

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

FILED
2003 JUL 28 PM 3:46

IN RE:)
)
FLEMING COMPANIES,)
INC., et al.,)
)
Debtors.)

Case No:03-10945 (MFW)
Jointly Administered
Chapter 11

US BANKRUPTCY COURT
DISTRICT OF DELAWARE

Objection Date: July 28, 2003 at 4:00 p.m.
Hearing Date: August 4, 2003 at 11:30 a.m.

**OBJECTION OF JAMES E. SPENCER, BLANCHARD
GROCERY, L.L.C., AND NEWCASTLE GROCERY, L.L.C.
(CONTRACT ASSIGNMENT NUMBER 6738 TO CURE AMOUNT SCHEDULE)**

James E. Spencer ("Spencer"), Blanchard Grocery, L.L.C. ("Blanchard") and Newcastle Grocery, L.L.C. ("Newcastle") hereby file their Objection ("Objection") to the Cure Amount Schedule and in support thereof state the following:

1. Blanchard and Newcastle are parties to Sublease Agreements with Fleming Companies, Inc. ("Fleming").

2. On April 1, 2003 ("the Petition Date"), the above-captioned debtors-in-possession commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. To Blanchard and Newcastle's knowledge, Debtors continue to manage their respective properties and are operating their businesses as debtors-in-possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code.

3. On or about July 7, 2003, the Debtors filed a Sale Motion and Bidding Procedures Motion, and in connection therewith have sought certain relief with regard to the procedures for assumption/assignment of executory contracts or unexpired leases, and procedures establishing cure amounts for the applicable contracts or leases.¹

4. By virtue of a cure notice served upon James E. Spencer, the Debtors seek to place an unlawful burden upon Blanchard and Newcastle to immediately calculate damages resulting

¹This relief, sought on an expedited basis, appears to be objectionable and prejudicial to the counter-parties to such contracts and unexpired leases. To the extent that any objections are raised, Blanchard and Newcastle join in those objections.

from Debtors' breach of agreements it has with Blanchard and Newcastle. The Debtors threaten that failure to respond (on very short notice) to the Cure Notice will result in the forfeiture by Blanchard and Newcastle of any right to claim damages as a result of the Debtors breaches except to the extent Debtors have admitted a Cure Amount in the Schedules.

5. The Debtors assert that the Cure Amount on the Contract Assignment 6738 with Spencer (and perhaps Blanchard and Newcastle although no notice was given to either) is \$0. This is incorrect. Blanchard and Newcastle have incurred damages at this time (some of which are unliquidated and/or consequential damages associated with the Debtor's service failures). These damages will be documented by later proof as and when appropriate, consistent with this Court's order.

6. Spencer, Blanchard, and Newcastle hereby preserve any and all rights to assert claims for additional damages in connection with the admitted breaches of the Debtors and do not waive any right to assert such damages.

WHEREFORE, Spencer, Blanchard, and Newcastle demand that as a condition of, and upon assumption of the Lease or any other executory contract involving them, Debtors be ordered to promptly pay all cure amounts, defaults and damages and for such other and further relief as may be just and proper.

Dated: July 28, 2003

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