

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Chapter 11

Fleming Companies, Inc., et al.,

Case No.: 03-10945 (MFW)

Debtors.

(Jointly Administered)

**OBJECTION TO PROPOSED ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASE NUMBER 7285 AND STATEMENTS OF POSITION TO
PROPOSED ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES NUMBERS 4572, 4598 AND 6882**

Mound Foods, Inc., the contracting party, through its attorney, Messerli & Kramer, P.A., 1800 Fifth Street Towers, 150 South Fifth Street, Minneapolis, Minnesota 55402, hereby objects to the proposed Assignment of Contracts number 7285 and states its position as to contracts numbers 4572, 4598 and 6882.

BACKGROUND

Mound Foods, Inc. ("Mound Foods"), is a Minnesota corporation. Mound Foods is a sub-lessee on two (2) separate Sub-Leases (Contract Numbers 6882 and 7285), a Retailer under a Facility Standby Agreement (Contract Number 4598), and a Licensee under a Jubilee Foods License Agreement (Contract Number 4572). Contract Numbers 4572, 4598 and 6882 are part of one business transaction and should be assumed only in total and not piecemeal.

Prior to March, 2003, Mound Foods operated a retail food and grocery store at 5229 Shoreline Drive, Mound, Minnesota 55364, pursuant to Contract Number 7285 (Exhibit A). In March, 2003, Mound Foods ceased to occupy 5229 Shoreline Drive (vacated) and immediately commenced doing business in a new location in the Mound Marketplace Shopping Center at 2131 Commerce Boulevard, Mound, Minnesota 55364 as sub-lessee under Contract Number 6882 (Exhibit B). This is also a retail food and grocery business. At the same time, and as a requirement for its entering into the Sub-Lease (Exhibit B), Fleming required Mound Foods to enter into a Facility Standby Agreement, Contract Number 4598 (Exhibit C), a License Agreement, contract number 4572 (Exhibit D), and a Demand Note (Exhibit E).

OBJECTION

I. **REJECT CONTRACT 7285**

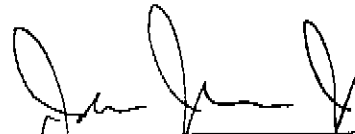
The lease payments made by Mound Foods under this Sub-lease are used, dollar-for-dollar, by Fleming to make its lease payments under a Prime Lease on the same facility to Mark Saliterman (Exhibit F). This Prime Lease should be rejected by Fleming Companies, Inc., because the store is closed. Contract Assignment Number 7285 should also be rejected.

II. STATEMENTS ON CONDITIONS TO ASSUMPTION OF CONTRACTS 4572, 4598 AND 6882

The Assumption of the Sub-Lease (Contract Assignment Number 6882), the License Agreement (Contract Assignment Number 4572), and the Facility Standby Agreement (Contract Assignment Number 4598) cannot occur unless all of the agreements which form the business relationship are assumed and the following conditions are complied with:

- a) Assignee must assume and agree to be bound by the terms of the Demand Note dated May, 2002, an unexecuted copy of which is attached (as Exhibit G). The note holder and assignee defers the right to make demand for payment under the Demand Note so long as Mound Foods, Inc. make all payments due under the Facility Standby Agreement (Contract Number 4598).
- b) Assignee must, to assume the Sub-Lease (Contract Number 6882), also assume the Prime Lease (Exhibit G) with Mound Marketplace LLC, since the Sub-Lease is dependent on the Prime Lease (Exhibit G).
- c) Assignee must, as a condition to the assumption of Contract Assignment Number 4598, waive any Facility Standby Fee for the lease year 2003. Fleming has been unable to supply products to retailer in quantities sufficient to allow retailer to meet the teamwork score described in Section 3 of the Facility Standby Agreement proposed to be assumed.

MESSERLI & KRAMER, P.A.



Jerome J. Simons, Jr., ID # 0101308
Attorney for Mound Foods, Inc.
1800 Fifth Street Towers
150 South Fifth Street
Minneapolis, MN 55402-4218
Telephone: 612-672-3600

Dated: July 23, 2003

552045.1

AFFIDAVIT OF SERVICE BY FEDERAL EXPRESS

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Kathryn J. McLean, of said County and State, being duly sworn deposes and says that on July 23, 2003, she served the foregoing Objection to Proposed Assignment of Executory Contracts and Unexpired Lease Number 7285 and Statements of Position to Proposed Assignment of Executory Contracts and Unexpired Leases Numbers 4572, 4598 and 6882 upon those persons set forth below by Federal Express, overnight delivery, as follows:

Fleming Companies, Inc.
Attn: Contracts Department
1945 Lakepointe Drive
Lewisville, Texas 75057

Dennis Dunne
Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, New York 10005
(Counsel for Committee)

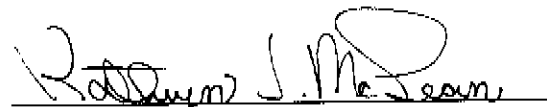
Shirley S. Cho
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017

Robert S. Herzberg
Pepper Hamilton LLP
100 Renaissance Center, 36th Floor
Detroit, Michigan 48243

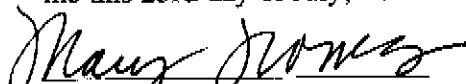
Geoffrey Richards
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois ~~60601~~

Laura Davis Jones
Pachulski, Stang, Ziehl, Young,
Jones & Weintraub P.C.
919 North Market St., 16th Floor
Wilmington, Delaware 19801

Andrew DeNatale
White & Case
1155 Avenue of the Americas
New York, New York 10036
(Counsel for Lenders)


Kathryn J. McLean

Subscribed and sworn to before
me this 23rd day of July, 2003


Notary Public

