

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Case No. 03-10945 (MFW)
)	(Jointly Administered)
Fleming Companies, Inc. et al.,)	Chapter 11
)	
Debtors.)	Objection Deadline: July 28, 2003 at 4:00 p.m.
)	Hearing Date: August 4, 2003 at 11:30 a.m.
)	

OBJECTION OF SANDELMAN LANDLORDS TO CURE AMOUNTS PROPOSED BY DEBTORS WITH REGARD TO MOTION FOR ORDER (A) APPROVING ASSET PURCHASE AGREEMENT WITH C&S WHOLESALE GROCERS, INC. AND C&S ACQUISITION LLC, (B) AUTHORIZING (I) SALE OF SUBSTANTIALLY ALL OF SELLING DEBTORS' ASSETS RELATING TO THE WHOLESALE DISTRIBUTION BUSINESS TO PURCHASER OR ITS DESIGNEE(S) OR OTHER SUCCESSFUL BIDDER(S) AT AUCTION, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, LICENSE AGREEMENTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF (D.I. NO. 1906)

Susan Sandelman as Trustee of the Diajeff Trust, Susan Sandelman as Trustee of the Alisan Trust, Sanford Sandelman as Trustee of the Jasue Trust, Jeffrey Sandelman as Trustee of the Sajan Trust, Susan Sandelman as Trustee of the Hareff Trust, Susan Sandelman as Trustee of the Laurie Industries Trust, Susan Sandelman as Trustee of the Aneff Trust, Susan Sandelman as Trustee of the Muffrey Trust, Susan Sandelman as Trustee of the Fundamentals Company Trust, Janess Associates, Stowsan Limited Partnership, Prusan Limited Partnership, Wichsan Limited Partnership, Jeffrey Sandelman, and Kin Properties, each as a landlord under one or more of the unexpired leases in connection with improved real property (individually, a "Property", collectively, the "Properties") owned by one or more of the landlords and leased to and which may be assumed by the Debtors (the "Leases") pursuant to section 365 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code") and Debtors' Motion for Order (A) Approving

Asset Purchase Agreement with C&S Wholesale Grocers, Inc. and C&S Acquisition LLC, (B) Authorizing (I) Sale of Substantially All of Selling Debtors' Assets Relating to the Wholesale Distribution Business to Purchaser or Its Designee(s) or Other Successful Bidder(s) at Auction, Free and Clear of All Liens, Claims, Encumbrances and Interests and (II) Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases, and (C) Granting Related Relief (the "Sale Motion"), and as creditors and parties in interest in the above-captioned bankruptcy cases (collectively, the "Sandelman Landlords"), by counsel, hereby object to the Sale Motion and proposed cure amounts with respect to any proposed assumption of the Leases and, in support hereof, state as follows:

FACTUAL BACKGROUND

1. On April 1, 2003 (the "Petition Date"), Fleming Companies, Inc. and each of its affiliated debtors (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, thereby commencing these jointly administered bankruptcy cases. Since the Petition Date the Sandelman Landlords understand that the Debtors have operated their businesses and managed their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. An Official Committee of Unsecured Creditors has been appointed in these cases. No trustee or examiner has been appointed in these cases.

2. The Sandelman Landlords are each owners of certain real property in various locations throughout the United States and, in connection with each Property, one or more of the Sandelman Landlords have entered into a Lease with one or more of the Debtors as tenants prior to the Petition Date. The Leases were, on the Petition Date, and continue to be, unexpired non-residential leases of real property.

3. On or about June 27, 2003, the Selling Debtors¹ and C&S Wholesale Grocers, Inc. ("C&S") entered into a letter of intent that provided for exclusive negotiations for the sale of the Debtors' Wholesale Distribution Business to C&S. On July 7, 2003, the Selling Debtors and C&S Acquisition LLC, a subsidiary of C&S (the "Purchaser"), entered into an asset purchase agreement ("APA") that provided for the sale of substantially all of the assets of the Debtors' Wholesale Distribution Business.

4. On July 7, 2003, the Selling Debtors filed a Motion for Entry of an Order (A) Approving Bidding Procedures and Bid Protection in Connection with the Sale of the Wholesale Distribution Business, (B) Approving Assignment Procedures for Affected Executory Contracts and Unexpired Leases, and (C) Setting Sale Hearing Dates (the "Bidding Procedures Motion").

5. On July 11, 2003, the Selling Debtors filed the Sale Motion seeking to have the Court enter a Sale Order approving the sale of substantially all of the Selling Debtors' assets free and clear of all liens, claims, encumbrances, and interests.

6. In addition, pursuant to the Sale Motion, the Selling Debtors seek authorization for the Selling Debtors to assume and assign to the Purchaser or the Successful Bidder(s) certain executory contracts and unexpired leases of real property associated with the Wholesale Distribution Business (the "Acquired Contracts").

7. On July 11, 2003, the Selling Debtors filed and served a Notice re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion (the "Assumption/Assignment Notice"). The Selling Debtors attached what they denominated was a Cure Amount Schedule to the Assumption/Assignment Notice with alleged cure amounts in connection with each such

¹ Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Asset Purchase Agreement, whichever applicable.

contract, license, and lease that may be assumed and assigned and further provided for a procedure whereby parties in interest could object.

8. The Debtors' Cure Amount Schedule, however, does not provide sufficient identifying information for the Sandelman Landlords (or, in all likelihood, any other landlord) to identify whether their Leases are included in the proposed Acquired Contracts. Instead, the Cure Amount Schedule lists (i) a "contract assignment number" (which is a different number than previously provided by Debtors in related motions filed by the Debtors in connection with the assumption and assignment of certain unexpired leases) and (ii) a contracting party name. In fact, for the Sandelman Landlords, the Debtors have listed the management company's address (Kin Properties) and not the Property address, making it difficult, if not impossible, to identify with any certainty the Lease proposed to be assumed and assigned. There is no information with respect to the location of the leased property (street address, city, or state), any description of the Property, the name of the lessee or the appropriate lessor/contracting party, amount of the rent, or any other terms or identifying features of the particular Lease proposed to be assumed and assigned.

9. Without such identifying information, the Sandelman Landlords cannot determine with any certainty which Leases the Selling Debtors propose to assume and assign. Further, without better disclosure, the Sandelman Landlords cannot determine or disclose the cure or cure amounts due upon such assumption.

10. Pursuant to section 365(b)(1) of the Bankruptcy Code, the Selling Debtors may only assume each of the Leases if, at the time of assumption of each such Lease, the Selling Debtors (1) cure any default, or provide adequate assurance that any default will be promptly cured; (2) compensate, or provide adequate assurance that they will promptly compensate, the applicable Sandelman Landlords for the actual pecuniary loss

resulting from such default; and (3) provide adequate assurance of future performance.
11 U.S.C. § 365(b)(1).

11. In order to assume each of the Leases, the Selling Debtors are required, at the time of assumption, to cure (or provide adequate assurance of the prompt cure) all monetary and non-monetary defaults under the Leases, including, without limitation, any and all defaults with respect to insurance requirements under the Leases, payment of real estate taxes and other charges, all maintenance and repair obligations, environmental cleanup obligations, hazardous materials restrictions, the satisfaction of liens, compliance with laws, and indemnification obligations.

12. The lack of identifying information with respect to the Leases makes it impossible for the Sandelman Landlords to correctly identify which of the many Leases are included in the Acquired Contracts which the Selling Debtors propose to assume and assign; thus, the Sandelman Landlords are currently unable to determine or disclose the proper cure amounts for any of the Leases that the Selling Debtors propose to assume. Additional information regarding each of the Acquired Contracts must be provided by the Selling Debtors along with an appropriate amount of time to review such information. As it stands, the Selling Debtors have not provided the Sandelman Landlords with adequate and reasonable notice of those Leases the Selling Debtors wish to assume and assign.

13. Moreover, even with such information, while the Sandelman Landlords can quickly determine whether there is unpaid rent or other charges they regularly collect from the Debtors, it is the Debtors who receive the tax bills, utility charges and who are obligated to maintain the Properties. Without providing the Sandelman Landlords with all tax bills, utility bills and without a full inspection of each Property it is impossible for the Sandelman Landlords (or, potentially any landlord) to respond to

the Debtors' demand that all cures and cure amounts be identified by July 28, 2003 or waived.

14. The Sandelman Landlords therefore reserve all of their rights under each of the Leases with respect to any and all obligations of the Selling Debtors as tenants, including the Sandelman Landlords' right to claim any amounts of rent, charges to compensate for monetary defaults, such as accrued real estate taxes, utility charges that have been assessed against the Properties, unsatisfied liens on the Properties created by Debtors and/or insurance premiums, and charges to compensate for non-monetary defaults, including all maintenance obligations and environmental obligations of the Debtors.

15. Further, upon information and belief, the Selling Debtors owe the applicable Sandelman Landlords more than zero dollars stated as the Cure Claim Amount with respect to each of the above referenced Leases. For these reasons, and because insufficient information has been provided in the Sale Motion and Assumption/Assignment Notice and attached Cure Amount Schedule to allow the Sandelman Landlords to determine which of the Leases Debtors propose to include in the Acquired Contracts, the Sandelman Landlords object to the Cure Claim Amount and the proposed assumption and assignment of any of the Leases under which any of the Debtors may be tenants.

16. The Sandelman Landlords assert that the Leases cannot be assumed by Selling Debtors unless and until all matters are cured and adequate assurance of future performance is provided under each and every provision of the Leases that Selling Debtors propose to assume. The Sandelman Landlords further reserve the right to amend or supplement any statement of cure amounts as necessary or appropriate under the circumstances.

WHEREFORE, for the foregoing reasons, the Sandelman Landlords request that the Court (i) deny the Sale Motion with respect to any of the Leases of the Sandelman Landlords, (ii) order the Selling Debtors to provide additional and adequate information with regard to the Leases it intends to include in the Acquired Contracts which is adequate to allow the Sandelman Landlords to (a) determine what Leases are at issue and (b) whether there are unpaid taxes, utilities, insurance, or other liens with respect to the Properties, (iii) provide the Sandelman Landlords with sufficient time to inspect the Properties to determine whether there are maintenance or environmental obligations with respect to each such Property, (iv) order an extension of time for the Sandelman Landlords to review such additional information provided by the Selling Debtors with regard to the Leases to file objections thereto, and (iv) grant such other and further relief as is just.

Dated: July 28, 2003

Respectfully submitted,

/s/ Thomas G Macauley
Thomas G. Macauley (ID No. 3411)
ZUCKERMAN SPAEDER LLP
919 Market Street, Suite 1705
Wilmington, Delaware 19801
Tel: (302) 427-0400
Fax: (302) 427-8242

Daniel M. Litt, Esquire
Jeffrey Rhodes, Esquire
DICKSTEIN SHAPIRO MORIN & OSHINSKY
LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
Tel: (202) 785-9700
Fax: (202) 887-0689

Attorneys for the Sandelman Landlords

CERTIFICATE OF SERVICE

I hereby certify that this 28th day of July, 2003, true and correct copies of the OBJECTION OF SANDELMAN LANDLORDS TO CURE AMOUNTS PROPOSED BY DEBTORS' WITH REGARD TO MOTION FOR ORDER (A) APPROVING ASSET PURCHASE AGREEMENT WITH C&S WHOLESALE GROCERS, INC. AND C&S ACQUISITION LLC, (B) AUTHORIZING (I) SALE OF SUBSTANTIALLY ALL OF SELLING DEBTORS' ASSETS RELATING TO THE WHOLESALE DISTRIBUTION BUSINESS TO PURCHASER OR ITS DESIGNEE(S) OR OTHER SUCCESSFUL BIDDER(S) AT AUCTION, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, LICENSE AGREEMENTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF were served by facsimile upon the following:

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

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

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 Street
16th Floor
Wilmington, Delaware 19801

Andrew P. DeNatale
White & Case
1155 Avenue of the Americas
New York, New York 10036

Scott D. Cousins
Greenberg Traurig LLP
The Brandywine Building
1000 West Street, Ste. 1540
Wilmington, DE 19801

Dennis F. Dunne
Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, New York 10005

I. William Cohen
Robert S. Hertzberg
Pepper Hamilton LLP
36th Floor
100 Renaissance Center
Detroit, Michigan 48243-1157

David F. Fournier
Pepper Hamilton LLP
1201 Market Street, Ste. 1600
Wilmington, DE 19801

Joseph McMahon
United States Trustee
844 King Street
Room 2313
Wilmington, DE 19801

/s/ Thomas G. Macauley
Thomas G. Macauley