

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Fleming Companies, Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 03-10945 (MFW)
	)	(Jointly Administered)
Debtors.	)	

Related Docket No.: 1342

**DEBTORS' SUPPLEMENTAL CERTIFICATION OF COUNSEL  
REGARDING ORDER DENYING MOTION OF E-Z MART  
STORES, INC. TO LIFT STAY, OR IN THE ALTERNATIVE, TO  
COMPEL ASSUMPTION OR REJECTION OF THE CONTRACT**

1. Prior to this time, E-Z Mart Stores, Inc. and the Debtors have filed proposed Orders regarding the Court's ruling on the Motion of E-Z Mart Stores for Relief from Automatic Stay.<sup>2</sup> The previously filed proposed Orders were drafted without a copy of the transcript from the hearing.

2. The Debtors have now received a copy of the transcript from the hearing on July 29. The transcripts resolve the disputed language. At 151:3-10 (attached hereto), the Court clearly stated that the 20 day period was to be 20 consecutive days, not an aggregate of 20 days as E-Z Mart argues:

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<sup>1</sup> The Debtors are the following entities: Core-Mark International, Inc.; Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C., Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

<sup>2</sup> The E-Z Mart Certifications of Counsel are docket numbers 2154 and 2364. The Debtors' Certification of Counsel is docket number 2218.

I think I can condition the denial of the relief from the stay and the denial of the motion to compel, or really, continue them, contingent on the Debtor meeting a certain level of performance. And I would make that at the 96 percent blended rate and require that if the Debtor fails to meet that for a period of 20 consecutive days that the matter may be relisted, the motion may be relisted for the next hearing on ten days' notice to the Debtor.

3. The Court also stated at 152:8-12 of the transcript that the Debtors should report back in four months regarding the status of contract:

I'm also going to condition the continuance to having the Debtors come back in a period of four months, and if there's not been any resolution or decision by the Debtor one way or the other I'll reconsider the motion to compel a decision at that time.

Copies of pages 151 and 152 of the transcript are attached hereto as Exhibit A.

4. Accordingly, the Debtors submit the revised proposed Order (the "Revised Order") attached hereto as Exhibit B that reflects the language in the transcript. A blackline of the Revised Order is attached as Exhibit C.

[remainder of page intentionally left blank]

5. The Debtors respectfully request that the Court sign and enter the Revised

Order at the Court's earliest convenience.

Dated: July 29, 2003

KIRKLAND & ELLIS

James H. M. Sprayregen, P.C. (ARDC No. 6190206)

Richard L. Wynne (CA Bar No. 120349)

Bennett L. Spiegel (CA Bar No. 129558)

Shirley Cho (CA Bar No. 192619)

Marjon Ghasemi (CA Bar No. 211551)

777 South Figueroa Street

Los Angeles, CA 90017

Telephone: (213) 680-8400

Facsimile: (213) 680-8500

And

PACHULSKI, STANG, ZIEHL, YOUNG, JONES

& WEINTRAUB P.C.

Scotta E. McFarland

Laura Davis Jones (Bar No. 2436)

Ira D. Kharasch (CA Bar No. 109084)

Scotta E. McFarland (Bar No. 4184)

Christopher J. Lhulier (Bar No. 3850)

919 North Market Street, 16<sup>th</sup> Floor

P.O. Box 8705

Wilmington, Delaware 19899-8705 (Courier No. 19801)

Telephone: (302) 652-4100

Facsimile: (302) 652-4400

Counsel for the Debtors and Debtors in Possession