

1 PAUL F. READY
State Bar No. 107469
2 FARMER & READY
A LAW CORPORATION
3 1254 Marsh Street
P. O. Box 1443
4 San Luis Obispo, CA 93406
(805) 541-1626

5 Attorney for Romaldo and Janice Martin
6

7 UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF DELAWARE
9

10 In Re)

CASE NO. 03-10945 (MFW)
Chapter 11

11)
12 FLEMING COMPANIES, INC.,
et al,)

OBJECTION AND
RESPONSE OF LESSOR
CONTRACT #7060

13)
14 Debtor.)
15)
16)
17)
18)

Date: August 4, 2003
Time: 11:30 a.m.
Place: 824 Market St
Wilmington DE

19 _____)
20 Comes now Romaldo Martin and Janice Martin in response to the Debtor's Notice Re;
21 Potential Assumption and Assignment Of Certain Executory Contracts and Unexpired Leases
22 In Connection With Sale Motion, and Supplemental Notice, and hereby provides the following
23 information for purposes of determining the status of defaults of the above referenced lease:

24 1. USE LIMITATION: The above referenced lease, to wit Contract No. 7060 for the
25 premises commonly known as Food 4 Less, 8360 El Camino Real, Atascadero, California,
26 93422, (the "Lease") and any assignment or subletting of the lease, are subject to strict use
27 limitations to wit: "...retail supermarket use", and no other use can be had without the
28 express written consent of the lessor, which under the Lease terms may be withheld "...for
any reason, or for no reason at all, and Lessor may act arbitrarily in withholding such

ORIGINAL

1 consent". (Paragraph 33).

2 2. CONSEQUENTIAL DAMAGES: Based upon current Base Monthly rents
3 (\$27,646.00) the estimated 11 U.S.C. 502(b)(6)(a) damages for one year's rent would equate
4 to Three Hundred Thirty One Thousand Seven Hundred Fifty Two and No/100 Dollars
5 U.S.(\$331,752.00).

6 3. GENERAL OBJECTION: The foregoing information is provided without prejudice
7 to Lessor's rights to present evidence and assert claims regarding further damages, terms and
8 conditions as to the debtor in possession and or any prospective assignee or purchaser, based
9 upon the lack of reasonable notice and time to prepare and respond to the debtor's notice.
10 Specifically this objection is based upon the fact that the Supplemental Notice was not
11 received by the Lessor in California until July 21, 2003, and accordingly this Lessor had less
12 than five (5) calendar days within which to review the notice, the lease, relevant accountings
13 and otherwise make arrangements to timely provide this response to the court by July 28,
14 2003. Lessor respectfully suggests that the foregoing notice represents a lack of due process,
15 and is not adequate "notice and hearing" as required under the Bankruptcy Code.

16
17 Dated: 7-25-03

FARMER & READY

18
19
20 By


PAUL F. READY
Attorney for Romaldo and
Janice Martin

PROOF OF SERVICE BY MAIL
Code of Civil Procedure section 1013a(3)

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN LUIS OBISPO)

I am employed in the County of San Luis Obispo, State of California. I am over the age of 18 and not a party to the within action. My business address is 1254 Marsh Street, Post Office Box 1443, San Luis Obispo, California 93406.

On July 25, 2003, I served the following described document(s):

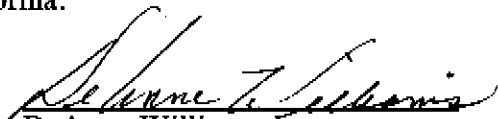
**OBJECTION AND RESPONSE OF LESSOR
CONTRACT #7060**

on the interested parties in this action by placing true copies thereof enclosed in a sealed envelope addressed as follows:

See attached list.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States postal service on that same day with postage thereon fully prepaid at San Luis Obispo, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that I am employed by a member of the bar of this court at whose direction the service was made. Executed on July 25, 2003, at San Luis Obispo, California.


DeAnne Williams

1 Fleming Companies, Inc.,
Attn: Contracts Department
2 1945 Lakepointe Drive
Lewisville, TX 75057
3
4 Shirley S. Cho
Kirkland & Ellis LLP
777 South Figueroa Street
5 Los Angeles, CA 90017
6
7 Geoffrey Richards
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago Illinois 60601
8
9 Laura Davis Jones
Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C.
919 North Market Street 16th Floor
10 Wilmington, Delaware 19801
11
12 the Lenders
c/o Andrew DeNatale
White & Case
1155 Avenue of the Americas
13 New York, New York 10036
14
15 Counsel to the Committee
c/o Dennis Dunne
Milbank Tweed Hadley & McCloy LLP
One Chase Manhattan Plaza
16 New York, New York 10005
17
18 Robert S. Hertzberg
Pepper Hamilton LLP
36th Floor 100 Renaissance Center
Detroit, Michigan 48243-1157
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WORK ORDER

Attorney Service of San Luis Obispo

860 Walnut Street, B
San Luis Obispo, CA 93401
(805) 543-8919

Date Received July 25, 2003

Client No. 5411626

Client Farmer & Ready
1254 Marsh St
San Luis Obispo, CA 93401-0000
(805) 541-1626

Order No. 27940

Their File No.
Server

Attorney
Contact Deann

Case No.

Court None

Plaintiff In re Fleming Companies, Inc.

vs Defendant

Depo/Hearing Date

RUSH****

29

Due Date July 29, 2003

²⁹Last Day To S/S

Service: RUSH--RUSH--MUST BE FILED 7-~~29~~²⁹-03, PLEASE FILE
THE OBJECTION AND RESPONSE OF LESSOR CONTRACT
#7060 FOR THE ABOVE CASE, AT US BANKRUPTCY
COURT--DISTRICT OF DELAWARE, CASE # 03-10945
(MFW) AND RETURN A CONFORMED FACE PAGE VIA

SASE

Business Address:

RUSH

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RUSH

RUSH