

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DEBTORS' OPPOSITION TO MOTION OF RELIANT ENERGY SOLUTIONS, LLC FOR AN ORDER PURSUANT TO SECTIONS 503 AND 556 OF THE BANKRUPTCY CODE (I) DETERMINING THAT FORWARD ELECTRIC ENERGY SALES AGREEMENT HAS AUTOMATICALLY TERMINATED, (II) REQUIRING PAYMENT OF ADMINISTRATIVE PRIORITY CLAIM FOR DELIVERY OF POST-PETITION ELECTRICITY, AND (III) AUTHORIZING THE TRANSFER OF ELECTRIC SERVICE AT DEBTOR'S FACILITIES FROM RELIANT TO DEFAULT SERVICE PROVIDER (Docket No. 1975)

The captioned debtors and debtors in possession (collectively, the "Debtors") file this opposition to the Motion Of Reliant Energy Solutions, LLC For An Order Pursuant To Sections 503 And 556 Of The Bankruptcy Code (I) Determining That Forward Electric Energy Sales Agreement Has Automatically Terminated, (II) Requiring Payment Of Administrative Priority Claim For Delivery Of Post-Petition Electricity, And (III) Authorizing The Transfer Of Electric Service At Debtor's Facilities From Reliant To Default Service Provider (the "Motion") filed by Reliant Energy Solutions LLC ("Reliant"), and respectfully state as follows:

¹ 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.; Favor Concepts, Ltd.; Fleming Foods Management Co., O.K., 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. (collectively, the "Debtors").

Preliminary Statement

1. In its Motion, Reliant seeks an order determining that the Electric Energy Sales Agreement (the "Agreement") between the Debtors and Reliant terminated on the April 1, 2003 petition date (the "Petition Date") because the Agreement is a "forward contract". The Debtors consent to this relief.

2. Reliant also seeks an order allowing the transfer of electric service at the Debtors' facilities to a default service provider. The Debtors consent to this relief as well.

3. Finally, Reliant seeks an administrative claim in the amount of \$222,141 for the Debtors' postpetition usage of electricity under the Agreement from the Petition Date through June 30, 2003, plus additional sums for usage thereafter. Reliant's Motion disingenuously fails to note several fundamental facts, such as that a) the Debtors have already paid Reliant \$137,296 for postpetition services, b) the Debtors requested termination of service for at least one of its locations as of April 30, 2003, c) Reliant itself informed the Debtors it would no longer provide any services after June 30, 2003, and d) by June 26, 2003 at the latest the Debtors requested termination of Reliant's services. The Debtors' records indicate that Reliant's administrative claim is a maximum of \$41,993.

Reliant's administrative claim is at most \$41,993

4. Under the Agreement, Reliant provided electricity to twenty-six (26) of the Debtors' locations.

5. On April 30, 2003 the Debtors sent Reliant a notice to immediately disconnect the service at its 1965 Lakepointe Dr. location, one of the twenty-six (26) locations. (See Exhibit A.) Despite the Debtors' clear instructions, Reliant continued to bill the Debtors for

services at that location. (See **Exhibit B.**) The Debtors are currently investigating whether the Debtors sent out any other similar termination notices.

6. It should be noted that because of this clear case of overbilling, and the otherwise factually inaccurate nature of the Motion, the Debtors requested a continuance, with respect to the administrative claim portion of the Motion only, so that the parties could attempt to reconcile the numbers. Reliant conditioned the continuance on language in an “agreed order” that was broader than Reliant’s prayer in the Motion regarding the termination of the Agreement and the transfer of service to a default provider. Reliant insisted that if the Debtors did not accept each and every word of the overly broad language, then the Motion had to be set for hearing.

7. On June 16, 2003, Reliant sent the Debtors an email indicating it would not provide any services to the Debtors after June 30, 2003. (See **Exhibit C.**)

8. In response, the Debtors sent Reliant an email on June 26, 2003 indicating that indeed Reliant would not need to provide any further services: the Debtors had sold, or rejected the contracts of, twenty-two (22) of the twenty-six (26) locations, and the Debtors requested that the remaining four (4) locations be serviced by a default energy provider. (See **Exhibit C.**) Thus, contrary to Reliant’s assertion that the Debtors may still be using Reliant’s services, by June 26, 2003 at the latest both parties had agreed that Reliant would no longer be providing the Debtors any services.

9. Contrary to Reliant’s implication that the Debtors have not paid for any of Reliant’s postpetition services, the Debtors’ records indicate the Debtors have paid Reliant \$137,838 for postpetition services.

10. The Debtors' records also indicate that even if the Debtors were to pay for all twenty-six (26) locations through June 30, 2003, the correct billing for Reliant's postpetition services would amount to \$179,831. Thus, this figure represents the maximum value of Reliant's postpetition services.

11. Consequently, subtracting \$137,838 in payments for postpetition services from a maximum value of postpetition services of \$179,831, Reliant's maximum administrative claim is \$41,993.

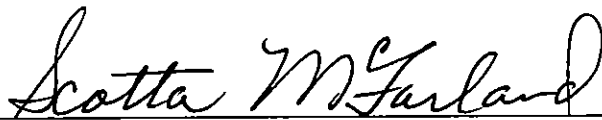
Dated: July 31, 2003

Respectfully Submitted,

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