

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	Chapter 11
	)	
	)	Case No. 03-10945 (MFW)
	)	
Fleming Companies, Inc. <i>et al.</i> ,	)	Jointly Administered
	)	
Debtors.	)	<b>Objection Deadline: August 11, 2003</b>
	)	<b>Hearing Date: August 14, 2003 @ 9:00 a.m.</b>
	)	<b>Related Docket No. 2002</b>

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**OBJECTION BY RALPHS GROCERY COMPANY TO NOTICES OF ASSUMPTION  
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES SCHEDULED FOR HEARING ON AUGUST 14, 2003**

Ralphs Grocery Company, a Delaware corporation d/b/a Food 4 Less (“Ralphs”), for its objection to the Notices of Assumption and Assignment of Certain Executory Contracts and Unexpired Leases scheduled for hearing on August 14, 2003, respectfully states as follows:

1. By motion dated July 11, 2003 (the “Sale Motion”), the debtors Fleming Companies, Inc. *et al.* (“Fleming” or the “Debtors”), sought entry of an order, *inter alia*, authorizing and approving the sale of the Debtors’ wholesale distribution business to C&S Wholesale Grocers, Inc. (“C&S”) and the assumption and assignment of certain executory contracts and unexpired leases in connection with the sale.

2. On July 28, 2003, Ralphs filed an Objection (Docket No. 2361) (“Ralphs’ Objection”) to the Debtors’ potential assumption and assignment of an agreement entitled Amended and Restated License Agreement (the “License Agreement”) between Ralphs and Fleming under which Fleming is granted a trademark license to use Ralphs’ “Food 4 Less” name and mark for certain purposes in certain territories. A copy of Ralphs’ Objection is attached hereto as Exhibit A, and is incorporated herein by reference.

3. The initial hearings on the Sale Motion took place on August 4 and August 7, 2003. The hearing on the Sale Motion has been continued to August 14, 2003.<sup>1</sup>

4. During the initial hearing on the Sale Motion, Fleming filed on August 4, 2003, certain Notices of Assumption and Assignment (the “Notices”) of contracts and leases in connection with the sale, with the hearings to be held on August 14, 2003.

5. Upon information and belief, Ralphs was not served with the Notices. After reviewing the Notices filed with the Court, Ralphs is unable to determine whether the License Agreement is included as a contract to be assumed and assigned pursuant to any of the Notices. Fleming has not informed Ralphs whether the License Agreement is the subject of any of the Notices, despite several requests and inquiries by Ralphs’ counsel in writing and by telephone,.

6. In an abundance of caution, Ralphs, therefore, objects to the assumption or assignment of the License Agreement pursuant to any of the Notices for all of the reasons set forth in Ralphs’ Objection, which is incorporated by reference herein.

7. As demonstrated in Ralphs’ Objection, the License Agreement cannot be assumed or assigned by Fleming under Section 365 of the Bankruptcy Code:

First, applicable trademark law bars an assignment of the license absent Ralphs’ consent. Since such consent is not forthcoming, Section 365(c) operates to prevent Fleming from assuming or assigning the License Agreement.

Second, Fleming committed material non-monetary breaches and violations of the License Agreement prior to the bankruptcy. These breaches are historical facts which cannot be undone and cured as required by Section 365(b).

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<sup>1</sup> Fleming represented to the Court in its reply pleadings and agenda letter that any issues concerning assumption and assignment of executory contracts under Section 365 (with the exception of the consequential

Third, the existence of the License Agreement is the subject of a pending action brought by Ralphs pre-bankruptcy in the United States District Court for the Central District of California. This Court cannot adjudicate that contract dispute in a summary proceeding on assumption and assignment of the License Agreement under Section 365.

Finally, Fleming and C&S provide absolutely no adequate assurance of future performance of the non-monetary (and monetary) obligations under the trademark License Agreement as required by Section 365(b) and (f).

8. Ralphs reserves all of its rights, including the right to adequate notice and due process in connection with any potential assumption or assignment of the License Agreement.

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damages issue under the Facility Standby Agreements) will be the subject of specific hearings on assumption and assignment once a particular contract or lease is scheduled to be assumed and assigned under Section 365.

WHEREFORE, Ralphs respectfully requests that the Court uphold Ralphs' Objection and deny the Debtors' attempt to sell, assume and assign the License Agreement to C&S (or anyone else) and grant Ralphs such other and further relief as is just and proper.

Dated: August 11, 2003

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