

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

In Re: )  
 ) Case No. 03-10945 (MFW)  
FLEMING COMPANIES, INC., *et al.*, ) Chapter 11  
 ) (Jointly Administered)  
Debtors. )  
 )

**OBJECTION OF B.H.B. GROCERY CORP. AND V & B ENTERPRISES,  
INC. TO DEBTOR’S MOTION FOR ORDER PURSUANT TO SECTION  
365(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS  
TO REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL  
REAL PROPERTY IN CONNECTION WITH SALE ORDER**

B.H.B. Grocery Corp. and V&B Enterprises, Inc. (collectively referred to as “Retailers”) hereby file this Objection to the Debtors’ Motion for Order Pursuant to Section 365(a) of the Bankruptcy Code Authorizing the Debtors to Reject Certain Unexpired Leases of Non-residential Real Property in Connection with Sale Order filed and served by debtor Fleming Companies, Inc. et al.’s (“Fleming” or “Debtor”). By this Objection, Retailer move the Court to enter an Order prohibiting the rejection of certain leases and subleases by Debtor. In support of this Objection, Retailers would show the Court as follows:

**Background**

1. This Objection is filed pursuant to 11 U.S.C. § 365 and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure.
2. On April 1, 2003, Debtor and its related affiliates filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. Debtor is conducting its affairs and managing its property as a Debtor-in-Possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
3. Retailers own and operate several grocery stores in the Oklahoma City, Oklahoma

area. For several years, Retailers have used Debtor as its primary grocery wholesaler pursuant to various agreements between the parties, including facility standby agreements and subleases.

4. On or about August 20, 2003, Debtor filed a Motion for Order Pursuant to Section 365(a) of the Bankruptcy Code Authorizing the Debtors to Reject Certain Unexpired Leases of Non-residential Real Property in Connection with Sale Order (the “Rejection Motion”). In the Rejection Motion, Debtor seeks to reject certain leases and subleases, including, but not limited to, the leases with Lawrenceco, LLC and Elizabeth J. and Charles A. Lawrence (File ID #OK-066/Contract #6795, File ID #OK-066(A)/Contract #6796 and File ID #OK-066b(A)/Contract #6774) and the sublease with Prague IGA Grocery and Keith Beachler<sup>1</sup> (File ID #OK-066a/Contract #6988) for the grocery store and fuel facility located at 210 West Elm, El Reno, Oklahoma; the lease with John A. Henry & Co. Ltd. (File ID #OK-067/Contract #6759) and the sublease with B.H.B. Grocery Corp. (File ID #OK-67a/Contract #6389) for a grocery store located at 3713 South Western, Oklahoma City, Oklahoma (collectively referred to as the “Leases”).

5. Retailers filed an objection to the assumption and assignment of certain facility standby agreements (“FSA”) by Debtor based upon Debtor’s failure to promptly cure all defaults under the FSA and Debtor’s failure to provide adequate assurance of future performance by its assignees, C&S Wholesale Grocers, Inc., C&S Acquisitions, LLC (collectively referred to as “C&S”) and AWG Acquisitions, L.L.C. (“AWG”). Retailers incorporate the Objection herein as if quoted verbatim. Retailers are negotiating with C&S and AWG in an attempt to resolve the objection.

6. The Leases are critical to the continued negotiation and resolution of the objection. Until the objection has been resolved between the parties or by the court, Retailers

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<sup>1</sup> Keith Beachler is the CEO and president of B.H.B. Grocery Corp.

request that the Debtor be prohibited from rejecting the Leases.

WHEREFORE, for the foregoing reasons, Retailers move the Court to enter an Order pursuant to 11 U.S.C. § 365(b) prohibiting the rejection of the Leases by Debtor at this time and for such other and further relief as the Court may deem just and proper.

Dated: August 28, 2003.

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

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FOR THE DISTRICT OF DELAWARE**

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|--|---|-------------------------|
| In re:                                   | : |                         |
|  | : | CHAPTER 11              |
| FLEMING COMPANIES, INC., <u>et al.</u> , | : |                         |
|  | : | CASE NO. 03-10945 (MFW) |
| Debtors.                                 | : |                         |
|  | : |                         |

**CERTIFICATE OF SERVICE**

I, William M. Kelleher, Esquire, certify that on this 28<sup>th</sup> day of August, 2003, I caused a true and correct copy of the foregoing Objection to be served on the attached service list in the manner indicated.

BALLARD SPAHR ANDREWS &  
INGERSOLL, LLP

By: /s/ William M. Kelleher  
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