

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

CASE NO. 03-10945

In re: FLEMING COMPANIES, INC., et al., ² Debtors	Case No. 03-10945 (MFW) Chapter 11 Jointly Administered
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**MOTION TO DISMISS OBJECTION TO NOTICE OF SALE OF REAL ESTATE AND
PERSONAL PROPERTY LOCATED THEREIN**

AND NOW, this 5th day of September, 2003, comes Kinsley Equities II Limited Partnership, a Pennsylvania limited partnership ("Kinsley"), by and through its counsel, Barley, Snyder, Senft & Cohen, LLC, and does file this Motion to Dismiss, stating as follows:

1. On or about April 29, 2003, the Debtors filed a Motion for Entry of an Order Establishing Procedures for the Sale of Real Estate and Personal Property Located Therein and Authorizing the Sale of Real Estate and Personal Property Located Therein Pursuant to §§363(b), 363(f) and 1146(c) of the Bankruptcy Code.
2. This Court approved the Motion by Order dated May 21, 2003 (the "Order").
3. Prior to entry of the Order, the Debtors marketed the real estate for several years, including marketing efforts conducted by a local real estate broker who pursued potential national and regional purchasers and listed the real estate on a website with a national presence.
4. Objector never expressed any interest in purchasing the Real Estate located at 1100 North Sherman Street, Springettsbury Township, York County, Pennsylvania (the "North

² 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.

Sherman Property”) in its own name and right. Rather, at all times Objector acted as an agent for Penn State Investment.

5. Kinsley entered into an Agreement dated June 6, 2003 with the Debtors to purchase the North Sherman Property for \$5,700,000.

6. The Order includes a provision stating “that the Debtors shall give notice upon entering of this Order to the Notice Parties, including any party who has previously expressed any interest in purchasing the Real Estate ...”

7. Pursuant to the Order, the Debtors gave notice of the proposed sale of the North Sherman Property on June 26, 2003 to the Notice Parties as defined in the Order. Exhibit A.

8. Penn State Investment was the only party other than Kinsley that expressed interest in purchasing the North Sherman Property.

9. Debtors provided Penn State Investment with notice of the proposed sale. Exhibit B.

10. As agent for Penn State Investment, Objector was not entitled to notice of sale separate from the notice to its principal, Penn State Investment. Alternatively, written notice to the potential purchaser constitutes notice to its agent, the instant Objector in satisfaction the requirement of notice to interested parties.

11. To approve the use, sale or lease of property outside the ordinary course of business pursuant to section 363 of the Bankruptcy Code, the Debtor’s decision need only be supported by a “sound business reason” justifying the preconfirmation sale of assets. In re Delaware & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991).

12. In Debtors’ Notice of Sale of Real Estate and Personal Property Located Therein (the “Notice”), Debtors state that in Debtors’ sound business judgment, Debtors believe that the sale will generate the highest and best value for the estate and that the sale is therefore in the best interests of the estate.

13. The Notice provides that all objections must be raised by July 7, 2003 or are waived.

14. Penn State Investment failed to raise an objection prior to the July 7, 2003 cutoff date for objections and is no longer interested in purchasing the property. Its decision not to pursue the purchase of the property binds its agent, the within Objector. Exhibit C.

15. On August 7, 2003, the Objector filed its Objection to Notice of Sale of Real Estate and Personal Property Located Therein (the "Objection") claiming that the proposed sale would not generate the highest and/or best value of the estate.

16. Objector never expressed interest in purchasing the North Sherman Property in its own name and right and was therefore not entitled to notice of the proposed sale.

17. In addition to Objector's lack of standing, Objector's Objection was not filed until August 7, 2003, one month after the bar date for objections.

18. Objector fails to provide the Court with any assurance that it or any other party has offered, or plans to offer, more than \$5,700,000 for the North Sherman Property.

19. Objector's Objection is contrary to the clear interests of the estate and has no legal basis.

20. Debtors and Kinsley are prepared to close on Kinsley's purchase of the North Sherman Property and continued delay as a result of Objector's Objection will be prejudicial to the estate and to Kinsley.

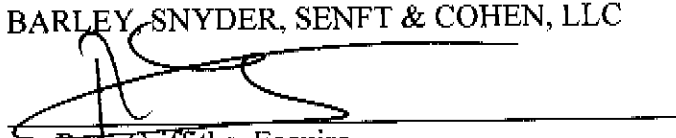
21. Objector failed to provide Kinsley with notice of Objector's Objection.

22. Kinsley is a party against whom relief is sought and as such, Objector is required to provide notice of the Objection to Kinsley.

WHEREFORE, Kinsley respectfully requests that the Court dismiss Objector's Objection and enter an Order denying all relief requested by Objector.

BARLEY SNYDER, SENFT & COHEN, LLC

By:



Rees Griffiths, Esquire

Court I.D. 21896

Jeffrey D. Lobach, Esquire

Court I.D. 35357

Jeremy D. Frey, Esquire

Court I.D. 89118

Attorneys for Kinsley Equities II Limited
Partnership

100 East Market Street

P.O. Box 15012

York, PA 17405-7012

(717) 846-8888

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 5th, 2003, I served a true and correct copy of the foregoing Motion to Dismiss Objection to Notice of Sale of Real Estate and Personal Property Located Therein filed in the above-captioned matter on the following, by United States Mail, First Class, postage prepaid or by facsimile (as noted below) on the following:

KNOWN PARTIES ASSERTING A LIEN ON THE REAL ESTATE OR PERSONAL PROPERTY

James E. Huggett
919 Market Street, Suite 1000
Wilmington, DE 19801-3062

Fax: (302) 426-9193

Diversified Liquidators
310 South Broad Street
York, PA 17406

OTHER PARTIES WHO HAVE EXPRESSED INTEREST IN PURCHASING THE REAL ESTATE SUBJECT TO SALE

Penn State Investments
2555 Kingston Road, Suite 180
York, PA 17404

Fax: (717) 757-4036

OFFICE OF UNITED STATES TRUSTEE

Office of the United States Trustee
Attn: Joseph McMahon, Esq.
844 King Street, Room 2313
Wilmington, DE 19801

Fax: (302) 573-6497

COUNSEL FOR THE SENIOR SECURED LENDERS

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Pachulski, Stang, Ziehl, Young & Jones, P.C.
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Wilmington, DE 19899-8705
(Courier 19801)
Attn: Laura Davis Jones, Esq.
Christopher J. Lhulier, Esq.

C. Lhulier Fax: (302) 652-4400

OBJECTOR

Sara A. Austin, Esq.
Blakey, Yost, Bupp & Rausch, LLP
17 East Market Street
York, PA 17401
(Counsel for Lenders Group)

Fax: (717) 854-7839

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NOV 19 2003
11:10 AM

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Debtors	Jointly Administered

COUNSEL'S AFFIDAVIT FOR FILING BY MAIL

The undersigned, counsel to Kinsley Equities II Limited Partnership, certifies to this Court as follows:

That the undersigned are admitted to practice and are in good standing with the Middle District of Pennsylvania (hereinafter "MDPa");

That the MDPa is not yet live with ECF nor has attorney training for ECF taken place;

The subject Motion to Dismiss Objection must be filed to protect the client's interests.

BARLEY, SNYDER, SENFT & COHEN, LLC

By: 

Rees Griffiths, Esquire
Court I.D. 21896
Jeffrey D. Lobach, Esquire
Court I.D. 35357
Jeremy D. Frey, Esquire
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