

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**MOTION FOR ENTRY OF AN ORDER TO ESTABLISH PROCEDURES TO  
(i) DISALLOW RECLAMATION CLAIMS FOR WHICH SUPPORTING  
DOCUMENTATION IS NOT PROVIDED AND  
(ii) BAR THE FILING OF NEW RECLAMATION CLAIMS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby move this Court for entry of an order with respect to the reclamation claims filed in these cases (the “Motion”)<sup>2</sup>. In support of this Motion, the Debtors respectfully state as follows.

**Jurisdiction**

1. The Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> 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.; Favara 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.

<sup>2</sup> This Motion is designed to afford all claimants who have not already done so a final opportunity to provide documentation in support of their asserted reclamation claims. Additional motion(s) will be filed, as necessary, to address substantive objections to the reclamation claims in these cases..

3. The statutory predicates for the relief requested are 11 U.S.C. §§ 503(b) and 546(c)(2).

### **Background**

4. On April 1, 2003 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code and commenced the above-captioned Chapter 11 cases (the "Chapter 11 Cases"). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On April 14, 2003, the United States Trustee appointed an official committee of unsecured creditors (the "Creditors' Committee"). No trustee or examiner has been appointed in these Chapter 11 Cases.

5. On the Petition Date, the Debtors filed their Motion for Entry of an Order, Under 11 U.S.C. §§ 105(a), 503(b), and 546(c): (A) Establishing Procedure for Treatment of Reclamation Claims and (B) Prohibiting Third Parties from Interfering with Delivery of Debtors' Goods Docket No. 8 (the "Reclamation Procedures Motion").

6. On April 22, 2003, the Court entered the Order under 11 U.S.C. §§ 105(a), 503(b), and 546(c), (A) Establishing Procedure for Treatment of Reclamation Claims and (B) Prohibiting Third Parties from Interfering with Delivery of Debtors' Goods [Docket No. 510] (the "Reclamation Order").

7. On July 21, 2003, the Debtors filed their reclamation motion pursuant to the procedures established in the Reclamation Order (the "Reclamation Motion").

8. On August 6, 2003, the Debtors filed their Notice to Parties-in-Interest with Respect to Update on Status of Debtors' Motion for Entry of an Order with Respect to the Reclamation Claims Filed in the Debtors' Cases (the "Notice")<sup>3</sup>, which provided that:

A. As a result of the Debtors' discussions with certain reclamation claimants whose rights and interests are affected by the Reclamation Motion and the relief sought by the Debtors therein, the Debtors have agreed to take certain procedural steps with respect to the Reclamation Motion that are likely to include (i) amendment of the motion and/or exhibits thereto and/or (ii) the reclamation status reports that have been sent by the Debtors to reclamation claimants; and that

B. The objection deadline of the Reclamation Motion was withdrawn and stricken; and that

C. No rights or interests of any reclamation claimant were adversely or in any way affected by failing to respond or object to the reclamation motion, or by failing to appear at the presently scheduled August 19, 2003 hearing date on the reclamation motion.

9. The Debtors and the Creditors' Committee have, subsequent to the notice, held discussions regarding the next steps to be taken in the reconciliation process, one of which is to define the universe of potentially valid reclamation claims.

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<sup>3</sup> Capitalized terms in paragraph [8] shall have the meaning ascribed to such terms in the Notice.

10. In that regard, it is the Debtors' position that those reclamation claims for which supporting documentation cannot be provided are invalid. A listing of the reclamation claims filed in these cases along with a status of the supporting documentation provided which is broken down into the following categories: (a) the dollar value of the asserted reclamation claim (the "Total Asserted Reclamation Claim")<sup>4</sup>, (b) the dollar value of the documentation provided in support of such claim (the "Total Supporting Electronic Data Provided"), and (c) the dollar value of the Total Asserted Reclamation Claim for which supporting electronic data has not been provided (the "Electronic Data Not Provided"), is attached hereto as Exhibit A.

#### **Relief Requested**

11. The Debtors request the entry of an order pursuant to 11 U.S.C. §§ 105(a), 503(b) and 546(c)(2) establishing the following procedures:

A. The Debtors shall serve a copy of the Order approving these procedures on all claimants by email or facsimile or, if neither is available, by overnight mail, on or before October 3, 2003.<sup>5</sup>

B. That portion of the Total Asserted Reclamation Claim that exceeds the Total Supporting Electronic Data Provided shall be disallowed unless support<sup>6</sup> for such

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<sup>4</sup> The Total Asserted Reclamation Claim is the higher of (a) the amount which the creditor has stated to be its reclamation claim and (b) the dollar value of electronic data provided by such creditor. By way of example, if a demand was made for \$100,000 and \$75,000 of detail has been provided, the Total Asserted Reclamation Claim would be listed as \$100,000. If a demand was made for \$100,000 (or not specified), and electronic detail has been provided in the amount of \$125,000, the Total Asserted Reclamation Claim would be listed as \$125,000. The Debtors reserve all rights to argue that the ultimate amount of any valid reclamation claim is less than the Total Asserted Reclamation Claim including that there is no valid reclamation claim.

<sup>5</sup> This deadline presumes that the Order is entered on October 2, 2003.

<sup>6</sup> Reclamation claimants retain their right to argue that support for its claim has previously been submitted or that submission in hard copy instead of electronically satisfies its submission burden and the Debtors reserve their rights to contest such arguments. However, such creditor must raise such arguments with the Debtors in

(Continued...)

claim is provided to the Debtors at [cms@fleming.com](mailto:cms@fleming.com) on or before October 17, 2003 (the "Information Deadline").<sup>7</sup>

C. The maximum amount of each reclamation claim shall be the amount indicated on Exhibit A as the Total Asserted Reclamation Claim unless the applicable creditor indicates to the Debtors, on or before the Information Deadline, an intent to argue that its claim is for an amount in excess of the Total Asserted Reclamation Claim.

D. The filing or assertion of any new reclamation claims<sup>8</sup> after the Information Deadline is barred.

E. The Debtors shall submit an order, in substantially the form attached hereto as Exhibit B, at the hearing on October 20, to reflect the responses received and the status of the reclamation claims in these cases.

12. Those reclamation claimants that do not dispute the amount listed as the Total Supporting Electronic Data with respect to their claims do not need to respond to this Motion.

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advance of the Information Deadline and such deadline will bar the making of such arguments after its expiration.

<sup>7</sup> All parties with any portion of their Claim listed as Electronic Data Not Provided will be sent (via email, fax or overnight mail), on or before September 12, 2003, a letter from the Debtors (1) alerting them to this fact, 2) providing a copy of this motion and 3) requesting such information. Each party that submits information to [cms@fleming.com](mailto:cms@fleming.com) will receive a confirming email indicating that the information has been received. If information is submitted but a confirmation not received within 24 hours, please contact Sarah Albus at 972-906-8103.

<sup>8</sup> New reclamation claims shall be defined as any reclamation claims not listed on Exhibit A attached hereto.

### **Basis for Relief Requested**

13. In order to administer their estates and fully consider and analyze their options for reorganization, the Debtors and their various constituents require certainty regarding the reclamation claims that are being asserted in these cases. The Debtors have learned that, with respect to certain claims for which supporting documentation has not been provided, that such documentation will not be provided as such creditor agrees with the Total Asserted Reclamation Claim listed by the Debtors. The Debtors have a need to understand if there are other creditors similarly situated or if such creditors which to pursue their claims in higher amounts than is indicated by the detail provided.

14. The Debtors and their professionals have devoted substantial time and effort to reviewing and analyzing the reclamation claims filed in these Chapter 11 Cases and will devote substantial time in the future. Reconciliation of a claim is not possible without supporting documents.

15. Therefore, the Debtors request that the Court enter an order (i) establishing the procedures requested herein, and (ii) enter an order, substantially in the format attached hereto, at the October 20, 2003 omnibus hearing in these cases barring the filing of new reclamation claims.<sup>9</sup>

### **Notice**

16. Notice of this Motion has been given to (a) the Office of the United States Trustee, (b) counsel for the Creditors' Committee, (c) counsel for the Debtors' postpetition

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<sup>9</sup> Such claims may be asserted as general unsecured claims provided such claimants comply with the Claims Bar Date Order [docket 1695] and other applicable law.

lenders, (d) those vendors who have submitted reclamation demands but have failed to provide supporting documentation, and (e) those parties who requested notice in these Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is required.

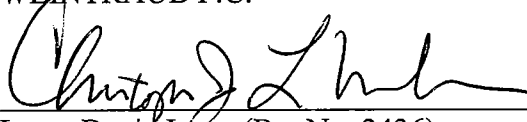
**WHEREFORE**, the Debtors respectfully request that the Court enter an order, in the form attached hereto, and grant such further relief as this Court deems appropriate.

Dated: September 11, 2003

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