

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

In re	:	
	:	Chapter 11
	:	
FLEMING COMPANIES, INC., et al.,	:	
	:	
Debtors.	:	Case Nos. 03-10945 (MFW)
	:	(Jointly Administered)
	:	Objection Due Date: October 14, 2003, at 4:00 p.m.
	:	(October 13, 2003 being a Legal Holiday)
	:	Hearing Date: October 20, 2003 at 2:00 p.m.
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LIMITED OBJECTION OF GOLDSTEIN MANAGEMENT, AGENT FOR ALLEN J. GOLDSTEIN TO DEBTOR’S SECOND MOTION PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER EXTENDING TIME TO ASSUME, ASSUME AND ASSIGN, OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY

TO THE HONORABLE MARY F. WALRATH,
UNITED STATES BANKRUPTCY JUDGE:

1. Goldstein Management is the agent for Allen J. Goldstein (hereinafter referred to as “Goldstein”), the owner of a shopping center located in Spencerport, New York, as that term is used in 11 U.S.C. § 365(b)(3). See *In Re: Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990). Fleming Companies, Inc. is a party to a lease (hereinafter referred to as “Lease”) for a leasehold identified by Debtors as Store No. NY-039, which is impacted by the relief requested in Debtors’ Motion.

2. It is acknowledged that the Debtors remain parties to a large number of unexpired leases, many of which are subject to designation rights as a result of the approval of a purchase agreement with C&S Wholesale Grocers, Inc. and C&S Acquisition, LLC, approved by this Court on August 15, 2003. The Lease is in fact subject to said designation rights.

3. Section 365(d)(3) of the Bankruptcy Code requires that a Debtor in Possession timely perform all post petition obligations under any unexpired Lease of

nonresidential real property until such Lease is assumed or rejected. The intent of Section 365(d)(3) is to require the Debtor to perform the Lease in accordance with its terms.

Montgomery Ward Holding Corporation, 268 F.3d 205 (3d Cir. 2001).

4. Debtors by their Motion seek an extension for cause of the sixty day deadline provided by Section 365(d)(4). Although Section 365(d)(3) and Section 365(d)(4) are not expressly linked, the great majority of bankruptcy courts that have granted extensions of time to assume or reject Leases for cause, including this Honorable Court, have always conditioned extensions upon Debtors remaining current under their post petition monetary obligations owed under the Leases.

5. Debtors implicitly recognize the link between the relief which they request pursuant to Section 365(d)(4) of the Bankruptcy Code and their obligations to perform their monetary obligations owed under the unexpired Leases as required by Section 365(d)(3) of the Bankruptcy Code in paragraph 19 of their Motion.

6. Debtors have failed to pay a portion of a 2003 School Tax as well as actual CAM charges owing and due as of September 30, 2003, both of which were invoiced on September 9, 2003 pursuant to the terms of the Lease. A tenant ledger showing those charges, the total of which currently amount to \$33,069.58, will be served upon Debtors' local counsel as an exhibit to this limited objection.

7. Goldstein does not object to the relief being requested by the Debtors as to its Lease, as long as said relief is conditioned upon Debtors promptly paying the amount owed under the Lease which became due post-petition, as described above.

WHEREFORE, Goldstein management objects to the relief being requested by the Debtors as to its Lease NY - 093 unless all monetary obligations that have become due post-

petition pursuant to the Lease are paid in full, and prays for such further relief as is just and necessary under the circumstances.

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