

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re: Fleming Companies, Inc., *et al.*            )  
  )  
Debtor.    )

No. 03-10945-MFW  
(Jointly Administered)

**NOTICE OF MOTION**

To: All parties listed in the attached certificate of service

Movant KENOSHA ASSOCIATES has filed the attached Motion for Allowance of Administrative Claim (Kenosha, Wisconsin).

You are required to file a response to the attached motion on or before **October 28, 2003**.

At the same time, you must also serve a copy of the response upon movant's attorneys: David L. Finger, Finger & Slanina, P.A., One Commerce Center, 1201 Orange St., Suite 725, Wilmington, DE 19801-1155 and Arnold H. Landis, 77 West Washington Street, Suite 702, Chicago, IL 60602.

A HEARING ON THE MOTION WILL BE HELD on **Tuesday, November 4, 2003 at 2:00 p.m.**

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

/s/ David L. Finger  
David L. Finger (DE Bar ID #2556)  
Finger & Slanina, P.A.  
One Commerce Center  
1201 Orange Street, Suite 725  
Wilmington, DE 19801-1155  
(302) 884-6766  
Attorney for movant Kenosha  
Associates

Dated: October 15, 2003

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re: Fleming Companies, Inc., <i>et al.</i>	)	No. 03-10945-MFW
	)	(Jointly Administered)
Debtor.	)	

**MOTION OF KENOSHA ASSOCIATES FOR  
ALLOWANCE OF ADMINISTRATIVE CLAIM (PEORIA, ILLINOIS)**

KENOSHA ASSOCIATES, an Illinois Limited Partnership (“KENOSHA ASSOCIATES”), by its attorneys, moves this Court for allowance of an administrative claim against debtors-in-possession, compelling them to pay instantly its post-petition lease obligations. In support of this motion, KENOSHA ASSOCIATES states as follows:

1. KENOSHA ASSOCIATES is the owner of certain nonresidential real estate located at the Sun Plaza Shopping Center, 3500 52nd Street, Kenosha, Wisconsin.

2. Pursuant to a written shopping center lease dated May 28, 1985, as subsequently amended (the “Lease”), debtors-in-possession leases a portion of the Sun Plaza Shopping Center. A copy of the Lease is attached hereto and incorporated herein by reference. Payments due lessor under the Lease are payable to KENOSHA ASSOCIATES.

3. On April 1, 2003, debtor-in-possession filed a voluntary petition for relief under Chapter 11 of the Code.

4. Section 365(d) of the Code provides that the debtor-in-possession “shall timely perform all of the obligations of the debtor...from and after the order for relief under any expired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.” 11 U.S.C. §365(d)(3).

5. Upon the failure of the debtor-in-possession to make timely rent payments post-petition, “[t]he court may order the immediate payment to the debtor’s landlord of rent that has

accrued from the petition date to the lease rejection date.” 1 Robert E. Ginsburg and Robert D. Martin, Bankruptcy: Text, Statutes, Rules §7.04(a)(4) (3rd ed. 1993) (citing In re: Galvan, 57 B>R. 732 (Bankr. S.D. Cal. 1986).

6. Notwithstanding debtor-in-possession’s obligation to pay post-petition rent to KENOSHA ASSOCIATES as it becomes due pursuant to Section 365(d)(3), debtors-in-possession have failed to pay CAM obligations for the leased premises since the entry of the order for relief.

7. The lease term expired on June 30, 2003

8. Since the entry of the order for relief, **\$23,540.04** is due and owing, comprised of **\$7,846.68** for CAM for each of April, May and June 2003.

WHEREFORE, for the foregoing reasons, KENOSHA ASSOCIATES respectfully requests that the Court enter the proposed form of Order granting this motion and require Debtors-in possession to pay \$34,604.08 in back rent for each of September and October, and to make such payment each month hereafter.

Dated: October 15, 2003

Respectfully submitted,

/s/ David L. Finger  
David L. Finger (DE Bar ID #2556)  
Finger & Slanina, P.A.  
One Commerce Center  
1201 Orange Street, Suite 725  
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- and -

Arnold H. Landis, Esq.  
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(302) 326-6268

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re: Fleming Companies, Inc., <i>et al.</i>	)	No. 03-10945-MFW
	)	(Jointly Administered)
Debtor.	)	

**ORDER**

On this \_\_\_\_ day of \_\_\_\_\_, 2003, having considered the submissions and the arguments of the parties, IT IS HEREBY ORDERED THAT:

1. The motion of KENOSHA ASSOCIATES for Allowance of Administrative Claim is GRANTED.

2. Debtors shall pay immediately to KENOSHA ASSOCIATES \$23,540.04, representing lease obligations to KENOSHA ASSOCIATES for April, May and June 2003.

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Walrath, J.

**CERTIFICATE OF SERVICE**

I, David L. Finger, hereby certify that on this 15h day of October, 2003, I caused a copy of the foregoing document to be served via first class mail, postage prepaid, on the below listed counsel, except to the extent that service was effectuated via CM/ECF:

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