

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
FLEMING COMPANIES, INC., et al.)	
)	Case No. 03 – 10945 (MFW)
Debtors.)	
)	
)	JOINTLY ADMINISTERED
)	
)	

Objection Deadline: October 28, 2003 at 12:00p.m.
Hearing Date: November 4, 2003 at 2:00 p.m.

**OBJECTION OF BRADLEY OPERATING LIMITED PARTNERSHIP TO
DEBTOR’S NOTICE PURSUANT TO SALE ORDER RE: ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES TO KNOWLAN’S SUPER MARKETS, INC.**

Bradley Operating Limited Partnership (“Bradley”), by and through its undersigned counsel and pursuant to 11 U.S.C. §365(b), hereby objects to the Debtor’s Notice Pursuant to Sale Order Re Assumption and Assignment of Certain Executory Contracts and Unexpired Leases to Knowlan’s Super Markets, Inc. (the “Notice”) on the grounds that the notice afforded to Bradley is inadequate, the cure amounts proposed by the Debtors are incorrect and insufficient and on the further ground that the Debtor and proposed assignee have not provided adequate assurance of future performance under the lease. Bradley incorporates herein its previously-filed objections, corrected objections and supplemental objections to Debtors’ Motion for Order (A) Approving Asset Purchase Agreement With C&S Wholesale Grocers, Inc. and C&S Acquisition LLC, (b) Authorizing (I) Sale of Substantially All of Selling Debtors’ Assets Relating to the Wholesale Distribution Business Free and Clear of All Liens, Claims, Encumbrances and Interests and (II) Assumption and Assignment of Certain Unexpired Leases, and (C) Granting Related Relief (the “Motion”). In further support of its Objection, Bradley states as follows:

1. On April 1, 2003 (the “Petition Date”), Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. The Court subsequently entered an order directing the procedural consolidation and joint administration of Debtors’ Chapter 11 cases. Debtors have continued to operate their businesses as debtors-in-possession under 11 U.S.C. §§ 1107(a) and 1108.

2. Bradley is a lessor of certain retail shopping center spaces as to which one or more of the Debtors is the lessee. To date, Debtors have rejected certain of Bradley’s shopping center leases and have assumed and assigned others.

3. In July 2003, Debtors filed their Motion, seeking, inter alia, to assume and assign to a third party buyer, C&S, certain unexpired leases of nonresidential real estate or to allow C&S to designate an assignee for those leases. Bradley filed an objection, a corrected objection and a supplemental objection (collectively, the “Objections”), which were deemed timely filed by order of the Court pursuant to a certificate of no objection, to the Motion. In its Objections, Bradley preserved, among other things, its objections to the cure amount of \$0 proposed by Debtors, and specifically preserved its rights to be paid a cure amount including all amounts subsequently coming due under Bradley’s leases but not yet paid by Debtor, all additional amounts that have accrued or are accruing under the leases but may not become due and payable until after the closing of the proposed assumption and assignment, and all unknown, contingent or potential obligations and/or liabilities that may occur or accrue or may already have occurred or accrued under the leases. Bradley also objected to Debtors’ failure to identify the leases sought to be assumed and assigned and to the inadequacy of the notice afforded.

4. Subsequently, Debtor clarified its identification of leases to be assumed and assigned, and Bradley timely filed a supplemental objection on or about August 8, 2003 (the “Supplemental Objection”).

5. Debtors’ Notice now identifies specifically the lease of Bradley’s White Bear Hills Shopping Center property (store no. MN 029) (the “White Bear Lease”) for assignment to Knowlan’s Super Markets, Inc. (“Knowlan’s”). Accordingly, Bradley hereby renews and restates its previously filed Objections and Supplemental Objection, including its objections to the Debtors’ proposed cure amount.

6. In addition, Debtors’ obligations under the White Bear Lease have continued to accrue, and additional amounts have become due under the White Bear Lease which have not been paid. Debtor’s Notice has not afforded Bradley adequate time to determine the amounts currently due under the White Bear Lease, but all of the amounts fall within the legal theories, categories and types or kinds of claims identified by Bradley under its Objections and Supplemental Objections, and Bradley thus is entitled to payment in full pursuant to the terms of the Sale Order.

7. On information and belief, the amounts currently overdue under the White Bear Lease include: (a) the \$22,231.10 identified payment obligations specified in Bradley’s Supplemental Objection; and (b) at least \$47,004.15 in amounts coming due since the previously filed Objections and Supplemental Objections.

8. In addition, Bradley is entitled to any amounts that may become due under the White Bear Lease if Debtors fail to timely perform all of their obligations under the Lease, as required by 11 U.S.C. § 365(d)(3), until the date the proposed assignment closes. The accruing obligations may include, without limitation, tax obligations, common area maintenance

(“CAM”) expenses, percentage, periodic and minimum rent obligations, special assessments, utilities, periodic repair costs and reserves, and other costs and attorney’s fees.

9. Bradley is further entitled to recover for other, unknown, contingent or potential obligations and/or liabilities that may occur or accrue prior to the closing date, including, but not limited to accidents, environmental contamination, fire or vandalism, and Bradley expressly reserves the right to collect all amounts otherwise due under the White Bear Lease for such obligations or liabilities.

10. In addition, Bradley objects to the Notice on the ground that it does not afford adequate assurances of future performance by Knowlan’s, the proposed assignee, in the context of the shopping center lease here in issue. The Notice does not satisfy the adequate assurance of future performance requirements for a lease of real property in a shopping center as provided by 11 U.S.C. § 365(b)(3). The requisite assurances must include, but are not limited to, assurances related to the source of rent, the level of percentage rent, the financial condition and operating performance of the proposed assignee and its guarantors, adherence to lease provisions and the non-disruption of the tenant mix and balance.

WHEREFORE, Bradley respectfully requests that this Court enter an order:

A. preserving Bradley’s rights to receive payment of the full and correct currently overdue amounts under the White Bear Lease, including any attorney’s fees it incurs in collecting those amounts;

B. preserving Bradley’s rights to receive payment of all obligations and amounts currently accruing under the White Bear Lease but which may not come due until after the date of this Objection or the effective date of the assignment;

C. preserving Bradley's rights to recover for any unknown, contingent or potential obligations and/or liabilities that may occur or accrue, in whole or in part, prior to the closing date;

D. requiring Knowlan's and the Debtors to provide all of the adequate assurances of future performance required for a lease of real property in a shopping center as set forth in 11 U.S.C. § 365(b)(3).

DATED: October 28, 2003

Respectfully submitted,

Bradley Operating Limited Partnership

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