

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

**In Re:** ) **Case No. 03-10945 (MFW)**  
 ) **Jointly Administered**  
**FLEMING COMPANIES, INC.** ) **Chapter 11**  
**et al.,** )  
 )  
 ) **Debtors.** ) **Objection Date: October 28, 2003 (EDT)**  
 ) **Hearing Date: November 4, 2003 at 2:00 p.m. (EDT)**

**HODA, LLC'S LIMITED OBJECTION TO DEBTORS' MOTION FOR  
ORDER PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE  
AUTHORIZING THE DEBTORS TO REJECT CERTAIN UNEXPIRED  
LEASES OF NONRESIDENTIAL REAL PROPERTY, PERSONAL  
PROPERTY LEASES AND EXECUTORY CONTRACTS IN CONNECTION  
WITH SALE ORDER (OCTOBER 17, 2003 MOTION)**

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HODA, LLC ("HODA") files this its Limited Objection to Debtors' Motion for Order Pursuant to Section 365(a) of the Bankruptcy Code Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property, Personal Property Leases and Executory Contracts in Connection with Sale Order (October 17, 2003 Motion) and in support thereof states the following:

1. The Court has jurisdiction in regard to this matter pursuant to 28 U.S.C. §157 and 1334.
2. The Debtors filed their Voluntary Petition for Relief on April 1, 2003.
3. On or about October 17, 2003 the Debtors filed their Motion for Order Pursuant to Section 365(a) of the Bankruptcy Code Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property, Personal Property Leases and Executory Contracts in Connection with Sale Order (October 17, 2003 Motion).
4. The October 17, Motion states that the leases listed on Exhibit "A" will be rejected effective October 31, 2003.
5. The following three HODA LLC ("HODA") leases are listed on Exhibit "A" to

the October 17, 2003 Motion:

- a. 6702 TX-340;
- b. 6703 TX-341; and
- c. 6704 TX-342.

6. HODA has no objection to the rejection of these three leases.

7. However, the October 17, 2003 Motion erroneously states at paragraph 16, page 6 that the "Debtors are current on their obligations pursuant to 365(d)(3) of the Bankruptcy Code."

8. The Debtors are not current on their obligations pursuant to 365(d)(3) of the Bankruptcy Code.

9. On or about July 11, 2003 the Debtor filed its Notice Re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion ("Notice").

10. Attached to the Notice was the Debtors' Cure Amount Schedule.

11. The Debtors' Cure Amount Schedule stated the following:

- a. 6702 HODA, LLC \$0.00 Real Estate, Lessor
- b. 6703 HODA, LLC \$0.00 Real Estate, Lessor
- c. 6704 HODA, LLC \$0.00 Real Estate, Lessor

12. HODA timely objected to the scheduled Cure Amounts because the scheduled Cure Amounts did not include the 2003 real property taxes which are "additional rent" pursuant to paragraph 5 of the Lease Agreements.

13. The 2002 real property tax amounts are listed below:

a. TX-340

8282 Spring Valley Road, Dallas, Texas

(1) Richardson Independent School District \$27,230.89

(2) Dallas County and Dallas City, Texas \$18,303.03

(3) Total \$45,533.92

The Lease Agreement was attached to and incorporated in the objection to the scheduled Cure Amounts as Exhibit "1". Copies of the 2002 tax statements were attached to and incorporated in the objection to the scheduled Cure Amounts as Exhibits "2" and "3".

b. TX-341

5401 Park Springs Blvd., Arlington, Texas

(1) Tarrant County, Arlington City, and Arlington

Independent School District, Ft. Worth, Texas \$40,394.81

The Lease Agreement was attached to and incorporated in the objection to the scheduled Cure Amounts as Exhibit "4". A copy of the 2002 tax statement was attached to and incorporated in the objection to the scheduled Cure Amounts as Exhibit "5".

c. TX-342

9920 White Settlement Road, Ft. Worth, Texas

(1) Tarrant County, Ft. Worth City, and White

Settlement Independent School District,

Ft. Worth, Texas \$49,190.54

The Lease Agreement was attached to and incorporated in the objection to the scheduled Cure Amounts as Exhibit "6". A copy of the 2002 tax statement was attached to and incorporated in the scheduled Cure Amounts as Exhibit "7".

14. HODA also timely objected to the scheduled Cure Amounts because the scheduled Cure Amounts did not include the insurance premiums which Debtors failed to pay pursuant to the terms of the Lease Agreement and which are "additional rent" pursuant to paragraph 5 of the Lease Agreements.

15. HODA timely filed three Proofs of Claim on September 5, 2003 and stated that pursuant to paragraph 5 of the Lease Agreements the real property taxes and unpaid insurance premiums were "additional rent".

16. The three Proofs of Claim were filed as 11 U.S.C. Section 507(a)(1) claims, listed

the amounts listed hereinabove for unpaid real property taxes, and stated that the insurance premiums would be determined and the three Proofs of Claim would be amended.

17. In addition, HODA must report to the Court that the Court previously ordered that lease number 6702 TX -340, 8282 Spring Valley Road, Dallas, Texas, would be assumed or rejected by the Debtors on or before August 31, 2003.

18. The Debtors did not assume or reject the lease on or before that date. At hearing on September 4, 2003, the Court bench ordered the lease rejected, and requested an Order be filed. Debtor's counsel stated an Order would be filed (transcript of hearing, page 26, lines 21-23) however, said Order has not yet been filed. Hoda has previously submitted a draft order to debtor's counsel.

WHEREFORE, HODA, LLC requests that the Court:

(1) enter an Order determining that the following unexpired leases of nonresidential real property are rejected:

- a. TX 340  
8282 Spring Valley Road, Dallas, Texas
- b. TX-341  
5401 Park Springs Blvd., Arlington, Texas
- c. TX-342  
9920 White Settlement Road, Ft. Worth, Texas

(2) enter an Order stating that the Court is making no determination at this time that the Debtors were current on their obligations to HODA LLC pursuant to 365(d)(3) of the Bankruptcy Code at the time of the rejection of the three leases listed hereinabove.

(3) enter an Order stating that HODA LLC has thirty days after the entry of the Order rejecting the three leases listed hereinabove to file its lease rejection claims.

(4) and for such other and further relief as the Court deems just.

Respectfully submitted,

STONE, LEYTON & GERSHMAN  
A Professional Corporation

By: /s/ E. Rebecca Case

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Respectfully submitted,

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