

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FLEMING COMPANIES, INC.,
ET AL.,

Debtor.

Case No. 03-10945 (MFW)
(Jointly Administered)

Chapter 11

Judge: Honorable Mary F. Walrath

Objection Deadline: November 18, 2003 at 4:00 PM.
Hearing Date: November 25, 2003 at 9:30 AM

**LIMITED OBJECTION OF BLAIR ROAD REALTY CO. TO JOINT MOTION FOR
AUTHORITY TO FILE SETTLEMENT AGREEMENTS UNDER SEAL
[DOCKET NO. 4380]**

Blair Road Realty Co. (“Blair”), through its attorneys, Archer & Greiner, A Professional Corporation, and Hellring, Lindeman, Goldstein & Siegal, LLP respectfully objects to the Joint Motion of the Debtors and C&S Acquisition LLC for Court Authority to File of Settlement Agreements Under Seal (the “Motion”). In support of this objection, Blair states as follows:

BACKGROUND

1. On April 1, 2003 (the “Petition Date”), the Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code. The Chapter 11 cases commenced thereby are jointly administered for administrative purposes only. The Debtors operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 cases. An Official Committee of Unsecured Creditors was appointed on April 14, 2003.

2. On October 1, 1975, Blair leased to Royal Food Distributors, Inc., predecessor of the Debtors, the land and building thereon known as 191 and 215 Blair Road, Woodbridge, New Jersey, and also known as Lots 12 and 13, Block 974 on the Township of Woodbridge Tax Map, to be used and occupied only for refrigerated warehouse distribution of dairy products and offices and other incidental lawful uses (the "Blair Lease"). The building consists of approximately 190,000 square feet.

3. On June 20, 1994, the Debtors entered into a Sublease of the leased premises to DiGiorgio Corporation (the "Sublease").

4. The rent paid by the Debtors to Blair under the Lease is identical to the rent and other amounts paid to the Debtors by DiGiorgio under the Sublease.

5. The Blair Lease was previously the subject of the Debtors' Motion to Authorize Motion for Order Pursuant to Section 365(a) of the Bankruptcy Code Authorizing the Debtors' to Reject Certain Unexpired Leases of Nonresidential Real Property and Aviation Equipment filed April 2, 2003. (Docket No. 13). The Blair Lease was subsequently withdrawn from that Motion and made the subject of a Motion for Order Pursuant to Section 365(a) of the Bankruptcy Code authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property (Subleased Locations) (Docket No. 644, filed April 30, 2003). The Motion with regard to the Subleased Locations was continued from time to time, and the proposed rejection of the Blair Lease never resolved.

6. The next motion affecting the Blair Lease was the Debtors' Motion for Entry of an Order: (a) Authorizing and Scheduling an Auction of the Sale of Certain of the Debtors' Real Property; (b) Approving the Terms and Conditions of Such Auction, Including Bidding Procedures Related Thereto, and (c) Approving Assignment Procedures for Affected Unexpired

Leases [Docket No. 3666]. At the hearing on this motion, DiGiorgio Corporation objected to the inclusion of the Blair Lease within the auction and the Blair Lease was removed from the auction.

7. The Debtors have most recently filed the Motion seeking to approve a settlement among various parties including the Debtor and DiGiorgio Corporation which settlement the Debtor represents involves the assumption and assignment of the Blair Lease to DiGiorgio. The Motion provides that if the Settlement Agreement is approved then the Debtor will immediately move to assume and assign the Blair Lease to DiGiorgio.

8. The instant Motion seeks an order to permit the Debtor to file the Settlement Agreement under seal.

BLAIR'S OBJECTIONS

9. Blair objects to the Motion to the extent that the motion seeks to conceal from Blair the terms of the Settlement Agreement between the Debtor and DiGiorgio. The Settlement Agreement affects Blair's property and according to the Motion, specifically refers to the Blair Lease (see ¶ 20(j), (k) and (l)). Blair is entitled to see the Settlement Agreement so that Blair can understand the transaction and effectively respond to those aspects of the transaction to which it objects, including the proposed assumption and assignment to DiGiorgio of the Blair Lease.

10. As this Court ruled in In re Muma Services, Inc., 279 B.R. 478 (Bankr. D. Del. 2002), Section 107(a) of the Bankruptcy Code creates a presumption in favor of public access to court records filed in bankruptcy cases. This Court noted that sealing court records is "a highly unusual and extraordinary remedy" (Id. at 484 (quoting In re Epic Associates, 54 B.R. 445, 448 (Bankr. E.D. Va. 1985)). The Motion fails to provide any evidence that filing under seal outweighs the presumption of public access to court records. The allegations of harm contained in the Motion are wholly conclusory.

11. Blair has requested access to the Settlement Agreement subject to a confidentiality agreement but has not received the Agreement.

Blair respectfully requests that the Debtor's Motion to allow the Settlement Agreement to be filed under seal be denied to the extent that the Settlement Agreement is concealed from Blair.

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