

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

In re:	:	Chapter 11
	:	
Fleming Companies, Inc., <u>et al.</u> , ¹	:	Case No. 03-10945 (MFW)
	:	(Jointly Administered)
Debtors.	:	
	:	Objection Date: December 1, 2003 at 12:00 p.m.
	:	Hearing Date: December 8, 2003 at 9:30 a.m.
	:	Related Docket No. 4537

**OBJECTION OF BRADFORD PLAZA INVESTMENT GROUP, LLC
TO DEBTOR FLEMING COMPANIES, INC.’S NOTICE OF
PROPOSED ASSUMPTION AND ASSIGNMENT
OF LEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED
IN EAST BRADFORD, PENNSYLVANIA**

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

Bradford Plaza Investment Group, LLC (the “Landlord”), by and through its undersigned attorneys, hereby objects to the notice of debtor Fleming Companies, Inc. (hereinafter referred to as the “Debtor” and collectively with the other debtor-affiliates, the “Debtors”) dated November 20, 2003 regarding the Debtor’s proposed assumption and assignment of certain executory contracts and unexpired leases (the “Assignment Notice”) and respectfully represents in support thereof as follows:

¹ The Debtors are the following entities: Core-Mark International, Inc.; Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C.; Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc. and Richmar Foods, Inc.

BACKGROUND

1. On April 1, 2003 (the "Petition Date"), the Debtor and certain of its affiliates filed respective voluntary petitions for reorganization pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 107 and 108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed herein.

3. Upon information and belief, on or about August 15, 2003, this Court entered an order (the "Sale Order") approving a certain asset purchase agreement by and among the Debtor, C&S Wholesale Grocers, Inc. and certain other parties and authorizing the sale of substantially all of the Debtor's assets relating to its wholesale distribution business free and clear of liens, claims, encumbrances and interests. Upon information and belief, pursuant to the Sale Order, the purchaser was permitted to designate certain of the Debtor's unexpired leases for rejection or assumption and assignment to third party assignees.

4. The Landlord is the owner of the East Bradford Shopping Center located in East Bradford, Pennsylvania (the "Premises"). The Premises are a "shopping center" within the meaning of § 365(b)(3) of the Bankruptcy Code.

5. The Debtor leases a retail grocery store located in the Premises pursuant to a nonresidential real property lease drafted June 21, 1989 (the "Lease") and, in turn, subleases the store to an entity known as Giunta's Market, Inc. ("Giunta's").

6. Pursuant to the Notice, the Debtor is seeking an order of this Court authorizing it to assume and assign its lease of the Premises to Giunta's.

7. For the reasons hereinafter set forth, the Landlord objects to the proposed assumption and assignment of the Lease.

THE RELIEF REQUESTED AND THE REASONS THEREFOR

8. The Landlord has entered into an agreement in principle with a national grocery retailer to commence operations at the Premises, subject only to the Landlord's ability to recover the retail location which is presently subject to the Lease. In this regard, the Landlord has previously notified both the Debtor and Giunta's of its strong preference for the Debtor to reject, rather than to assume and assign the Lease in order that the Landlord can redevelop the Premises and install a new, substantially more qualified tenant therein.

9. The Landlord's ability to implement this strategy is critical to the present and future viability of the Premises in that, among other reasons, the current subtenant – Giunta's – does not meet current market standards for the operation of a retail grocery store and lacks the capital or financial resources to upgrade its operations to be competitive, and to make the Premises competitive, in the marketplace.

10. In contrast, the proposed new tenant will expend the resources necessary to upgrade the current retail location and will serve as a viable anchor tenant around which the Premises will be redeveloped.

11. This business strategy is essential to the Landlord in view of the substantial recent commercial development in the immediate vicinity of the Premises, which has operated and will continue to operate to exert competitive pressure on the Premises as consumers migrate to adjacent shopping centers. The Landlord will introduce evidence at the hearing on this matter concerning the effects of competing developments on the Premises and the material adverse

effect which the Landlord will suffer if it cannot develop the property with a stronger anchor tenant than Giunta's.

12. Moreover, the Debtor will suffer no economic injury to the extent that the Lease is rejected since the Landlord will waive and relinquish any and all claims, including lease rejection damage claims, arising under the Lease.

13. Because the Premises is a shopping center within the meaning of § 365(b)(3) of the Bankruptcy Code, neither the Debtor nor the proposed assignee are able to meet their burden of demonstrating adequate assurance of future performance within the meaning of § 365(b)(1)(B). In this regard, § 365(B)(3) provides in relevant part as follows:

(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance –

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as radius, location, use or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

14. As reflected above, Giunta's is required to demonstrate that its present financial condition and operating performance are similar to the financial condition and operating

performance of the Debtor as of June 21, 1989, the date on which the Lease was entered into. The Landlord submits that Giunta's cannot meet this evidentiary burden.

15. Moreover, and as set forth above, the Landlord will be substantially and irreparably injured to the extent that the proposed Lease assignment is approved since Giunta's is simply unable to implement the necessary upgrades to its location to keep the Premises competitive in what is already a challenging consumer marketplace.

16. When the Court balances the benefits and hardships of declining to approve the proposed assignment, it cannot fail to conclude that, on balance, the Landlord will suffer extraordinary detriment by the proposed assignment while, in contrast, the Debtor will suffer none. The Landlord will not assert any claims against the Debtor in respect of a Lease rejection and, at the same time, will avoid the severe adverse economic effects of being unable to implement its redevelopment plan for the Premises.

CONCLUSION

17. For these reasons, the proposed assumption and assignment of the Lease to Giunta's should be denied in all respects.

WHEREFORE, East Bradford Associates, L.P., respectfully requests the entry of an order pursuant to 11 U.S.C. § 365(b) denying the Debtor's proposed assumption and assignment of the Lease to Giunta's Market, Inc., together with such other and further relief as is just and proper.

Dated: November 28, 2003

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