

IN THE UNITED STATES 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)
)	
Debtor.)	
)	

Related to Docket No. 4299

**ORDER AUTHORIZING AND APPROVING ARBITRATION OF CERTAIN CLAIMS
AND CAUSES OF ACTION ASSERTED BY OR AGAINST THE DEBTOR**

Upon consideration of the motion of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), seeking entry of an Order authorizing and approving arbitration of certain claims and causes of action asserted by or against the Debtors (the “Motion”)²; and it appearing that the relief requested, as modified hereby, is in the best interests of the Debtors’ estates and creditors; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given; and it appearing that no other notice need be given; and after due deliberation and

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.; Favara 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.

² Capitalized terms not otherwise defined herein shall be as defined in the Motion.

sufficient cause appearing therefore, it is hereby ORDERED THAT:

1. The Motion is granted, as modified hereby.
2. The Debtors are authorized to continue and complete the Pending Arbitrations.
3. The automatic stay created by section 362(a) of the Bankruptcy Code (the “Automatic Stay”) is hereby modified to allow the Debtors and Third Parties to continue and complete the Pending Arbitrations.
4. The Debtors are hereby authorized to enter into an agreement with any Third Party, substantially in the form of the arbitration provision contained in Exhibit 1 to the Motion or a similar form of agreement promulgated by the AAA (containing no terms inconsistent with the relief granted herein) to submit the Debtors’ Claims against any such Third Party and any Counter-Claims asserted by such Third Party to final and binding arbitration.
5. The Debtors (or any of them) are authorized to take all actions necessary to institute an Arbitration Proceeding against a Third Party, if and only if (a) such Third Party is a party with the Debtors (or any of them) to a written agreement that provides that such disputes will be submitted to final and binding arbitration or such Third Party is a customer of the Debtors (or any of them) and is subject to a “selling plan” as described in the Motion, to resolve any Debtor’s Claim or Claims; (b) the Debtors (or any of them) obtain the consent of the affected Third Party in the form of a stipulation to be filed with this Court that provides that the disputes set forth therein between the parties thereto will be submitted to and resolved by final and binding arbitration and that the Debtors may commence an Arbitration Proceeding to resolve

those disputes as provided in this Order; (c) the Debtors serve the Official Committee of Unsecured Creditors (the "Committee") with any such stipulation and the Committee does not serve the Debtors with an objection to such stipulation within five (5) business days after the service of the stipulation on the Committee; and (d) the Debtors file with this Court the stipulation along with a Certification of Counsel indicating that the Committee has not served an objection to the stipulation on the Debtors within the allotted time.

6. If any Third Party refuses to enter into such a stipulation with the Debtors (or any of them) or if the Committee serves the Debtors with an objection to a stipulation with a Third Party as set forth in paragraph 5 above, the Debtors, prior to instituting an Arbitration Proceeding against such Third Party, must file a motion with this Court seeking authority to submit to final and binding arbitration the stated disputes with the Third Party and receive an order of this Court allowing such arbitration.

7. All disputes subject to a stipulation as set forth in paragraph 5 above or an Order of the Court allowing arbitration shall proceed in the same manner as the existing arbitrations as set forth below.

8. The arbitrators selected from the national roster of the AAA arbitrators are authorized to proceed with the Pending Arbitrations and any other Arbitration Proceedings commenced by any of the Debtors.

9. The Automatic Stay is hereby modified to allow the Third Parties that become parties to an Arbitration Proceeding to assert and pursue Counter-Claims in the

Arbitration Proceeding to which they are a party without any presumption as to the validity or enforceability of such Counter-Claims.

10. The Automatic Stay is hereby modified to allow any Third Party that is a party to an Arbitration Proceeding to offset pursuant to section 553 of the Bankruptcy Code any amount the arbitrator or arbitrators determine it owes to a Debtor against any amount the arbitrator or arbitrators determine that the same Debtor owes the same Third Party so long as the amounts owed to the Debtor party and by the Debtor party are both debts that arose prepetition or are both debts that arose postpetition.

11. Any Third Party to a Pending Arbitration or other Arbitration Proceeding is prohibited from enforcing any award or the collection of any amount awarded except by set off as provided in paragraph 10 above or by the filing of a Proof of Claim as required by the *Order Pursuant to Sections 105(a), 501, and Bankruptcy Rules 2002(a)(7), 3003(c)(3) and 5005(a) Establishing a Bar Date for Filing Proofs of Claim and Proofs of Interest* entered on June 25, 2003 by this Court.

12. The Debtors are authorized to pay their portion of (i) administrative fees and expenses incurred in the Pending Arbitrations and other Arbitration Proceedings, (ii) the arbitrators' fees and expenses incurred in the Pending Arbitration and other Arbitration Proceedings and (iii) any other fees and costs (including, but not limited to, witness' expenses) incurred in any Arbitration Proceeding and any Pending Arbitration.

13. The AAA and any arbitrator selected to serve as an arbitrator in the Pending Arbitrations or other Arbitration Proceedings are authorized to apply the payments made

by the Debtors pursuant to paragraph 12 above to fees and expenses incurred in the Pending Arbitrations and other Arbitration Proceedings.

14. The AAA is authorized to apply the Deposits to arbitration expenses and the arbitrators' fees and expenses already incurred but not paid in the Pending Arbitrations and any other fees and expenses to be incurred in the Pending Arbitrations.

15. This Order shall have no effect on the Order Approving Stipulation Granting Northeast Frozen Foods Company, LLC Relief from the Automatic Stay entered by this Court on August 4, 2003 in these cases.

16. This Order shall not affect or supplant any reclamation procedures approved by this Court or agreed to by the Debtors and any reclamation creditor.

17. The objection of Price Chopper LLC, Geoff Stickler, Gail. Stickler, Richard Guest, Maggie Blohm, Gorman Foods, LLC, Davis/Burkett Food Corporation, H.N.A., Inc., H.N.A. of Utah, Inc., Sentker Food Corporation, HBP, LC, Kanab Food Corporation, J, J & J, Inc. d/b/a Dave's Jubilee, Montpelier Food Corporation, Idaho Falls Food Corporation, Crisp Grocery, Inc., Evergreen Supermarkets, Inc., South Cache Market, Inc., Ridley's Food Corporation, and Z, Inc. d/b/a Paul's Markets is withdrawn without prejudice; provided, however, that this Order shall not affect or prejudice the rights of said parties and shall not be construed to authorize the Debtors to institute arbitration proceedings by or against said parties or to limit the means available to such parties to enforce or collect amounts awarded to them in arbitration proceedings or otherwise.

18. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2003

The Honorable Mary F. Walrath
Chief United States Bankruptcy Judge