

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
Fleming Companies, Inc., et al., ¹)	Case No. 03-10945 (MFW)
)	(Jointly Administered)
Debtors.)	

**DEBTORS' MOTION FOR ORDER PURSUANT TO
SECTION 365(a) OF THE BANKRUPTCY CODE AUTHORIZING
THE DEBTORS TO REJECT TWO UNEXPIRED LEASES OF NONRESIDENTIAL
REAL PROPERTY RELATING TO CLOSED DISTRIBUTION FACILITIES**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move this Court for entry of an Order pursuant to section 365(a) of the title 11 of the United States Code (the "Bankruptcy Code") authorizing the Debtors to reject certain unexpired leases of nonresidential real property (the "Motion"). In support of this Motion, the Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is section 365(a) of the Bankruptcy Code.

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

3. On April 1, 2003, the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing 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 cases. An official committee of unsecured creditors (the "Committee") was appointed on April 14, 2003.

4. On or about July 7, 2003, several of the Debtors entered into a certain asset purchase agreement with C&S Wholesale Grocers, Inc. and C&S Acquisition LLC (collectively, "C&S") to sell the Debtors' wholesale distribution business (the "Sale"), which supplies a full line of products to grocery stores, discount stores, and specialty retailers to C&S (the "Wholesale Distribution Business"). On August 15, 2003, this Court entered an Order approving the Sale.

5. The Debtors have identified leases for two distribution facilities (the "Facilities"), as listed on Exhibit A attached to the proposed order² (collectively, the "Rejected Leases"), that are related to the Debtors' convenience divisions and not the Wholesale Distribution Business. The Debtors are the tenants under the Rejected Leases. The Facilities are no longer in operation and do not generate any revenue. Based on the analysis of The Staubach Company ("Staubach"), who provides lease administration and valuation services to the Debtors, the current monthly lease payments for the Rejected Leases are above market value and the estimated time period to effectively market these properties will be between 12 to 18 months. Staubach's analysis supports the requested rejection because the Rejected Leases have no further

² A copy of the proposed order is attached hereto.

value to the Debtors' estates and the rejection will save the Debtors' estates more than \$78,000 in monthly lease expenses.

6. The Debtors will have surrendered the premises subject to the Rejected Leases to the landlords as of December 31, 2003.

7. Upon information and belief, the Debtors have little or no personal property remaining at any of the real property locations included as Rejected Leases. To the extent the Debtors have any property at any of the locations associated with the Rejected Leases, the Debtors will abandon such property as de minimis assets to the landlords of such Rejected Leases.

Relief Requested

8. The Debtors seek authority to reject the Rejected Leases, as listed on Exhibit A attached to the proposed order, effective as of December 31, 2003. The Debtors have the consent of the Committee to the proposed rejections.

Basis for Relief

9. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may ... reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The "business judgment standard" is applied to determine whether the rejection of an executory contract or unexpired lease should be authorized. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 524 (1984); see In re Taylor, 913 F.2d 102 (3d Cir. 1990); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.), 872 F.2d 36 (3d Cir. 1989). Rejection of any executory contract is appropriate where rejection of the contract would benefit the estate. Id. at 40. Stated differently, the standard for

rejection is satisfied when a debtor has made a business determination that rejection will benefit the estate.

10. If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. See, e.g., NLRB v. Bildisco & Bildisco, 465 U.S. at 523; Group of Institutional Investors v. Chicago M. St. P. & P.R.R. Co., 318 U.S. 523 (1943); In re Sharon Steel Corp., 872 F.2d at 39-40. In applying the business judgment standard, courts show great deference to the debtor's decision to reject. See, e.g., Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course.").

11. In the instant case, pursuant to section 365(a) of the Bankruptcy Code, the Debtors seek to reject the Rejected Leases effective as of December 31, 2003. The Rejected Leases relate to two Facilities that are no longer in operation. Accordingly, the Debtors, in the exercise of their business judgment, have determined that the Rejected Leases no longer benefit their estates and creditors. Furthermore, if the relief requested in the Motion is granted, the Debtors will save more than \$78,000 per month in lease expenses that arise under the Rejected Leases.

12. The Debtors are entitled to a December 31, 2003 effective date of rejection as to the Rejected Leases, because the Debtors are current on their obligations pursuant to section 365(d)(3) of the Bankruptcy Code, the Debtors will have surrendered the locations to the landlords on or before December 31, 2003, and the Debtors will have served this Motion on the counterparties to the Rejected Leases two weeks in advance of December 31, 2003. The Debtors will not withdraw any of the locations from Exhibit A to the proposed Order without the

consent of the counterparties. See In re Namco Cybertainment, Inc., Case No. 98-00173 (PJW) (January 21, 1998).

13. The Debtors may have claims against the counterparties to the Rejected Leases arising under, or independently of, the Rejected Leases. The Debtors do not waive such claims by filing of this Motion or the rejection of any such Rejected Leases.

14. The Debtors request that the deadline for the counterparties to the Rejected Leases, to the extent applicable, to file proofs of claim relating to the rejection of the Rejected Leases be thirty (30) days after the Court's entry of an Order approving such rejection.

15. In light of the need to reject the Rejected Leases to avoid unnecessary administrative expenses, the Debtors request that the Court enter an Order approving the rejection of the Rejected Leases effective as of December 31, 2003.

16. Any party wishing to discuss any outstanding obligations under the Rejected Leases may contact Jim Bienias at AlixPartners LLC at 650-589-9445 ext. 3128, jbienias@alixpartners.com.

Notice

17. Notice of this Motion has been given to: (a) the United States Trustee; (b) counsel to the senior secured lenders; (c) counsel to the Committee; (d) all parties who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; and (e) the counterparties to the Rejected Leases.

No Prior Relief

18. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, authorizing the Debtors to reject each of the Rejected Leases effective as of December 31, 2003 and that this Court grant any such further relief as is necessary.

Dated: December 16, 2003

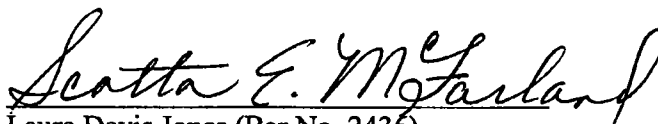
Respectfully submitted,

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