

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

In re:)	
FLEMING COMPANIES, INC., <i>et al.</i> ¹)	Chapter 11
Debtors.)	
_____)	Case No. 03-10945 (MFW)
FLEMING COMPANIES, INC.,)	(Jointly Administered)
Plaintiff,)	Adv. No. _____
vs.)	
WESTCHESTER FIRE INSURANCE COMPANY,)	
Defendant.)	
_____)	

**COMPLAINT FOR AVOIDANCE AND RECOVERY OF PREFERENTIAL
TRANSFERS PURSUANT TO 11 U.S.C § § 547 AND 550**

Plaintiff alleges:

THE PARTIES

1. Plaintiff, Fleming Companies, Inc. ("Fleming") is a Delaware corporation with its principal place of business in Lewisville, Texas. Fleming and its related entities ("Debtors") filed

¹ The "Debtors" are the following entities: Core-Mark International, Inc.; Plaintiff Companies, Inc.; ABCD Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; CIM Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Plaintiff Foods Management Co., LLC.; Plaintiff Foods of Texas, LP.; Plaintiff International, Ltd.; Plaintiff Supermarkets of Florida, Inc.; Plaintiff 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.

voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on April 1, 2003 (the "Petition Date").

2. Defendant Westchester Fire Insurance Company ("Westchester") is a New York corporation with its principal place of business in Philadelphia, Pennsylvania.

JURISDICTION AND VENUE

3. The Court has jurisdiction to adjudicate the issues raised in this adversary proceeding pursuant to 28 U.S.C. § 157(a) and § 1334 (a).

4. Venue in this district is proper pursuant to 28 U.S.C. § 1409 (a).

5. This adversary proceeding is commenced pursuant to Federal Rules of Bankruptcy Procedure 7001(1) and (9), and is a core proceeding under 28 U.S.C. § 157 (b) (2) (F).

GENERAL ALLEGATIONS

6. On or about January 18, 2002, Debtors and Westchester entered into an Agreement of Indemnity (the "Indemnity Agreement") pursuant to which, in consideration for Westchester's agreement to execute bonds, including undertakings and other obligations, including bonds predating the Indemnity Agreement (the "Bonds"), Debtors agreed, among other things, to indemnify and exonerate Westchester from and against losses which Westchester may incur or sustain as a result of or in connection with the furnishing of any Bond.

7. Prior to 90 days before the Petition Date, to secure Debtors' obligations under the Indemnity Agreement, Debtors caused Debtors' banks to issue a letter of credit in the total sum of \$9,000,000 naming Westchester as the beneficiary thereof.

8. Prior to 90 days before the Petition Date, Westchester issued Bonds on behalf of Debtors and in favor of various obligees.

9. Within 90 days before the Petition Date, Westchester demanded that Debtors provide additional collateral security for Debtors' obligations under the Indemnity Agreement.

10. On February 11, 2003, in response to Westchester's demand that Debtors provide it with additional collateral security, Debtors increased Debtors' letter of credit naming Westchester as beneficiary by the sum of \$11,000,000 (the "Transfer").

FIRST CLAIM FOR RELIEF

(For Avoidance Of A Preferential Transfer Pursuant To 11 U.S.C. § 547)

11. Debtors refer to the allegations contained in paragraphs 1 through 10 and by such reference incorporate those allegations herein.

12. The Transfer was a transfer of an interest of Debtors in property.

13. The Transfer was made to or for the benefit of Westchester which, at the time of the Transfer, was a creditor of Debtors.

14. The Transfer was made for or on account of an antecedent debt owed by Debtors to Westchester before the Transfer was made.

15. The Transfer was made while Debtors were insolvent.

16. The Transfer enabled Westchester to receive more than Westchester would have received if: (a) the Debtors bankruptcy case were a case under chapter 7 of the Bankruptcy Code, (b) the Transfer had not been made, and (c) Westchester received payment of the sums owed to it by Debtors to the extent provided by the Bankruptcy Code.

17. The Transfer constitutes an avoidable preference within the meaning of 11 U.S.C. § 547.

18. By reason of the foregoing, Debtors are entitled to a judgment against Westchester avoiding the Transfer, and to the extent Westchester has not drawn on the letter of credit, are further entitled to a judgment decreeing that Debtors may cancel and terminate the undrawn portion up to the full amount of the Transfer.

SECOND CLAIM FOR RELIEF

(For Recovery Of Property Pursuant To 11 U.S.C. § 550)

19. Debtors refer to the allegations contained in paragraphs 1 through 10 and 12 through 18, and by such reference incorporates those allegations herein.

20. By reason of the foregoing, to the extent that Westchester has drawn on the Transfer letter of credit, Debtors are entitled to a judgment against Westchester for the full amount of such draws, to a maximum of \$11,000,000, plus interest at the legal rate, all according to proof.

WHEREFORE, Debtors pray for judgment as follows:

1. On the First Claim for Relief, for a determination that the Transfer is avoidable as a preferential transfer under 11 U.S.C. § 547 of the Bankruptcy Code, and to the extent Westchester has not drawn on the Transfer letter of credit, for a further determination that Debtors may cancel and terminate the Transfer letter of credit.
2. On the Second Claim for Relief, to the extent that Westchester has drawn on the Transfer letter of credit, Debtors are entitled to a judgment against Westchester for the full amount of such draws, to a maximum of \$11,000,000, plus interest at the legal rate, all according to proof.
3. For the costs incurred herein; and
4. For such other and further relief as the Court may deem just and proper.

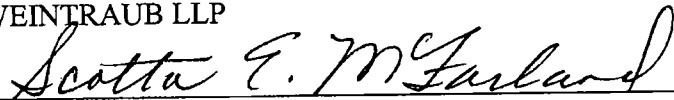
Dated: December 22, 2003

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