

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
FLEMING COMPANIES, INC., <u>et al.</u> ,	)	Case No. 03-10945 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	<b>Related to Docket No. 5073</b>
	)	
	)	<b>Obj. Deadline: 12/29/03 at 4:00 p.m.</b>
	)	<b>Hearing Date: 1/5/04 at 2:00 p.m.</b>

**OBJECTION OF THE RONALD BENDERSON 1995 TRUST  
TO NOTICE PURSUANT TO SALE ORDER RE ASSUMPTION  
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES PURSUANT TO INSTRUCTION FROM  
SUPERVALU INC., INCLUDING, AMONG OTHERS, A REAL PROPERTY  
LEASE WITH ZORBET, LLC (HEARING DATE: JANUARY 5, 2004)**

The Ronald Benderson 1995 Trust (“Benderson”), by and through its undersigned counsel, hereby files this objection to the Notice Pursuant to Sale Order re Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to Instruction From Supervalu Inc., Including, Among Others, a Real Property Lease With Zorbet, LLC (Hearing Date: January 5, 2004) (the “Notice”), which was filed by the above-captioned debtors and debtors-in-possession (the “Debtors”), and in support thereof, respectfully represents as follows:

Background

1. On or about April 1, 2003 (the “Petition Date”), the Debtors each filed a voluntary petition under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Upon information and belief, the Debtors are still operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, a predecessor of the Debtors entered into a lease for non-residential real property located in Orchard Park, New York, which has been designated by the Debtors as lease no. NY-042 (the “Lease”). The Debtors are the current tenant under the Lease, and Benderson is the current landlord under the Lease.

3. On or about December 18, 2003, the Debtors filed the Notice. In the Notice, the Debtors state that they intend to assume and assign the Lease to Raeco Foods, Inc. (“Raeco”). To date, Benderson has not received any information regarding Raeco’s ability to adequately perform under the Lease in the future.

Benderson’s Objection to the Assumption and Assignment of the Lease

4. Benderson objects to the assumption and assignment of the Lease pursuant to sections 365(b) and (f) of the Bankruptcy Code. Benderson has not been provided with any actual information concerning the financial condition of Raeco, and thus Benderson has no means by which it can evaluate whether Raeco can provide adequate assurance of future performance under the Lease within the meaning of sections 365(b) and (f) of the Bankruptcy Code.

5. Bankruptcy Code sections 365(b)(1), 365(b)(3) and 365(f)(2) require the Debtors to present evidence that either the Debtors, or any proposed assignee, will be able, financially and otherwise, to fully perform the tenant’s obligations under the Lease. In order to evaluate the evidence that the Debtors must tender, at a minimum, Benderson is entitled to receive, without limitation, financial projections for Raeco, balance sheets reflecting Raeco’s assets and liabilities at the time of assignment, financial and personnel information regarding Raeco, the extent to which any other entities are responsible for Raeco’s operations and financial health, and

disclosure of the proposed management of Raeco and their qualifications. Without any such evidence of Raeco's ability to perform in the future, the Court must deny the relief sought in the Notice.

WHEREFORE, for all the foregoing reasons, Benderson respectfully requests that the Court enter an order that denies the Debtors' request to assume and assign the Lease until further information is provided with respect to the assignee's adequate assurance of future performance under the Lease, and that grants such other and further relief as the Court deems just and proper.

Dated: December 29, 2003  
Wilmington, Delaware

**/s/ Karen C. Bifferato**

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