

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)
Debtors.)	
)	Objection Deadline: TBD
)	Hearing Date: TBD
)	Relates to Docket No. 5151

**LIMITED OBJECTION OF LENDERS TO REQUEST OF INLAND
PARK SQUARE, LLC FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO SECTIONS
365(d)(3), 503(b)(1)(A) AND 507(a)(1) OF THE BANKRUPTCY CODE**

Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent and JPMorgan Chase Bank, in its capacity as Collateral Agent, Provider of Treasury Services and Syndication Agent (together, the “**Agents**”) on behalf of themselves and on behalf of those certain prepetition and postpetition secured lenders (collectively, the “**Lenders**”) of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby submit this Limited Objection (the “**Objection**”) to the Request of Inland Park Square, LLC (“**Inland Park**”) for Allowance and Payment of Administrative Expense Claim Pursuant to Sections 365(d)(3), 503(b)(1)(A) and 507(a)(1) of the Bankruptcy Code (the “**Motion**”) and respectfully represent 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. The Lenders are party to that certain Credit Agreement, dated as of June 18, 2002, among, Fleming Companies, Inc., a Debtor (“**Fleming**”), Deutsche Bank, as Administrative Agent, JPMorgan Chase and Citicorp North America, Inc., as Syndication Agents, Lehman Commercial Paper Inc. and Wachovia Bank, National Association, as Documentation Agents, Deutsche Bank and JPMorgan Chase, as Joint Book Managers, Deutsche Bank, JPMorgan and Solomon Smith Barney Inc., as Joint Lead Arrangers, and the lenders party thereto (the “**Pre-Petition Credit Agreement**” and, collectively with all ancillary documents executed in connection therewith, the “**Pre-Petition Loan Documents**”), pursuant to which the lenders, inter alia, made loans and advances to Fleming and issued or caused to be issued letters of credit on Fleming’s behalf (collectively, the “**Pre-Petition Loans**”). All of the Debtors, other than Fleming, executed guarantees of the Pre-Petition Loans in favor of the Pre-Petition Lenders.

2. The Pre-Petition Loans were secured by first-priority security interests and liens (the “**Pre-Petition Financing Liens**”) on all or substantially all of the Debtors’ then existing and after-acquired assets set forth in Section 1.1 of the Security Agreement (as defined in the Pre-Petition Credit Agreement) and Section 3.1 of the Pledge Agreement (as defined in the Pre-Petition Credit Agreement)² and all proceeds and products of any and all such assets (the “**Pre-Petition Collateral**”).

² Pursuant to Section 1.1 of the Security Agreement and Section 3.1 of the Pledge Agreement, such assets included accounts receivable, inventory, instruments and chattel paper evidencing accounts receivable or into which any accounts receivable have been, or thereafter were, converted, securities, limited liability company interests, partnership interests, security entitlements, financial assets and

3. As of the Petition Date, Fleming was indebted to the Pre-Petition Lenders under the Pre-Petition Credit Agreement in the aggregate principal amount of \$604 million (including outstanding letters of credit and fees associated therewith of approximately \$146 million), in addition to pre-petition interest accrued thereon, plus costs, fees and expenses pursuant to Section 9.03 of the Pre-Petition Credit Agreement, as well as obligations incurred in connection with Treasury Services not to exceed \$50 million (collectively, the “**Pre-Petition Indebtedness**”). Furthermore, there was an automatic \$5 million step-up in one of the pre-petition letters of credit such that the overall exposure of the Pre-Petition Lenders grew to \$609 million.

4. On May 7, 2003, this Court entered its Final Order Authorizing (i) Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Bankruptcy Rule 4001(c); (ii) Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Bankruptcy Rule 4001(b) and (d); (iii) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363; and (iv) Approving Secured Inventory Trade Credit Program and Granting of Subordinate Liens, Pursuant to 11 U.S.C. §§ 105 and 364(c)(3) and Rule 4001(c) (the “**Final DIP Order**”),³ pursuant to which, *inter alia*, this Court authorized the Debtors to use the Pre-Petition Lenders’ Cash Collateral, on the terms and subject to the conditions set forth therein and in the Post-Petition Loan Documents. See Final DIP Order ¶ 3. One of the conditions of the use of Cash Collateral is that it be used in strict compliance with an approved budget.

investment property, and all proceeds and products of any all of the foregoing. The Pre-Petition Financing Liens did not cover the Debtors’ real estate assets.

³ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Final DIP Order.

Another condition to the use of Cash Collateral is that there must be sufficient availability under the Borrowing Base as more fully set forth in the Post-Petition Loan Documents. See Post-Petition Loan Agreement § 4.03.

5. Pursuant to paragraph 48 of the Final DIP Order, the deadline by which parties may challenge the Pre-Petition Lenders' liens and claims has passed. Other than a challenge by a so-called "Unofficial Committee of Unsecured Creditors of Dunigan Fuels, Inc.", which should not affect the relief requested herein, no parties challenged the Pre-Petition Lenders' liens and claims. Accordingly, such liens and claims are now valid and unavoidable.

6. Under the Final DIP Order, the Pre-Petition Lenders and Pre-Petition Agents were provided with adequate protection against any diminution in value of the Pre-Petition Lenders' and the Pre-Petition Agents' interest in the Pre-Petition Collateral "resulting from, inter alia, the granting of the Liens and the carve-out provided for in the Bridge Financing Order, the priming of the Pre-Petition Financing Liens, the imposition of the automatic stay, and the use, sale or lease or other disposition of the Pre-Petition Collateral". Final DIP Order ¶ I.

7. Among other things, the Pre-Petition Lenders and Pre-Petition Agents were granted first priority liens and security interests on substantially all unencumbered assets of the Debtors (whether acquired prior thereto or thereafter) and junior liens on all assets encumbered by Senior Liens (subject to the Carve-Out and the Post-Petition Financing Liens) (collectively, the "**Pre-Petition Lender Replacement**

Liens”). See Final DIP Order ¶ 8. The Pre-Petition Lender Replacement Liens are deemed perfected as of the Petition Date and may not be subject to or pari passu with any lien or security interest existing as of the Petition Date, other than the Senior Liens. See Final DIP Order ¶ 9. In addition, to the extent of any Diminution Claim, the Pre-Petition Agents and the Pre-Petition Lenders were also granted, effective as of the Petition Date, allowed super-priority administrative expense claims pursuant to Section 507(b) of the Bankruptcy Code (the “**Pre-Petition Lender Superpriority Claims**”), subject only to the Carve-Out and the Post-Petition Lender Superpriority Claims. See Final DIP Order ¶ 10.

8. Pursuant to sections 2.07(b) and 2.09(e) of the Post-Petition Loan Agreement, respectively, by virtue of asset sales undertaken by the Debtors subsequent to the Petition Date, there is no availability under the DIP Facility and all outstanding post-petition letters of credit will be cash collateralized.⁴

9. On December 5, 2003, this Court entered an Order Approving the Joint Motion of Debtors and Pre-Petition Agents for Authorization, Pursuant to Sections 363 and 105 of the Bankruptcy Code, to Pay Amounts to the Pre-Petition Agents on Behalf of the Pre-Petition Lenders (the “**Pay Down Order**”). Pursuant to the Pay Down Order, the Debtors were authorized and directed to pay \$325 million to the Agents, for the benefit of the Pre-Petition Lenders, in partial satisfaction of the Pre-Petition Indebtedness.

⁴ The post-petition letters of credit are in the amount of \$18.3 million.

LIMITED OBJECTION

10. The Motion seeks an order: (i) allowing Inland Park an administrative expense claim for post-petition, pre-rejection amounts due under a lease in the amount of \$80,731.14; (ii) directing the Debtors to pay the administrative expense claim within five days following entry of an Order from this Court; and (iii) granting such other and further relief as is just and proper.

11. The Agents object to the relief requested in the Motion only to the extent that Inland Park seeks to assert an administrative expense claim that is superior to the liens or claims of the Lenders granted under the Final DIP Order.


12. Pursuant to the Final DIP Order, this Court has granted to the Lenders: (i) super-priority administrative expense claim status under section 364(c)(1) of the Bankruptcy Code; and (ii) valid, perfected and enforceable first priority Liens on and security interests in the Pre-Petition Collateral pursuant to sections 364(c)(2) and (d) of the Bankruptcy Code. To the extent that the Court does grant Inland Park an administrative expense claim, the order should make clear that these claims are subordinate to the claims of the Lenders under the Final DIP Order.

13. The Agents reserve all of their rights and remedies granted in the Final DIP Order, the Loan and Security Agreement and the Post-Petition Loan Documents.

WHEREFORE, the Agents respectfully request that this Court deny the Motion only to the extent that Inland Park seeks to assert an administrative expense claim that is superior to the liens or claims of the Lenders granted under the Final DIP Order.

December 30, 2003

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