

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: Fleming Companies, Inc., et. al., Debtors. Chapter 11 Case No. 03-10945 (MFW) (Jointly Administered) Objections Due: January 14, 2004 @ 4:00 p.m. Hearing Date: January 21, 2004 @ 9:30 a.m.

AFFIDAVIT OF PAUL COOLEY IN SUPPORT OF THE MOTION OF HALL EQUITY CORPORATION AND H. THOMAS HALL, III FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(D) TO EXERCISE POST-PETITION SETOFF AND TO COMPEL THE DEBTORS TO COMPLY WITH OUSTANDING LEASE OBLIGATIONS PURSUANT TO SECTION 365(D)(3) OF THE BANKRUPTCY CODE

STATE OF FLORIDA COUNTY OF PINELLAS)) ss.

I, Paul Cooley, being duly sworn, declare as follows:

- 1. I submit this affidavit in support of the above-referenced Motion. I am a property manager with Retail Asset Management ("RET"). RET is the property manager of the Premises1 and the agent of the owner, Hall Equity Corporation and H. Thomas Hall, III.
2. I am duly authorized to submit this affidavit. I have personal knowledge of and could testify to the matters set forth herein.
3. I have reviewed each of the exhibits attached to the Motion and attest that they are true, correct and complete copies of the documents so identified.

1 All capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Motion.

4. On or about April 16, 2003, I received a Notice of Motion for Order Under Section 365(a) of the Bankruptcy Code Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property and Aviation Equipment advising that the Debtors intended to reject the Lease as of the Petition Date. I did not receive any notification from the Debtors that rejection of the Lease was either not approved by the Court or that the Debtors no longer intended to reject the Lease.

5. The Debtors remitted monthly rent to RET on account of the Lease in the amount of \$7,677.25 for the months of May, June, July and November, 2003. The Debtors did not remit any monthly rent for the months of August, September and October, 2003. In total, the Debtors have outstanding rent obligations under the Lease totaling \$23,031.75.

6. On April 8, 2003, RET sent the Debtors a bill in the amount of \$30,388.55 for real estate tax, insurance, common area maintenance and sales taxes for the year 2002. This bill remains outstanding.

7. On November 25, 2003, RET sent the Debtors a bill in the amount of \$32,424.72 for real estate tax, insurance, common area maintenance and sales taxes for the year 2003. I also faxed a copy of the bill to the Debtors on November 29, 2003. This bill also remains outstanding.

8. The Subtenants have remitted rent to RET in aggregate total of \$51,956.20. This amount is comprised of (i) \$32,100 from FAC consisting of six (6) monthly rental payments of \$5,350.00 for each of the months of May through October, 2003 and (ii) \$19,856.20 from Dolgencorp., Inc. consisting of seven (7) monthly rental payments of \$2,836.20 for each of the months of May through November, 2003. The Subtenants have not

made any payments to RET for outstanding common area maintenance charges, real estate taxes and insurance.

9. The Debtors are obligated under the Lease to maintain and repair the roof at the Premises. Neither the FCA Sublease nor the sublease with Dolgencorp, Inc., the other subtenant at the Premises, relieve the Debtors of this obligation.

10. On May 20, 2003, RET received correspondence from Cathy Bigger, Stores Facilities Coordinator for Joann Stores, Inc. ("Joann"), advising of severe roof leaks at the Premises and requesting that immediate action be taken to repair the roof. Ms. Bigger incorrectly identified Hall as the landlord under the FCA Sublease.

11. While Hall does not have the obligation to maintain and repair the roof at the Premises, Hall does have the right to inspect the Premises, including the roof pursuant to the Lease. Hall arranged for a vendor to visit the Premises at least ten (10) times during the months of June and July to attempt to repair the roof. Invoices for repairs during this period total \$5,295.17 and were provided to the Debtors. Hall also received three bids to replace the roof at the Premises.

12. The repairs to the roof were just an intermediary solution to the leaking roof. On August 28, 2003, Joann notified me that the roof at the premises continued to severely leak and that a fire marshal had visited the Premises. Joann requested immediate attention to remedy the situation. Upon information and belief, a copy of Joann's August 28, 2003 correspondence was faxed to Brian Lake, a representative of the Debtors.

13. Having received no response from the Debtors, RET wrote to Brian Lake on September 16, 2003 to advise Mr. Lake that, in accordance with the provisions of the Lease, the Debtors were in default of the Lease for failing to maintain and repair the roof at the

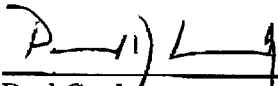
Premises. In accordance with Paragraph 29 of the Lease, RET advised the Debtors that they had thirty (30) days to cure the default.

14. RET did not receive a response from the Debtors its September 26, 2003 correspondence and the Debtors did not cure the default under the Lease within the thirty day period.

15. Pursuant to paragraph 15 of the Lease, the Debtors are required to immediately repay to Hall the costs of repairing and replacing the roof.

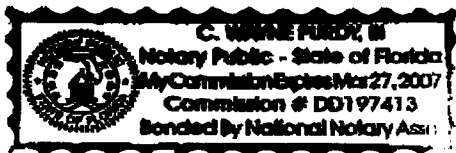
I declare under penalty of perjury under the laws of the State of Minnesota that the foregoing is true and correct.


Executed this 2nd day of January, 2004.



Paul Cooley
Property Manager
Retail Asset Management, Inc.
Agent for Owner Hall Equity
Corporation and H. Thomas Hall, III

SWORN AND SUBSCRIBED before me this 2nd day of January, 2004.



NOTARY: 
My commission expires: 3/27/07