

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:

FLEMING COMPANIES, INC.,  
ET AL.,

Debtor.

Case No. 03-10945 (MFW)  
(Jointly Administered)

Chapter 11

Judge: Honorable Mary F. Walrath

**Hearing Date: TBD**

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**OBJECTION OF BLAIR ROAD REALTY CO. TO EMERGENCY MOTION BY  
DIGIORGIO CORP. FOR EXPEDITED TELEPHONIC CONFERENCE TO  
DETERMINE SCOPE OF HEARING ON OBJECTION OF BLAIR ROAD REALTY CO.  
TO DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 365 OF THE  
BANKRUPTCY CODE AUTHORIZING DEBTORS TO ASSUME AND ASSIGN THAT  
CERTAIN UNEXPIRED REAL ESTATE PROPERTY LEASE WITH BLAIR ROAD  
REALTY CORP  
[DOCKET NO. 5447]**

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Blair Road Realty Co. (“Blair”), through its attorneys, Archer & Greiner, A Professional Corporation and Hellring Lindeman Goldstein & Siegal LLP, respectfully objects to the Emergency Motion by DiGiorgio Corp. for Expedited Telephonic Conference to Determine Scope of Hearing on Objection of Blair Road Realty Co. to Debtors' Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Authorizing Debtors to Assume and Assign That Certain Unexpired Real Estate Property Lease with Blair Road Realty Corp. (the “Motion”). In support of this objection, Blair states as follows:

**BLAIR’S OBJECTION**

1. The Motion is perplexing attempt to deprive Blair of its day in court in opposing the Debtors' Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Authorizing

Debtors to Assume and Assign That Certain Unexpired Real Property Lease With Blair Road Realty Corp (the “ Assumption Motion”). Contrary to the title of the Motion, no “emergency” exists, nor does the Motion state what the Court is supposed to do at the proposed telephone conference. Presumably, DiGiorgio seeks to have the Court bar Blair from making arguments of which DiGiorgio disapproves. Improperly, DiGiorgio uses the Motion as an attempt to argue the Assumption Motion. There is no reason why DiGiorgio cannot present its response to Blair's Objection at the January 14, 2004 hearing in the same manner as DiGiorgio would have had to do had the Court held a hearing on December 2, 2003. DiGiorgio may believe that Blair’s arguments lack merit, but that determination is for the Court. The Court should summarily reject DiGiorgio's attempt to have the Court censor Blair's arguments in advance.

2. When the Assumption Motion was called at 500 p.m. Chief Judge Walrath announced that she had to leave “in three minutes”, noted that Blair had raised several arguments in its Objection to the Assumption Motion and made clear that the Court could not hear the Assumption Motion at that time. Counsel for Blair had no opportunity to present Blair's opposition to the Assumption Motion.

3. Blair acknowledges that the Court indicated that it did not wish to hear the issue of environmental defaults but, as stated previously, Blair never had the opportunity to address the issue and respectfully submits that it is entitled to do so. Contrary to the Motion, the Court said nothing about Blair’s other objections. DiGiorgio’s attempt to prevent Blair from raising these other objections is wholly lacking in merit.

4. As the Motion states, after the proceedings of December 2, 2003, DiGiorgio provided an affidavit to Blair on the issue of adequate assurance of future performance. Blair subsequently advised DiGiorgio that Blair would withdraw its objection on this issue. Since the

evidentiary hearing was then no longer necessary, in a conversation between counsel on January 6, 2004, Blair's counsel suggested that rather than taking up the Court's time on January 14 2004, the remaining issues be heard on a regular omnibus motion date. In response, DiGiorgio's counsel stated that there were no other issues to determine. Blair has since been advised that DiGiorgio insists that the hearing go forward on January 14, 2004, as scheduled.

5. On January 8, 2004, DiGiorgio's counsel sent a letter to Blair's counsel (exhibit C to the Motion) demanding that Blair withdraw its Objection to the assumption motion. Blair responded through a letter of January 9, 2004 to DiGiorgio's counsel which is omitted from the Motion but a copy of which is annexed hereto as Exhibit A. Blair's counsel stated that Blair had not had its day in court and would not withdraw its Objection. At the request of Debtors' counsel, Blair was in the process of preparing a statement of the issues to be presented on January 14 when the Motion arrived.

6. As stated above, the Motion is totally unnecessary. Indeed, the Motion is an excellent example of the overreaching behavior of which Blair complains in its Objection. While DiGiorgio obviously disagrees with Blair's objection, Blair is still entitled to a hearing on these objections the only one of which resolved to date is that of adequate assurance. Because DiGiorgio, for no justifiable reason, has compelled Blair to incur the time and expense of responding to the Motion, Blair requests that the Court award Blair the costs of opposing the Motion including reasonable counsel fees.

WHEREFORE, Blair Road Realty Co. respectfully requests that the Emergency Motion of DiGiorgio be denied.

Dated: January 12, 2004

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