

In re:) Chapter 11
)
FLEMING COMPANIES, INC., et al.,) Case No. 03-10945 (MFW)
)
Debtors.) (Jointly Administered)

Objection Deadline: January 14, 2004
Hearing Date: January 21, 2004 at 9:30 a.m.

Related Pleading No. 4966

**OPPOSITION TO MOTION BY BRADFORD PLAZA INVESTMENT GROUP, LLC
FOR AN ORDER DIRECTING THE PRODUCTION OF DOCUMENTS AND ORAL
EXAMINATIONS UNDER BANKRUPTCY RULE 2004**

DiGiorgio Corporation ("DiGiorgio") and Giunta's Market, Inc., by their attorneys, Finkel Goldstein Berzow Rosenbloom & Nash, LLP and Jaspan Schlesinger Hoffman LLP, as and for their opposition to the motion brought by Bradford Plaza Investment Group, LLC ("Bradford Plaza") respectfully alleges and shows this Court, as follows:

1. The motion brought by Bradford Plaza is wholly without merit as it represents an improper discovery tool in a contested matter where the parties have the rights and protections provided by the Federal Rules of Civil Procedure as made applicable by the Federal Rules of Bankruptcy Procedure as will hereafter be set forth.

2. The motion brought by Bradford Plaza has its genesis in a motion brought by C&S Acquisition, LLC which was party to a settlement agreement made by and between the Debtor, C&S, DiGiorgio and approximately 30 retail supermarket merchants doing business in the states of New Jersey, Pennsylvania and Delaware. Under the settlement agreement which was approved by this Court, C&S designated

fourteen (14) leases to be assigned from the Debtor directly to the store merchants. In all of these cases, the Debtor entered into a direct lease with the Landlord, and thereafter, sublet the premises to the store owners, each of whom has occupied their respective premises for in excess of ten years faithfully paying their subrent with upcharge to Fleming.

3. The assignment motion was brought immediately before the Thanksgiving holidays and was first returnable on December 8, 2003 and has been periodically adjourned by the Court (Docket No. 4537). Bradford Plaza has filed written opposition to the Motion (Docket No. 4638). As of the date hereof, the Court has signed orders which have authorized the assumption and assignment of seven (7) of the subject leases. DiGiorgio expects that as of the date of the next omnibus hearing, orders will be signed authorizing the assumption and assignment of no less than three (3) additional leases and from counsel's discussion with the various landlords, it would appear that orders will be entered authorizing the assumption and assignment of all the remaining leases on a consensual basis other than the Bradford Plaza lease. DiGiorgio and Giunta's Market, Inc. reserve all of their rights in connection with the objection filed by Bradford Plaza to the underlying assumption and assignment.

4. In this motion, the Bradford Plaza seeks to take discovery by way of a Bankruptcy Rule 2004 examination coupled with a request for the production of documents. It is black letter law that the Landlord's objection to the assignment motion

constitutes a contested matter triggering the applicability of the Federal Rules of Civil Procedure as they are made applicable by the Rules of Bankruptcy Procedure.

5. The Court is respectfully advised that Bradford Plaza has recently served upon DiGiorgio a notice of deposition and request for the production of documents under Bankruptcy Rules 7030 and 7034 and DiGiorgio reserves all its rights in connection therewith. Based upon the status of this proceeding, the motion brought by Bradford Plaza should be denied.

Dated: January 12, 2004
Wilmington, Delaware

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-and-

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