

**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)

**Related Docket Nos. 2699, 2937, 4025,
4537, 5454 & 5456**

Hearing: 1/14/04 @ 2:00 p.m.

**OBJECTION OF INVERSIONES RAMIRO TO SYCAMORE PARTNERS, LLC'S
MOTION TO CONTINUE CONTESTED HEARING, AND TO RECLASSIFY
JANUARY 14, 2004 HEARING DATE TO A STATUS CONFERENCE FOR
CONSIDERATION AND ENTRY OF A SCHEDULING ORDER (D.I. 5454)**

Inversiones Ramiro, S.A., (“Inversiones”) by and through undersigned counsel, objects to the Motion to Continue Contested Hearing, and to Reclassify January 14, 2004 Hearing Date to a Status Conference For Consideration and Entry of a Scheduling Order (the “Continuance Motion”) (D.I. 5454), and states as follows:

BACKGROUND

1. On April 1, 2003 the above-captioned debtors and debtors in possession (the “Debtors”), each filed for protection under chapter 11 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

2. Fleming Foods of California, Inc., a California corporation and one of the above-captioned debtors and debtors in possession, (the “Debtor”) is Inversiones’ tenant with respect to certain non-residential real property (the "Premises") located at the Riverside Plaza Shopping Center in Sacramento, California, pursuant to an Assignment and Assumption Agreement dated January 14, 1985, of that certain lease agreement dated July 31, 1973, (the “Lease”). On or about January 14, 1985, Debtor sublet the Premises to Nugget Market, Inc., a

California corporation, (“Nugget Market”) which operated a supermarket on the Premises under a facility services agreement with the Debtor. Nugget Market relocated its supermarket operations to a newly-constructed facility at Lakecrest Village Shopping Center, about 2.7 miles away. When Nugget Market moved to its new location in late October 2003, the Premises went dark.

3. On July 11, 2003, Debtor filed that certain Motion for Order (A) Approving Asset Purchase Agreement with C&S Wholesale Grocers, Inc. and C&S Acquisition LLC, (B) Authorizing (I) Sale of Substantially All of Selling Debtors Assets Relating to the Wholesale Distribution Business to Purchaser or its Designee(s) or Other Successful Bidder(s) at Auction, Free and Clear of All Liens, Claims, Encumbrances and Interests and (II) Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases, and (C) Granting Related Relief (the “Sale Motion”) (D.I. 1906).

4. On July 16, 2003 the Debtor filed that certain Notice Regarding Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection With Sale Motion (the “1st Assumption Notice”) (D.I. 1984). The 1st Assumption Notice first notified Inversiones of the Debtor’s intent to assume the Lease and assign it to C&S Acquisition, LLC.

5. On July 25, 2003, Inversiones filed its Objection of Inversiones Ramiro, S.A. to the “Cure Amounts” and Proposed Assignment (the “Cure Objection”) (D.I. 2699).

6. On August 11, 2003, Inversiones filed its Objection of Inversiones Ramiro to Motion of Debtors and Debtors in Possession to Assume and Assign Certain Nonresidential

Real Property Leases Pursuant to Section 365 of the Bankruptcy Code (the “Assumption Objection”) (D.I. 2937).

7. On September 26, 2003 Debtors filed their Second Motion Pursuant to Section 365(d)(4) of the Bankruptcy Code for Entry of an Order Extending Time to Assume, Assume and Assign, or Reject Unexpired Leases of Nonresidential Real Property (the “Extension Motion”) (D.I. 3836).

8. On October 13, 2003, Inversiones filed its Objection of Inversiones Ramiro To The Debtors’ Second Motion Pursuant to § 365(d)(4) of the Bankruptcy Code For Entry of an Order Extending Time To Assume, Assign, Or Reject Certain Nonresidential Real Property Leases (the “Extension Objection”) (D.I. 4025).

9. At the October 20, 2003, hearing on the Debtor’s Extension Motion, the Court ruled that if there were any further failures to timely pay post-petition obligations, or if the Debtor failed to make its assumption/rejection decision before November 30, 2003, the Lease would be deemed rejected (the “Deemed Rejection Order”)(D.I. 4190, entered October 28, 2003).

10. On October 31, 2003 Inversiones served a Notice of Deposition of Tom Wilson of Duckett-Wilson Development Company (the “Deposition Notice”) (D.I. 4278 & 4284) and propounded its First Request for Production of Documents Directed to Debtors, C&S Acquisition, Inc. and Sycamore Partners (the “Inversiones Document Requests”) (D.I. 4292).

11. In late October 2003, Inversiones learned that Debtor intended to assign the Lease to Sycamore Partners, LLC, an affiliate of Nugget Markets (“Sycamore”). Pursuant to

the Document Requests, Inversiones sought documents relevant to Debtor's attempted assignment of the Lease, including documents related to Sycamore's adequate assurance of future performance under the Lease and documents that the parties intended to rely on in connection with Debtor's attempt to assume and assign the Lease.

12. The Debtors formally notified Inversiones of their intention to assume and assign the Lease to Sycamore Partners, LLC (Sycamore") on November 20, 2003. The Inversiones Lease is referred to as Fleming Lease CA-001 and identified as Contract Assignment No. 6721 on page 5 of the "Assignment List," attachment no. 1 to the "Assignment Notice" filed on November 20, 2003 (the "2d Assumption Notice") (D.I. 4537).

13. On December 1, 2003, Inversiones filed its Supplemental Objections of Inversiones Ramiro to Motion of Debtors and Debtors In Possession to Assume and Assign Lease to Sycamore Partners LLC And "Cure Amounts" (the "Fourth Objection") (D.I. 4656). The Fourth Objection expressly notified Debtors of their further failure to make timely payments pursuant to section 365(d)(3) of the Bankruptcy Code and pursuant to the terms of the Deemed Rejection Order.

14. Also on December 1, 2003, C&S responded to the Inversiones Document Requests (D.I. 4674). C&S's response states that C&S possesses no documents responsive to the Document Requests.

15. On December 3, 2003 the Debtors responded to the Inversiones Document Requests (D.I. 4723), and thereafter the Debtors produced certain documents responsive to the Document Requests.

16. On December 3 and 8, 2003, Sycamore responded to the Inversiones Document Requests, indicating that it “presently has no documents responsive to [the Inversiones Document Requests], but will supplement its responses as documents become available.” To date, Sycamore has produced no documents (the “Sycamore Document Response”).

17. At a hearing in this matter in late November 2003, Inversiones’ counsel requested that the Court schedule a hearing on the assumption and assignment of the Lease for the December 8, 2003 omnibus hearing date scheduled in these cases. Because the Court’s calendar did not permit a hearing with respect to all of the matters noticed for hearing by the Debtors on December 8, 2003, Inversiones’s counsel again stood up at the December 8, 2003 hearing to request an evidentiary hearing with regard to the issues raised with respect to the Debtors’ proposed assumption and assignment of the Lease. The Court granted this request in open Court, without objection from any party, and set the evidentiary hearing for January 14, 2004 at 2:00 p.m. (the “Evidentiary Hearing”).

18. Interrogatories were propounded by and to each of the parties to this dispute, and each party responded to such discovery, on an agreed expedited basis, during the first week of January 2004.

19. The parties have agreed that the Premises leased pursuant to the Lease are part of a “shopping center” within the meaning of section 365(b)(3) of the Bankruptcy Code.

OBJECTION

20. As shown by the multiple objections filed by Inversiones and the record established at multiple hearings at which counsel for Inversiones has sought to limit the negative impact of these cases upon this landlord, Inversiones has repeatedly endeavored to expedite the Debtors' and the Court's decision with respect to its Lease. As explained at the hearings held on October 20, 2003 and on December 8, 2003, Inversiones is prejudiced by each day of delay due to 1) the Debtors' repeated failure to timely perform their obligations pursuant to section 365(d)(3) of the Bankruptcy Code, and 2) the ongoing absence of an anchor tenant since the Debtors' vacated the Premises in late October 2003.

21. Contrary to the movants' statements and as evidenced by the history of these proceedings, Inversiones has indeed sought to force an earlier decision with respect to the Lease. The Extension Objection requested, and the Deemed Rejection Order in part granted, Inversiones' request for an expedited decision with respect to the Lease.

22. The dispute with respect to the assumption or rejection of this Lease is not complex, and has been outstanding since July 2003. The parties do not dispute that the Riverside Plaza Shopping Center constitutes a "shopping center" within the meaning of the Bankruptcy Code, and hence the only issues remaining to be decided are deemed rejection, adequate assurance and cure issues.

23. The parties have known about the Hearing since December 8, 2003. If Sycamore needed more discovery, then it could have and should have requested such shortly after December 8, 2003. That Sycamore failed to serve further discovery, failed to produce any documents to Inversiones in response to the Inversiones Document Requests, and apparently

failed otherwise to prepare for the Hearing, are burdens that only Sycamore and the Debtors should bear.

24. There have never been any serious settlement discussions in connection with this matter, and Sycamore's and Debtor's alleged failure to prepare for the Hearing in response to any such discussions is beyond cavil. Sycamore's counsel and broker contacted counsel for Inversiones a single time in mid-December and vaguely referenced a potential settlement. Hardly a good faith effort to settle the dispute.

25. Inversiones is prepared to go forward at the Hearing scheduled on Wednesday, January 14, 2004. Inversiones is preparing exhibit and pleading binders for the benefit of the opposing parties and the Court, and has arranged for co-counsel and a witness to travel from California to Delaware for the Hearing.

WHEREFORE, for the foregoing reasons, Inversiones Ramiro prays that this Honorable Court deny the nonconsensual request to adjourn or continue the Hearing and grant such other and further relief as is just and proper.



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DATED: January 12, 2004