

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Fleming Companies, Inc., et al., <sup>1</sup>	)	Case No. 03-10945 (MFW)
	)	(Jointly Administered)
Debtors.	)	
	)	Related Docket Nos.:3277, 3706 and 4334
	)	Hearing Date: January 21, 2004 at 9:30 a.m.

**AWG ACQUISITIONS, LLC AND  
ASSOCIATED WHOLESALE GROCERS, INC.'S  
OBJECTION TO MOTION OF PARK PLACE, MHP LTD.  
TO VACATE AN ORDER AUTHORIZING THE  
DEBTORS TO REJECT A CERTAIN LEASE AND  
SUBLEASE OF NONRESIDENTIAL REAL PROPERTY  
[DOCKET NO. 4334]**

AWG ACQUISITIONS, LLC and ASSOCIATED WHOLESALE GROCERS, INC. (collectively, "AWG"), by and through counsel, hereby object to the Motion Of Park Place, MHP Ltd. To Vacate An Order Authorizing The Debtors To Reject A Certain Lease And Sublease Of Nonresidential Real Property (Docket No. 4334) (the "Motion to Vacate") which seeks to vacate the Court's order dated September 16, 2003 (the "Rejection Order") (Docket No. 3706) granting the Motion Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property (Docket No. 3277) (the

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<sup>1</sup> 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.

“Rejection Motion”) as it relates to a certain Lease and the Sublease<sup>2</sup>. In support thereof, counsel for AWG states as follows:

1. Contemporaneously, the Debtors have filed an Objection to the Motion to Vacate. AWG adopts and incorporates the Debtors’ objection as if fully set forth herein.

2. AWG is a Third Party Purchaser pursuant to that certain Asset Purchase Agreement as amended by that certain Amendment dated August 4, 2003 submitted as Exhibit 2 to the Court at the sale hearing commenced on August 4, 2003 (“APA”) which was approved by the Court by Order dated August 15, 2003 (Docket No. 3142).

3. Pursuant to Section 2.5 of the APA, AWG has the right to designate certain contracts to be assumed and rejected. AWG served upon the Debtors an Option Notice as contemplated and provided for by the APA directing the Debtors to reject the Lease and Sublease.

4. In conformity with their contractual obligations under the APA, on August 21, 2003, the Debtors filed the Rejection Motion. As reflected on the certificate of service, a copy of the Rejection Motion was served on Park Place MHP, Ltd. (“Park Place”) at P.O. Box 359, Stuart, FL 34995-0359 by mail on August 20, 2003.

5. Park Place failed to timely file an objection, and on September 18, 2003, the Court entered the Rejection Order.

6. Park Place did not appeal or otherwise seek to alter or amend the Rejection Order pursuant to Rule 9023, and the time to seek appeal or reconsideration has expired.

7. Park Place now seeks to vacate the order based upon lack of notice.

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<sup>2</sup> All capitalized terms not defined herein are used as defined in the Motion to Vacate.

8. As set forth by the Debtors, the notice was properly addressed to a valid Park Place address. Park Place admits that it has received notices sent by the Debtors to that address, and Park Place admits receiving a copy of the Certification of Counsel submitted by Fleming regarding entry of the Rejection Order. Further, Park Place admits receiving the Rejection Order itself. Notwithstanding this information, Park Place denies receipt of the Rejection Motion.

9. As set forth by the Debtors, the notice was properly addressed, stamped and deposited in the mail. A presumption arises that an addressee receives a properly mailed item when the sender presents proof that it was properly addressed, stamped, and deposited the item in the mail. See Hagner v. U.S., 285 U.S. 427, 430 (1932); see also Leon v. Murphy, 988 F.2d 303, 309 (2d Cir. 1993). A party's mere denial of receipt is insufficient to rebut the presumption afforded by the "mailbox rule", and the receipt by that party of other notices sent to the same address supports and reinforces the presumption. In re Petroleum Production Management, Inc., 240 B.R. 407, 412 (Bankr. D. Kan. 1999).

10. Moreover, Park Place had actual notice of the Certification of Counsel and the Rejection Order itself. Park Place failed to timely move for reconsideration or appeal the Rejection Order, and such time periods have expired.

11. Park Place seeks to vacate the Rejection Order under Federal Rule 60(b)(6), the "catch all", but fails to demonstrate "exceptional circumstances" required by the Third Circuit in Coltec Industries, Inc. v. Hobgood, 280 F.3d 262, 273 (3d Cir. 2002). The record reflects that valid service was made upon Park Place, Park Place had actual notice of the Rejection Order, and Park Place sat on their rights.

12. Consequently, the Motion to Vacate should be disallowed and denied.

WHEREFORE, AWG respectfully requests that the Court disallow and deny the Motion to Vacate and for such further and other relief as the Court deems just and proper.

Dated: January 15, 2004

Respectfully submitted,

/s/ Selinda A. Melnik

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