
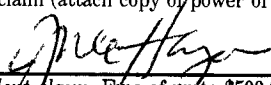


UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF Delaware		PROOF OF CLAIM
Name of Debtor FLEMING COMPANIES, INC		Case Number 03-10945
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 USC § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property) JULES GOURMET SHOP N BAG		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent JULE HAZOU 18 Whittier Lane Oakland, New Jersey 07436		
Telephone number (201) 914-1143		
Account or other number by which creditor identifies debtor 22-2640310		Check here if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated _____
1 Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Retiree benefits as defined in 11 USC § 1114(a) <input type="checkbox"/> Services performed <input type="checkbox"/> Wages, salaries, and compensation (fill out below) <input type="checkbox"/> Money loaned Your SS# _____ <input type="checkbox"/> Personal injury/wrongful death Unpaid compensation for services performed <input type="checkbox"/> Taxes from _____ to _____ (date) (date) <input checked="" type="checkbox"/> Other SEE ATTACHED RIDER		
2 Date debt was incurred October 2002		3 If court judgment, date obtained
4 Total Amount of Claim at Time Case Filed \$ 759,600 00 plus interest If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5 Secured Claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any \$ _____		6 Unsecured Priority Claim <input type="checkbox"/> Check this box if you have an unsecured priority claim. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier. 11 USC § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan. 11 USC § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal family or household use. 11 USC § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 USC § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 USC § 507(a)(8) <input type="checkbox"/> Other. Specify applicable paragraph of 11 USC § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/01, and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8 Supporting Documents Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. *See below. 9 Date Stamped Copy To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY FILED SEP 15 2003 BMC Fleming Companies Claim  13380
Date 09/12/2003	Sign and print the name and title, if any of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any).  JULE HAZOU, OWNER/PRESIDENT	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 USC §§ 152 and 3571.		

RIDER TO PROOF OF CLAIM

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

Name of Debtor **FLEMING COMPANIES, INC**

Case Number **03-10945**

Name of Creditors **JULES SHOP N BAG, JULE'S GOURMET MARKET,
JULES GOURMET SHOP N BAG, JULES GOURMET
SHOP**

1 Basis for claim

(a) Credits for damages to goods and rebates for special foods	\$120,000 00
(b) Rebates due creditors	300,000 00
(c) Show allowance	800 00
(d) Credit for sign	8,800 00
(e) Inventory removed from Oakland, New Jersey store	320,000 00
(f) Salaries due employees as per Court Order	<u>10,000 00</u>
	\$759,600 00

DATED September 12, 2003



JULE HAZOU, Owner/President

THEODORE E MALOOF, ESQ
75 Essex Street, Suite 206
Hackensack, New Jersey 07601
(201) 342-0970
Attorney for Defendants/Counterclaimants,
Jule Hazou and M & A Supermarket, Inc , d/b/a Jules Market

FLEMING COMPANIES, INC ,

Plaintiff

vs

**JULE HAZOU AND M & A
SUPERMARKET, INC , d/b/a JULES
MARKET,**

Defendants

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION BERGEN COUNTY**

DOCKET NO BER-L-2292-03

CIVIL ACTION

**ANSWER, SEPARATE DEFENSES
AND COUNTERCLAIM**

Defendants, Jule Hazou and M & A Supermarket, Inc , d/b/a Jules Market by way
of Answer to the Complaint filed in this action says

AS TO THE FIRST COUNT

1 Defendant is without knowledge or information sufficient to form a belief as
to the truth of the allegations contained in paragraph 1 and leaves plaintiff to its proofs

2 Defendant, Jule Hazou, is an officer of M & A Supermarket, Inc , d/b/a Jules
Market Defendant denies the remaining allegations of paragraph 2

3 Defendants admit the allegations of paragraph 3

4 Defendant, M & A Supermarket, Inc is a domestic corporation for profit pursuant to the laws of New Jersey Defendants deny the remaining allegations of paragraph 4

5 Defendant, M & A Supermarket, Inc admits that it entered into a certain Facility Standby Agreement Defendant denies the remaining allegations of paragraph 5 and leaves plaintiff to its proof

6 Defendant, M & A admits that it signed a Promissory Note and Amendment to the Promissory Note dated October 17, 2002, defendant denies the remaining allegations of paragraph 6 and leaves plaintiff to its proves

7 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 and leaves plaintiff to its proof

8 Defendant admits it signed a Continuing Guaranty Agreement dated October 10, 2002 Defendant denies the remaining allegations of paragraph 8

9 Defendant denies the allegations of paragraphs 9, 10, 11 and 12

AS TO THE SECOND COUNT

1 Defendants repeat its answers to the allegations of the First Count of the Complaint as if set forth herein at length

2 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 and leaves plaintiff to its proof

3 Defendant, Jule Hazou, admits that he signed a Continuing Guaranty Agreement dated October 10, 2002 Defendant denies the remaining allegations of paragraph 15

4 Defendant admits the allegations of paragraph 16

5 Defendant denies the allegations of paragraph 17

WHEREFORE, defendants, Jule Hazou and M & A Supermarket, Inc , d/b/a Jules Market, demand Judgment dismissing the Complaint with costs

SEPARATE DEFENSES

- 1 Plaintiff has failed to state a claim upon which relief may be granted
- 2 The plaintiff waived, released and/or relinquished all or part of the claims it may have had against the defendant
- 3 Plaintiff has failed to mitigate damages
- 4 Any balance allegedly due is set off against claims due and owing from plaintiff to defendants
- 5 Defendants breached no obligations owed to the plaintiff
- 6 Any alleged losses suffered by plaintiff are the avoidable consequences of its own conduct
- 7 The doctrine of laches serves to bar or reduce the recovery of the plaintiff against the defendant
- 8 The claims of the plaintiff are barred by estoppel
- 9 Plaintiff's Complaint should be dismissed for failure to comply with the entire controversy doctrine
- 10 Plaintiff has failed to pay the payroll for employees of M & A for work performed by the workers during the period from March 25, 2003 to Wednesday, April 2, 2003, in violation of Court Order dated April 2, 2003 in the companion action, Docket No BER-C-76-03E
- 11 Plaintiff has failed to pay rent for premises located at 350 Ramapo Valley Road, Oakland, New Jersey, for the period of April 3, 2003 to the end of the first week of May

2003, amounting to \$23,000 00 per month, and it has further failed to pay CAM charges of \$6,600 00, and electric charges for the month of April to the first week in May in the sum of approximately \$10,000 00

12 Defendants are entitled to credit for inventory removed from the supermarket at 350 Ramapo Valley Road, Oakland, New Jersey pursuant to the Order of the Court in the Chancery Division dated April 2, 2003

13 Defendants are entitled to credit for all out of date inventory and damaged inventory supplied by plaintiff to the defendants

14 Defendants are entitled to credit for the sign of Jules Market located at the Oakland premises in the sum of approximately \$8,800 00

15 Defendants are entitled to credit for Best Yet private label for opening in the sum of approximately \$30,000 00

16 Defendants are entitled to credit for special gourmet foods which should have been at no charge, but which were charged to defendants in the sum of approximately \$60,000 00

17 Defendants are entitled to credit for recalled products for grand opening of the Oakland premises in the sum of approximately \$10,000 00

18 Plaintiff breached and failed to comply with the provisions of the Facility Standby Agreement

19 Defendants failed to provide promotion materials and sale items for grand opening of the Oakland premises, and defendants are entitled to additional credits for such failures

20 Plaintiff billed defendant for premature grand opening for flyers before store opening, and as a result, defendants are entitled to additional credits in the sum of approximately \$6,000 00

21 Defendants are entitled to credits for overcharges on delivery fees

22 Plaintiff failed to provide required technical assistance to the defendants, resulting in damages to the defendants, and defendants are entitled to credit on account of such failure

23 Plaintiff made over-shipment of products that had to be discarded by the defendants, defendants were charged for such excess shipments and are thus entitled to credits for the same

24 Plaintiff failed to provide promised funding and loans to operate the Oakland business to be used for working capital, to purchase merchandise, for equipment costs and construction

25 Plaintiff failed to provide defendants with \$300,000 00 as defendant's rebate

26 Plaintiff engaged in a course of conduct which was calculated to lead to the failure of defendants' operation at the Oakland premises

27 Plaintiff filed for Chapter 11 Bankruptcy in Federal District of Delaware on or about April 1, 2003, Case No 03-10945 Accordingly, the within action should be dismissed, and any proceeding to collect against defendants should be brought in Bankruptcy Court

28 The AAA Arbitration contemplated by the Facility Standby Agreement cannot be made separate and distinct from the claims under the Continuing Guaranty Agreement Accordingly, the pending action should be dismissed, and all claims should be processed in Bankruptcy Court, or through AAA Arbitration

WHEREFORE, defendants, Jule Hazou and M & A Supermarket, Inc , d/b/a Jules Market, demand Judgment dismissing the Complaint with costs

DEMAND FOR STATEMENT OF DAMAGES

In accordance with R 4 5-2, defendants demand in writing, within five (5) days, a Statement of Damages claimed by plaintiff

JURY DEMAND

Defendants demand trial by jury as to all issues herein

REQUEST FOR DOCUMENTS

Defendants hereby demand that plaintiffs produce all documents referred to in the Complaint, pursuant to R 4 18-2, within five (5) days of the services of the Request for Documents

DEMAND FOR STATEMENTS

In accordance with R 4 10-2(c), demand is hereby made for any statement made by any servant, agent, employee or representative of defendants concerning this action or the subject matter of this action

COUNTERCLAIM

Counterclaimant, Jule Hazou and M & A Supermarkets, Inc , d/b/a Jules Market (hereinafter referred to as "M & A"), by way of Counterclaim against plaintiff, Fleming Companies, Inc , says

1 On or prior to April 3, 2003, and at all times herein relevant, M & A and Jules Hazou, its president and sole shareholder, operated a supermarket known as Jules Market at 350

Ramapo Valley Road, Oakland, New Jersey, together with another supermarket known as Jules Market located at 315 Broad Avenue, Leonia, New Jersey

2 Pursuant to the Facility Standby Agreement dated October 17, 2002, referred to in the Complaint and Answer, plaintiff, Fleming Companies, Inc (hereinafter referred to as "Fleming") was obligated to furnish products, supplies, technology and support for the start-up and continued operation of M & A

3 Pursuant to the said documents, and as further supported by the written and verbal agreements between the parties, Fleming was further obligated to provide M & A with \$300,000 00 in advanced rebates and further to supply M & A with certain financing to be used by M & A for working capital, and further to be used for the purchase of supplies, machinery, equipment and construction

4 Fleming further failed to perform its obligations pursuant to the Facility Standby Agreement, and further violated the written and verbal agreements between the parties as more fully and specifically set forth in the various separate defenses set forth in the Answer to the Complaint, all of which are incorporated herein in this Counterclaim as if set forth at length


5 Fleming further failed to give M & A the \$300,000 00 in promised cash and failed to provide the funding needed by M & A in order to continue operations, and in order to purchase merchandise, and the necessary funds to be used for working capital, equipment cost and construction

6 As a result of the breach of contract by Fleming as above set forth, M & A was caused to suffer the loss of its business operations both at 350 Ramapo Valley Road, Oakland, New Jersey, and also at 315 Broad Avenue, Leonia, New Jersey

7 Further, as a result of Fleming's breach of contract, counterclaimants, M & A and Jule Hazou sustained damages, together with loss of future business profits at both the Oakland and Leonia, New Jersey locations

WHEREFORE, counterclaimants, Jules Hazou and M & A Supermarket, Inc , d/b/a Jules Market, demand Judgment against the plaintiff, Fleming Companies, Inc on the counterclaim for damages, together with interest, attorneys fees and costs of suit

DATED June 23, 2003


THEODORE E MALOOF, ESQ
ATTORNEY FOR DEFENDANTS,
JULE HAZOU AND M & A
SUPERMARKET, INC , D/B/A JULES
MARKET

DESIGNATION OF TRIAL COUNSEL

In accordance with R 4 22-4, defendant hereby designates Theodore E Maloof, Esq , as trial counsel for the within matter

CERTIFICATION


I hereby certify that the within Answer and this pleading have been served and filed within the time prescribed by the Rules of the Court, as extended by counsel in the Stipulation Extending Time, which extended the time for a period of fifteen (15) days which expired on Monday, June 23, 2003

I further certify pursuant to R 4 5-1 that this matter is not the subject of any other action or arbitration proceeding, pending or contemplated, except as follows

1 There is pending the equitable action in the matter of Fleming Companies, Inc v M & A Supermarkets, Inc , Docket No BER-C-76-03E

2 An AAA Arbitration is contemplated with respect to the provisions of the
Facility Standby Agreement

DATED June 23, 2003



THEODORE E MALOOF, ESQ
ATTORNEY FOR DEFENDANTS,
JULE HAZOU AND M & A
SUPERMARKET, INC , D/B/A JULES
MARKET



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division – Civil Part pleadings (not motions) under Rule 4 5-1

Pleading will be rejected for filing, under Rule 1 5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE	CK	CG	CA
CHG / CK NO			
AMOUNT			
OVERPAYMENT			
BATCH NUMBER			

ATTORNEY/PRO SE NAME THEODORE E MALOOF, ESQ	TELEPHONE NO (201) 342-0970	COUNTY OF VENUE BERGEN
FIRM NAME (if applicable)	DOCKET NUMBER (When available) BER-L-2292-03	
OFFICE ADDRESS 75 Essex Street, Suite 206 Hackensack, New Jersey 07601	DOCUMENT TYPE Answer with counterclaim	
NAME OF PARTY (e.g. John Doe Plaintiff) JULE HAZOU and M & A SUPERMARKET, INC , d/b/a JULES MARKET		CAPTION FLEMING COMPANIES, INC VS JULE HAZOU AND M & A SUPERMARKET, INC , d/b/a JULES MARKET
CASE TYPE NUMBER 503 (See reverse side for listing)	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED YES SEE N J S A 2A 53A 27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT	
RELATED CASES PENDING? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES LIST DOCKET NUMBERS BER-C-76-03E	
DO YOU ANTICIPATE ADDING ANY PARTIES (ansing out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT S PRIMARY INSURANCE COMPANY IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A DO PARTIES HAVE A CURRENT PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FAMILIAL <input checked="" type="checkbox"/> BUSINESS	<input type="checkbox"/> FRIEND / NEIGHBOR <input type="checkbox"/> OTHER (explain) _____
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B DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? YES NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? YES NO IF YES PLEASE IDENTIFY THE REQUESTED ACCOMMODATION _____

WILL AN INTERPRETER BE NEEDED? YES NO IF YES FOR WHAT LANGUAGE _____

ATTORNEY SIGNATURE