

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
Fleming Companies, Inc., et al.,)	Case No. 03-10945 (MFW)
)	(Jointly Administered)
<u>Debtors.</u>)	

OBJECTION BY BERNATELLO’S PIZZA, INC. TO DEBTORS’ MOTION FOR ENTRY OF AN ORDER WITH RESPECT TO THE RECLAMATION CLAIMS FILED IN THE DEBTORS’ CASES (Docket No. 2050)

Creditor and reclamation claimant, Bernatello’s Pizza, Inc. (“Bernatello’s”), for its Objection to Debtors’ Motion for Entry of an Order with Respect to the Reclamation Claims Filed in the Debtors’ Cases, states as follows:

1. In an effort to reduce and eliminate many reclamation claims, Debtors filed a motion on July 21 seeking to have their position with respect to the validity and amount of the 611 reclamation claims filed in this case declared to be correct and binding on all parties, without any evidentiary support, unless an objection thereto is filed by August 12, 2003.

2. With regard to Bernatello’s reclamation claim, Debtors attempt to reduce the initial claim of \$ 63,887.00 to \$0.00 because Debtors claim that Bernatello’s did not provide them with purchase orders when the reclamation demand was received.

3. Bernatello’s provided its product through direct store delivery (“DSD”). DSD is product which is not pulled through the wholesaler’s warehouse, but is delivered directly to each retail outlet. The aisle clerk or department head of each grocery store signs the invoice or delivery receipt provided by Bernatello’s. Regardless whether Fleming’s own internal records reflect possession of purchase orders, Bernatello’s has provided the Debtors with invoices that establish delivery by a signed and stamped delivery receipt making up Bernatello’s \$63,887.00 reclamation demand. Attached hereto as Exhibit A is a set of such invoices for which Debtors

contend their internal records do not reflect. Accordingly, Debtors should not be allowed to reject \$63,887.00 of Bernatello's reclamation claim just because Fleming's poor record keeping does not reflect acknowledgment of said invoices.

4. Accordingly, Bernatello's requests that the Court deny Debtors' motion to the extent it seeks to reduce Bernatello's reclamation claim by \$ 63,887.00 and deny the motion, conditionally, until Debtors provide information satisfactory to Bernatello's and/or the Court that goods sold by Bernatello's to Debtors during the reclamation period in this amount were consumed when the reclamation demand was made.

Dated: August 8, 2003

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.

/s/ Charles J. Brown, III

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Attorneys for Bernatello's Pizza, Inc.

CERTIFICATE OF SERVICE

I, Charles J. Brown, III, hereby certify that I caused a true and correct copy of the foregoing *Objection by to Debtors' Motion for Entry of an Order with Respect to the Reclamation Claims filed in the Debtors' Cases (Docket No. 2050)* was served this day 8th of August 2003, via hand delivery or first class United States mail, postage prepaid, to:

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I certify the foregoing to be true and correct under the penalty of perjury.

Dated: August 8, 2003

/s/ Charles J. Brown, III
Charles J. Brown, III