

Hearing Date: August 19, 2003
11:30. A.M.

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)
Debtors.)

**OBJECTION OF B. ROSEN & SONS, INC. TO
PROPOSED EXPUNGEMENT/DISALLOWANCE
OF ITS RECLAMATION CLAIM**

B. Rosen & Sons, Inc., by its attorneys, Finkel Goldstein Berzow Roscnbloom & Nash, LLP, respectfully submits this Objection to the proposed expungement/disallowance of its reclamation claim, and shows this Court as follows:

1. B. Rosen & Sons, Inc. ("B. Rosen") is a distributor of lamb and meat products.
2. On April 2, 2003, B. Rosen promptly served a Demand for Reclamation with respect to three shipments of goods delivered to the Debtors within ten (10) days of the Chapter 11 filings totaling \$21,251.23. A copy of B. Rosen's reclamation demand is annexed hereto as **Exhibit "A"** including copies of all supporting invoices (the "Invoices").
3. The Invoices themselves reference all necessary customer information, including the Debtors' requisite P.O. numbers.
4. Under the procedures established by the Court, B. Rosen's reclamation demand was internally reviewed and has now come under objection.

According to the applicable schedules and reclamations statements, the Debtors seek to disallow B. Rosen's reclamation demand in its entirety unless timely objections are filed.

5. While the grounds for the expungement/disallowance are not substantiated, it appears that the only reason cited by the Debtors in support of the proposed treatment relates to B. Rosen's purported failure to identify the underlying purchase orders in question.

6. B. Rosen disagrees with this treatment and hereby submits the instant objections to the Debtors' motion as required by applicable guidelines.

7. Contrary to the papers filed by the Debtors, all Fleming purchase orders were, in fact, adequately identified on B. Rosen's supporting invoices and relate to the following:

3-25-03	(0077415) B. Rosen Invoice	- Fleming Customer P.O. 045403
3-25-03	(0077398) B. Rosen Invoice	- Fleming Customer P.O. 754106
3-26-03	(0077565) B. Rosen Invoice	- Fleming Customer P.O. 754123

8. In view of the foregoing, the proposed treatment of B. Rosen's claim should be overruled and, instead the reclamation claim should be allowed in the maximum sum of \$23,438.94 as recognized by the Debtors based upon the so-called "Electronic Assertion Detail Account" information.

WHEREFORE, B. Rosen respectfully requests relief consistent with the foregoing, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
August 11, 2003

FINKEL GOLDSTEIN BERZOW
ROSENBLOOM & NASH, LLP
Attorneys for B. Rosen
26 Broadway, Suite 711
New York, New York 10004
(212) 344-2929

By: 
KEVIN J. NASH, ESQ. (KJN-6274)

LOCAL COUNSEL TO BE DESIGNATED
AS NECESSARY.

TO:

Kirkland & Ellis
777 South Figueroa Street
Los Angeles, California 90017
Attn: Richard Wynne, Esq.

Pachulski, Stang, Ziehl, Young,
Jones & Weintraub, P.C.
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705
Attn: Laura Davis Jones, Esq.

White & Case
1155 Avenue of the Americas
New York, New York 10036-2787
Attn: Andrew P. DeNatale, Esq.

Greenberg Taurig LLP
The Brandywine Building
1000 West Street, Suite 1540
Wilmington, Delaware 19801
Attn: Scott D. Cousins, Esq.

Office of the U.S. Trustee
844 King Street, Room 2313
Wilmington, Delaware 19801
Attn: Julie Compton, Esq.

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attn: Dennis F. Dunne, Esq.

Pepper Hamilton LLP
100 Renaissance Center, Suite 3600
Detroit, Michigan 48232-1157
Attn: I. William Cohen, Esq.

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

SYLVIA SHAVELSON, hereby certifies as follows:

1. I am not a party to the action, am over 18 years of age and reside at Staten Island, New York.

2. On August 11, 2003, I served the within Objection of B. Rosen & Sons, Inc. to Proposed Expungement/Disallowance of its Reclamation Claim and annexed Exhibits, by transmitting a copy by means of Federal Express overnight mail, addressed to each of the persons listed below:

Kirkland & Ellis
777 South Figueroa Street
Los Angeles, California 90017
Attn: Richard Wynne, Esq.

Pachulski, Stang, Ziehl, Young,
Jones & Weintraub, P.C.
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705
Attn: Laura Davis Jones, Esq.

White & Case
1155 Avenue of the Americas
New York, New York 10036-2787
Attn: Andrew P. DeNatale, Esq.

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1000 West Street, Suite 1540
Wilmington, Delaware 19801
Attn: Scott D. Cousins, Esq.

Office of the U.S. Trustee
844 King Street, Room 2313
Wilmington, Delaware 19801
Attn: Julie Compton, Esq.

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attn: Dennis F. Dunne, Esq.

Pepper Hamilton LLP
100 Renaissance Center, Suite 3600
Detroit, Michigan 48232-1157
Attn: I. William Cohen, Esq.

Dated: New York, New York
August 11, 2003


SYLVIA SHAVELSON

Exhibit A

Law Offices of

FINKEL GOLDSTEIN BERZOW ROSENBLUM & NASH, LLP

26 Broadway, New York, N.Y. 10004

(212) 344-2929 ☐

TELECOPIER (212) 422-6836

E-MAIL: FINK@FINKGOLD.COM

KJNash@finkgold.com

Benjamin Finkel (1905-1986)

Harvey L. Goldstein

Harold S. Bernow

Neal M. Rosenbloom

Kevin J. Nash

Charles Fischer

J. Ted Donovan

Counsel

Arthur A. Hirschler

Peter L. Reilly

April 2, 2003

Federal Express

Fleming Companies, Inc.

1945 Lakepointe Drive

Lewisville, TX 75057-6424

Re: Fleming Companies, Inc., et al.,

Gentlemen:

Please be advised that we are the attorneys for B. Rosen & Sons, Inc. and hereby serve upon you a Demand for Reclamation with respect to goods delivered to the Debtors within the last ten days.

I presume you will be receiving hundreds of reclamation notices in the upcoming days, and I request that my client and I be placed on all service lists established for reclamation creditors.

Very truly yours,


KEVIN J. NASH

KJN:ss

cc:

Laura Davis Jones, Esq.

Pachulski Stang Ziehl

Young & Jones

919 N. Market St. - 16th Fl. Los Angeles, CA 90017

Wilmington, DE 19899-8705 (Via Fax)

(Via Fax)

James H.M. Sprayregen, P.C.

Kirkland & Ellis

777 South Figueroa St.

Los Angeles, CA 90017

B. Rosen & Sons, Inc.

Building #C-16

Hunts Point Co-op

Bronx, NY 10474

DEMAND FOR RECLAMATION

TO: FLEMING COMPANIES, INC. together with all affiliates (collectively, "Fleming")
1945 Lakepointe Drive
Lewisville, Texas 75057-6424

VIA FACSIMILE and FEDERAL EXPRESS

B. ROSEN & SONS, INC., by its attorneys, FINKEL GOLDSTEIN BERZOW ROSENBLOOM & NASH, LLP, (hereinafter referred to as the "Reclaiming Creditor") hereby exercises its rights under applicable law, including but not limited to, §2-702 of the Uniform Commercial Code and §546(c) of the United States Bankruptcy Code, and hereby demands reclamation of all goods and merchandise of whatever character and type sold and delivered to Fleming as itemized on the attached statement of outstanding invoices within ten (10) days of the filing of a petition in bankruptcy by Fleming on April 1, 2003.

The goods subject to this reclamation demand are not to be processed or sold and are to be immediately segregated and marked as property of the Reclaiming Creditor. Immediate access is hereby demanded to arrange for redelivery of the goods and to identify all of Reclaiming Creditor's goods if necessary.

Dated: New York, New York
April 2, 2003

FINKEL GOLDSTEIN BERZOW
ROSENBLOOM & NASH, LLP,
Attorneys for B. ROSEN & SONS, INC.
26 Broadway, Suite 711
New York, New York 10004
(212) 344-2929

By: 

KEVIN J. NASH

TO: Laura Davis Jones, Esq.
Pachulski Stang Ziehl Young & Jones
919 N. Market Street, 16th Floor
Wilmington Delaware 19899-8705

James H.M. Sprayregen, P.C.
Kirkland & Ellis
777 South Figueroa Street
Los Angeles, California 90017

B. ROSEN



100% SELECTED PREMIUM QUALITY

1-800-USA LAMB
WWW.ROSEN LAMB.COM

REMIT TO:

Building C-16 Hunts Point Market
Bronx, New York 10474
(718) 842-4447 • Fax (718) 617-4096

INVOICE DATE	INVOICE NUMBER	PAGE
03/25/03	0077398	1

ORIGINAL INVOICE

S
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T
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A/P/NE PERISHABLES
MARYLAND DIV./FLEMING
P.O. BOX 268858
OKLOHOMA CITY OK 73126-8858

S
H
I
P

T
O

A/P/NE PERISHABLES
MARYLAND DIV./FLEMING
P.O. BOX 268858
OKLOHOMA CITY OK 73126-8858

SPECIAL INSTRUCTIONS

CUSTOMER NO.	ORDER NO.	CUSTOMER P.O.	WAREHOUSE	SALESPERSON	SHIPPED VIA	VENDOR	TERMS
10544	77166.00	754106	001	3	RT Star		NET 7 DAY

QUANTITY ORDERED		PRODUCT CODE	DESCRIPTION	WEIGHT	UNIT PRICE	EXTENDED PRICE
BOXES	PIECES					
2		63303	SEASONED R/R LEGS OF LAMB HALVES	54.5	5.09	277.4
13		65225	SO CHUX OF LAMB (4)	503.5	1.79	901.2
SUB-TOTAL				558.0		1178.6

This sale made pursuant to agreement between B. Rosen & Sons and purchaser, that purchaser will pay to B. Rosen & Sons, Inc. all costs and expenses, if attorney's fees, which are incurred in attempting to collect from the purchaser the amount of the invoice by reason of non-payment when due. Said attorney to be computed on the basis of 20% of the amount sued for and recoverable with the amount of the invoice.

OFFICE

ALL CLAIMS FOR SHORT WEIGHT MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS.

B.ROSEN



1-800-USA LAMB
WWW.ROSENLAMB.COM

1-800-USA LAMB
WWW.ROSENLAMB.COM

REMIT TO:

Building C-16 Hunts Point Market
Bronx, New York 10474
(718) 842-4447 • Fax (718) 617-4096

INVOICE DATE	INVOICE NUMBER	PAGE
03/26/03	0077565	1

ORIGINAL INVOICE

S
O
L
D

A/P/NE PERISHABLES
MARYLAND DIV./FLEMING
P.O. BOX 268958
OKLOHOMA CITY OK 73126-8958

S
H
I
P
T
O

A/P/NE PERISHABLES
MARYLAND DIV./FLEMING
P.O. BOX 268958
OKLOHOMA CITY OK 73126-8958

SPECIAL INSTRUCTIONS

CUSTOMER NO.	ORDER NO.	CUSTOMER P.O.	WAREHOUSE	SALESPERSON	SHIPPED VIA	VENDOR	TERMS
10544	77334.00	754123	001	3	RT <i>Star</i>		NET 7 DAY

QUANTITY ORDERED		PRODUCT CODE	DESCRIPTION	WEIGHT	UNIT PRICE	EXTENDED PRICE
BOXES	PIECES					
3		63330	R/R BRY LEGS OF LAMB 1/2's 8	62.4	4.99	311.72
3		63261	2PC CASE READY LEGS LAMB (4) PACK	45.1	3.99	179.95
2		65700	LAMB B/R S	103.9	2.45	254.56
10		65225	SO CHUX OF LAMB (4)	381.0	1.79	681.99
20		63202	LEGS T/O SPLIT LAMB (3)	640.1	2.70	1728.27
5		64115	RACKS OF LAMB (6)	186.0	7.39	1374.55
10		63609	TR LOINS OF LAMB (4) CRYO BOXED	380.3	4.89	1859.87
2		63390	TOP ROUNDS LAMB (4)	23.2	4.65	107.78
SUB-TOTAL				1922.0		6498.79

This sale made pursuant to agreement between B. Rosen & Sons and purchaser, that purchaser will pay to B. Rosen & Sons, Inc. all costs and expenses, in attorney's fees, which are incurred in attempting to collect from the purchaser the amount of the invoice by reason of non-payment when due. Said attorney's fees to be computed on the basis of 20% of the amount sued for and recoverable with the amount of the invoice.

OFFICE

ALL CLAIMS FOR SHORT WEIGHT MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS.

B. ROSEN



QUALITY LAMB MEATS - GROUP PURCHASING QUALITY

1-800-USA LAMB
WWW.ROSENLAMB.COM

REMIT TO:

Building C-16 Hunts Point Market
Bronx, New York 10474
(718) 842-4447 • Fax (718) 617-4096

INVOICE DATE	INVOICE NUMBER	PA
03/25/03	0077423	

ORIGINAL INVOICE

S
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FLEMING CO., -TULSA
P.O. BOX 24670
OKLAHOMA CITY OK 73124-4670

S
H
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P
T
O

FLEMING CO., -TULSA
P.O. BOX 24670
OKLAHOMA CITY OK 73124-4670

SPECIAL INSTRUCTIONS

CUSTOMER NO.	ORDER NO.	CUSTOMER P.O.	WAREHOUSE	SALESPERSON	SHIPPED VIA	VENDOR	TERMS
062500	77183.00	045403	001	5	RT		NET 7 DAY

QUANTITY ORDERED		PRODUCT CODE	DESCRIPTION	WEIGHT	UNIT PRICE	EXTENDED PRICE
BOXES	PIECES					
15		65730	CHUCKS OF LAMB B/R (4)	499.9	1.94	969.
25		65712	LOINS B/R 1X1 LAMB	785.3	6.98	5481.
29		65700	LAMB B/R S	1426.0	3.99	5689.
10		63261	2PC CASE READY LEGS LAMB (4) PACK	381.6	3.73	1423.
SUB-TOTAL				3092.8		13564.

This sale made pursuant to agreement between B. Rosen & Sons and purchaser, that purchaser will pay to B. Rosen & Sons, Inc. all costs and expenses, including attorney's fees, when any incurred in attempting to collect from the purchaser the amount of the invoice by reason of non-payment when due. Said attorney's fee is computed on the basis of 20% of the amount sued for and recoverable with the amount of the invoice.

OFFICE

ALL CLAIMS FOR SHORT WEIGHT MUST BE MADE IMMEDIATELY ON RECEIPT OF GOODS.