

**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)  
:  
: **Objection Deadline: September 25, 2003**  
: **Hearing Date: October 2, 2003, at 2:00 p.m.**  
:  
: **Docket Reference No. 3667**  
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**OBJECTION OF PROVENZANO’S, L.L.C.  
TO [CM/ECF#3667] DEBTORS’ MOTION FOR ORDER ESTABLISHING AMOUNT OF  
ADEQUATE PROTECTION RESERVE PURSUANT TO THE SALE ORDER**

Provenzano’s, L.L.C. (“Provenzano”), hereby files its objection to the Motion For Order Establishing Amount Of Adequate Protection Reserve Pursuant To The Sale (the “Adequate Protection Motion”) (CM/ECF#3667) filed on September 12, 2003, by Fleming Companies, Inc. (the “Debtors”) herein, and respectively states the following in support of its objection:

**THE METHODOLOGY USED IN CALCULATING THE OFFSET RIGHTS IS  
ABSENT IN THE DEBTORS’ MOTION AND IS APPARENTLY FLAWED**

1. Provenzano owns and operates a Mexican food specialty grocery store in the Phoenix, Arizona area under the name “Pro’s Ranch Market” or “Phoenix Ranch Market.”

2. In connection with the relevant Asset Purchase Agreement, from which the Debtors’ Adequate Protection Motion arises, Provenzano was previously served in this case with a Cure Notice.

3. In response to the Cure Notice, Provenzano timely filed and served a detailed objection to the Cure Notice setting forth that it was entitled to cure damages in the event of a

proposed assignment in the amount of not less than \$1,877,500 (the “Cure Amount”). The Provenzano contract was scheduled in the Cure Notice as Assignment No. 4982.

4. Obviously, Provenzano’s cure damage claim must be considered as an offset right to any proposed or actual assumption and assignment of the Provenzano Facility Stand-by Agreement and its integrated promissory note and forgiveness note provisions (collectively the “FSA Agreement”).

5. Moreover, to the extent that the Debtors are still seeking to assume and assign the FSA Agreement, Provenzano is entitled under Section 365(f)(2) to adequate assurance that the its Cure Amount can be satisfied by the Debtors.

6. In spite of these claims, the Debtors have listed Provenzano in the Adequate Protection Motion as being without any amount of an offset claim.

7. Contrary to the small type explanation at the bottom of the Debtors’ Exhibit “A” attachment to the Adequate Protection Motion, the Provenzano FSA Agreement has not been cured, nor settled as between Provenzano and the Debtors.

8. In light of this apparent failure by the Debtors to account for Provenzano’s offset claim, as well as by the Debtor’s apparent failure to account for other offset claims made evident in the several objections to the Adequate Protection Motion filed by other creditors, this Court should require the Debtors to first provide an accurate, complete and detailed explanation as to why and for exactly how much they are seeking to reduce the Adequate Protection Reserve, as well as provide an accurate and explanatory methodology as to how the Debtors’ proposed offset amounts were obtained.

## **CONCLUSION**

WHEREFORE, Provenzano respectfully requests this Court to deny the Adequate Protection Motion as currently formulated.

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