

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
BUILDING MATERIALS HOLDING) Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i> ,)
) Jointly Administered
Debtors.)
) Cure Objection Deadline:
) December 3, 2009, 4:00 p.m. (ET)
) Adjourned Hearing Date:
) December 17, 2009, 11:00 a.m. (ET)
)

**REPLY OF CONTRACTING PARTY SOUTHWEST MANAGEMENT, INC.
TO DEBTORS' OMNIBUS RESPONSE TO CURE CLAIM OBJECTIONS
AND PROPOSED ORDER RESOLVING CURE CLAIM OBJECTIONS**

1. On December 2, 2009, Southwest Management, Inc. (“Southwest”) filed its Objection of Contracting Party Southwest Management, Inc., to Cure Amounts Submitted by Debtors with Respect to Assumption of Purchase and Sale Agreement Between Certain Debtors as Buyers and Southwest Management, Inc., *et al.*, as Sellers (“Objection”). [Docket No. 1052]

2. In the Objection, Southwest asserted that the Debtors could not assume the Purchase and Sale Agreement (“APA”) between the Debtors and, *inter alia*, Southwest that was identified in paragraph 1 of the Objection without paying (ii) \$300,000 due and owing pursuant to the indemnification provisions of § 13(a) of the APA, plus pre-petition interest as allowed by law ,and (ii) \$631,085.95 in damages due with respect to four leases that were rejected by the Debtors, but were integral parts of the APA. [Docket No. 1052 at ¶¶ 6, 8-16].

3. On December 8, 2009, the above-captioned Debtors filed their Omnibus Response to Cure Claim Objections and Proposed Order Resolving Cure Claim Objections (“Response”). [Docket No. 1090]

4. In the Response, the Debtors contend, *inter alia*, that (i) pursuant to the terms of the APA, they have no obligation to pay \$300,000 to Southwest; and (ii) the aforesaid leases were independent agreements and not parts of the APA. [Docket No. 1090, ¶ 8] While Southwest disagrees with Debtors' arguments, the Court can resolve Debtors' opposition to the Objection through a consideration and analysis of the terms of the APA.

5. The Debtors seek in the Response to adjourn the hearing on the Objection to January 27, 2010, even though they intend to move forward with confirmation on December 17, 2009.

6. Because a resolution of the Debtors' opposition to Southwest's Objection requires only a consideration of the terms of the APA, it is submitted that the Objection can and should be addressed at the adjourned confirmation hearing date, December 17, 2009.

7. Southwest notes that there appear to be few other objections (either to confirmation or to proposed cures) that need to be resolved at the confirmation hearing. Hence, considering Southwest's Objection would not burden the Court's calendar on December 17, 2009. Indeed, the Debtors themselves initially scheduled cure objections for hearing at the confirmation hearing.

8. The Debtors, moreover, have had sufficient time in which to determine whether they want to assume or reject the APA.

9. Additionally, under the APA the Debtors are responsible for addressing certain litigation. If they reject the APA, the Debtors' obligations in this regard cease. In the Response, the Debtors reserve the right to reject the APA if they don't agree to the cure amount determined

by the Court. Southwest is prejudiced by a further delay in a decision by the Debtors whether they will assume or reject the APA.

10. It also bears noting that the Debtor must decide to assume or reject a contract by no later than the time of confirmation.

Conclusion

11. Southwest requests that this Court hear and decide the Objection at the December 17, 2009 hearing on confirmation and deny the adjournment of the hearing on Southwest's objection the Debtors request.

Dated: December 9, 2009
Wilmington, Delaware

GIBBONS PC

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