

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

IN RE:	§	
	§	CHAPTER 11
BUILDING MATERIALS HOLDING CORPORATION, et al.	§	
	§	CASE NO. 09-12074 (KJC)
	§	
Reorganized Debtors.	§	Jointly Administered

AFFIDAVIT OF JAMES V. HOFFNER, TEXAS COUNSEL FOR GSA HOME ENERGY SOLUTIONS, IN SUPPORT OF MOTION FOR RECONSIDERATION

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, personally appeared James V. Hoeffner, who, after being first duly sworn, stated as follows:

“My name is James V. Hoeffner. I am over eighteen years of age, of sound mind, capable of making this affidavit, have never been convicted of a felony crime or a crime of moral turpitude, and am fully competent to testify to the matters stated herein. I have personal knowledge of each of the matters stated herein, and they are true and correct. I am a duly qualified attorney with the law firm of Graves, Dougherty, Hearon & Moody, P.C. and I have been licensed to practice law in the State of Texas since 1980.

“GSA possessed an executory contract with BMC, which is attached as Exhibit “C” to the Motion for Reconsideration.

“I am Texas counsel for Creditor GSA Home Energy Solutions, LLC in connection with the above-referenced matter. On November 19, 2009, this Court entered an order rejecting such contract. The Court set December 19, 2009, as the deadline to file a proof of claim.

“GSA timely filed its proof of claim on December 18, 2009 with attachments thereto.

“The Debtor filed an objection to GSA’s proof of claim as being filed late. This is because the deadline for filing proofs of claim for regular unsecured creditors was August 31, 2009. GSA brought this error to Debtor’s counsel’s attention and Debtor’s counsel graciously agreed to withdraw such objection without GSA having to file the response it had prepared. After the Debtor’s Plan was confirmed, the Court and the Debtor issued a notice dated January 4, 2010 requiring the re-filing of proofs of claim with the Court Clerk. I followed the procedure. An identical proof of claim that had already been filed with the claims agent was therefore filed on January 26, 2010 with the bankruptcy clerk.

“On March 18, 2010, Debtor filed and served the Sixteenth Omnibus Objection to Claims and the Seventeenth Omnibus Objection to Claims. They were both received by GSA’s Texas counsel on the same date. I looked at them and given the similar title, date and service, thought they were identical. I did not note that one objection said “Sixteenth” and one said “Seventeenth”.

“The Sixteenth Omnibus Objection simply provided that the December 18, 2009 claim should be retained. As I thought these were identical objections, I did not review the Seventeenth Omnibus Objection.

“In point of fact, The Sixteenth Omnibus Objection was not identical to the Seventeenth Omnibus Objection and instead of reiterating that GSA had a surviving claim of \$1,114,147.60, the Seventeenth Omnibus Objection stated that GSA had no claim and the same should be expunged.

“This confusion was compounded on April 19, 2010, when this Court entered an order that stated that the GSA claim had been expunged.

“However, after that order was entered on April 19, 2010, this Court issued a subsequent order stating that GSA had a “surviving claim” in the amount of \$1,114,147.60. The subsequent order seems to supersede the order disallowing the claim.

“Based upon the subsequent order, I made no mistake because the claim survived.

“Regardless, any mistake that I made was not a result of conscious indifference.”

“The claim of GSA against BMC has not been actually litigated nor has it been considered on its merits. The delay in litigation is non-existent. No party is prejudiced by reinstating the claim to allow litigation. The reinstatement of the claim does not affect an efficient court administration.

“GSA has at all times proceeded in good faith and has attempted to follow the procedures of this Court. This is evidenced by:

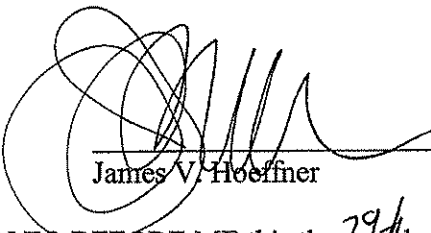
- a) the timely filing of a proof of claim;
- b) the subsequent timely filing of a proof of claim when a subsequent notice was entered that required another proof of claim to be filed;
- c) bringing to the Debtor’s attention that its initial objection to GSA’s claim was inappropriate as a separate order gave GSA additional time to file a proof of claim due to the later rejection of the executory contract;
- d) allowing the Debtor to retroactively reject the executory contract although the Debtor had no evidence or authority to support the same; and
- e) allowing the Debtor to object to the subsequent proof of claim that was duplicative but ordered by the Court.

“In all candor, this has been a complicated proof of claim process. Respectfully, GSA had attempted to make this as smooth as possible.

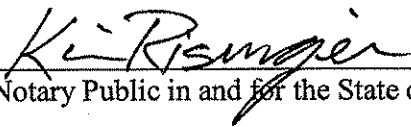
“The Debtor cannot assert in good faith that it was surprised or caught unaware by the assertion of GSA’s claim. Upon information and belief, allowance and payment of GSA’s claim will not force the return of amounts already paid nor will the payment jeopardize the reorganization. The allowance of the claim will not adversely affect Debtor actually or legally. Upon information and belief, the allowance of GSA’s claim will not open the floodgates to other future claims.

“The undersigned asserts that he has given much attention to this case as evidenced by the actions taken above. The undersigned contends he was not careless in the claim process especially given that a reasonable construction of the subsequent April 19, 2010 order indicates the claim survived. The undersigned was not careless and did not willfully fail to respond to the Debtor’s Omnibus Objections.”

Further Affiant sayeth not.


James V. Hoeffner

SUBSCRIBED AND SWORN TO BEFORE ME this the 29th day of April, 2010.


Notary Public in and for the State of Texas

My Commission Expires:

7-23-10



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 29, 2010, a copy of the foregoing *Affidavit of James V. Hoeffner, Texas Counsel for GSA Home Energy Solutions in Support of Motion for Reconsideration* was served (1) upon the counsel listed below, (2) via CM/ECF Noticing to all parties appearing thereon, and (3) further upon those parties appearing on the attached Service List via United States First Class Mail, postage paid:

Sean M. Beach
Donald J. Bowman, Jr.
Robert F. Poppiti, Jr.
Young, Conaway, Stargatt & Taylor
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

Michael A. Rosenthal
Matthew K. Kelsey
Sae M. Muzumdar
Gibson, Dunn & Crutcher LLP
200 Park Avenue, 47th Floor
New York, NY 10166-0193

Aaron G. York
Jeremy L. Graves
Gibson, Dunn & Crutcher LLP
2100 McKinney Ave., Suite 1100
Dallas, TX 75201-6911

ATTORNEYS FOR THE REORGANIZED DEBTORS

/s/ Patricia P. McGonigle

James V. Hoeffner
Patricia P. McGonigle