

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, <i>et al.</i> , ¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket No. <u>181</u>

**FIFTH ORDER AUTHORIZING THE DEBTORS TO
REJECT CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS,
NUNC PRO TUNC TO THE REJECTION EFFECTIVE DATE**

Upon consideration of the fifth omnibus motion (the "*Motion*") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order authorizing the Debtors to reject certain unexpired leases, as set forth in the Motion; and upon the Street Declaration² in support thereof; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

² Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Court (the "*Hearing*"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors are authorized to reject the Personal Property Leases listed in *Exhibit B* that was annexed to the Motion. Effective immediately, such Personal Property Leases are deemed rejected (the "*Rejections*"), with the Rejections being effective as of June 16, 2009 (the "*Rejection Effective Date*").
3. The Counterparties to the Personal Property Leases shall have until the date fixed by this Court pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(3) to file any claim for damages arising from rejection of a Personal Property Lease.
4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. The Debtors do not waive any claims they may have against the Counterparties to the Personal Property Leases, whether or not such claims arise under, are related to the rejection of, or are independent of the Personal Property Leases.
6. Nothing herein shall prejudice the rights of the Debtors to argue that any claim for damages arising from the rejection of the Personal Property Leases is limited to the remedies available under any applicable termination provision of such Personal Property Lease, or that any such claim is an obligation of a third party, and not that of the Debtors or their estates.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6006(c) and the Local Bankruptcy Rules are satisfied by such notice.

8. Notwithstanding the possible application of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Date: Wilmington, Delaware
July 14, 2009



KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE