

**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
)	Related Docket No. 811
)	
)	Objection Deadline: Nov. 12, 2009 at 4:00 p.m. (ET)
)	Hearing Date: November 19, 2009 at 11:00 a.m. (ET)

LIMITED OBJECTION AND RESPONSE OF CRP HOLDINGS B, L.P. TO DEBTORS' MOTION FOR AN ORDER AUTHORIZING REJECTION OF THAT CERTAIN UNEXPIRED LEASE WITH PARKER METROPOLITAN, L.P.

CRP HOLDINGS B, L.P. ("CRP"), by and through its undersigned counsel, submits this Limited Objection and Response ("Response") to Debtors' Motion for an Order Authorizing Rejection of that Certain Unexpired Lease (the "Motion") with Parker Metropolitan, L.P. (the "Frisco Lease") for property located at 10351 Home Road, Frisco, Texas (the "Premises") and in support thereof shows as follows:

1. CRP is the landlord of the Debtor of BMC West Corporation as the assignee of and successor- in-interest to Parker Metropolitan, L.P. as of January 6, 2006.
2. CRP does not challenge the statement of jurisdiction, venue, background, or the right of Debtors to reject the Lease pursuant to 11 U.S.C. § 365 and applicable case law.
3. Debtors have made the business decision, based upon what they claim is their "sound business judgment," "to terminate" the Frisco Lease, and lease an alternative location in

¹ The Debtors, along with the last four digits of each Debtors' 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.

the area at a lower rate. Debtors have also represented in their Disclosure Statement that those leases that they do intend to assume will be assumed by the Effective Date of the Plan of Reorganization.² While Debtors appear to have made their decision, they have not requested a date certain on which the Frisco Lease would be deemed rejected and Debtors would be required to surrender the Premises. There should be no reason why the rejection should not be effective on the date of this Court's order granting the motion, which should be on or about November 19, 2009.

4. Establishing a date certain for the effectiveness of the rejection would allow CRP to begin remarketing the Premises and make the Premises ready for any potential new tenant. It is generally accepted that in accelerating a debtor's decision to reject or assume a lease, the court must balance the interests of the contracting party against the interests of the debtor and its estate. *See In re Physicians Health Corp.*, 262 B.R. 290, 292 (Bankr. D. Del. 2001). However, when the decision to reject or assume a lease *has already been made* by a debtor, there should be no impediment to the court ordering rejection as of the date of its order and further ordering that debtor surrender the Premises by that date. The court should give greater weight to needs of the party contracting with the debtor when debtor has already made the decision. Otherwise, the landlord's interest is not adequately protected.

5. In addition to the foregoing, CRP objects to the Order submitted by Debtors because it exceeds the scope of the Motion. The Order contains language (Paragraph 6) that nothing therein "shall prejudice the rights of the Debtors to argue that any claim for damages arising from the rejection of the Frisco Lease is limited to the remedies available under any

² Whether Debtors have decided "to terminate" the Frisco Lease is inapposite and not for the Court's determination at this time. For the record, CRP does not necessarily agree that Debtors may simply "terminate" the Lease. Debtors seek to reject the Lease – a rejection is a breach and does not negate, invalidate or terminate the Lease. *In re Continental Airlines*, 981 F.2d 1450 (5th Cir. 1993).

applicable termination provision of such Frisco Lease, or that any such claim is an obligation of a third party, and not that of Debtors or their estates.” Nowhere in their Motion do Debtors ask for such relief. This paragraph should be struck from any order or it should be mutual so as to allow either party to urge the full range of remedies for rejection of the Frisco Lease (as reflected in the proposed form of order attached hereto).

WHEREFORE, CRP HOLDINGS B, L.P. respectfully requests that the relief sought by Debtors be denied in so far as there is no effective rejection date in their Motion, that CRP’s requests for relief be granted, and for further relief as the Court may deem just and proper.

Dated: November 12, 2009

Respectfully submitted,

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)	Jointly Administered
Debtors.)	Related Docket Nos. 248, 811
)	
)	
)	

**ORDER AUTHORIZING REJECTION OF THAT CERTAIN
UNEXPIRED LEASE WITH CRP HOLDINGS B, L.P.,
SUCCESSOR-IN-INTEREST TO PARKER METROPOLITAN, L.P.**

Upon consideration of the 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 that certain unexpired lease (the “*Frisco Lease*”) by and between CRP Holdings B, L.P., successor-in-interest to Parker Metropolitan, L.P. (the “*Landlord*”) and BMC West Corporation for the property described therein located at 10351 Home Road, Frisco, Texas (the “*Premises*”), all as set forth in the Motion; 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 considered the Motion and Response of CRP Holdings B., L.P. and finding 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

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hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and Response and having considered the statements in support of the relief requested therein at a hearing before the Court (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing established 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 Frisco Lease and the rejection shall be effective as of the date of this Order. Debtors shall surrender the Premises upon entry of this Order.
3. In accordance with that certain *Order Pursuant to Sections 501, 502, and 111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rule 2002-1(e) Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 248], any claim for damages allegedly arising from the rejection of the Frisco Lease (a “**Rejection Damages Claim**”) must be filed on or before the date which is thirty (30) days from the entry of this Order (the “**Rejection Bar Date**”). Any holder of a Rejection Damages Claim which fails to timely file a proof of such claim on or before the Rejection Bar Date shall not be treated as a creditor for purposes of receiving any distributions under the Plan.
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 Landlord, whether or not such claims arise under, are related to the rejection of, or are independent of the Frisco Lease, nor does the Landlord waive any claims it has against Debtors.

6. Nothing herein shall prejudice the rights of the Debtors or the Landlord to argue that any claim for damages arising from the rejection of the Frisco Lease is, or is not, limited to the remedies available under any applicable termination provision of such Frisco Lease, or that any such claim is, or is not, an obligation of a third party, and not that of the Debtors or their estates.

7. Notice of this 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. To the extent Bankruptcy Rule 6004(h) is applicable, 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.

SO ORDERED this _____ day of November, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

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Debtors.)	

CERTIFICATE OF SERVICE

On this 12th day of November, 2009, I caused a copy of the foregoing Limited Objection and Response of CRP Holdings B, L.P. to Debtors' Motion for an Order Authorizing Rejection of That Certain Unexpired Lease With Parker Metropolitan, L.P. to be served upon the following counsel via the CM/ECF filing system and by United States mail, first class, postage prepaid:

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Dated: November 12, 2009