

IN THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT, IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

CASE NO. 09-07901 CA 23

LENNAR HOMES, LLC f/k/a LENNAR  
HOMES, INC., a Florida limited liability  
company, and U.S. HOME CORPORATION,  
a Delaware corporation,

Plaintiffs,

v.

KNAUF GIPS KG, a German corporation, et al.

Defendants,

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**PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT;  
FOR ENLARGEMENT OF TIME TO EFFECTUATE SERVICE OF PROCESS  
ON FOREIGN DEFENDANTS; AND FOR DETERMINATION  
AS TO "COMPETENCY" OF FOREIGN PROCESS SERVER**

Plaintiffs, Lennar Homes, LLC ("Lennar Homes") and U.S. Home Corporation ("U.S. Home") (collectively, "Lennar"), by and through undersigned counsel and pursuant to Rules 1.190(a) and 1.070(j) of the Florida Rules of Civil Procedure, respectfully move for leave to file their First Amended Complaint (attached hereto as Exhibit "A"); for an enlargement of time to effectuate service of process on the foreign defendants; and for a determination as to the "competency" of Lennar's foreign process server. In support thereof, Lennar states as follows:

**I. Request for Leave to File First Amended Complaint**

1. On January 30, 2009, Lennar filed the instant lawsuit against over 20 manufacturers, suppliers and installers of defective Chinese-manufactured drywall. The lawsuit seeks damages for, among other things, the losses Lennar has incurred and will continue to incur

through the repair of certain homes Lennar built in which independent subcontractors -- without the approval or knowledge of Lennar -- installed defective Chinese-manufactured drywall.

2. Since the filing of the Complaint, Lennar has discovered additional defendants who manufactured, supplied, and installed defective Chinese-manufactured drywall in certain Lennar homes. Lennar seeks to name these additional manufacturers (Beijing New Building Material Public Limited Company (“BNBM”) and Pingyi Zhongxing Paper-Faced Plasterboard Co., Ltd. f/k/a Shandong Chenxiang Building Materials Co. Ltd. (“Chenxiang”)), suppliers (All Florida Drywall Supplies Inc. and Pro-Build Holdings, Inc. f/k/a Rosen Building Supplies, Inc.), and installers (Alpha & Omega Contractors, Inc., Active Drywall South, Inc., 1st Drywall, LLC, Design Drywall of South Florida, LLC and A B C Drywall, Corporation) as defendants in this lawsuit.

3. Moreover, among other minor amendments to the original Complaint, Lennar seeks to add an additional claim for equitable subrogation against the manufacturers and suppliers of the defective Chinese-manufactured drywall. As more fully set forth in the First Amended Complaint, although Lennar is not primarily responsible for the damages caused by this defective drywall, Lennar has already started repairing certain of the affected homes containing this defective drywall. In so doing, Lennar has satisfied, and continues to satisfy, the entire obligation and debt associated with this repair work and has effectively obtained releases for the manufacturers and suppliers from the homeowners for all claims relating to this repair work. As such, Lennar has claims for equitable subrogation against the manufacturers and suppliers, and seeks to add those claims in the First Amended Complaint.

4. Rule 1.190(a) of the Florida Rules of Civil Procedure permits the amendment of pleadings with leave of court, and further states that “[l]eave of court shall be given freely when

justice so requires.” Fla. R. Civ. P. 1.190(a). “Absent exceptional circumstances, requests for leave to amend pleadings should be granted.” *Thompson v. Publix Supermarkets, Inc.*, 615 So. 2d 796 (Fla. 1st DCA 1993). Indeed, it is the “public policy of Florida to freely allow amendments to pleadings so cases may be resolved on their merits.” *Colandrea v. King*, 661 So. 2d 1250, 1251 (Fla. 2d DCA 1995). Consequently, “[a]ll doubts should be resolved in favor of allowing amendments.” *Craig v. East Pasco Medical Center, Inc.*, 650 So. 2d 179, 180 (Fla. 2d DCA 1995) (citations omitted).

5. As the court observed in *Drakeford v. Barnett Bank of Tampa*, 694 So. 2d 822 (Fla. 2d DCA 1997), leave to amend should not be denied “unless the privilege to amend has been abused or the complaint is clearly not amendable.” 694 So. 2d at 824. Neither condition is applicable here. Indeed, this is the first time Lennar has sought to amend the complaint. *See Life General Security Insurance Co., v. Horal*, 667 So. 2d 967, 969 (Fla. 4th DCA 1996) (“Since Life General had not sought to amend its pleadings before the instance we now review, it cannot be said that the appellant has abused the privilege.”).

6. Moreover, no party will be prejudiced by granting Lennar leave to file the First Amended Complaint. First, this case is not yet set for trial, as several of the defendants have either not yet responded to the Complaint, or have yet to be served with formal process.<sup>1</sup> Second, discovery is in the very early stages, with significant amounts of discovery yet to be completed. Lastly, the currently-named defendants will not be prejudiced by the inclusion of additional defendants in this lawsuit. Therefore, the Court should grant Lennar leave to file the First Amended Complaint.

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<sup>1</sup> As discussed more fully below, certain of the defendants in this action are foreign companies registered, organized, and/or incorporated outside of the United States of America. For these defendants, Lennar is arranging for formal service through the Hague Convention, but has been advised that it could take up to approximately 6 months to serve all of these foreign defendants.

## II. Request for Enlargement of Time for Foreign Service and Request for Determination as to "Competency" of Foreign Process Server

7. In addition, Lennar seeks an enlargement of time in which to effectuate service of process on the foreign defendants. Pursuant to Rule 1.070(j) of the Florida Rules of Civil Procedure, service of process is to be effected within 120 days after filing of the Complaint. That deadline in this instance is May 30, 2009. However, where good cause is shown, the Court "shall extend the time for service for an appropriate period." Fla. R. Civ. P. 1.070(j). As discussed more fully below, good cause exists for extending the time for Lennar to serve the foreign defendants.

8. Four of the existing Defendants in this action -- Knauf Gips KG ("**Knauf Gips**"), Knauf Plasterboard (Tianjin) Co., Ltd. ("**Knauf Tianjin**"), Taishan Gypsum Co. Ltd. f/k/a Shangdong Taihe Dongxin Co. Ltd ("**Taishan**"), and Rothchilt International Ltd. ("**Rothchilt**") - - and two of the new defendants to be included in the First Amended Complaint -- BNBM and Chenxiang (collectively, the "**International Defendants**") -- are foreign companies registered, organized, and/or incorporated outside of the United States of America. Specifically, Knauf Gips is a German entity, Knauf Tianjin, Taishan, BNBM and Chenxiang are Chinese entities, and Rothchilt is a company based in the British Virgin Islands.

9. The Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "**Hague Convention**") provides a method for member nations to effectuate service of judicial documents abroad within the territory of another member nation.

10. China and Germany are signatories to the Hague Convention. The United Kingdom, also a signatory to the Hague Convention, has extended application of the Hague Convention to its British Overseas Territories, including the British Virgin Islands.

11. Lennar is arranging for formal service on the International Defendants through the Hague Convention. In order to serve process abroad under the Hague Convention, “the authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed” a Request For Service Abroad of Judicial or Extrajudicial Documents (the “Request”) and translated copies of the documents to be served. Hague Convention, Article 3. In other words, Lennar must translate the First Amended Complaint into German and Chinese before proceeding through the Hague Convention. The Central Authority in the foreign state then serves the documents itself or arranges to have the documents served on the foreign defendant. *Id.*, Article 5.

12. Lennar is using Process Forwarding International (“PFI”),<sup>2</sup> a legal support company that has extensive experience with service of process under the Hague Convention, to prepare the Request and forward the translated documents to be served on the International Defendants to the Central Authority in China, Germany, and the British Virgin Islands.

13. Although Lennar does not believe it is required, to the extent PFI must be “competent under the law of the State in which the documents originate,” Lennar requests in an abundance of caution for this Court to enter an Order declaring PFI “competent” to prepare and forward the Request and the documents to be served on the International Defendants to the Central Authority in China, Germany, and the British Virgin Islands.

14. Additionally, PFI has indicated that it could take six (6) months or more to receive a certificate of service from the Central Authority in China and three (3) months or more to receive a certificate of service from the Central Authority in Germany and in the British Virgin Islands. As such, Lennar will be unable to serve all of the International Defendants within 120 days of filing the original Complaint, or within 120 days after it is granted leave to

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<sup>2</sup> The office of Process Forwarding International is located at 633 Yesler Way, Seattle, Washington 98104, USA.

file the First Amended Complaint.


15. Under the circumstances, good cause exists for granting Lennar an enlargement of time in which to effectuate service of process on the International Defendants for an additional six (6) months.

WHEREFORE, Plaintiffs, Lennar Homes and U.S. Home, respectfully request that the Court enter an Order (i) granting them leave to file their First Amended Complaint in the form attached hereto as Exhibit "A"; (ii) granting Lennar a six-month extension of time to effectuate service of process on the International Defendants; (iii) declaring PFI "competent" to prepare the Request and forward the documents to be served on the International Defendants to the Central Authority in China, Germany, and the British Virgin Islands; and (iv) granting such other and further relief as the Court deems just and proper.

Dated: May 11, 2009

Respectfully submitted,


**GREENBERG TRAURIG, P.A.**  
*Attorneys for Lennar Homes, LLC and U.S.  
Home Corporation*  
1221 Brickell Avenue  
Miami, Florida 33131  
Telephone: (305) 579-0500  
Facsimile: (305) 579-0717  
E-mail: [bassh@gtlaw.com](mailto:bassh@gtlaw.com)  
E-mail: [salkym@gtlaw.com](mailto:salkym@gtlaw.com)  
E-mail: [foslida@gtlaw.com](mailto:foslida@gtlaw.com)

By:   
HILARIE BASS  
Florida Bar No. 334323  
MARK A. SALKY  
Florida Bar No. 058221  
ADAM M. FOSLID  
Florida Bar No. 682284

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S.

Mail on this 11 day of May, 2009 to all parties listed on the attached service list.

  
MARK A. SALKY

*Lennar Homes, LLC & U.S. Home Corporation v. Knauf GIPS, KG, et al.*  
 Case No. 09-07901 CA 23

**SERVICE LIST**

<p><b>Michelle Nelson, Esq.</b>  <b>Clark Smith, Esq.</b>                  Paxton Smith                  Barristers Bldg., Suite 500                  1615 Forum Place                  West Palm Beach, Florida 33401                  Telephone: 561-684-2121                  Facsimile: 561-684-6855</p> <p><i>Counsel for All County Drywall Service, Inc., B&amp;B Stucco, Inc., Harrell's Drywall, Inc., Ocean Construction, Inc., &amp; Northeast Drywall, Inc.</i></p>	<p><b>Fred E. Moore, Esq.</b>                  Blalock, Walters, Held &amp; Johnson, P.A.                  802 11<sup>th</sup> Street West                  Bradenton, Florida 34205                  Telephone: 941-748-0100                  Facsimile: 941-745-2093</p> <p><i>Counsel for MDW Drywall, Inc., f/k/a McCoy Drywall, Inc.</i></p>
<p><b>Randall P. Mueller, Esq.</b>                  Carey O'Malley Whitaker &amp; Mueller, P.A.                  712 South Oregon Avenue                  Tampa, Florida 33606-2543                  Telephone: 813-250-0577                  Facsimile: 813-250-9898</p> <p><i>Co-Counsel for Northeast Drywall, Inc.</i></p>	<p><b>Michael K. Feldman, Esq.</b>                  1111 Kane Concourse                  Suite 209                  Bay Harbor Islands, Florida 33154                  Telephone: 305-865-5716                  Facsimile: 305-865-5710</p> <p><i>Counsel for La Suprema Trading, Inc., and La Suprema Enterprise, Inc.</i></p>
<p><b>Robert H. Schwartz, Esq.</b>                  Adorno &amp; Yoss LLP                  888 Southeast Third Avenue                  Suite 500                  Fort Lauderdale, Florida 33316                  Telephone: 954-713-1330                  Facsimile: 954-446-1526</p>	<p><b>Susan Cole, Esq.</b>                  Bice Cole Law Firm, PL                  999 Ponce de Leon Blvd.                  Suite 710                  Coral Gables, Florida 33134                  Telephone: 305-444-1225                  Facsimile: 305-446-1598</p> <p><b>W. David Conner, Esq.</b>                  Haynsworth Sinkler Boyd, P.A.                  P.O. Box 2048                  Greenville, SC 29602                  Telephone: 864-240-3226                  Facsimile: 864-240-3300</p> <p><i>Counsel for L&amp;W Supply Corp. and USG Corp.</i></p>

<p><b>Edward J. Briscoe, Esq.</b>  Fowler White Burnett  1395 Brickell Avenue, 14<sup>th</sup> Floor  Miami, Florida 33131-3302  Telephone: 305-789-9252  Facsimile: 305-789-9201</p> <p><i>Counsel for Black Bear Gypsum Supply, Inc.</i></p>	<p><b>Gary F. Baumann, Esq.</b>  Fulmer, LeRoy, Albee, Baumann &amp; Glass PLC  2866 East Oakland Park Blvd.  Fort Lauderdale, Florida 33306  Telephone: 954-707-4430  Facsimile: 954-707-4431</p> <p><i>Counsel for Independent Builders Supply Association, Inc.</i></p>
<p><b>Andrea M. Fair, Esq.</b>  Wetherington, Hamilton, Harrison &amp; Fair, P.A.  P.O. Box 172727  Tampa, Florida 33672-0727  Telephone: 813-225-1918  Facsimile : 813-225-2531</p> <p><i>Counsel for Residential Drywall, Inc.</i></p>	<p><b>Samuel B. Reiner, Esq.</b>  Reiner &amp; Reiner, P.A.  9100 South Dadeland Boulevard  Suite 901  Miami, Florida 33156-7815  Telephone: 305-670-8282  Facsimile: 305-670-8989</p> <p><i>Counsel for S.D. &amp; Associates, Inc.</i></p>
<p><b>John B. Marion, IV, Esq.</b>  Sellars Marion Bachi, P.A.  811 North Olive Avenue  Box 3767  West Palm Beach, FL 33402  Telephone: 561-655-8111  Facsimile: 561-655-4994</p> <p><i>Counsel for Ocean Construction, S.D. &amp; Associates and Residential Drywall, Inc.</i></p>	<p><b>Robert V. Fitzsimmons, Esq.</b>  Rumberger, Kirk &amp; Caldwell, P.A.  Brickell Bayview Centre, Suite 3000  80 Southeast 8<sup>th</sup> Street  Miami, Florida 33130-3037  Telephone: 305-995-5425  Facsimile: 305-371-7580</p>
<p><b>BMD, Inc.</b>  Attention: Gary A. Fracassi, Registered Agent  218 S. Bumby Avenue  Orlando, Florida 32803</p>	<p><b>Bill Pfannkuch Framing, Inc.</b>  Attention: William A. Pfannkuch, Registered Agent  1958 Trout Circle  Englewood, Florida 34224</p>
<p><b>J.D.M. Builders, Inc.</b>  Attention: Jack C. Carter, Jr., Registered Agent  91095 SW 28<sup>th</sup> Avenue  Cape Coral, Florida 33914</p>	<p><b>Knauf Gips KG</b>  Attention: President / Vice President / or Agent  Authorized to Receive Service under Section 48.081,  Florida Statutes  Am Bahnhof 7  D-97346 Iphofen  Germany</p>

<p><b>Rothchild International Ltd.</b>  <i>Attention: President / Vice President / or Agent          Authorized to Receive Service under Section          48.081, Florida Statutes</i>          A02 5/F Zhongnongxin International Building No.          181 East          Zhongshan Road          Haishu District, Ningbo City          P.R. China</p>	<p><b>Taishan Gypsum Co. Ltd. f/k/a Shandong Taihe          Dongxin Co. Ltd.</b>  <i>Attention: President / Vice President / or Other Agent          Authorized to Receive Service under Section 48.081,          Florida Statutes</i>          Dawenkou, Daiyue District          Taishan City, Shandong Province          P.R. China 271026</p>
<p><b>Knauf Plasterboard (Tianjin) Co., Ltd.</b>  <i>Attention: President, Vice President, or Agent          Authorized to Receive Service under §48.081, Fla.          Stat.</i>          Knauf Plasterboard (Tianjin) Co., Ltd.          North Yinhe Bridge, East Jingin Road          Beichen District Economic Developing Zone          Tianjin Municipality, P.R. China 300400</p>	

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR MIAMI-DADE COUNTY,  
FLORIDA

LENNAR HOMES, LLC f/k/a LENNAR  
HOMES, INC., a Florida limited liability  
company, and U.S. HOME CORPORATION,  
a Delaware corporation,

CASE NO. 09-07901 CA 23

Plaintiffs,

v.

KNAUF GIPS KG; KNAUF PLASTERBOARD  
(TIANJIN) CO., LTD.; TAISHAN GYPSUM CO. LTD.  
f/k/a SHANDONG TAIHE DONGXIN CO. LTD.;  
BEIJING NEW BUILDING MATERIAL PUBLIC  
LIMITED COMPANY; PINGYI ZHONGXING  
PAPER-FACED PLASTERBOARD CO. LTD. f/k/a  
SHANDONG CHENXIANG BUILDING MATERIALS  
CO. LTD.; USG CORPORATION; L&W SUPPLY  
CORPORATION d/b/a SEACOAST SUPPLY;  
BANNER SUPPLY CO.; BLACK BEAR GYPSUM  
SUPPLY, INC.; ALL FLORIDA DRYWALL SUPPLIES  
INC.; LA SUPREMA TRADING, INC.; LA SUPREMA  
ENTERPRISE, INC.; ROTHCHILT INTERNATIONAL  
LTD.; INDEPENDENT BUILDERS SUPPLY  
ASSOCIATION, INC.; PRO-BUILD HOLDINGS, INC.,  
f/k/a ROSEN BUILDING SUPPLIES, INC.; BILL  
PFANNKUCH FRAMING INC.; BMD, INC.; RESIDENTIAL  
DRYWALL, INC.; J.D.M. BUILDERS INC.; MDW  
DRYWALL, INC. f/k/a MCCOY DRYWALL, INC.;  
NORTHEAST DRYWALL CO.; FLORIDA STYLE  
SERVICES, INC.; OCEAN CONSTRUCTION, INC.; B&B  
STUCCO, INC.; HARRELL'S DRYWALL, INC.; S.D. &  
ASSOCIATES, INC.; ALL COUNTY DRYWALL SERVICE,  
INC.; ALPHA & OMEGA CONTRACTORS, INC.; ACTIVE  
DRYWALL SOUTH, INC.; 1ST DRYWALL, LLC; DESIGN  
DRYWALL OF SOUTH FLORIDA, LLC; and A B C  
DRYWALL, CORPORATION;

Defendants.

**FIRST AMENDED COMPLAINT**

