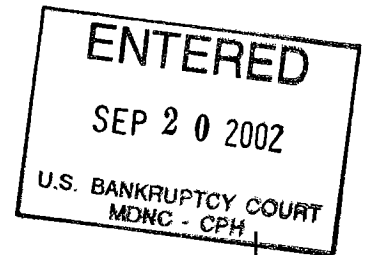


**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION**



**IN THE MATTER OF:**

**Buildnet, Inc.; et al.**

**Debtors**

**Case Nos. 01-82293 through 01-82299  
(Consolidated for Administration)**

**MEMORANDUM OPINION**

This matter coming before the Court after notice to all parties in interest and hearing on June 4, 2002, in the U.S. Bankruptcy Court in Durham, N.C., to consider the Debtors' Motions for Orders: (A) Conditionally Approving the Assumption, Assignment, and Sale of Debtors' Interests Under Certain Executory Contracts; (B) Determining Amounts Necessary to Cure Defaults and Compensate for Pecuniary Loss; (C) Approving Procedures for Sale, Including Compensation and Reimbursement of Expenses to Selling Agent; and (D) Scheduling Final Hearing to Confirm Sale and Assumption and Assignment, or Rejection, of Executory Contracts with regards to Artemis Management Systems, Inc., Broadvision, Inc., NuView Systems, Inc., Oracle Corporation, Portal Software, Inc., Rational Software, Inc. and Selectica, Inc. (the "Motions"), and after considering the matters set forth in the Motions, the comments of any parties present and wishing to be heard, and the official file the Court makes the following findings of fact and conclusions of law:

**FACTS**

On August 8, 2001, (the "Commencement Date"), the Debtors filed voluntary petitions seeking relief under Chapter 11 of the Bankruptcy Code and an Order for relief was entered in each bankruptcy case. The Debtors contemporaneously sought consolidation of these proceedings for purposes of administration only. The Debtors have continued in possession of their respective assets

and continued operation of their businesses as debtors-in-possession. No creditors committee has been formed in these cases. This Court has proper and personal jurisdiction over the subject matter hereof and the parties pursuant to 28 U.S.C. §§ 151, 157, and 1334 and the Standing Order entered by the United States District Court for the Middle District of North Carolina. This is a core proceeding within 28 U.S.C. § 157(b)(2).

The Debtor, BuildNet, Inc. ("BuildNet"), was engaged in the business of the development and sale of various software with a principal office in Durham, North Carolina. BuildNet primarily devoted its efforts to the development of software for the building industry; however, through a series of acquisitions, software for other industries and markets were developed. Prior to the commencement date, BuildNet either formed or purchased the other affiliated debtors, each of which is owned 100% by BuildNet. The direct subsidiaries and affiliates of BuildNet that comprise the filing entities are the F.A.S.T. Management Group, Inc., RIM Data Systems, LLC, BuildNet Corp., BuildNet Financial Services, Inc., The UniLink Group, Inc. and Contractors Software Group, Inc. (collectively referred to as the "Debtors").

Since the commencement date, the Debtors developed and executed a plan of orderly liquidation, subject to Court approval, for the sale of certain primary assets of the Debtors. This process resulted in a public auction of the five (5) main software applications owned by the Debtors on September 24, 2001. The sales were confirmed by the Court and have closed, with sale proceeds sufficient to pay all secured claims in full. These initial sales were then followed by a series of public and private sales of furniture, fixtures, and other equipment in various locations across the country. In this regard, the Debtors retained DoveBid, Inc. ("DoveBid") as auctioneer of the IT equipment.

In conjunction with the development of the Debtors' businesses, including but not limited to the acquisition of other entities, one or more of the Debtors entered into software license

agreements or similar contracts, some of which included provisions for support or maintenance, and for which intellectual property licenses or rights the Debtors expended substantial sums in payments to the other parties to the agreements. These contracts are not uniform, but most if not all of the contracts provide for a nonexclusive license of certain intellectual property to the Debtors, with duties which remain due and owing on both sides of the agreement. Accordingly, the Debtors believe that the contracts are “executory contracts” within the meaning of § 365 and other applicable sections of the Bankruptcy Code. The Debtors wish to assume, assign and sell these license rights pursuant to the sale procedures set forth in the Motions, employing DoveBid for this purpose. With respect to the issue of assignment, the license agreements fall into three distinct groups: (1) those that prohibit assignment; (2) those that prohibit assignment except under limited circumstances; and (3) those that do not address the assignment of the license.

The Debtors entered into license agreements with both Portal Software, Inc. (“Portal”) and Oracle Corporation (“Oracle”) which fall into the first group and specifically prohibit assignment under any circumstances. The Debtors acquired their interest under the Oracle license agreement for \$643,200. The Oracle license agreement grants the Debtors a nonexclusive license for the use of a database and e-commerce software known as the Oracle Enterprise Edition. The Oracle agreement provides that the Debtors may not assign the license or make the programs available to any third party for use in business operations.

The Debtors paid initial fees or compensation in the aggregate amount of approximately \$300,000 to Portal to acquire their interests under the license agreement. In broad terms, the Portal license agreement provides a nonexclusive license to the Debtors for the use of an automatic billing and accounts receivable system. Portal objects to the assumption and assignment of these license rights and the license agreement on the basis that § 365(c) precludes such assignment without the

consent of Portal. The license agreement provides for a blanket prohibition on the assignment of the license agreement including by way of merger, sale or acquisition without Portal's prior written consent. The Portal license agreement further provides:

Licensee agrees that it will not itself, or through any parent, affiliate, agent or other third party . . . sell, lease, license, sublicense, encumber or otherwise deal with any portion of the Licensed Software or Documentation . . . provide, disclose or make available to, or permit use of the Licenses Software by persons other than Licensee's employees who have signed a confidentiality agreement consistent with the terms and provisions herein, without Portal's written consent.

The majority of the license agreements that are the subject of the Debtors' Motions fall into the second group and prohibit assignment except under limited circumstances. The Debtors entered into license agreements with the following: Artemis Management Systems, Inc. ("Artemis") at a cost of \$32,000 for the use of project management software; Broadvision, Inc. ("Broadvision") at a cost of \$660,000 for a nonexclusive and nontransferable license to the Debtors for web site development and content management; Rational Software, Inc. ("Rational") at a cost of \$123,000 for the use of intellectual property used in the development of software applications; and Selectica, Inc. ("Selectica") at a cost of \$400,000, for the use of software to allow e-customers of the Debtors the ability to pick and design features of the Debtors' products on-line. Each of these license agreements prohibits the free assignment of the license agreement to another individual or entity, but allows for transfer in some limited instances such as to a successor entity in the event of a sale or merger. None of these license agreements contemplate the individual sale or auction of the license as proposed by the Debtors. Each of the license agreements in this group includes provisions which require confidentiality by the Debtors.

Finally, the Debtors acquired an interest in a nonexclusive license from NuView Systems, Inc. ("NuView") at a cost of \$87,500 for web-based online human resources software. The Nuview

license agreement does not address the assignment of the license; however it provides that the Debtors “acknowledge[s] the trade secret and proprietary nature of the Software and agree[s] to limit any access to, or operation of, the Software and documentation to Company employees only, and to take reasonable measures to protect the Software and Documentation from unauthorized duplication.”

Portal was the only entity which filed an objection to the Debtors’ Motions. Broadvision filed a proof of claim in the amount of \$180,970.07 for services performed pursuant to a service agreement with the Debtors. NuView filed a proof of claim with attached invoices and a copy of the license agreement.

## **DISCUSSION**

As a general rule, most patent, trademark, technology and other intellectual property licenses are executory contracts. See, e.g., Lubrizol Enterprises v. Richmond Metal Finishers, 756 F.2d 1043, 1045 (4<sup>th</sup> Cir. 1985), cert. denied, 475 U.S. 1043 (1986) (nonexclusive license agreement to utilize patented technology was executory); In re Select-A-Seat Corp., 625 F.2d 290, 292 (9<sup>th</sup> Cir. 1980) (licensing agreement granting exclusive rights to use and license corporate debtor's software packages in all but five areas of the world was an executory contract); In re Biopolymers, Inc., 136 B.R. 28, 30 (Bankr. D. Conn. 1992)(patent license agreement an executory contract); In re Chipwich, Inc., 54 B.R. 427, 430 (Bankr. N.Y. 1985) (trademark license agreement for eggnog executory). Therefore, as a preliminary matter, the Court finds that the license agreements are executory contracts within the meaning of § 365.<sup>1</sup> Section 365(f) of the Bankruptcy Code provides that,

---

<sup>1</sup> The Fourth Circuit has adopted the “Countryman” definition which provides that an executory contract is a “contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete the performance would constitute a material breach excusing the performance of the other.” Countryman,

subject to the provisions of § 365(c), a debtor may generally assume and assign executory contracts to a third party, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease.” 11 U.S.C. § 365(f). Section 365(c) provides:

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if--

(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment;

11 U.S.C. § 365(c).

The use of the term “applicable law” in both 365(f) and 365(c) has created uncertainty regarding the scope of the exception carved out by 365(c) and has been addressed by numerous courts. Some courts have interpreted the term “applicable law” in 365(f) to be limited to state laws that enforce contractual anti-assignment provisions and found that 365(c) refers to applicable law which excuses the nonassigning party from performance, independent of any express contractual anti-assignment clause. See Matter of Midway Airlines, Inc., 6 F.3d 492, 495 (7<sup>th</sup> Cir. 1993); In re Pioneer Ford Sales, Inc., 729 F.2d 27, 29 (1<sup>st</sup> Cir. 1984). Other courts have found that “applicable law” in § 365(f) encompasses any law which bars assignment, whether contractual or otherwise, and concluded that § 365(c) is focused upon the rights of the nonassigning third party and the material nature of the identity of the parties. See In re Magness, 972 F.2d 689, 696 (6<sup>th</sup> Cir. 1992); In re Catapult Entertainment, Inc., 165 F.2d 747, 752 (9<sup>th</sup> Cir. 1999). The distinctions made by the various interpretations of §§ 365(c) and (f) are somewhat illusive, and in many instances, the result

---

Executory Contracts in Bankruptcy: Part I, 57 Minn.L.Rev. 439, 460 (1973).

would be the same under either approach. The traditional example of an executory contract that would fall within the scope of § 365(c) under either approach is a personal services contract, where applicable law would excuse the nonassigning party from accepting performance from a third party precisely because the identity of the parties is a material condition of the contract. See In re McVay, 169 B.R. 49 (Bankr. W.D. Tenn. 1994); In re Catron, 158 B.R. 627 (Bankr. E.D.Va. 1992), *aff'd* 158 B.R. 629 (E.D.Va. 1993), *aff'd* 25 F.3d 1038 (4<sup>th</sup> Cir. 1994).

The Fourth Circuit has not taken a clear position on this issue. The District Court of Maryland, following Magness, has interpreted 365(c)(1) to apply to situations in which performance by the non-debtor party to an agreement is excused if “the identity of the debtor is a material condition of the contract when considered in the context of the obligations which remain to be performed under the contract.” In re Antonelli, 148 B.R. 443, 448 (D. Md. 1992) (finding that Section 365(c) allows the transfer of a partnership interest otherwise prohibited by state partnership law when the identity of the general partner is not material to the nature of the partnership duties).<sup>2</sup>

In In re Neuhoff Farms, Inc., the court concluded that “applicable law” in 365(c) means “nonbankruptcy law that excuses the nondebtor from accepting performance from or rendering performance to anyone other than the debtor.” In re Neuhoff Farms, Inc., 258 B.R. 343, 349 (Bankr. E.D.N.C. 2000), quoting In re Schick, 235 B.R. 318, 323 (Bankr. S.D.N.Y. 1999). In this instance, § 365 bars the assignment of the license agreements under any of the above approaches because the Court concludes that, consistent with the Copyright Act, the nonexclusive licenses are personal to the Debtors, and the identity of the Debtors is a material element of the license agreements.

---

<sup>2</sup> The Fourth Circuit affirmed this decision in an unpublished opinion, without determining whether it agreed with the approach of the district court. See In re Antonelli, 4 F.3d 984, 1993 WL 321584 (4<sup>th</sup> Cir. 1993).

The Copyright Act, 17 U.S.C. § 101 *et seq.* is intended to grant the copyright owner a limited monopoly which provides the owner a period of time during which to reap the benefits of his work. Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 429, 104 S.Ct. 774, 782, 78 L.Ed.2d 574 (1984).<sup>3</sup> The owner has the exclusive right to authorize the use of the copyrighted work. 17 U.S.C. § 106. The Copyright Act distinguishes between exclusive and non-exclusive licenses. The holder of the exclusive license has all the rights of the copyright owner, to the extent of that license, and, as such, may freely transfer his rights. 17 U.S.C. § 201(d)(2).

In contrast, the holder of a non-exclusive license does not obtain the rights of ownership of the copyright, but acquires only a personal interest in a copyright. See In re Patient Education Media, Inc., 201 B.R. 237 (Bankr. S.D.N.Y. 1997); In re CFLC, Inc. 89 F.3d 673, 679 (9<sup>th</sup> Cir. 1996). Accordingly, a nonexclusive license is personal to the transferee and cannot be assigned without the consent of the licensor. *Id.* See also Unarco Industries, Inc. v. Kelley Co., 465 F.2d 1303, 1306 (7<sup>th</sup> Cir. 1972); In re Valley Media, Inc., 279 B.R. 105, 135-136 (Bankr. D.Del. 2002); In re Golden Books Family Entertainment, Inc., 269 B.R. 300, 309 (Bankr. D. Del. 2001). Since a non-exclusive license may not be assigned by a licensee under applicable copyright law, a debtor in possession may not assign a non-exclusive license absent the consent of the non-debtor party as provided by 11 U.S.C. § 365(c). See In re Access Beyond Tech., Inc., 237 B.R. 32 (Bankr. D.Del. 1999); In re Patient Education Media, Inc., 210 B.R. 237, 243 (Bankr. S.D.N.Y. 1997).

---

<sup>3</sup> In Sony Corp. of America, the Supreme Court also stated that, when faced with an issue of copyright law, it was appropriate to look to patent law for guidance “because of the historic kinship between patent law and copyright law.” Sony Corp. of America, 464 U.S. at 439, 104 S.Ct. at 787, (1984).

The Debtors maintain that despite federal copyright law, with regard to these license agreements the identity of the licensee is immaterial and that the performance due under the license agreements is not unique to the Debtors. The Debtors argue that the performance due under the agreement could be performed by any number of entities and that it cannot be maintained that such performance is personal or unique to the licensee.

The Debtors' reasoning simply does not apply to the facts present in this case. The software that is the subject of these motions is highly sophisticated and customized for the individual needs of a customer, qualities that are reflected in the purchase prices. Furthermore, all of the license agreements require confidentiality regarding either the provisions of license agreements or the use of the software in addition to the protections afforded by the Copyright Act. Allowing the Debtors to sell these licenses at an auction conducted by Dovebid would create the possibility that a competitor could purchase a license. This sale process would strip the copyright holder of the right to control the dissemination of their copyrighted material and would undermine the purpose of the Copyright Act. The Court finds that the identity of the Debtors is a material condition of the license agreement such that the Licensor is excused from accepting performance from an assignee.

The Debtors further contend that implied consent is found in the agreements with Artemis, Broadvision, Rational and Selectica because those agreements provide for assignment under limited circumstances and those parties did not file objections to this motion. The Debtors also argue that consent is implied in the NuView agreement, in that it does not address the issue of assignability. Under the Copyright Act, a licensee does not have the right to sublicense or assign unless expressly authorized. Gardner v. Nike, 279 F.3d 774,778 (9<sup>th</sup> Cir. 2002) (citing Harris v. Emus Records Corp., 734 F.2d 1329, 1333 (9<sup>th</sup> Cir.); see also Unarco, 465 F.2d at 1306; Stenograph Corp. v. Fulkerson, 972 F.2d 726, 729 n. 2 (7th Cir.1992) ("Patent licenses are not assignable in the absence of express

language."); Verson Corp. v. Verson Int'l Group PLC, 899 F.Supp. 358, 363 (N.D.Ill. 1995) (finding that in the absence of compelling evidence of a clear intent to consent to assignment, the court will not imply a right to assign a license). This Court cannot conclude that silence constitutes express consent when, pursuant to Copyright Act, a copyright license is not transferable or assignable.

Based upon the foregoing findings and conclusions, orders will be entered contemporaneously with the entry of this memorandum opinion denying the Debtors' Motions.

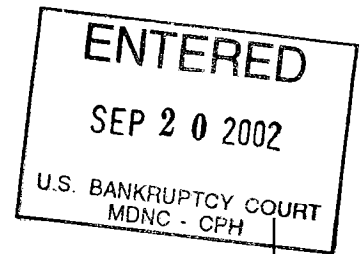
Entered this the 20 day of September 2002.

CATHARINE R. CARRUTHERS

---

Catharine R. Carruthers  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN THE MATTER OF:

Buildnet, Inc.; et al.

Debtors

Case Nos. 01-82293 through 01-82299  
(Consolidated for Administration)

Order Denying the Assumption,  
Assignment, and Sale of Debtors' Interests  
Under Certain Executory Contracts  
[Artemis Management Systems, Inc.]

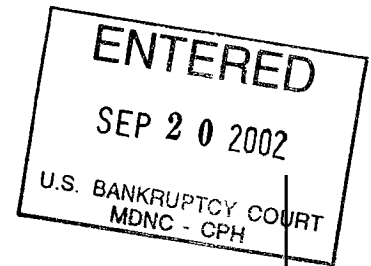
Pursuant to the Memorandum Opinion filed contemporaneously herewith, IT IS ORDERED, ADJUDGED, AND DECREED that the Debtors' Motion for Order: (A) Conditionally Approving the Assumption, Assignment, and Sale of Debtors' Interests Under Certain Executory Contracts; (B) Determining Amounts Necessary to Cure Defaults and Compensate for Pecuniary Loss, (C) Approving Procedures for Sale, Including Compensation and Reimbursement of Expenses to Selling Agent; and (D) Scheduling Final Hearing to Confirm Sale and Assumption and Assignment, or Rejection, of Executory Contracts [Artemis Management Systems, Inc.] is DENIED.

This the 30 day of September 2002.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN THE MATTER OF:

Buildnet, Inc.; et al.

Debtors

Case Nos. 01-82293 through 01-82299  
(Consolidated for Administration)

---

Order Denying the Assumption,  
Assignment, and Sale of Debtors' Interests  
Under Certain Executory Contracts  
[Broadvision, Inc.]

---

Pursuant to the Memorandum Opinion filed contemporaneously herewith, IT IS ORDERED, ADJUDGED, AND DECREED that the Debtors' Motion for Order: (A) Conditionally Approving the Assumption, Assignment, and Sale of Debtors' Interests Under Certain Executory Contracts; (B) Determining Amounts Necessary to Cure Defaults and Compensate for Pecuniary Loss, (C) Approving Procedures for Sale, Including Compensation and Reimbursement of Expenses to Selling Agent; and (D) Scheduling Final Hearing to Confirm Sale and Assumption and Assignment, or Rejection, of Executory Contracts [Broadvision, Inc.] is DENIED.

This the 20 day of September 2002.

CATHARINE R. CARRUTHERS

---

Catharine R. Carruthers  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN THE MATTER OF:

**Buildnet, Inc.; et al.**

**Debtors**

**Case Nos. 01-82293 through 01-82299  
(Consolidated for Administration)**

---

**Order Denying the Assumption,  
Assignment, and Sale of Debtors' Interests  
Under Certain Executory Contracts  
[NuView Systems, Inc.]**

---

Pursuant to the Memorandum Opinion filed contemporaneously herewith, IT IS ORDERED, ADJUDGED, AND DECREED that the Debtors' Motion for Order: (A) Conditionally Approving the Assumption, Assignment, and Sale of Debtors' Interests Under Certain Executory Contracts; (B) Determining Amounts Necessary to Cure Defaults and Compensate for Pecuniary Loss, (C) Approving Procedures for Sale, Including Compensation and Reimbursement of Expenses to Selling Agent; and (D) Scheduling Final Hearing to Confirm Sale and Assumption and Assignment, or Rejection, of Executory Contracts [NuView Systems, Inc.] is DENIED.

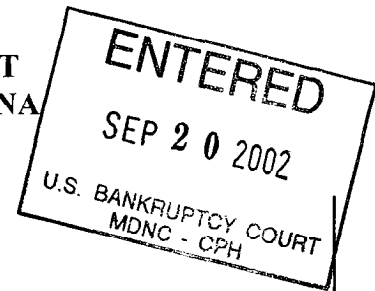
This the 20 day of September 2002.

CATHARINE R. CARRUTHERS

---

Catharine R. Carruthers  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN THE MATTER OF:

**Buildnet, Inc.; et al.**

**Debtors**

Case Nos. 01-82293 through 01-82299  
(Consolidated for Administration)

---

**Order Denying the Assumption,  
Assignment, and Sale of Debtors' Interests  
Under Certain Executory Contracts  
[Oracle Corporation]**

---

Pursuant to the Memorandum Opinion filed contemporaneously herewith, IT IS ORDERED, ADJUDGED, AND DECREED that the Debtors' Motion for Order: (A) Conditionally Approving the Assumption, Assignment, and Sale of Debtors' Interests Under Certain Executory Contracts; (B) Determining Amounts Necessary to Cure Defaults and Compensate for Pecuniary Loss, (C) Approving Procedures for Sale, Including Compensation and Reimbursement of Expenses to Selling Agent; and (D) Scheduling Final Hearing to Confirm Sale and Assumption and Assignment, or Rejection, of Executory Contracts [Oracle Corporation] is DENIED.

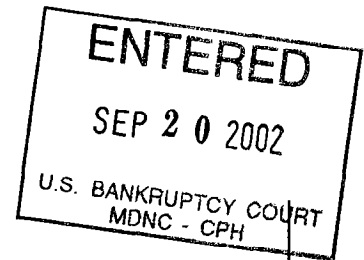
This the 20 day of September 2002.

CATHARINE R. CARRUTHERS

---

Catharine R. Carruthers  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN THE MATTER OF:

**Buildnet, Inc.; et al.**

**Debtors**

Case Nos. 01-82293 through 01-82299  
(Consolidated for Administration)

---

**Order Denying the Assumption,  
Assignment, and Sale of Debtors' Interests  
Under Certain Executory Contracts  
[Portal Software, Inc.]**

---

Pursuant to the Memorandum Opinion filed contemporaneously herewith, IT IS ORDERED, ADJUDGED, AND DECREED that the Debtors' Motion for Order: (A) Conditionally Approving the Assumption, Assignment, and Sale of Debtors' Interests Under Certain Executory Contracts; (B) Determining Amounts Necessary to Cure Defaults and Compensate for Pecuniary Loss, (C) Approving Procedures for Sale, Including Compensation and Reimbursement of Expenses to Selling Agent; and (D) Scheduling Final Hearing to Confirm Sale and Assumption and Assignment, or Rejection, of Executory Contracts [Portal Software, Inc.] is DENIED.

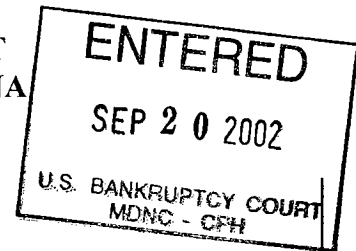
This the 20 day of September 2002.

CATHARINE R. CARRUTHERS

---

Catharine R. Carruthers  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN THE MATTER OF:

**Buildnet, Inc.; et al.**

**Debtors**

**Case Nos. 01-82293 through 01-82299  
(Consolidated for Administration)**

---

**Order Denying the Assumption,  
Assignment, and Sale of Debtors' Interests  
Under Certain Executory Contracts  
[Rational Software, Inc.]**

---

Pursuant to the Memorandum Opinion filed contemporaneously herewith, IT IS ORDERED, ADJUDGED, AND DECREED that the Debtors' Motion for Order: (A) Conditionally Approving the Assumption, Assignment, and Sale of Debtors' Interests Under Certain Executory Contracts; (B) Determining Amounts Necessary to Cure Defaults and Compensate for Pecuniary Loss, (C) Approving Procedures for Sale, Including Compensation and Reimbursement of Expenses to Selling Agent; and (D) Scheduling Final Hearing to Confirm Sale and Assumption and Assignment, or Rejection, of Executory Contracts [Rational Software, Inc.] is DENIED.

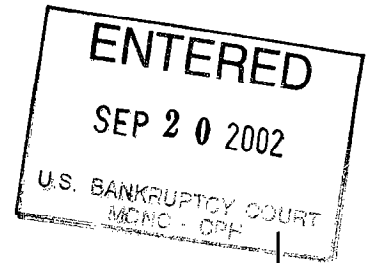
This the 20 day of September 2002.

CATHARINE R. CARRUTHERS

---

Catharine R. Carruthers  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN THE MATTER OF:

Buildnet, Inc.; et al.

Debtors

Case Nos. 01-82293 through 01-82299  
(Consolidated for Administration)

Order Denying the Assumption,  
Assignment, and Sale of Debtors' Interests  
Under Certain Executory Contracts  
[Selectica, Inc.]

Pursuant to the Memorandum Opinion filed contemporaneously herewith, IT IS ORDERED, ADJUDGED, AND DECREED that the Debtors' Motion for Order: (A) Conditionally Approving the Assumption, Assignment, and Sale of Debtors' Interests Under Certain Executory Contracts; (B) Determining Amounts Necessary to Cure Defaults and Compensate for Pecuniary Loss, (C) Approving Procedures for Sale, Including Compensation and Reimbursement of Expenses to Selling Agent; and (D) Scheduling Final Hearing to Confirm Sale and Assumption and Assignment, or Rejection, of Executory Contracts [Selectica, Inc.] is DENIED.

This the 20 day of September 2002.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers  
United States Bankruptcy Judge