

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

In re: ) Chapter 11  
)  
BRIGGS & STRATTON )  
CORPORATION, *et al.*, ) Case No. 20-43597-399  
)  
Debtors. ) (Jointly Administered)

**OBJECTION OF W.W. GRAINGER, INC. TO  
NOTICE OF CURE COSTS AND PROPOSED ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES IN CONNECTION WITH SALE**

W.W. Grainger, Inc. (“Grainger”) hereby files this objection (“Objection”) to the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Dkt. 537; “Cure Notice”). In support of this Objection, Grainger states as follows:

**BACKGROUND**

1. On July 20, 2020 (“Petition Date”), Briggs & Stratton Corporation and certain of its affiliates (collectively, “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their businesses as debtors in possession.
2. On August 21, 2020, the Debtors filed the Cure Notice.
3. As part of the Cure Notice, the Debtors assert that, prepetition, Grainger, as seller, and various of the Debtors, as buyers, entered into thirteen (13) separate contracts (collectively, “Assumed Agreements”), under which Grainger had agreed to provide and sell to the Debtors certain goods, materials and products for several of the facilities owned and operated by the



Debtors, which the Debtors proposed to assume and assign as part of the Sale Transaction detailed in the Cure Notice.<sup>1</sup>

4. The Cure Notice alleges that the aggregate amount necessary to “cure” all existing defaults under the Assumed Agreements between Grainger and the Debtors, within the meaning of 11 U.S.C. §365, is \$25,559.57 (“Debtors’ Cure Amount”). (See Cure Notice, Exhibit A, Pages 7 and 17, Contract ID Nos. 01328, 20414, 20225, 19760, 19897, 20391, 21994, 08994, 08993, 08995, 08996, 08997, and 08992, respectively.)

5. First, the list of the Assumed Agreements with Grainger in the Cure Notice is ambiguous and fails to identify with sufficient specificity information necessary for Grainger to determine which contracts the Debtors propose to assume. Grainger is searching its records to determine the scope of its relationships with the Debtors. At current, Grainger has identified only a master purchasing agreement that governs its relationship with the Debtors which includes all of the agreements to the obligations of the Debtors.

6. Second, Grainger’s records reflect that the current outstanding aggregate balance due Grainger from the Debtors, as of the date of the Cure Note, is \$96,353.36 (“Grainger’s Cure Amount”).

7. As a result of the foregoing, Grainger has filed this Objection to preserve its rights (i) to have identified with sufficient specificity each of the contracts the Debtors proposed to assume and assign, as part of the Sale Transaction and (ii) to receive all amounts due under the Assumption Agreements as of the date of the closing of the proposed sale contemplated by the Cure Notice, currently Grainger’s Cure Amount, as part of those amounts necessary to be paid as

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<sup>1</sup> All capitalized terms not separately defined in this objective shall have those meanings associated to these in the Cure Notice.

part of any assignment and assumption of the Assumption Agreements between Grainger and the Debtors.

8. Before filing this Objection, Grainger provided to Debtor's Counsel a summary of the amounts due for invoices issued pursuant to the Assumption Agreements, comprising the amount of Grainger's Cure Amount and remains committed to resolving any discrepancies in these cure amounts with the Debtors.

9. Grainger has filed this Objection to preserve its rights with respect to the proposed sale. Grainger does not oppose the sale – or generally the proposed assignment and assumption of any agreements identified with sufficient specificity between Grainger and the Debtors as part of such sale – but does oppose any proposed assumption and assignment that fails (i) to specifically identify the exact agreements, and (ii) to cure all amounts due under such agreements at the time such agreements are actually assumed and assigned.

### **OBJECTION**

10. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that “the trustee, subject to court approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). However, where a default has occurred under an executory contract or unexpired lease, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee:

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1); see *City of Covington v. Covington Landing Ltd. P'ship*, 71 F.3d 1221, 1226 (6<sup>th</sup> Cir. 1995) (trustee must assume both the benefits and the burdens of an executory contract or unexpired lease); *In re Adelpia Bus. Solutions, Inc.*, 322 B.R. 51 (Bankr. S.D.N.Y. 2005) (same).

11. The Debtors have not properly accounted for all amounts due Grainger from the Debtors under the Assumed Agreements. Accordingly, Grainger has filed this Objection to preserve its rights to recover the full amount of those balances due Grainger under the Assumed Agreements, currently Grainger's Cure Amount, as part of those amounts necessary to be paid as part of any assignment and assumption of the Agreements between Grainger and the Debtors.

#### **CONCLUSION**

12. Grainger has no objection to the proposed assumption and assignment of the Assured Agreements set forth in the Cure Notice, provided that the Debtors provide a cure payment in the amount of the aggregate amount due Grainger under the Agreements as of the actual date of such assignment and assumption as part of the Sale Transaction.

#### **RESERVATION OF RIGHTS**

13. Grainger expressly reserves any and all rights to supplement and modify this Objection and the cure amounts claimed hereunder. This Objection is being filed only as it pertains to the Agreements. Nothing contained herein should be construed as a waiver by Grainger with respect to any other rights.

WHEREFORE, Grainger respectfully requests that the Court (i) deny the relief requested in the Cure Notice as it relates to Grainger, and (ii) grant such other and further relief as the Court may deem appropriate under the circumstances.

Date: September 4, 2020

/s/ Mark J. Adey

Mark J. Adey (Admitted *Pro Hac Vice*)

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*Attorneys for W.W. Grainger, Inc.*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 4<sup>th</sup> day of September, 2020, a copy of the *Objection of W.W. Grainger, Inc. to Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* was served as indicated upon the counsel below:

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