

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

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

**OBJECTION OF NIKKI AMERICA FUEL SYSTEMS, LLC
TO NOTICE OF CURE COSTS AND PROPOSED ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH SALE**

Nikki America Fuel Systems, LLC (“NAFS”), by its counsel, hereby objects (the “Cure Objection”) to the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* (the “Cure Notice”) [Docket No. 515], as follows:

Background

1. On July 20, 2020 (the “Petition Date”), the debtors in these bankruptcy proceedings (the “Debtors”) commenced their cases under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) that are currently pending with this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. The Debtors’ chapter 11 bankruptcy cases are being jointly administered.

3. The Debtors’ and NAFS’ respective counsel have had ongoing discussions for the purpose of attempting to resolve NAFS’ objections to the Cure Notice. Pursuant to those discussions, the Debtors agreed to provide to NAFS until September 9, 2020 to file this Objection.



Although it appears the Debtors' and NAFS' counsel have resolved the Objection, Debtors' counsel requested an opportunity to discuss the proposed resolution with the Debtors and has not yet confirmed the resolution. As such, NAFS is filing its Objection out of an abundance of caution.

The Sale Motion and Cure Notice

4. On July 20, 2020, the Debtors filed a motion [Docket No. 53] (the "Sale Motion") seeking entry of (i) an order establishing, *inter alia*, certain Bidding Procedures and procedures for the assumption and assignment of contracts (the "Assumption and Assignment Procedures") in connection with the sale or sales of substantially all of the Debtors' assets (the "Sale"), and (ii) an order authorizing the Sale which authorized the assumption and assignment of proposed assumed contracts, in connection therewith and granting related relief.

5. On August 19, 2020, the Bankruptcy Court entered an Order [Docket No. 505] (the "Bidding Procedures Order"), which established dates and times relating to the Debtors' auction and proposed Sale and approved the Assumption and Assignment Procedures.

6. In accordance with the Assumption and Assignment Procedures, on August 19, 2020, the Debtors filed the Cure Notice.

7. Attached as Exhibit A to the Cure Notice is a list of the Debtors' contracts and unexpired leases that the Debtors may seek to assume and assign in connection with a sale or sales of substantially all of the Debtors' assets and the cure amounts that the Debtors propose to pay to the applicable contract counterparties in connection with the assumption/assignment thereof.

8. Exhibit A to the Cure Notice, at page 63 of 96, lists NAFS as the counterparty to the following contracts, among others, with Debtor Briggs & Stratton Corporation, each with a proposed contract cure amount as follows:

- A. Term Agreement [Document_14070] -- \$673,978.95
- B. Supply Agreement [Document_04595] -- \$0.00

9. The amounts due NAFS pursuant to the foregoing agreements would be due NAFS pursuant to the Supply Agreement and not the Term Agreement and therefore the foregoing cure amount should be moved to the Supply Agreement. In the months prior to the Petition Date and subsequent thereto, NAFS has been supplying goods to Debtor Briggs & Stratton Corporation pursuant to the Supply Agreement. On the other hand, the Term Agreement appears to have expired by its own terms many years ago. Counsel for Debtors and NAFS have agreed in principal that the cure amount of \$673,978.95 (the “Cure Amount”) associated in the Cure Notice with the Term Agreement should be moved and become the cure amount associated with the Supply Agreement. Although the foregoing has been agreed to in principal, Debtor’s counsel has not yet confirmed that the foregoing will in fact occur in a revised Cure Notice. Out of an abundance of caution, NAFS is filing this Objection.

10. Both the Bidding Procedures Order and the Cure Notice provide that the Debtors may continue making assumption and assignment decisions with respect to certain contracts following closing of the Sale. *See* Bidding Procedures Order at page 20; Cure Notice at page 5.

11. As provided above, NAFS’ extended deadline for filing objections to proposed cure amounts by agreement of counsel is September 9, 2020 at 5:00 p.m. (prevailing Central Time).

Discussion

A. The Debtors Must Satisfy all Prepetition Claims and Post-Petition Obligations in Order to Assume the Supply Agreement With NAFS.

12. Section 365(b)(1)(A) and (B) of the Bankruptcy Code provide, in pertinent part, as follows:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of 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;

13. Accordingly, if the Debtors want to assume and assign the Supply Agreement, the Debtors must first pay NAFS the Cure Amount owing under the Supply Agreement to be assumed/assigned, plus any other unpaid post-petition amounts incurred thereunder through the effective date of assumption, as a condition to such assumption/assignment.

B. The Debtors and/or Purchaser(s) Should Be Required To Make Final Decisions With Respect to the Supply Agreement Prior to Sale Closing.

14. Further, the Debtors and/or Sale purchaser should be required to make final decisions regarding assumption and/or rejection of the Supply Agreement prior to the Sale closing date so that NAFS is not required to continue providing products post-closing under the Supply Agreement if the Debtors ultimately elect to reject the Supply Agreement.

WHEREFORE, the Court should enter an Order:

- A. Requiring, as a condition to the Debtors' assumption and/or assignment of the Supply Agreement that the Debtors pay to NAFS the Cure Amount set forth above, plus all post-petition amounts incurred thereunder through the effective date of assumption;
- B. Requiring the Debtors and/or the Sale purchaser(s) to make final assumption and/or rejection decisions regarding the Supply Agreement prior to the Sale closing date; and
- C. Granting such other and further relief as is equitable and just.

Dated: September 9, 2020

AFFINITY LAW GROUP, LLC

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 9, 2020, a true and correct copy of the above and foregoing *Objection of Nikki America Fuel Systems, LLC to Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* was served via electronic filing through the CM/ECF system of the U.S. Bankruptcy Court, Eastern District of Missouri upon all parties to this matter requesting service by electronic filing and by U.S. First Class Mail, postage prepaid, upon the following persons:

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