

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In Re:) In Proceedings Under Chapter 11
) Hon. Barry S. Schermer
BRIGGS & STRATTON)
CORPORATION, *et. al.*,)
) Case No. 20-43597-399
Debtors.) (Jointly Administered)
)
)
)

**MOTION OF UFP TECHNOLOGIES, INC. FOR: (I) ALLOWANCE
AND PAYMENT OF ADMINISTRATIVE EXPENSE PURSUANT TO
11 U.S.C. §503(b)(9); (II) ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE PURSUANT TO 11 U.S.C. §503(b)(1);
AND (III) DETERMINATION THAT ANY AGREEMENTS BETWEEN UFPT
AND THE DEBTORS THAT CONSTITUTE EXECUTORY CONTRACTS
ARE REJECTED EFFECTIVE AS OF SEPTEMBER 10, 2020**

COMES NOW, UFP Technologies, Inc. (“UFPT”) by and through its undersigned
counsel, and for its *Motion of UFP Technologies, Inc. for: (I) Allowance and Payment of
Administrative Expense Pursuant to 11 U.S.C. §503(b)(9); (II) Allowance and Payment of
Administrative Expense Pursuant to 11 U.S.C. §503(b)(1); and (III) Determination that any
Agreements Between UFPT and the Debtors That Constitute Executory Contracts are Rejected
As of September 10, 2020* (the “Application”), state to this Honorable Court as follows:

I. JURISDICTION AND VENUE

1. On July 20, 2020 (the "Petition Date"), Briggs & Stratton Corporation (“Debtor”) and several of its affiliates filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Code") in the United States Bankruptcy Court for the Eastern District of Missouri (the “Court”). The cases are being jointly administered under the above-captioned case number pursuant to this Court’s order of July 21, 2020 [Doc. #117].



2. This Court has jurisdiction over these proceedings and this Motion pursuant to, *inter alia*, 28 U.S.C. §§157 and 1334, 11 U.S.C. §§105, 365, 502, 503, Rule 81- 9.01(B)(1) of the Local Rules for the United States District Court for the Eastern District of Missouri.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1408.

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (M), and (O).

II. ARGUMENT

A. Relationship Between UFPT and Debtors.

5. UFPT manufactures and sells foam filters for various small engine applications. UFPT has been a supplier to the Debtor for decades. The products manufactured by UFPT and sold to the Debtor are used by and necessary to the Debtor's manufacturing operations; indeed, they are critical to the Debtor's ongoing operations.

6. UFPT sells the aforementioned foam filters to the Debtor pursuant to several Blanket Purchase Orders issued by the Debtor (the "**Blanket POs**") which require UFPT to manufacture and deliver goods to the Debtor over significant periods of time and under which the Debtor issues "releases" to UFPT indicating the quantity of goods UFPT is supposed to deliver, the date of delivery, and the location for delivery. Currently, there are approximately thirteen (13) Blanket POs in place between the Debtor and UFPT, which are summarized as follows:

Blanket PO Number	Date
5500069080	April 28, 2011
5502002388	July 4, 2018
5502012780	July 5, 2018
5502000036	July 4, 2018
5502005924	July 4, 2018
5502001025	July 4, 2018
5502001132	July 4, 2018
5500103926	February 3, 2018
5502012322	July 5, 2018
5502012323	July 5, 2018
5502012187	July 5, 2018

5502023459
5502024435

July 26, 2019
October 7, 2019

In addition, UFPT sells goods to the Debtor pursuant to certain Spot Purchase Orders (the “**Spot POs**”). Unlike the Blanket POs, the Spot POs are for one-time purchases by the Debtor. As of the Petition Date, the Debtor owed UFPT approximately \$69,061.74 for goods sold by UFPT to the Debtor in the ordinary course of the parties’ business under the Blanket POs and the Spot POs.

7. Even though UFPT’s products are critical to the Debtor’s ongoing business operations, the Debtor did not elect to treat UFPT as a “critical vendor” pursuant to the authority granted by the Court under its orders of July 22, 2020 [Doc. #145] and August 20, 2020 [Doc. #534] granting on an interim, and then a final basis, Debtors’ motion to approve certain ordinary course operations and payment of critical vendors [Doc. #30]. Despite UFPT not being treated as a critical vendor, the Debtor recognized and admitted that UFPT will have administrative expense priority and will be promptly paid for all goods that it ships to the Debtor post-petition. After the Petition Date (and as of September 10, 2020) UFPT sold and delivered to the Debtor approximately \$76,974.76 in goods used by the Debtor in the ordinary course of the Debtor’s business but for which no payment has yet been received by UFPT.

8. On August 19, 2020 the Debtors filed their *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection With Sale* (the “**Contract Assumption Notice**”) [Doc. No. 516] which lists two contracts with UFPT and proposed a cure amount of approximately \$90,044.72. UFPT filed a timely objection to the Contract Assumption Notice on September 2, 2020 stating that the cure cost was in excess of \$104,322.23 (as of August 19, 2020) [Doc. No. 702]. In response to UFPT’s foregoing objection, on September 3, 2020 the Debtor stated that it intends to assume its entire supply chain and assign

it to the buyer and that UFPT would be paid in full as part of that process. On September 10, 2020, however, the Debtor changed its position to a completely contrary one, stating that it believes that it has no executory contract with UFPT and that it intends to file a revised Contract Assumption Notice to remove UFPT from the list of assumed contracts. As such, the Debtor stated that UFPT will not be paid as part of the supply chain contract assumption process after all.

B. Allowance of UFPT's Claim under 11 U.S.C. §503(b)(9).

9. Pursuant to 11 U.S.C. §503(a) an entity may request payment of an administrative expense. Pursuant to 11 U.S.C. §503(b)(9) the value of goods received by a debtor within 20 days before the date of the commencement of a case and sold in the ordinary course of the debtor's business shall be allowed as an administrative expense.

10. In the ordinary course of business UFPT sold and delivered to the Debtor various products used by the Debtor in its manufacturing operations. The value of the foregoing goods is summarized in the *Declaration of Ronald Lataille* attached hereto as **Exhibit A**, which is incorporated herein and which shows that during the twenty (20) days prior to the Petition Date Debtor received \$22,920.21 in goods from UFPT. Because the Debtor has not treated UFPT as a critical vendor and because the Debtor is not seeking to assume either the Blanket POs or the Spot POs, the invoices for said amounts remain unpaid.

11. UFPT will provide evidence of the Debtor's purchases, the accompanying invoicing, and delivery at the hearing on this Application.

C. Allowance of UFPT's Claim under 11 U.S.C. §503(b)(1)(A).

12. This list of claims which may be given administrative expenses status is not exhaustive. Sanchez v. Northwest Airlines, Inc., 659 F.3d 671, 677 (8th Cir. 2011). Administrative expenses exist to encourage creditors to continue to do business with a debtor post filing and to

facilitate the debtor's operations while it formulates a plan. Matter of Jartran, Inc., 732 F.2d 584, 586-587 (7th Cir. 1984).

13. Based on the Debtor's representations that UFPT would have administrative expense priority for all goods that it shipped to the Debtor post-petition, UFPT sold and delivered products to the Debtor on credit after the Petition Date. These sales were in the ordinary course of the Debtor's business and were necessary to allow the Debtor to manufacture and sell its products to customers, to maintain its relationships with its customers and employees, and to generate revenue for the Debtor's business, thus providing an actual, real, significant--indeed critical--benefit to Debtor and its estate. The value of the foregoing goods is again summarized in the ***Declaration of Ronald Lataille*** which shows that, from and after the Petition Date, UFPT shipped \$76,974.76 in goods to the Debtor. The Debtor has not treated UFPT as a critical vendor and (as of September 10, 2020) has decided not to seek assumption of either the Blanket POs or the Spot POs. UFPT's invoices for post-petition amounts remain unpaid.

14. The foregoing post-petition transactions have provided a real and significant benefit to Debtor and to its estate. Pursuant to 11 U.S.C. §503(b)(1)(A) these post-petition transactions with the Debtor are administrative expenses which enjoy administrative expense priority. *See, e.g., AgriProcessors, Inc. v. Iowa Quality Beef Supply Network, L.L.C. (In re Tama Beef Packing, Inc.)*, 290 B.R. 90, 95-96 (8th Cir. BAP 2003) (Applicant must show a transaction with the debtor's estate and some benefit to the estate). Indeed, as noted above, the Debtor has recognized and admitted UFPT has administrative expense priority and for all goods that it shipped to the Debtor post-petition.

15. UFPT will provide evidence of the Debtor's post-petition purchases, the accompanying invoicing, and delivery at the hearing on this Application.

16. This Application is timely in that the Court has not set a deadline for the filing of applications for administrative expenses or for allowance and payment of claims under 11 U.S.C. §503(b)(9). To the extent that administrative expense claimants are governed by the *Order (I) Establishing Deadlines for Filing Proofs of Claim and Procedures Related Thereto and (II) Approving Form and Manner of Notice Thereof* entered on August 24, 2020 [Doc. #564] this Application is timely.

D. Immediate Payment of Administrative Claims.

17. The court has discretion to determine the time of payment of an allowed administrative expense claim. HQ Global Holdings, Inc., 282 B.R. 169, 173 (Bankr. D. Del. 2002) and should consider the prejudice to the Debtor, hardship to the claimant, and potential detriment to other creditors. Id.

18. UFPT respectfully submits that payment of its allowed 503(b)(9) and 503(b)(1)(A) claims should be made immediately. Despite the Debtor's assurances that UFPT would be paid as an administrative priority expense for all post-petition shipments to the Debtor, UFPT has not been paid therefor. And, despite the Debtor's September 3, 2020 assurance that the Debtor's entire supply chain would be assumed as part of the contract assumption process in connection with the upcoming sale of the Debtor's assets, the Debtor has now "changed its mind". The Debtor has not argued to the Court that it lacks funds to pay its ongoing expenses of operations and the Debtor should be compelled to pay all of UFPT's administrative expense priority claims now. Moreover, in its Contract Assumption Notice the Debtor asserted that it was ready, willing, and able to pay UFPT \$90,044.72 in executory contract cure costs. The Debtor, which is selling its assets for more than \$500 million and which has in place post-petition financing to pay for its operations, cannot credibly argue that it would be prejudiced by having to pay UFPT \$76,974.76 for the post-

petition shipments that UFPT has made to the Debtor (as of September 10, 2020) plus \$22,902.21 for the value of goods that UFPT delivered to Debtor within the twenty (20) days before the Petition Date. Especially in light of the Debtor's "changing its mind", UFPT is legitimately concerned that it will not be paid on its administrative priority expense claims. While the share of UFPT's business from the Debtor is not of such a volume that UFPT will be forced into financial distress, UFPT nonetheless must make business decisions on anticipated revenue and the loss of (or delay in) receiving payment, coupled with the non-payment of the non-administrative expense amounts will negatively impact UFPT's operations. Moreover, the difference between paying UFPT's administrative expense claims now (as opposed to at some future date) will not be a detriment to other creditors. Those creditors who do not have administrative expense status will not be impacted by the timing of payment to UFPT and any administrative creditors should be paid upon allowance, just as UFPT should be.

E. Any Agreements between UFPT and the Debtor that Constitute Executory Contracts are Rejected as of September 10, 2020.

19. As noted in paragraph 8 above, on September 10, 2020 the Debtor advised UFPT that the Debtor's position is that the Debtor has no executory contract with UFPT. UFPT is concerned that the Debtor's analysis is flawed and, especially in light of the Debtor's previous change(s) in position, UFPT is concerned that the Debtor (or a purchaser of the assets of the jointly administered debtors) might take the position that Debtor's Blanket POs and/or Spot POs constitute executory contracts that require UFPT to perform, and may seek, *inter alia*, remedies if UFPT does not perform. Consequently, in light of the Debtor's foregoing position, UFPT seeks a determination of this Court that any agreements between UFPT and the Debtor (or any of the jointly administered debtors) that constitute executory contracts are rejected effective as of

September 10, 2020 and that UFPT has no obligation to deliver any goods to Debtor (or to any of the jointly administered debtors).

20. Consequently, and for its protection in light of the Debtor's September 10, 2020 change in position, UFPT requests an order of this Court determining that, to the extent that any executory contract exists, it is rejected as of September 10, 2020. UFPT requests entry of such an order to avoid any future dispute regarding any alleged obligation of UFPT to supply product to any of the jointly administered debtors (or to any purchaser of their respective assets.)

WHEREFORE, UFP respectfully pray that, pursuant to 11 U.S.C. §§503(a), (b)(1)(A), (b)(9), and 105, this honorable Court: (a) allow UFPT an administrative expense claim in the amount of \$22,920.21 for goods delivered in the twenty (20) days before the Petition Date; (b) allow UFPT an administrative expense claim in the amount of \$76,974.76 (as of September 10, 2020) for goods shipped to Debtor after the Petition Date; (c) direct Debtor to pay all administrative expense priority claims to UFPT within seven (7) business days after the entry of an order allowing said claims; (d) determine that any agreements between UFPT and the Debtor (or any of the debtors) that constitute executory contracts are rejected effective as of September 10, 2020 and (e) grant UFPT such additional and further relief as is just and proper.

Dated: September 14, 2020

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UNITED STATES BANKRUPTCY COURT
EASTER DISTRICT OF MISSOURI
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In Re:) In Proceedings Under Chapter 11
) Hon. Barry S. Schermer
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BRIGGS & STRATTON,) Case No. 20-43597-399
CORPORATION, *et. al.*,)
) (Jointly Administered)
Debtor.)
)
)

DECLARATION OF RONALD LATAILLE

Ronald Lataille, being duly sworn, declares as follows:

1. I am a resident of the Commonwealth of Massachusetts and am over the age of 18.
2. I am the Chief Financial Officer of UFP Technologies, Inc. ("UFPT").
3. I make this declaration based upon the books and records of UFPT. I am familiar with the facts and circumstances set forth in this Declaration and, if called upon, I can testify to the facts and circumstances described in this Declaration which are true and accurate to the best of my knowledge, information and belief.
4. I have reviewed the *Motion of UFP Technologies, Inc. for: (I) Allowance and Payment of Administrative Expense Pursuant to 11 U.S.C. §503(b)(9); (II) Allowance and Payment of Administrative Expense Pursuant to 11 U.S.C. §503(b)(1); and (III) Determination that any Agreements Between UFPT and the Debtors That Constitute Executory Contracts are Rejected As of September 10, 2020* (the "Application") and the statements therein are true and correct.

5. UFPT manufactures and sells foam filters for various small engines. UFPT has been a supplier to Briggs & Stratton Corporation (“Briggs & Stratton”) for decades. Briggs & Stratton uses these filters in the ordinary course of its manufacturing process.
6. UFPT sells foam filters to Briggs & Stratton pursuant to several Blanket Purchase Orders issued by Briggs & Stratton (“Blanket POs”). The Blanket POs require UFPT to provide goods over a significant period of time, and Briggs & Stratton issues “releases” to UFPT indicating the quantity of goods that UFPT is supposed to deliver by a certain date, and the location to which UFPT should ship the goods. Currently, there are approximately thirteen (13) Blanket POs dated between April 28, 2011 and October 7, 2019, including the following:

Blanket PO Number	Date
5500069080	4/28/2011
5502002388	7/4/2018
5502012780	7/5/2018
5502000036	7/4/2018
5502005924	7/4/2018
5502001025	7/4/2018
5502001132	7/4/2018
5500103926	2/3/2018
5502012322	7/5/2018
5502012323	7/5/2018
5502012187	7/5/2018
5502023459	7/26/2019
5502024435	10/7/2019

7. UFPT also sells goods to Briggs & Stratton pursuant to “Spot” Purchase Orders (“Spot POs”). Spot POs are for one-time purchases.
8. As of the July 20, 2020 petition date (the “Petition Date”), UFPT was owed approximately \$22,920.21 for goods sold to Briggs & Stratton and delivered in the twenty (20) days prior to the Petition Date.

9. From and after the Petition Date UFPT has continued to sell goods to Briggs & Stratton on credit pursuant to post-petition releases under the Blanket POs and under Spot POs. As of this date, UFPT is owed \$76,974.76 for goods sold and delivered to Briggs & Stratton after the Petition Date
10. I prepared the attached summary of the transactions between UFPT and Briggs & Stratton identifying the Blanket POs, Spot POs, accompanying invoicing and delivery, as well as the amount currently owed by Briggs & Stratton to UFPT.
11. Because UFPT continues to sell goods to Briggs & Stratton post-petition, the amount that Briggs & Stratton owes to UFPT increases almost daily.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2020

Ronald Lataille
Ronald Lataille

Sum of Cust. Total	Column Labels			
Row Labels	Pre-petition outside of 20 days	Pre-Petition within 20 days	Post-petition	Grand Total
Blanket POs	23,861.04	16,413.98	35,341.38	75,616.40
5502001025	3,337.24	3,729.86	785.23	7,852.33
5502002388	919.62	204.36	715.26	1,839.24
5502005924		945.00	810.00	1,755.00
5502012322	833.00	238.00	952.00	2,023.00
5502012323	352.44	117.48	469.92	939.84
5502012780	119.00	119.00	238.00	476.00
5502024435	18,299.74	11,060.28	31,370.97	60,730.99
Spot POs	22,280.49	6,506.23	41,633.38	70,420.10
4502060155	2,113.78			2,113.78
4502090829	4,941.90			4,941.90
4502093031		3,857.85		3,857.85
4502094046	3,224.06			3,224.06
4502094789	3,217.54			3,217.54
4502095294	1,992.51			1,992.51
4502097070	4,384.34			4,384.34
4502097893	2,014.20			2,014.20
4502099499	392.16			392.16
4502100229		2,080.80		2,080.80
4502100539		567.58		567.58
4502102017			4,358.78	4,358.78
4502105292			196.31	196.31
4502106451			11,947.34	11,947.34
4502107391			12,870.15	12,870.15
4502107392			3,843.00	3,843.00
4502107393			5,895.68	5,895.68
4502107394			2,522.12	2,522.12
Grand Total	46,141.53	22,920.21	76,974.76	146,036.50