

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: )
BRIGGS & STRATTON CORPORATION, et al. ) Case No. 20-43597-399
) Honorable Barry S. Schermer
) Chapter 11
Debtors. ) Jointly Administered
)
)
)

OBJECTION OF DAVIS TOOL & DIE CO., INC. AND POPLAR BLUFF
TOOL & DIE CO., INC. TO NOTICE OF CURE COSTS
AND PROPOSED ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH SALE

Davis Tool & Die Co., Inc. ("Davis Tool") and Poplar Bluff Tool & Die Co., Inc.
("Poplar Bluff Tool"), by counsel, hereby objects to the Amended Notice of Cure Costs and
Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in
Connection with Sale (the "Revised Cure Notice") [Docket No. 879], and states as follows:

PROCEDURAL AND BACKGROUND FACTS

- 1. On July 20, 2020 (the "Petition Date"), the Debtors commenced their cases under
Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") that are now pending
with this Court.
2. The Debtors' Chapter 11 cases are being jointly administered.
3. Davis Tool and Poplar Bluff Tool provide Debtors, in part, with a) components
for various molds and dies in the fabrication of certain aluminum products, b) certain molds
and dies, and c) repair work on molds and dies.
4. In connection with the work performed for the Debtors, Davis Tool and Poplar
Bluff Tool are in possession of certain molds and dies in their plants, located in Fenton, Missouri



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and Poplar Bluff, Missouri, respectively.

5. In addition, Davis Tool and Poplar Bluff Tool have purchased and is currently in possession of die tooling components, either raw materials, in process of finished tooling, which can only be used for products produced for Debtors, and are not usable for other customers.

6. Under Missouri common law, Davis Tool and/or Poplar Bluff Tool would have a workman's and artisan's lien on certain molds and dies in their possession, securing amounts owing them for any repairs and improvements made with respect to said molds and dies.

7. Previously, on August 19, 2020, Debtors filed their Notices of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale (the "Original Cure Notices") [Docket No. 514 as to Davis Tool and Docket No. 515 as to Poplar Bluff Tool].

8. On September 4, 2020, Davis Tool and Poplar Bluff Tool timely responded to the Original Cure Notices by filing their Objection to Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale [Docket No. 735] (the "Original Objection").

9. In the Original Objection, Davis Tool and Poplar Bluff Tool stated, in part, that the Debtors failed to a) adequately identify the specific contracts, b) erroneously stated the cure amount, c) failed to address and identify whether the cure amounts included post-petition amounts, d) failed to address and identify when and how the pre and post-petition cure amounts would be paid, and e) failed to provide for assumption or rejection prior to any sale closing.

10. Subsequent to the Original Cure Notices, Davis Tool and Poplar Bluff Tool provided ledgers setting forth the amounts owed pre-petition. Specifically, these ledgers confirmed that the amounts owed pre-petition amounts to Davis Tool and Poplar Bluff Tool totaled the sum of \$616,794.75 as to Poplar Bluff Tool and \$93,341.00 as to Davis Tool, which are almost the

identical amounts stated in the Original Objection. In the aggregate, these sums total \$710,135.75

11. Since the filing of the Original Objection, the Debtors filed their Revised Cure Notice which stated that the cure amounts with regard to Davis Tool and Poplar Bluff Tool are as follows:

- a) for Davis Tool, the cure amount of \$79,021.00 relating to an Inventory Management Agreement with Debtor Briggs & Stratton Corporation (“B&S”) [Document 12005]; and
- b) for Poplar Bluff Tool, the cure amount of \$634,507.75 relating to a document entitled Consignment Agreement with B&S [Document 05959].

12. In the aggregate, Debtors assert that the pre-petition amounts owed to Davis Tool and Poplar Bluff Tool total \$713,528.75, which is only about \$3,000 more than what Davis Tool and Poplar Bluff Tool assert are owed pre-petition, thereby suggesting that there may be (a) some minor reconciliations required to address the amounts owed and (b) some minor reconciliations required to establish which entity is owed the appropriate sums.

13. The Revised Cure Notice further intimates that the specified cure amounts relate to pre-petition debt, as it expressly stated that post-petition liabilities not paid as of the closing of the sale or that arise after or become due after closing will be paid by the purchaser in the ordinary course of business. (Page 3 of the Revised Cure Notice under Cure Objection).

14. On September 15, 2020, the Court entered its order approving the sale of the assets of Debtors [Docket No. 0898] (the “Sale Order”). The Sale Order also reinforces the statement that post-petition liabilities will be paid by the purchaser as stated above.

15. While Debtors have addressed some of the concerns of Davis Tool and Poplar Bluff Tool, not all of them have been addressed and resolved. More specifically, there remains the reconciliation of the total amounts due for the pre-petition cure sums and the allocation between

the two affiliated entities. These sums are in addition to the substantial post-petition amounts that are due (which amounts fluctuate daily). These sums as of about September 4, 2020 were identified in the Original Objection, namely, approximately \$779,000 owed to Poplar Bluff Tool for post-petition invoices, along with approximately \$784,000 of tooling in process or finished as to Davis Tool and approximately \$784,000 of tooling in process or finished as to Poplar Bluff Tool. Davis Tool and Poplar Bluff Tool, consistent with the statements in the Revised Cure Notice and Sale Order, would fully expect that these post-petition amounts, as changed daily based on continuing work, orders and payments, would be paid in accordance with their agreements with Debtors and now the purchaser.

16. This Objection shall not constitute or be deemed a waiver or any limitation of (a) Davis Tool and Poplar Bluff Tool's rights under the Bankruptcy Code, any other applicable non-bankruptcy law, (b) their construction of the legal import of any agreements with Debtors, or (c) a waiver of any claims or causes of action which may exist against the Debtors and/or the molds and dies.

WHEREFORE, Davis Tool and Poplar Bluff Tool respectfully request that this Court enter an Order:

- A. Denying approval of the Revised Cure Notice in its present form;
- B. Requiring as a condition to the Debtors' assumption and/or assignment of their contracts that all pre-petition amounts owing to Davis Tool and Poplar Bluff Tool be paid prior to assumption;
- C. Requiring that Debtors reconcile further the amounts owed pre-petition as stated above and that they pay, at a minimum, the sum of \$710,135.75 in the aggregate to Davis Tool and Poplar Bluff Tool prior to assumption;

- D. Requiring an acknowledgement from Debtors and purchaser that the post-petition amounts will be paid when due and owing in accordance with the agreement of the parties or as otherwise required by applicable law; and
- E. Requiring such other relief as may be just and proper.

Respectfully Submitted,

Date: September 17, 2020

SUMMERS COMPTON WELLS LLC

By /s/ David A Sosne

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was filed electronically on (date) with the United States Bankruptcy Court for the Eastern District of Missouri and has been served on the parties in interest via e-mail by the Court's CM/ECF System as listed on the Court's Electronic Mail Notice List.

September 17, 2020

/s/ Christina Hauck