

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

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

**OBJECTION OF JONES PLASTIC & ENGINEERING COMPANY, LLC
TO AMENDED NOTICE OF CURE COSTS AND PROPOSED ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH SALE**

Jones Plastic & Engineering Company, LLC (“Jones”), 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 “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. Jones is a plastic injection molding company whose corporate offices are located in Louisville, Kentucky.
4. Jones has performed plastic injection molding work for one or more of the Debtors since approximately 2009, utilizing Debtors’ molds, dies, forms and/or patterns (collectively, the



“Molds”) at both its Kentucky and Tennessee locations.

5. In connection with the work performed for the Debtors, Jones is in possession of the Molds. Some of the Molds are located in Kentucky, and some are located in Tennessee.

6. In addition, Jones has purchased and is currently in possession of raw materials which can only be used for products produced for Briggs, and are not usable for Jones’ other customers.

7. Under both Kentucky and Tennessee law (KRS 376.435(3) and TC 66-18-102, respectively), Jones has a statutory molder’s lien on all Molds in its possession, securing all amounts owing it for Debtors’ fabrication work and the value of raw materials related to such work.

8. Under the Purchase Terms Agreement entered into by Jones and the Debtors dated as of May 17, 2019, Jones is entitled to retain possession of the Molds until the Debtors request the return thereof. Upon such request, and provided Debtors are current on their invoices from Jones, Jones is required to return the Molds to Debtors within thirty (30) days.

9. Briggs is not current on its invoices from Jones, and owes Jones \$265,324.00 on delinquent prepetition invoices.

10. In addition, as of September 14, 2020, the post-petition debt owed by the Debtors to Jones under the Purchase Terms Agreement is \$46,941.77. Briggs also owes Jones \$37,460.00 for finished goods; \$143,704.00 for purchased components; and \$125,989.00 for raw materials on order.

11. The total amount owing Jones as of September 14, 2020 is \$618,419.50.

12. On July 20, 2020, the Debtors filed a motion [Docket No. 53] (the “Sale Motion”), seeking entry of an order: (a) establishing certain bidding procedures and procedures for the assumption and assignment of contracts (the “Assumption and Assignment Procedures”) in

connection with the sale of substantially all of the Debtors' assets (the "Sale"); and (b) authorizing the Sale, and authorizing the assumption and assignment of proposed assumed contracts in connection therewith (the "Assumption and Assignment Procedures"), and granting related relief.

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

14. In accordance with the Assumption and Assignment Procedures, on August 19, 2020, the Debtors filed the Cure Notice [Docket No. 514].

15. Attached as Exhibit "A" to the Cure Notice [Docket No. 514] is a list of the Debtors' contracts and unexpired leases which the Debtors may seek to assume and assign in connection with the sale of substantially all of the Debtors' assets, and the cure amounts that the Debtors propose to pay to contract counter-parties, such as Jones, in connection with the assumption/assignment thereof.

16. Exhibit "A" to the Cure Notice [Docket No. 514] (pages 91 and 92) lists Jones as the counter-party to the following twenty (20) contracts with Briggs & Stratton Corporation, with a proposed cure amount of \$0:

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|-----|----------------|----------------------------|
| (A) | Document 00406 | Term Agreement |
| (B) | Document 18659 | Tooling Products Agreement |
| (C) | Document 18653 | Tooling Products Agreement |
| (D) | Document 18656 | Tooling Products Agreement |
| (E) | Document 05595 | Tooling Products Agreement |
| (F) | Document 05594 | Tooling Products Agreement |
| (G) | Document 05593 | Confidentiality Agreement |

(H)	Document 05592	Confidentiality Agreement
(I)	Document 05596	Tooling Products Agreement
(J)	Document 05598	Bailment Agreement
(K)	Document 05599	Tooling Products Agreement
(L)	Document 05597	Tooling Products Agreement
(M)	Document 05600	Confidentiality Agreement
(N)	Document 11788	Tooling Products Agreement
(O)	Document 11787	Tooling Products Agreement
(P)	Document 12113	Tooling Products Agreement
(Q)	Document 12112	Confidentiality Agreement
(R)	Document 12111	Confidentiality Agreement
(S)	Document 14099	Confidentiality Agreement
(T)	Document 02554	Tooling Products Agreement

17. In addition, Exhibit “A” to the Cure Notice [Docket No. 514] (pages 91 and 92) lists Jones as the counter-party to one (1) additional contract with Briggs & Stratton Corporation, with a proposed cure amount of \$376,419.33: Document 00593 - Term Agreement.

18. Upon receipt of the Cure Notice, Jones requested from Debtors’ counsel copies of all executory contracts with Jones which are listed on Exhibit “A” to the Cure Notice, as contracts which the Debtors may seek to assume and assign in connection with the Sale.

Counsel for the Debtors responded by email to Jones’ counsel that:

“Due to limitations in the Company’s contracts database system, there’s not an easy way to tell which contracts have are active and which are not. As a result, we have gone through the contracts listed in the Cure Notice. The Company believes that the attached contracts are the currently active contracts. I’ve also attached an excel to map the document number listed in the Cure Notice to the document number listed in the file names.”

19. Further, instead of providing copies of the twenty (20) contracts listed on Exhibit “A” to the Cure Notice, Counsel for the Debtors provided Jones’ counsel with only four (4) contracts which the Debtors may assume and assign in connection with the Sale:

(A)	Document 20704235	Term Agreement
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- (B) Document 21265892 Term Agreement
- (C) Document 9026916 Bailment Agreement
- (D) Document 20129780 Tooling Products Agreement.

20. Because the information contained on Exhibit “A” to the Cure Notice is inconsistent with information subsequently provided to Jones by Debtors’ counsel, Jones is unable to determine with certainty which contracts the Debtors may assume and assign in connection with the Sale.

21. On September 14, 2020, Debtors filed their Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale (the “Amended Cure Notice”) (Docket No. 879). Attached to the Amended Cure Notice is Exhibit B, which reduces the cure costs debtors claim are owing to Jones. The Amended Cure Notice also provides that the cure amount of \$280,692.19 set forth in Exhibit B is the only amount which must be paid to Jones to cure outstanding defaults.

22. In addition, under both the Bidding Procedures Order and the Cure Notice, the Debtors are permitted to continue making assumption and assignment decisions with respect to certain contracts following closing of the Sale. (*See* Bidding Procedures Order at page 20 and Cure Notice at page 5.)

23. The deadline for filing objections to proposed cure amounts set forth in the Amended Cure Notice is September 21, 2020 at 5:00 p.m. (prevailing Central Time).

DISCUSSION

24. At a minimum, Debtors should be required to pay Jones \$265,324.00, which represents delinquent amounts owing on prepetition invoices prior to assumption of the Purchase

Terms Agreement dated as of May 17, 2019, plus interest at the legal rate, as well as all amounts owing Jones for finished goods and raw materials on hand on the Petition Date. In addition, Debtors should be required to pay all post-petition invoices owing to Jones on or before their due date, as required under the terms of the Purchase Terms Agreement dated as of May 17, 2019.

RESERVATION OF RIGHTS

Jones' objection shall not constitute or be deemed a determination or admission by Jones that the Purchase Terms Agreement and/or any other Agreements listed on Exhibit A to the Cure Notice and Exhibit B to the Amended Cure Notice are executory contracts within the meaning of the Bankruptcy Code. Jones reserves all of its rights and claims with respect to all such agreements. Further, nothing contained herein shall be deemed a waiver or any limitation of (a) Jones' rights under the Bankruptcy Code, any other applicable non-bankruptcy law, or (b) a waiver of any claims or causes of action which may exist against the Debtor and/or the Molds.

WHEREFORE, Jones respectfully requests that this Court enter an Order:

- A. Denying approval of the Amended Cure Notice in its present form;
- B. Requiring, as condition to the Debtors' assumption and/or assignment of its contracts with Jones, that the Debtors amend the Amended Cure Notice to specifically define which contracts they may seek to assume and assign;
- C. Requiring, as a condition to the Debtors' assumption and/or assignment of its contracts with Jones, that Jones be provided adequate assurance of future performance, including without limitation, preservation and enforcement of its molder's lien;
- D. Requiring, as a condition to the Debtors' assumption and/or assignment of its

contracts with Jones, that all pre-petition amounts owing to Jones be paid to Jones prior to assumption of the Purchase Terms Agreement dated as of May 17, 2019, and that all post-petition invoices owing to Jones be paid on or before their due date; and

E. Granting such other and further relief as is equitable and just.

Respectfully Submitted,

Date: September 18, 2020

SUMMERS COMPTON WELLS LLC

By /s/ David A Sosne
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For Information Purposes Not Presently Pro Hac Vice Admitted
Co-Counsel of Jones Plastic and Engineering Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via electronic filing in the CM/ECF system of the United States Bankruptcy Court for the Eastern District of Missouri to the parties requesting service by electronic filing.

September 18, 2020

 /s/ David A. Sosne