

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

BRIGGS & STRATTON CORPORATION,
et al.,

Debtors.

Case No. 20-43597-399
(Jointly Administered)

**RENEWED LIMITED OBJECTION OF MSC INDUSTRIAL SUPPLY CO.
TO AMENDED NOTICE OF POTENTIAL ASSUMPTION OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AND CURE AMOUNTS**

MSC Industrial Supply Co., Inc. ("MSC"), a counter-party to an executory contract listed in the *Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection with Sale [Docket No 879]* (the "Amended Cure Notice") as one that may be assumed and assigned in connection with the Sale Transaction¹, hereby objects to the amount of the proposed Cure Costs to be paid to MSC upon assumption pursuant to 11 U.S.C. § 365 as follows:

1. On July 20, 2020 (the "Petition Date"), the Debtors commenced these jointly administered cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").
2. As of the Petition Date, MSC and the debtor, Briggs & Stratton Corporation ("Debtor"), were parties to a Supply Agreement dated as of November 1, 2010, as amended by the First Amendment to Supply Agreement (the "Supply Agreement"). Pursuant to the Supply Agreement, MSC agreed to sell various general industrial supplies (the "Products") to the Debtors in exchange for payment, as invoiced by MSC.

¹ Capitalized terms not herein defined shall have the meanings ascribed in the Amended Cure Notice.



3. As of the Petition Date, the Debtor had accrued an obligation to MSC under the Supply Agreement in the ordinary course of the parties' business of **\$303,528.86** on account of Products sold to the Debtor, but not paid for. A summary of the invoices giving rise to this prepetition claim, copies of which have previously been provided to the Debtor, is evidenced by MSC's timely filed proof of claim, assigned Claim No. 293 ("Claim").

4. In the Amended Cure Notice, the Debtor indicates that the Supply Agreement is among those executory contracts and unexpired leases that is subject to potential assumption by the Debtor and assignment to the highest bidder in connection with the Sale Transaction in progress. In the Amended Cure Notice, however, the proposed "cure" payment is not equal to the Claim, but is proposed in the lower amount of \$83,479.56 ("Amended Proposed Cure").

5. Nonetheless, 11 U.S.C. § 365(b)(1) states, in pertinent part:

(b)(1) 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; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). A cure under 11 U.S.C. § 365 means that all unpaid amounts due under the agreement have been paid. *In re Network Access Solutions, Corp.*, 330 B.R. 67, 76 (Bankr. D. Del. 2005).

6. While MSC does not object to the proposed assumption and assignment of the Supply Agreement generally, MSC submits that assumption of the Supply Agreement under 11 U.S.C. 365 must be conditioned on the timely payment to MSC of Cure Costs in the amount of the Claim, *plus* any post-petition invoices that remain outstanding as of the time of assumption (the "MSC Cure").

HOLLAND & KNIGHT LLP

/s/ Lynne B. Xerras

Lynne B. Xerras, Esq. (Mass. Bar. 632441)

Pro Hac Vice Pending

10 St. James Avenue

Boston, MA 02116

Telephone: (617) 523-2700

lynne.xerras@hklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2020, a true and correct copy of the above and foregoing was served by the method or methods specified below:

 X by electronically filing with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

 X by U.S. Mail, postage prepaid, to the following:

Kathryn M. Buono, Esq. BRIGGS & STRATTON CORPORATION 12301 West Wirth Street Wauwatosa, WI 53222	Sirena T. Wilson Office of the U.S. Trustee 111 South 10th Street, Suite 6.353 St. Louis, MO 63102
Chad Husnick, Gregory F. Pesce KIRKLAND & ELLIS LLP 300 N. LaSalle Chicago, IL 60654	Jeffrey B. Jensen U.S. Attorney's Office, Eastern District MO 111 S. 10th Street, 20th Floor St. Louis, MO 63102
Ronit J. Berkovich, Debora A. Hoehne, Esq., Martha E. Martir, WEIL GOTSHAL & MANGES LLP 767 Fifth Avenue New York, NY 10053	Robert J. Stark, Iksana P. Lashko, Andrew Carty BROWN RUDNICK LLP Seven Times Square New York, NY 10036
Robert E. Eggmann, Christopher J. Lawhorn, Thomas H. Riske CARMODY MACDONALD P.C. 120 S. Central Avenue, Suite 1800 St. Louis, MO 63105	Peter P. Knight, Jonathan C. Gordon LATHAM & WATKINS LLP 330 North Wabash Avenue, Suite 2800 Chicago, IL 60611
Seth H. Lieberman, David W. Smith PRYOR CASHMAN LLP 7 Times Square New York, NY 10036	

/s/ Seth A. Albin