

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In Re:

BRIGGS & STRATTON
CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 20-43597-339

Jointly Administered

LIMITED OBJECTION AND RESERVATION OF RIGHTS

Ace Hardware Corporation (“Ace”), by and through its counsel, hereby limitedly objects and reserves its rights to the Briggs & Stratton Corporation and its affiliates’ (the “Debtor”) *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (the “Cure Notice”) (See. Docket No. 513), and sets forth the following:

BACKGROUND

1. The Debtors filed a Chapter 11 Voluntary Bankruptcy Petition on July 20, 2020 in the United States Bankruptcy Court of the Eastern District of Missouri.

2. Ace and the Debtor have numerous contracts that constitute the agreements between them. These agreements shall be referred to as “the Vendor Agreements,” and they include and are governed by, but are not limited to, rebate agreements, new store allowance program agreements, the electronic data interchange agreements, the marketing agreement, the Ace vendor manual, as may be modified from time to time, purchase orders, vendor indemnity agreement, and sales agreements.

3. The *Motion of Debtors for Entry of an Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C)*



Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Hearing, and (E) Assumption and Assignment Procedures; and (II) Authorizing (A) Sale of Debtors Assets and Equity Interest Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief (the “Sale Motion”) was filed by the Debtors on July 20, 2020. Refer to Docket No. 53.

4. This Court entered an Order approving the following: bidding procedures, scheduling of sales hearing, the assignment and assumption procedures, and Stalking Horse designation on August 19, 2020. Refer to Docket No. 505.

5. The Debtors filed a Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases (the “Cure Notice”) on August 19, 2020. Refer to Docket No. 513-516.

6. On September 21, 2020, the Debtors filed a *Second Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (the “Second Amended Cure Notice”) that extended the deadline for Cure Objections, Adequate Assurance Objections, and Assumption and Assignment Objections to September 29, 2020 at 5:00 PM Central Time. Refer to Docket No. 965.

7. The Exhibits to the Cure Notice include contracts that the Debtors may assume or assign to a potential buyer. The Exhibits also include each contract’s respective cure amount if the proposed assumption or assignment were to occur.

8. Exhibit A to the Cure Notice of Docket No. 513 on page 7 of 94 lists several Ace Hardware Corporation contracts with the Debtor that have a cure amount of \$0:

- a. Ace Hardware Corporation Direct; Description: Notice (Document_23930)
- b. Ace Hardware Corporation Direct; Description: Sales Agreement
Document_24505)

9. Exhibit A to the Cure Notice of Docket No. 513 on page 7 of 94 lists only one contract between Ace Hardware Corporation and the Debtor for a Sales Agreement with a cure amount of \$237.04.

10. As noted, numerous agreements constitute the business relationship between Ace and the Debtor. Debtor only referred to one such agreement in arriving at its calculation of the Cure Notice. The Vendor Agreements, however, contain numerous other obligations of the Debtor to Ace.

11. By reason of these Vendor Agreements, the Debtor has accrued Cure Amounts owing to Ace in the approximate amount of \$210,955.00. The Cure Amount includes a projected estimate amount of \$176,155.00 due in October for rebates incurred in 3Q 2020. Note, this projected amount is subject to change as 3Q has not been complete as of the date of this filing. Additionally, the Cure Amount includes \$34,600.00 based on the projected amounts owed for September and is subject to change as September has not been complete as of the date of this filing. The total approximate Cure Amount of \$210,955.00 is also subject to change as it may not include all charges for orders made in September or for in process orders that existed as of and after September 24, 2020.

12. For illustration purposes on the breakdown of how these Cure Amounts arise, a 'picture-in-time' spreadsheet is attached as **EXHIBIT 1**, hereto. It illustrates the accrual of payments by Ace to Debtor and corresponding credits owed by Debtor to Ace for the past three (3) months, as well as projections for the current period, and estimates on a 'go-forward' basis.

13. The Cure Amounts owed to Ace include, but are not limited to, rebates, new store allowances, savings, and discounts. Additionally, Cure Amounts are owed by reason of OTIF (On Time, In Full Orders) obligations, as well as show booth fees arising from Debtor's involvement with Ace's annual conventions.

14. Ace and Debtor have continued their business transactions as agreed upon by their Vendor Agreements throughout the pendency of this bankruptcy case.

15. Ace does not object to the Debtor's assumption and assignment of its Vendor Agreements. However, Ace objects to the stated Cure Amounts of \$0 and \$237.04, and the assumption of only one contract when all contracts that comprise the Vendor Agreements must be assumed in order for the Debtor, or its designee by virtue of a sale, to maintain the relationship.

16. This Limited Objection is not a waiver or release of Ace's rights under any of its contracts.

WHEREFORE, Ace is filing this Limited Objection and Reservation of Rights to the above-mentioned Cure Notice. Ace objects to the assumption and assignment of Ace's contracts in accordance with the stated Cure Amounts. Ace requests that all agreements between the Debtor and Ace be assumed, to reflect the agreements between the parties, and to adjust the stated Cure Amounts to the amount of not less than \$210,955.00, plus such Cure Amounts that then accrue as of both the Sale and Closing Date, and to also include Cure Amounts for orders and charges in process as of and after September 24, 2020 in the event of an assumption or assignment of the contracts. Further, Ace reserves the right to object to the Debtor's Assumption and Assignment of the Contracts if an agreement is not reached as to any proposed Cure Amount that Debtor may offer.

Dated: September 29, 2020

Respectfully Submitted,

ACE HARDWARE CORPORATION

By: /s/ Kurt M. Carlson

Kurt M. Carlson,
One of its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on this 29th day of September, 2020, a true and correct copy of the above and foregoing **LIMITED OBJECTION AND RESERVATION OF RIGHTS** 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 e-mail and U.S. Mail, postage prepaid, to the following:

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/s/ Kurt M. Carlson

EXHIBIT 1

Briggs & Stratton Activity Post Bankruptcy Petition - 07/20/2020 - 09/24/2020

Category	Sub-Category	Based on actual activity per A/P Vendor Account				
		Year/month				
Invoice	Dropship Warehouse	2020/07	2020/08	2020/09	Grand Total	
		(62,462.51)	(80,062.73)	(322,774.24)	(465,299.48)	
		(5,040.93)	(187,816.80)	(541,276.13)	(734,133.86)	
Invoice Total		(67,503.44)	(267,879.53)	(864,050.37)	(1,199,433.34)	
Deductions	Damaged goods-Warehouse	247.71	102.30	247.71	597.72	
	Defective Claim		206.02	887.59	1,093.61	
	Defective Policy		377.19	445.10	822.29	
	Instant Savings		486.00	648.00	1,134.00	
	New Store Allowance	22,826.74	18,601.79	12,597.38	54,025.91	
	OTIF		36,993.47		36,993.47	
	Post Audit Claim		166.93		166.93	
	Pricing Discrepancy		246.42	1,790.88	2,037.30	
	Quantity Discrepancy		562.43	3,477.03	4,039.46	
	Quantity Discrepancy Repayment		(1,162.76)	(15,265.15)	(16,427.91)	
	Rebate - International - 2% Drop Ship Only		2,900.95		2,900.95	
	Rebate - 1% TGA (Warehouse & dropship)		19,950.36		19,950.36	
	Rebates - 2% ADV (Warehouse only))		37,751.76		37,751.76	
	Rebates - 2% CERT (Dropship only)		2,137.99		2,137.99	
	Rebates - 2% GEN (Warehouse only)		37,786.02		37,786.02	
	Rebates - Engine - (paid by check)	209,814.35			209,814.35	
	Show Booth Fees		7,000.00		7,000.00	
	Traffic Fines - Direct Shipment		95.85		95.85	
Deductions Total		232,888.80	164,202.72	4,828.54	401,920.06	
Payments	(blank)	15,933.18	675,573.05	1,047,390.38	1,738,896.61	
Payments Total		15,933.18	675,573.05	1,047,390.38	1,738,896.61	

Estimate of Amounts Owed to Ace Remainder of Year					Grand Total - Post Petition Date of 7/20/20
2020/10	2020/11	2020/12	Total Estimate		
			-	(465,299.48)	
			-	(734,133.86)	
			-	(1,199,433.34)	
200.00	200.00	200.00	600.00	1,197.72	
400.00	400.00	400.00	1,200.00	1,093.61	
28,700.00	17,000.00	11,500.00	57,200.00	2,022.29	
5,300.00	5,300.00	5,300.00	15,900.00	1,134.00	
			-	111,225.91	
			-	52,893.47	
			-	166.93	
			-	2,037.30	
			-	4,039.46	
			-	(16,427.91)	
2,000.00			2,000.00	4,900.95	
14,920.00			14,920.00	34,870.36	
25,869.00			25,869.00	63,620.76	
7,471.00			7,471.00	9,608.99	
25,895.00			25,895.00	63,681.02	
100,000.00			100,000.00	309,814.35	
200.00	200.00	200.00	600.00	7,000.00	
210,955.00	23,100.00	17,600.00	251,655.00	695.85	
			-	653,575.06	
			-	1,738,896.61	
			-	1,738,896.61	

The highlighted column indicates the itemization for the approximate Cure Amount.