

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
	§	Case No. 20-43597-399
BRIGGS & STRATTON	§	
CORPORATION, et al.,	§	(Jointly Administered)
	§	
Debtors.	§	

DEBTORS' MOTION FOR AN ORDER
(I) EXTENDING THE DEADLINE BY WHICH THE DEBTORS
MAY REMOVE CIVIL ACTIONS, AND (II) GRANTING RELATED RELIEF

Briggs & Stratton Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Background

1. On July 20, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On August 5, 2020, the United States Trustee appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”). No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.



2. On the Petition Date, the Debtors filed 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 Sale Hearing, and (E) Assumption and Assignment Procedures; (II) Authorizing (A) Sale of Debtors' Assets and Equity Interests 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* [Docket No. 53]. On August 19, 2020, the Court entered an order [Docket No. 505] (the “Bidding Procedures Order”) that, among other things, approved bidding procedures in connection with the sale of the Debtors’ assets, scheduled an auction to take place on September 1, 2020, and scheduled a sale hearing for September 15, 2020. On September 15, 2020, the Court entered an order authorizing the Debtors to sell substantially all of their assets¹ to Bucephalus Buyer, LLC. On September 21, 2020, the Debtors closed the sale transaction. The Debtors continue to honor their post-closing sale obligations, wind down their estates, and otherwise conclude these chapter 11 cases.

3. Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors’ Chapter 11 Petitions and First Day Relief* [Docket No. 51] (the “**Ficks Declaration**”).²

¹ *Order (I) Authorizing the Sale of the Assets and Equity Interests to the Purchaser Free and Clear of Liens, Claims, Interests, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 898].

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration

Jurisdiction

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

5. By this Motion, the Debtors seek entry of an order (the “**Proposed Order**”)³ pursuant to 28 U.S.C. § 1452, Bankruptcy Rules 9006(b) and 9027, and Local Rule 9006, (i) extending the deadline by which the Debtors may file notices of removal under Bankruptcy Rule 9027(a) (the “**Removal Deadline**”) by 120 days to February 16, 2021, from the current deadline of October 19, 2020, and (ii) granting related relief.

Relief Requested Should Be Granted

6. Bankruptcy Rule 9027 and 28 U.S.C. § 1452 govern the removal of pending civil actions. Specifically, section 1452(a) provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

7. Bankruptcy Rule 9027(a)(2) further provides, in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the [Bankruptcy] Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the

³ Copies of the Proposed Order will be made available on the Debtors’ case information website at <http://www.kccllc.net/Briggs>.

[Bankruptcy] Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Bankruptcy Rule 9027(a)(2).

8. With respect to post-petition actions, Bankruptcy Rule 9027(a)(3) provides that a notice of removal may be filed:

only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

Bankruptcy Rule 9027(a)(3).

9. Bankruptcy Rule 9006(b) provides that the court may extend unexpired time periods, such as the Debtors' removal period, without notice:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order . . .

Bankruptcy Rule 9006(b)(1).

10. It is well-settled that this Court is authorized to extend, for cause, the removal period provided under 28 U.S.C. § 1452 and Bankruptcy Rule 9027. *See Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984), *overruled on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 134-35 (1995) (holding that the bankruptcy court's power to grant an extension of the removal period pursuant to Bankruptcy Rule 9006(b) is "clear"); *see also Caperton v. A.T. Massey Coal Co., Inc.*, 251 B.R. 322, 325 (S.D. W. Va. 2000) (explaining that Bankruptcy Rule 9006 provides authority to enlarge time periods for removing actions under Bankruptcy Rule 9027); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (finding that an

expansion of time to file notices of removal is authorized under the Bankruptcy Rules); *In re World Fin. Servs. Ctr., Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (providing that the United States Supreme Court intended to give bankruptcy judges the power to enlarge the filing periods under Bankruptcy Rule 9027(a) pursuant to Bankruptcy Rule 9006(b)).

11. Cause exists to extend the Removal Deadline in these chapter 11 cases from October 19, 2020 through and including February 16, 2021. Since the Petition Date, the Debtors have focused their efforts on implementing their chapter 11 strategy designed to maximize value for all of the Debtors' stakeholders. The Debtors have worked diligently to: among other things, (i) stabilize and transition their operations into chapter 11 following the Commencement Date; (ii) obtain the Court's approval of their debtor-in-possession financing; (iii) execute the sale process, including negotiating a global settlement with the Creditors' Committee, the Debtors' prepetition and postpetition lenders, the Pension Benefit Guaranty Corporation (the "**PBGC**"), and the Purchaser resolving, among other things, the Creditors' Committee's and PBGC's objections to the sale and the PBGC's claims against the Debtors and paving the path for the ultimate resolution of these chapter 11 cases; (iv) prepare and file their schedules of assets and liabilities and statements of financial affairs (collectively, the "**Schedules**"), and (v) draft their chapter 11 plan and disclosure statement, which they are currently doing.

12. The Debtors are party to certain civil actions (collectively, the "**Civil Actions**"). Given the Debtors' focus to date, the Debtors have not yet decided whether it is appropriate to file notices of removal with respect to any of the Civil Actions. Therefore, the Debtors believe that it is prudent to seek an extension of the time prescribed under Bankruptcy Rule 9027(a), through and including February 16, 2021, to protect their right to remove those Civil Actions if they deem it to be appropriate. The extension sought will afford the Debtors a

reasonable additional amount of time to make well-informed decisions concerning removal of the Civil Actions and will ensure that the Debtors do not forfeit valuable rights under 28 U.S.C. § 1452. Absent the requested extension, the Debtors will not be able to complete this review adequately and the result could, among other things, unnecessarily hinder the Debtors' ability to recover assets for the benefit of their estates. Further, the rights of the Debtors' adversaries will not be prejudiced by such an extension because any party to an action that is removed may seek to have the action remanded to the state court pursuant to 28 U.S.C. § 1452(b).

13. The Debtors further request that the order approving this Motion be without prejudice to (a) any position the Debtors may take regarding whether section 362 of the Bankruptcy Code applies to stay any given Civil Action pending against the Debtors, and (b) the right of the Debtors to seek further extensions of the Removal Deadline.

14. For the reasons stated above, the Debtors submit that the relief requested herein is appropriate and in their best interests, as well as in the best interests of their estates and creditors.

Notice

15. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri; (ii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to JPMorgan Chase Bank, N.A., as the administrative agent and collateral agent under the ABL Credit Facility and DIP Facility; (iv) Pryor Cashman LLP (Attn: Seth H. Lieberman, Esq. and David W. Smith, Esq.), as counsel to Wilmington Trust, N.A., as successor indenture trustee under the Unsecured Notes; (v) the United States Attorney's Office for the Eastern District of Missouri; (vi) Brown Rudnick LLP

(Attn: Robert J. Stark, Esq. and Osaka P. Lashko, Esq.), as counsel to the Creditors' Committee; (vii) any other party that has requested notice pursuant to Bankruptcy Rule 2002; (viii) the non-Debtor parties to the Civil Actions; and (ix) any other party entitled to notice pursuant to Local Rule 9013-3(E) (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(E)(1).

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: September 30, 2020
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

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