

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)

**LIMITED OBJECTION OF FR GEORGIA, LLC TO THIRD AMENDED NOTICE  
OF CURE COSTS AND PROPOSED ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
IN CONNECTION WITH SALE**

FR Georgia, LLC (“FRG”), a counter-party to an unexpired lease listed in the Third Amended *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection with Sale [Docket No 1040]* (the “Third Amended Cure Notice”) as one that may be assumed and assigned in connection with the Sale Transaction<sup>1</sup>, hereby objects to the amount of the proposed Cure Costs to be paid to FRG 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, FRG and the debtor, Briggs & Stratton Corporation (“Debtor”), were parties to a Standard Form Industrial Building Lease dated as of December 15, 2019, as amended by the First Amendment to Lease Agreement (the “Lease Agreement”). Pursuant to the Lease Agreement, FRG agreed to lease commercial real estate and building commonly known as 5356 E Ponce de Leon, Stone Mountain, Georgia 30083 (the “Factory”) to the Debtors in exchange for payment.

<sup>1</sup> Capitalized terms not herein defined shall have the meanings ascribed in the Third Amended Cure Notice.



3. As of the Petition Date, the Debtor had allowed, in violation of the terms of the Lease Agreement, multiple parties to assert mechanic's liens against the Factory in the total amount of **\$93,445.00** for work done that the Debtor failed to pay ("Lien Amount").

4. Pursuant to the Lease Agreement and Georgia law, FRG is entitled to receive its attorney's fees and costs to deal with the removal of the mechanic's liens. To date FRG has incurred attorney's fees and costs in the amount of \$10,503.00 (*See* Claim Number 1621) ("FRG Attorney Fees").

5. In addition, the Debtor has accrued a Post-Petition obligation to FRG in the amount of \$9,457.29 for unpaid fees and expenses under the Lease Agreement (*See* Claim Number 1618) ("FRG Claim"). This amount will increase significantly as of November 1, when rent and other expenses become due.

6. In the Third Amended Cure Notice, the Debtor indicates that the Lease 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 Third Amended Cure Notice, however, the proposed "cure" payment is listed as \$4,694.69 and the Third Amended Cure Notice is silent as to how the Debtors will cure the Lien Amount. Under the terms of the Lease Agreement, the Lien Amount needs to be paid before any assumption of the Lease Agreement may take place.

7. 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).

8. While FRG does not object to the proposed assumption and assignment of the Lease Agreement generally, FRG submits that assumption of the Lease

9. Agreement under 11 U.S.C. 365 must be conditioned on the timely payment of the Lien Amount, FRG Claim, and FRG Attorney's Fees *plus* any post-petition invoices (including but not limited to post-petition rent and expenses) that remain outstanding as of the time of assumption (the "FRG Cure").

10. Prior to the filing of this Objection, FRG provided detail in support of the Lien Amount and FRG Cure to counsel at Weil Gotshal & Manges, LLP for internal review by the Debtor and its professionals. As it appears that the Debtor has not yet completed that reconciliation, FRG files this Limited Objection out of an abundance of caution, in order to preserve its right to seek full payment of the FRG Cure amount through the contract assumption process.

11. The filing of this Objection to Cure Amount shall neither: (i) waive or release any rights of FRG against any Debtor or any other entity or person; nor (ii) elect a remedy which waives or otherwise affects any other remedy of FRG.

12. FRG reserves the right to supplement this Objection if it discovers any further amounts due and owing, including, but not limited to, accruing, unpaid post-petition obligations arising under the Lease Agreement.

WHEREFORE, FR Georgia, LLC hereby respectfully requests that this Court enter an order conditioning assumption of the Lease Agreement on payment of the FRG Cure, and granting such other relief as is just and proper.

Dated: October 16, 2020

Respectfully submitted,

ALBIN LAW

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of October, 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:

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/s/ Seth A. Albin