

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

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BRIGGS & STRATTON CORPORATION, <i>et al.</i> ,	:	
Debtors.	:	Chapter 11
	:	
	:	Case No. 20-43597-399
BRIGGS & STRATTON CORPORATION, <i>et al.</i> ,	:	
Movant,	:	Hearing Date: November 18, 2020
	:	Hearing Time: 10:00 A.M.
v.	:	Objection Deadline: November 11,
	:	2020
UNITED STEELWORKERS	:	
Respondent.	:	

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**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF UNITED
STEELWORKERS TO DEBTORS' FIRST OMNIBUS MOTION TO AUTHORIZE
REJECTION OF EXECUTORY CONTRACTS AND ABANDONMENT OF PROPERTY**

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") submits this limited objection and reservation of rights with respect to the October 31, 2020 First Omnibus Motion of Debtors (I) Authorizing (A) Rejection of Certain Executory Contracts and Unexpired Leases and (B) Abandonment of Property In Connection Therewith; and (II) Granting Related Relief [Dkt. No. 1184] (the "Motion").

BACKGROUND

USW is the collective bargaining representative of employees of debtor Briggs & Stratton Corp. ("Briggs") at facilities around Milwaukee, Wisconsin. USW and Briggs were parties to a series of collective bargaining agreements ("CBAs") establishing terms and conditions of employment for Briggs' USW-represented employees from at least 1983 and continuing through 2017.

The last agreed-upon CBA expired on July 31, 2017. After the parties failed to reach agreement upon a successor contract, Briggs implemented the terms and conditions of its last offer in those negotiations, notifying USW of its decision to implement by letter dated May 24, 2018. During these bankruptcy proceedings, Briggs and USW reached an agreement concerning the effects of the sale of Briggs' assets. USW has also reached a collective bargaining agreement with Bucephalus Buyer, LLC, purchaser of Briggs' assets and successor employer of Briggs' former USW-represented employees.

OBJECTION AND RESERVATION OF RIGHTS

The Motion seeks authority to reject a "Closing Statement" dated August 19, to which USW is a counterparty and which is listed on page 46 of Exhibit A to the motion as contract number 39927. USW is not aware of any collective bargaining agreement or any executory contract currently in force between USW and Briggs, and accordingly believes there is no such contract to reject. USW believes this is a misunderstanding and has reached out to Debtors' counsel to resolve this matter, but files this objection to preserve its rights subject to confirmation of Debtors' intentions with respect to the Closing Statement.

First, if the "Closing Statement" is a collective bargaining agreement, Briggs may not reject it without following the procedures and meeting the substantive standards of Section 1113 of the Bankruptcy Code. *See* 11 U.S.C. Section 1113(a) ("The debtor in possession... may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.") *Chicago Dist. Council of Carpenters Pension Fund v. Cotter*, 914 F. Supp. 237, 242 (N.D. Ill. 1996) (Section 1113 makes clear, however, that collective bargaining agreements cannot be rejected through Section 365."); *see also In re Ala. Symphony Ass'n*, 155 B.R. 556, 571 (Bankr. N.D. Ala. 1993) ("... a CBA cannot be rejected under Section 365."), *rev'd on other grounds*, 211 B.R. 65 (N.D. Ala. 1996). Second, if by the Motion Briggs instead intends to ask the Court for authority to modify terms and conditions of employment that remain in place after expiration of a collective bargaining agreement, this is a statutory

obligation, not a contractual one subject to rejection under Code Section 1113 or any other Code provision. *See Gloria Mfg. Corp. v. ILGWU*, 734 F.2d 1020, 1022 (4th Cir. 1984) (citing 2 COLLIER ON BANKRUPTCY ¶ 365.02 (15th ed. 1981)); *see also In re Pesce Baking Co., Inc.*, 43 B.R. 949, 957 (Bankr. N.D. Ohio 1984) (“once the agreement expires of its own terms, the debtor's application to reject it becomes moot”); *In re Cont'l Properties, Inc.*, 15 B.R. 732, 736 (Bankr. D. Haw. 1981) (expired contract “cannot be assumed or rejected by the Debtor”); *but see In re Trump Entertainment Resorts*, 810 F.3d 161 (3rd Cir. 2016). Moreover, even if a debtor could utilize Section 1113 to reject a post-expiration term of employment, Briggs has not. Thus, if the Closing Statement that the Motion seeks authority to reject is a collective bargaining agreement, or terms and conditions embodied in an expired collective bargaining agreement, it is not subject to rejection pursuant to Code Section 365.

CONCLUSION

For the reasons stated above, the Motion should be denied subject to Debtors' clarification of the identify and nature of the "Closing Statement."

Dated: New York, New York
November 11, 2020

Respectfully submitted,

/s/ Richard M. Seltzer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of November, 2020, that a true and correct copy of the above was served by operation of the Court's CM/ECF system.

/s/ Janine M. Martin