

UNITED STATES BANKRUPTCY COURT
EASTER DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In Re:) In Proceedings Under Chapter 11
) Hon. Barry S. Schermer
)
BRIGGS & STRATTON,) Case No. 20-43597-399
CORPORATION, *et. al.*,)
) (Jointly Administered)
Debtor.)
)
)
)
)
)

**LIMITED OBJECTION OF UFP TECHNOLOGIES, INC.
TO CONFIRMATION OF AMENDED JOINT CHAPTER 11 PLAN OF
BRIGGS & STRATTON CORPORATION AND ITS AFFILIATED DEBTORS**

COMES NOW, UFP Technologies, Inc. (“UFPT”), by and through its undersigned counsel, and for its *Limited Objection of UFP Technologies, Inc. to Confirmation of Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* (the “Objection”), states to this Honorable Court as follows:

BACKGROUND

1. UFPT manufactures and sells foam filters for various small engines. UFPT has been a supplier to Briggs & Stratton Corporation (“**Briggs & Stratton**”) for decades.
2. On or about January 8, 2019 Briggs & Stratton Corporation and UFPT entered into a Tooling Products Agreement (the “**January 2019 Tooling Products Agreement**”) pursuant to which UFPT was to manufacture a tool for Briggs & Stratton Corporation. UFPT timely manufactured that tooling and has been paid therefor.



3. UFPT sells foam filters to Briggs & Stratton pursuant to several Blanket Purchase Orders issued by Briggs & Stratton (“**Blanket POs**”). The Blanket POs require UFPT to provide goods over a significant period of time, and Briggs & Stratton issues “releases” to UFPT indicating the quantity of goods that UFPT is supposed to deliver by a certain date, and the location to which UFPT should ship the goods. As of the commencement of these proceedings there were approximately thirteen (13) Blanket POs in operation, none of which has been assumed by Briggs & Stratton or its affiliated Debtors. After the commencement of these proceedings UFPT continued to sell goods to Briggs & Stratton.

4. UFPT also sells goods to Briggs & Stratton pursuant to “Spot” Purchase Orders (“**Spot POs**”). Unlike Blanket POs, Spot POs are for one-time purchases. As of the Petition Date, Briggs & Stratton owed UFPT approximately \$28,786.22 for goods sold pre-petition pursuant to the Spot POs.

5. On or about October 9, 2020 Briggs & Stratton and its related Debtors filed their *Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors* [Doc. #1066]. On or about November 6, 2020 Briggs & Stratton and its related Debtors filed their *Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors* [Doc. #1211]. On or about November 9, 2020 Briggs & Stratton and its related Debtors filed an updated version of their *Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors* [Doc. #1226] (the “Plan”).

6. On September 23, 2020, UFPT timely filed a proof of claim in these proceedings (the “Claim”) in the aggregate amount of \$152,349.02 of which \$106,326.49 is an administrative expense claim (the “Administrative Claim”) and \$46,022.53 is an unsecured, nonpriority claim (the “Unsecured Claim”).

7. In addition, on September 14, 2020, UFPT filed its *Motion of UFP Technologies, Inc. for: (I) Allowance and Payment of Administrative Expense Pursuant to 11 U.S.C. §503(b)(9); (II) Allowance and Payment of Administrative Expense Pursuant to 11 U.S.C. §503(b)(1); and (III) Determination that any Agreements Between UFPT and the Debtors That Constitute Executory Contracts are Rejected As of September 10, 2020* (the “Application”)[Doc. #882] in which UFPT sought, *inter alia*, the allowance and immediate payment of \$99,894.97 in administrative expense claims.

8. Debtors have paid a portion of the Administrative Claim and have admitted liability as to the remaining amount of the Administrative Claim, but filed an objection to the Application on the issue of timing of payment of the remaining balance of the Administrative Claim. See, Doc. #1283, at “Preliminary Statement”.

9. Pursuant to §4.16 of the Plan the UFPT’s Unsecured Claim is classified in Class 4(a), UFPT is impaired, and UFPT is entitled to vote on the Plan. On December 8, 2020 UFPT submitted its ballot for its Unsecured Claim, voting to reject the Plan and electing to “opt-out” of the release provisions of the Plan.

10. Pursuant to §§2.1 and 3.1 of the Plan, UFPT’s Administrative Claim is not separately classified and is purportedly not entitled to vote on the Plan. Debtors assert that UFPT’s Administrative Claim is unimpaired, that it cannot be separately classified pursuant to 11 U.S.C. §1123(a)(1), and that UFPT’s Administrative Claim is not entitled to vote on the Plan or to opt out of the release provisions of the Plan. Debtors did not provide UFPT with a ballot for the Administrative Claim and did not provide UFPT with an election form by which UFPT might elect to opt out of the Plan’s release provisions.

11. Pursuant to §10.3 of the Plan, as of the Effective Date of the Plan, its terms will be binding on “holders of Claims against and Interests in the Debtors and their respective successors and assigns, notwithstanding whether any such holders were (a) Impaired or Unimpaired under the Plan; (b) deemed to accept or reject the Plan.” Clearly, Debtors intend to bind UFPT to the terms of the Plan, including its release provisions (summarized below) should the Plan be confirmed by this Court.

12. Pursuant to §10.6(d) of the Plan, upon confirmation and the occurrence of the Effective Date, UFPT and all others similarly situated, will be “conclusively, absolutely, unconditionally, irrevocably and forever” deemed to release not only the Released Parties identified in §1.97 of the Plan, but also a broad group of Related Parties identified in §1.96 of the Plan. The release in said §10.6 of the Plan, which UFPT’s Administrative Claim is purportedly presumed to accept, is exceedingly broad, encompassing:

... any and all Claims and Causes of Action, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, in law, equity, or otherwise, that entity would have been legally entitled to assert in their own right (whether individually, derivatively, or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising prior to the Effective Date, from, in whole or in part, the Debtors, the Chapter 11 Cases, the pre-and post-petition marketing and sale process, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Wind-Down Estates, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the Disclosure Statement, the Plan (including any Plan Supplement), the DIP Documents or any related agreements, instruments, and other documents relating thereto, or the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; provided, that nothing herein shall be construed to release (i) the Released Parties from gross negligence, willful misconduct or intentional fraud as determined by a Final Order; (ii) any obligation of any party under the Plan or any document, instrument, or agreement executed to implement the Plan (including the Plan Supplement) or the Confirmation Order; or (iii) any post-Effective Date obligations of any party or Entity under the Plan or any document, instrument, or agreement executed to implement the Plan (including the Plan Supplement) or the Confirmation Order; provided, further, that in the event that a Debtor has substantially defaulted in the

performance of its obligations under the Plan prior to the date that all the distributions under the Plan have been made by such Debtor, holders of Claims shall continue to have the same rights to enforce their Claims against such Debtor as they had prior to the consummation of the Plan (in addition to enforcing the Plan). Except as otherwise set forth in subsection (e) of this Section 10.6, the Persons and Entities in (a)through (d) of this Section 10.6 shall be permanently enjoined from prosecuting any of the foregoing Claims or Causes of Action released under this Section 10.6 against each of the Released Parties.

13. The definition of “Causes of Action” in §1.22 of the Plan is likewise very broad and includes: “... any action, Claim, cross-claim, third-party claim, cause of action, controversy, dispute, demand, right, lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expenses, damage, interest, judgment, cost, account, defense, remedy, offset ... of any kind or character whatsoever.” and is not limited in time.

14. Not only does the Plan contain the broad releases described above, §10.4 of the Plan purports to set up an injunction against UFPT from acting in a manner not in conformance with the Plan and §10.10 of the Plan purports to further broaden the releases even if inconsistent with otherwise applicable law.

15. In stark contrast to the extensive releases contained in the Plan and highlighted herein, §5.10 of the Plan contains expansive preservation of Debtor’s Causes of Action (as defined in §1.22 of the Plan).

16. The Plan itself, with its extensive releases of Debtors and multiple non-debtor Related Parties, along with the injunctive relief contained in §10 of the Plan and the preservation of rights in §5.10 of the Plan, amounts to a rewriting of UFPT’s legal, equitable and contractual rights, working a significant and permanent impairment of the rights of UFPT and indeed the rights of each administrative claimant similarly situated to UFPT. While UFPT has voted its Unsecured Claim to reject the Plan and to opt-out of the releases, that opportunity was not provided to the Administrative Claim and could result in future disputes regarding whether UFPT in fact granted

a release, leading to potential litigation between or among UFPT and one or more of the Released Parties, the Related Parties, or the Wind-Down Estates.

17. Despite the Plan's clear intention and effect to impair UFPT's rights, Debtors do not classify UFPT's Administrative Claim under §1122 or 1123, Debtors seek to prevent UFPT from voting its Administrative Claim, and Debtors seek to prevent UFPT from fully opting out of the Plan's release provisions. UFPT as an impaired creditor is entitled to vote its Administrative Claim. *See*, 11 U.S.C. §1129(a)(7); In re Sagamore Partners, Ltd., 512 B.R. 296, 306-307(S.D. Fla. 2014), *aff'd* in part and *rev'd* in part on other grounds, 610 Fed. Appx. 922 (11th Cir. 2015), *aff'd* in part and *rev'd* in part, 620 Fed. Appx. 864 (11th Cir. 2015)(impaired creditor entitled to vote on Plan); In re Windsor on the River Associates, Ltd., 7 F.3d 127, 130 (8th Cir. 1993)(impairment means "any alteration of a creditor's rights, no matter how minor"); In re Reuter, 427 B.R. 727, 773-774 (Bankr. W.D. Mo. 2010)(impairment includes "virtually any alteration" of a claimant's rights), *aff'd* 443 B.R. 427 (8th Cir. BAP 2011), *aff'd* 686 F.3d 511 (8th Cir. 2012); and In re Rexford Properties, 558 B.R 352, 368-369 (Bankr. C.D. Cal. 2016)(creditor is impaired, despite full payment, where creditor was required to continue to extend credit to reorganized debtor on favorable terms).

18. UFPT, as an impaired creditor having been given no ballot and no opportunity to vote its Administrative Claim, or an opportunity to elect to opt out of the releases, respectfully objects to confirmation of the Plan and requests that this Objection operate as and be deemed to constitute a ballot to reject the Plan and to the full extent of applicable law, and an election to opt out of any and all release provisions in the Plan.

19. UFPT would respectfully suggest that any order confirming the Plan include the following language to confirm that UFPT is not impaired:

Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, this Order, any amendment or supplement to any of the foregoing items, or in any document executed or delivered pursuant to or relative to the Plan or this Order including, without limitation, any Plan Supplement, Exhibit, or trust agreement: UFP Technologies, Inc. (“UFPT”) has not granted any person or entity any release whatsoever in connection with the Plan, this Order, or these Chapter 11 cases and all of UFPT’s rights or defenses to any Cause of Action are expressly preserved; and with respect to UFPT, the injunctions and releases in Section 10 of the Plan enjoin only UFPT’s right to pursue collection, in excess of the distribution provided to UFPT under the Plan, against Debtors on UFPT’s pre-petition unsecured claim.

WHEREFORE, UFPT respectfully requests that the Court condition confirmation of the Plan on the inclusion in the confirmation order of the language set out above and that the Court grant UFPT such additional and further relief as is just and proper.

GOLDSTEIN & PRESSMAN P.C.

By: /s/ Robert Breidenbach
7777 Bonhomme Ave., Suite 1910
Clayton, MO 63105
Phone: (314) 727-1717
Fax: (314)727-1447
Email: rab@goldsteinpressman.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of December, 2020, I served the foregoing document on the following parties, by first-class mail, postage prepaid, unless said parties received service by the court's CMECF system.

Briggs & Stratton Corporation, et al.
c/o Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway Suite 300
El Segundo, California 90245

Sirena Wilson
Office of the U.S. Trustee
111 South 10th Street, Room 6.353
St. Louis, Missouri 63102

sirena.Wilson@usdoj.gov

Ronit Berkovich
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153

ronit.berkovich@weil.com
deborah.hoehne@weil.com
martha.martir@weil.com

Robert E. Eggmann
Carmody MacDonald P.C.
120 S Central Ave., Ste. #1800
Clayton, Missouri 63105

ree@carmodymacdonald.com
cjl@carmodymacdonald.com
thr@carmodymacdonald.com

Robert J. Stark
Brown Rudnick LLP
7 Times Square
New York, New York 10036

rstark@brownrudnick.com
olashko@brownrudnick.com
acarty@brownrudnick.com

Greg Willard
Doster Ullom & Boyle, LLC
16150 Main Circle Drive, Suite 250
Chesterfield, Missouri 63017

gwillard@dubllc.com
amoen@dubllc.com

/s/ Robert A. Breidenbach