

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re: BRIGGS & STRATTON CORPORATION, et al., Debtors.1
Chapter 11
Case No. 20-43597-399
(Jointly Administered)
Hearing Date: August 18, 2020, at 10:00 a.m. (CT)

KPS CAPITAL PARTNERS, LP'S OMNIBUS REPLY IN SUPPORT OF DEBTORS' DIP FINANCING AND BID PROCEDURES MOTIONS

KPS Capital Partners, LP ("KPS"), the sponsor of Bucephalus Buyer, LLC (the "Stalking Horse Bidder"), respectfully represents as follows (a) in support of 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] (the "Bid Procedures Motion"), (b) in support of the Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling Final Hearing and (VII) Granting Related Relief [Docket No. 35] (the

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Briggs & Stratton Corporation (2330), Billy Goat Industries, Inc. (4442), Allmand Bros., Inc. (4710), Briggs & Stratton International, Inc. (9957), and Briggs & Stratton Tech, LLC (2102). The address of the Debtors' corporate headquarters is 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.



“DIP Financing Motion” and, together with the Bid Procedures Motion, collectively, the “Motions”),² and (c) in response to the objections filed with respect to the Motions by the United States Trustee (the “U.S. Trustee”) [Docket No. 409] (the “U.S. Trustee Obj.”), the Official Committee of Unsecured Creditors (the “Committee”) [Docket Nos. 399] (the “Comm. Obj.”), the Ad Hoc Group of Holders of 6.875% Senior Notes Due December 2020 (the “Ad Hoc Group”) [Docket Nos. 300] (the “Ad Hoc Group Bid Proc. Obj.”), [Docket No. 403] (the “Ad Hoc Group DIP Obj.”), and purported potential bidder Generac Power Systems, Inc. (“Generac”) [Docket No. 367] (the “Generac Obj.” and, collectively, the “Objections”):

Response

1. These cases are weeks old, yet time and again KPS has stepped up to support the Debtors and their stakeholders: KPS’s acquisition proposal is the *only* fully committed offer to purchase the Debtors’ business as a going concern. But KPS’s efforts to save this iconic American company did not stop there: after the Debtors exhausted their efforts to find necessary financing to fund their chapter 11 sale process, KPS, at the Debtors’ request, again stepped up and agreed to advance a material portion of its purchase price in the form of the DIP FILO Facility (as defined below) to prevent an imminent liquidation. Additionally, KPS’s acquisition of the Debtors’ assets is supported by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “United Steelworkers”). KPS is pleased to report that the rank and file membership of United Steelworkers Local 2-232 ratified a new collective bargaining agreement with the Stalking Horse Bidder on August 16, 2020. This collective bargaining agreement is exclusive to KPS, and will become effective subject to this Court’s approval of the sale transaction.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motions, as applicable.

2. Unfortunately, rather than laud the Debtors' extraordinary efforts and thank KPS for its participation in the process, the Committee and the Ad Hoc Group attack the Debtors' process, criticize the proposed sale timeline, and attempt to cast KPS as a bad actor, relying on trite recitations of law that have no factual or legal relevance to this situation. For the reasons discussed below, the Court should look beyond the empty rhetoric, overrule the Objections, and approve the Motions.

3. As exhaustively detailed in the Motions and the accompanying declarations, the Debtors determined prior to seeking chapter 11 relief that their businesses required significant new capital. To this end, the Debtors, as prudent stewards for all of their stakeholders—including their secured lenders, unsecured creditors, employees, and partners in organized labor—engaged advisers to identify potential sources of new capital. Despite their exhaustive efforts—which included significant prepetition discussions with certain members of the Ad Hoc Group—the Debtors were unsuccessful in locating any viable financing proposals. Thus, facing looming maturities this year and the risk of liquidation absent a near-term solution, the Debtors pivoted and sought out potentially interested parties that could acquire their business as a going concern and preserve a century-old industrial business and thousands of jobs in the American heartland for the benefit of employees, vendors and other creditors, and customers.

4. KPS—due to its financial resources, track record of investments in manufacturing businesses, and deep, long-standing relationships with the United Steelworkers—emerged as the highest and best—and, indeed, only—fully committed offer to purchase the Debtors' business as a going concern. Thereafter, KPS and the Debtors engaged in extensive, good faith, and arm's-length negotiations regarding a potential acquisition of substantially all of the Debtors'

assets pursuant to section 363 of the Bankruptcy Code for \$550 million, subject to certain purchase price adjustments.

5. During these negotiations, KPS and the Debtors also remained in dialogue regarding the Debtors' liquidity position. Through that process, the Debtors and KPS determined that the Debtors would lack sufficient funding to both accommodate the lending requirements of the prepetition agent (which conditioned continued access to its revolving credit facility on a full roll-up of its prepetition commitments) and fund the Debtors' estates. Indeed, no party—including the Ad Hoc Group, which was represented by the Committee's proposed counsel, Brown Rudnick LLP, until last week and became restricted to engage with respect to a transaction—was willing or able to provide a solution to the Debtors' liquidity issues.

6. With an upcoming July 15, 2020 interest payment, the Debtors asked KPS to step up again and to submit a proposal to bridge the Debtors and their employees to a viable transaction. To this end, KPS offered a variety of DIP financing options, including a full postpetition takeout of the prepetition revolving credit facility. Instead, the Debtors initially requested that KPS fund 25% of a potential new-money "first in, last out" ("FILO") facility that the prepetition agent sought to syndicate on a "best efforts" basis. Ultimately, the prepetition agent was unable to muster any meaningful market interest from parties other than KPS for the proposed postpetition FILO facility. Faced with the prospect of liquidation, the Debtors requested that KPS fund the entire proposed \$265 million postpetition FILO facility (the "DIP FILO Facility"), thereby prefunding \$265 million of its \$550 million purchase price (subject to certain purchase price adjustments) with the Stalking Horse Bidder to credit bid the DIP FILO Facility portion of the sale transaction. Put another way, when neither the prepetition agent nor

any other third party was willing to fund the DIP FILO Facility, KPS stepped up to the plate for the entire facility.³

7. Thus, the record to date clearly demonstrates that the chapter 11 process is working to maximize stakeholder value: the Debtors have secured a going-concern bid for their business, which is subject to a competitive market check, and obtained committed financing to bridge to a viable transaction. The Stalking Horse Bidder has also ratified a new collective bargaining agreement with the United Steelworkers Local 2-232, a critical constituency for any industrial enterprise.

8. This record notwithstanding, the Ad Hoc Group, the Committee, and Generac—an existing competitor that appears to be seeking to use the Debtors’ sale process to obtain sensitive competitive information for its own parochial use—object to the Motions. Their principal objection, which is that the Debtors’ sale timeline is too short and the Court should unilaterally extend the marketing process, lacks any basis in the factual record or the Bankruptcy Code. *See* Ad Hoc Group Bid Proc. Obj. ¶¶ 28, 38; Generac Obj. at p. 2. The proposed timeline is appropriate where—as is the case here—the Debtors’ business is a quintessential “melting ice cube.” Every day that the Debtors remain in chapter 11, their assets lose more value. For that reason, the Debtors’ agreement to support an expedited sale process was a fundamental element of the bargain struck between the Debtors and KPS. Simply put, KPS would not have agreed to pay \$550 million (subject to certain purchase price adjustments) for these assets absent the expectation that this transaction would close in the manner and on the timeline set forth in the purchase agreement.

³ KPS also agreed to match the economics proposed by the prepetition agent during its “best efforts” syndication process, notwithstanding the fact that no third-party capital provider was willing to accept those terms.

9. The proposed sale timeline—an integral element of both the proposed sale transaction and the DIP FILO Facility—is appropriate in light of the Debtors’ exhaustive prepetition marketing process and the Debtors’ liquidity constraints. Moreover, the proposed sale timeline is consistent with—and, in certain cases, longer than—the sale timelines approved in other complex chapter 11 cases. *See In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (recognizing that main goal of any proposed sale of property of a debtor’s estate is to maximize value); *Wintz v. American Freightways, Inc. (In re Wintz Cos.)*, 219 F.3d 807, 812–13 (8th Cir. 2000) (sale procedure providing for competitive bidding calculated to maximize value to the estate was deemed valid); *see also In re Color Spot Holdings, Inc.*, No. 18-11272 (LSS) (Bankr. D. Del. June 25, 2018) [Docket No. 134] (approving a sale hearing 52 days after the petition date); *In re Bertucci’s Holdings, Inc.*, No. 18-10894 (MFW) (Bankr. D. Del. May 7, 2018) [Docket No. 182] (approving a sale hearing 51 days after the petition date); *In re Sungevity, Inc.*, No. 17-10561 (KG) (Bankr. D. Del. Mar. 31, 2017) [Docket No. 142] (approving a sale hearing 35 days after the petition date).

10. Indeed, the Ad Hoc Group’s demand to extend the sale timeline to permit the bondholders to evaluate a potential standalone reorganization rings particularly hollow. *See Ad Hoc Group Bid Proc. Obj. ¶ 28.* The Ad Hoc Group became restricted to evaluate a potential transaction and could not come up with, let alone close, a deal at the Debtors’ moment of greatest need. There is no reason to believe that the Ad Hoc Group—or any other bondholder—is prepared to transact. Nor is there any reason to indulge the Committee and Ad Hoc Group’s fantasy that a third party other than the Ad Hoc Group is prepared to transact, either: as noted above, the prepetition agent’s “best efforts” process to raise a FILO facility failed, which effectively required KPS to fund the entire DIP FILO Facility. Furthermore, to the extent that

any bondholder seeks to sponsor a plan of reorganization or other transaction, it is free to do so like any other competitive bidder prior to the bid deadline.

11. The Ad Hoc Group’s assertion that the DIP FILO Facility and its connection to the Stalking Horse Bidder is a “serious impediment” to the outcome of these chapter 11 cases likewise lacks any merit. *See* Ad Hoc Group DIP Obj. ¶ 8. As an initial matter, KPS is only providing the DIP FILO Facility to facilitate a viable sale transaction; it would not have provided the DIP FILO Facility absent its interest in acquiring the Debtors’ assets. In any event, the Ad Hoc Group’s empty rhetoric notwithstanding, the uncontroverted record is that the Debtors required additional financing in the form of the DIP FILO Facility to satisfy its prepetition lenders’ lending requirements. A rival bidder would need to satisfy the DIP FILO Facility, a new-money postpetition financing, in any case, irrespective of whether that facility was provided by KPS or a different third party. ***This much is clear: without the DIP FILO Facility from KPS, there would have been no going-concern sale process. There would have been no going-concern sale. Instead, there would have been an unfortunate liquidation of an iconic American company.***

12. The objections of the Ad Hoc Group, U.S. Trustee, and Committee to the proposed bid protections are likewise divorced from the facts and circumstances of these cases. The bid protections, which were the subject of extensive good-faith, arm’s-length discussions between KPS and the Debtors, are an integral component of the Stalking Horse Bid. And, the U.S. Trustee’s protests to the contrary notwithstanding, the proposed bid protections are well within market. *See* U.S. Trustee Obj. ¶¶ 11–15. Indeed, the Ad Hoc Group concedes—as it must—that the proposed bid protections “appear to be within market bounds.” *See* Ad Hoc Group Bid Proc. Obj. ¶ 8. This should end any debate regarding the propriety—and

necessity—of the proposed bid protections. Nevertheless, the Ad Hoc Group suggests that the bid protections are inappropriate because the Stalking Horse Bid contemplates a credit bid of the DIP FILO Facility. This argument may hold water where a secured lender is credit bidding a prepetition claim, but that is not the case: KPS is a postpetition new-money capital provider, not a prepetition lender, and it is entitled to bid protections with respect to its entire purchase price, regardless of the form it takes. The suggestion—which runs throughout the Committee and Ad Hoc Group’s Objections—that a new-money postpetition lender is subject to the type of “challenge” that may be asserted against a prepetition lender, is without precedent and would starve the Debtors and other companies in need of critically needed financing by creating a significant impediment to obtaining postpetition credit. This is particularly true where, as is the case here, KPS is a DIP lender by necessity due to the Debtors’ liquidity needs. Indeed, absent the prepetition lenders’ requirements, the Stalking Horse Bidder would have funded the full \$550 million amount of its purchase price at closing, rather than through the DIP FILO Facility.⁴

13. Finally, the objections with respect to the DIP Financing Motion lack merit and should be overruled. In particular, the objections to the proposed fee structure lack any basis in the factual record. As noted above, and as detailed in the declarations filed in support of the DIP Financing Motion, the Debtors were required to obtain additional external financing to satisfy the lending requirements of their prepetition revolving lenders, which conditioned continued access to the revolver on a full roll-up, an arranger fee, and other economics.

14. However, despite the Debtors’ extensive process, including the prepetition agent’s “best efforts” FILO syndication process in the week prior to the commencement of these chapter 11 cases, the Debtors were ultimately unable to procure DIP financing on more favorable

⁴ As noted elsewhere herein, the purchase price is subject to certain purchase price adjustments.

economic terms than the DIP FILO Facility. The very fact that no other party in the marketplace (including the Ad Hoc Group) was willing to invest in the FILO on the same terms as the DIP FILO Facility on its face demonstrates that the DIP FILO Facility provided by KPS is underpriced. In fact, KPS agreed to match the economics proposed by the prepetition agent during its “best efforts” syndication process, thereby further demonstrating the reasonableness of the DIP FILO Facility’s economic terms.

15. Moreover, the suggestion that this Court should reject the DIP FILO Facility just because KPS is also a Stalking Horse Bidder is inapposite to the public policy considerations underpinning bankruptcy law, which promote the extension of credit to debtors in times of distress. *See In re Florida West Gateway, Inc.*, 147 B.R. 817, 819 (Bankr. S.D. Fla. 1992); (“Having recognized the natural reluctance of lenders to extend credit to a company in bankruptcy, Congress designed § 364 to provide ‘incentives to the creditor to extend postpetition credit.’” (citing *In re Ellingsen MacClean Oil Co.*, 834 F.2d 599, 603 (6th Cir. 1987))). KPS’s willingness to provide distressed entities such as the Debtors with necessary funding in their time of greatest need should be rewarded, not penalized. As such, if this Court sustains the Objections, it will be sending a clear message to future investors that will inevitably chill their desire to commit to financing the liquidity needs of the distressed entities they may seek to acquire, resulting in the unnecessary liquidation of going-concern businesses and value-destructive outcomes.

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Conclusion

WHEREFORE for the foregoing reasons, KPS respectfully requests that the Court overrule the Objections and approve the Motions and grant such other relief as is just and proper under the circumstances.

Dated: August 17, 2020
St. Louis, Missouri

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