

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.	§	Related Docket Nos. 42

**ORDER AUTHORIZING DEBTORS
TO RETAIN AND EMPLOY ERNST & YOUNG LLP
AS FINANCIAL AND TAX ADVISOR**

Upon the application (the “**Application**”)¹ of Briggs & Stratton Corporation and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 327(a) and 328 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2014(A) of the Local Rules of the United States Bankruptcy Court of the Eastern District of Missouri (the “**Local Rules**”) for authority to retain and employ Ernst & Young LLP (“**EY LLP**”) as financial and tax advisor for the Debtors, effective as of the Petition Date; and upon the declaration of Jeffrey Ficks, a partner at EY LLP, annexed to the Application as **Exhibit A** (the “**Ficks Retention Declaration**”); and the supplemental Declaration of Jeffrey Ficks file on August 4, 2020 [Docket No. 284]; and the Court being satisfied, based on the representations made in the Application and the Ficks Retention Declaration that EY LLP is “disinterested” as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required under section 327(a) of the Bankruptcy Code, and that EY LLP represents no interest adverse to the Debtors’ estates with

¹ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Application.



respect to the matters upon which it is to be engaged; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having represented that adequate and proper notice of the Application has been given and that no other or further notice need be given; and the Court having reviewed the Application; and the Court having previously granted the Application on a provisional basis; and the Court having held a hearing, if necessary, to consider the relief requested in the Application; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief requested in the Application is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that the Application is **GRANTED** in that:

1. The Debtors are authorized, but not directed, pursuant to sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014(A), to employ and retain EY LLP as their financial and tax advisor on the terms and conditions set forth in the Engagement Letters. This Order, to the extent it conflicts with the Engagement Letters, shall take precedence.

2. Consistent with, and subject to, the terms of the Engagement Letters and this Order, EY LLP shall be authorized to perform the services provided for in the Engagement Letters.

3. EY LLP shall file interim and final fee applications for allowance of its compensation and reimbursement of its expenses with respect to services rendered in these chapter

11 cases with this Court, in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court. Notwithstanding any provision of this Order, the Application, or the Engagement Letter to the contrary, approval of EY LLP's fees and expenses shall be evaluated in accordance with the standards utilized pursuant to section 330 of the Bankruptcy Code, subject to review for reasonableness. Notwithstanding any provision of this Order, the Application, or the Engagement Letter to the contrary, approval of EY LLP's fees and expenses for services performed shall be evaluated in accordance with the standards utilized pursuant to section 330 of the Bankruptcy Code, subject to review for reasonableness, *provided*, that EY LLP shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code with respect to the Employment Tax Services; EY LLP's fees and expenses for Employment Tax Services shall not be subject to review under the standard set forth in section 330 of the Bankruptcy Code, except solely by the Office of the U.S. Trustee for the Eastern District of Missouri (the "**U.S. Trustee**"), who, for the avoidance of doubt, shall be entitled to review applications for payment of compensation and reimbursement of expenses of EY LLP under section 330 of the Bankruptcy Code.

4. Notwithstanding the foregoing, EY LLP need not record and submit detailed time entries with respect to the Employment Tax Services, in which EY LLP will be compensated based on a percentage of the recoveries it is able to garner on the Debtors' behalf and not upon time and effort expended.

5. In the event EY LLP is unable to provide services set out in this Order, EY LLP will immediately notify the Debtor's attorneys.

6. The parties shall meet and confer in an attempt to resolve any dispute that might arise relating to the Engagement Letters or monthly invoices. If the parties, after meeting

and conferring are unable to resolve their dispute, they may seek resolution of the matter from the Court.

7. To the extent that, during the pendency of these chapter 11 cases, the Debtors require EY LLP to perform professional services other than (a) those set forth in the Engagement Letters and (b) services related to those set forth in the Engagement Letters, the following procedures shall apply:

- a) The Debtors shall file with the Court a notice of the proposed expansion of EY LLP's services (the "**Expansion Notice**"), which shall include as exhibits: (i) a copy of the engagement letter or amendment, as signed by the Debtors and EY LLP, that describes the additional services for which the Debtors would retain EY LLP and that describes the terms and conditions relating to such services (including the fees for such services); and (ii) a proposed order approving the proposed expansion of scope of EY LLP's services and the engagement letter or amendment relating to such proposed services (the "**Proposed Expansion Order**").
- b) The Expansion Notice shall state that any objections to the proposed expansion of EY LLP's services are due within ten (10) days after the date of such notice.
- c) The Expansion Notice shall be served upon: (i) the Office of the United States Trustee; and (ii) party who has requested notice pursuant to Bankruptcy Rule 2002.
- d) If no objection to the Expansion Notice is filed and served on the Debtors within the notice period, the Debtors may submit a certification of counsel stating that no objections were filed to the proposed expansion of EY LLP's services or that any objections filed were resolved, and the Court may then enter the Proposed Expansion Order. If an objection is filed and served on the Debtors within the notice period and is not resolved by the Debtors and the objecting party, the matter will be scheduled for hearing at the next available omnibus hearing date that is not less than five (5) business days after the Debtors determine, in their discretion, that a hearing is necessary (or any other hearing date the Court may select).
- e) The foregoing procedure shall not abridge the Debtors' right to file ordinary applications seeking expansions of EY LLP's services, if the Debtors deem it appropriate to do so.

8. To the extent that there may be any inconsistency between the terms of the Application, the Engagement Letters, the Ficks Retention Declaration and the express terms of this Order, the express terms of this Order shall govern.

9. Notice of the Application is adequate under Bankruptcy Rule 6004(a).

10. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

11. EY LLP shall apply all pre-petition retainers, advances and expense advances for payment of fees and costs authorized by this Court to be paid before seeking compensation from the Debtors.

12. Nothing herein shall be construed to permit EY LLP to be allowed reimbursement or compensation for fees or expenses EY LLP incurs in defense of EY LLP's fees from legal challenge.

13. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

14. Not later than two (2) business days after the date of this Order, the Debtors shall serve a copy of the Order and shall file a certificate of service no later than twenty-four (24) hours after service.

DATED: August 19, 2020
St. Louis, Missouri

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Barry S. Schermer
United States Bankruptcy Judge

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