

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 A.B. BOYD CO. AND AAVID ALLCAST, LLC  
TO CONFIRMATION OF AMENDED JOINT CHAPTER 11 PLAN OF  
BRIGGS & STRATTON CORPORATION AND ITS AFFILIATED DEBTORS**

COME NOW, A.B. Boyd Co. (“**AB**”) and Aavid Allcast, LLC (“**Aavid**”), by and through its undersigned counsel Howard & Howard Attorneys PLLC and Goldstein & Pressman, P.C., and for their *Limited Objection of A.B. Boyd Co. and Aavid Allcast, LLC to Confirmation of Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* (the “**Objection**”), state to this Honorable Court as follows:

**BACKGROUND**

1. AB has supplied certain breather tubes to Debtors to Briggs & Stratton Corporation, et. al. (“**Debtors**”) for decades. These products are necessary for Debtors’ manufacturing operations. AB sells the aforementioned breather tubes pursuant to one or more blanket purchase orders and multiple spot purchase orders issued by Debtors which require AB to manufacture and deliver goods to Debtors over significant periods of time and under which Debtors issue “releases” to AB indicating the quantity of goods AB is supposed to deliver, the date of delivery, and the location for delivery. As of the Petition Date, Debtors owed AB approximately \$96,914.00 for goods sold by AB to Debtor in the ordinary course of the parties’ business.



2. Aavid has supplied certain castings to Debtors to Briggs & Stratton Corporation, et. al. (“**Debtors**”) for decades. These products are necessary for Debtors’ manufacturing operations. Aavid sells the aforementioned castings pursuant to one or more blanket purchase orders and multiple spot purchase orders issued by Debtor. As of the Petition Date, Debtor owed Aavid approximately \$183,100.58 for goods sold by Aavid to Debtor in the ordinary course of the parties’ business.

3. 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”).

4. On October 2, 2020 AB timely filed a proof of claim in these proceedings (the “AB Claim”)[Claim No. 294] in the aggregate amount of \$96,914.00 of which \$65,835.00 is an administrative expense claim (the “AB Administrative Claim”) and \$31,079.00 is an unsecured, nonpriority claim (the “AB Unsecured Claim”).

5. On October 2, 2020 Aavid timely filed a proof of claim in these proceedings (the “Aavid Claim”)[Claim No. 295] in the aggregate amount of \$183,100.58 of which \$51,372.00 is an administrative expense claim (the “Aavid Administrative Claim”) and \$131,728.58 is an unsecured, nonpriority claim (the “Aavid Unsecured Claim”). Subsequently, Aavid and Debtors and Briggs & Stratton LLC entered into a trade agreement and the Aavid Unsecured Claim was reduced to \$58,488.35.

6. On October 6, 2020 Aavid filed its *Application for Allowance and Payment of Administrative Expense Pursuant to 11 U.S.C. §503(b)(9)* (the “Aavid Application”)[Doc. #1027] in which Aavid sought, *inter alia*, the allowance and immediate payment of \$51,372.00 in administrative expense claims. Likewise, on October 6, 2020 AB filed its *Application for Allowance and Payment of Administrative Expense Pursuant to 11 U.S.C. §503(b)(9)* (the “AB Application”)[Doc. #1030] in which AB sought, *inter alia*, the allowance and immediate payment of \$65,835.00 in administrative expense claims.

7. Debtors filed an omnibus objection to both the Aavid Application and the AB Application (as well as similar applications filed by a number of other creditors), admitting the amount due and allowance of an administrative expense but objecting only on the issue of timing of payment of the allowed administrative expense claims. See, “Preliminary Statement” of *Debtors’ Omnibus Response and Objection to Requests for Allowance and Payment of Administrative Expense Pursuant to 11 U.S.C. §503(B)(9)* [Doc. #1240].

8. Pursuant to §4.16 of the Plan the AB Unsecured Claim and the Aavid Unsecured Claim are each classified in Class 4(a), AB and Aavid are each impaired, and AB and Aavid are each entitled to vote on the Plan. On December 10, 2020 AB and Aavid each submitted their respective ballots for their respective Class 4(a) claims, each voting to reject the Plan and electing to “opt-out” of the release provisions of the Plan.

9. Pursuant to §§2.1 and 3.1 of the Plan, the AB Administrative Claim and the Aavid Administrative Claim are not separately classified and are purportedly not entitled to vote on the Plan. Debtors assert that the AB Administrative Claim and the Aavid Administrative Claim are each unimpaired, that Debtors cannot separately classify said claims pursuant to 11 U.S.C. §1123(a)(1), and that neither the AB Administrative Claim nor the Aavid Administrative Claim is

entitled to vote on the Plan or to opt out of the release provisions of the Plan. Debtors did not provide either AB or Aavid with a ballot for their respective administrative expense claims and did not provide either AB or Aavid with an election form by which they might elect to opt out of the Plan's release provisions.

10. 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 AB and Aavid to the terms of the Plan, including its release provisions (summarized below) should the Plan be confirmed by this Court.

11. 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.

12. 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.

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

14. 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).

15. 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 wholesale rewriting of AB’s and Aavid’s respective

legal, equitable and contractual rights, working a significant and permanent impairment of the rights of AB and Aavid and indeed the rights of each administrative claimant similarly situated. While AB and Aavid have each voted the respect AB Unsecured Claim and the Aavid Unsecured Claim; each rejecting the Plan and opting-out of the releases, that opportunity was not provided to the AB Administrative Claim or the Aavid Administrative Claim and could result in future disputes regarding whether AB or Aavid in fact granted a release, leading to potential litigation between or among AB or Aavid and one or more of the multiple Released Parties, Related Parties, or the Wind-Down Estates.

16. Despite the Plan's clear intention and effect to impair the rights of AB and Aavid, Debtors do not classify the AB Administrative Claim or the Aavid Administrative Claim under §1122 or 1123, Debtors seek to prevent AB and Aavid from voting said claims, and Debtors seek to prevent AB and Aavid from fully opting out of the Plan's release provisions. As impaired creditors, each of AB and Aavid is entitled to vote its Administrative Claim and to decline the expansive releases Debtors seek to impose upon them under the Plan. *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 (11<sup>th</sup> Cir. 2015), *aff'd* in part and *rev'd* in part, 620 Fed. Appx. 864 (11<sup>th</sup> Cir. 2015)(impaired creditor entitled to vote on Plan); In re Windsor on the River Associates, Ltd., 7 F.3d 127, 130 (8<sup>th</sup> 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 (8<sup>th</sup> Cir. BAP 2011), *aff'd* 686 F.3d 511 (8<sup>th</sup> 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).

17. AB and Aavid, as impaired creditors having been given no ballot and no opportunity to vote their administrative claims, or an opportunity to elect to opt out of the releases which may be imposed upon them, respectfully request that this Objection operate as and be deemed to constitute: (a) a ballot by which each of AB and Aavid vote their respective administrative claims to reject the Plan; and (b) an election by which each of AB and Aavid elect to opt out of any and all release provisions in the Plan.

18. AB and Aavid would respectfully suggest that any order confirming the Plan include the following language to confirm that AB and Aavid are 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: Neither A.B. Boyd Co. (“AB”) nor Aavid Allcast, LLC (“Aavid”) has granted any person or entity any release whatsoever in connection with the Plan, this Order, or these Chapter 11 cases and all of AB’s and Aavid’s respective defenses to any Cause of Action are expressly preserved; and with respect to each of AB and Aavid, the injunctions and releases in Section 10 of the Plan enjoin only AB’s and Aavid’s respective rights to pursue collection, in excess of the distributions provided to them under the Plan, against Debtors on AB’s and Aavid’s respective pre-petition unsecured claims.

**WHEREFORE**, AB and Aavid respectfully request 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 AB and Aavid such additional and further relief as is just and proper.

GOLDSTEIN & PRESSMAN P.C.

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### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10<sup>th</sup> 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.

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