

SO ORDERED
Provisionally granted until an order is entered after the final hearing on this document.
No later than two (2) business days after entry of this Order, the Debtors shall serve a copy of this Order, and shall file a certificate of service no later than 24 hours after service.
Jul 20, 2020
Barry S. Schermer
BARRY S. SCHERMER
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

In re: § **Chapter 11**
§
§ **Case No. 20-43597-339**
§ **(Joint Administration Requested)**
§
§ **Debtors.¹** § **Hearing Date: July 21, 2020**
§ **Hearing Time: 10:00 a.m. (Central Time)**
§ **Hearing Location: Courtroom 5 North**
§ **111 S. 10th St., St. Louis, MO 63102**

APPLICATION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 327(A), 328, AND 330, FED R. BANKR. P. 2014(a) AND 2016, AND LOCAL RULES 2014(A) FOR AUTHORITY TO RETAIN AND EMPLOY ERNST & YOUNG LLP AS FINANCIAL AND TAX ADVISOR TO THE DEBTORS EFFECTIVE AS TO THE PETITION DATE

Briggs & Stratton Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this application (the “**Application**”):

Background

1. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. The Debtors have also filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and

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.

Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).

2. The Debtors, combined with their non-Debtor affiliates (collectively, the “**Company**”), are the world’s largest producer of gasoline engines for outdoor power equipment and a leading designer, manufacturer and marketer of power generation, pressure washer, lawn and garden, turf care and job site products. The Company’s products are marketed and serviced in more than 100 countries on six continents through 40,000 authorized dealers and service organizations. Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors’ Chapter 11 Petitions and First Day Relief*, sworn to on the date hereof (the “**Ficks First Day Declaration**”),² which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

Jurisdiction

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

4. By this Application, pursuant to sections 327(a), 328, and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014(A), the Debtors request authority to retain and employ Ernst & Young LLP (“**EY LLP**”) as its financial and tax

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration. All dollar (\$) references in this Application are to the U.S. dollar, unless stated otherwise.

advisor for the Debtors effective as of the Petition Date in accordance with the terms and conditions set forth in the agreements, including each Statement of Work, between the Debtors and EY LLP (each an “**Engagement Letter**”, and collectively the “**Engagement Letters**”), copies of which are annexed to the declaration of Jeffrey Ficks, a partner of EY LLP (the “**Ficks Retention Declaration**”), filed in support of this Application and annexed hereto as **Exhibit A-1** through **A-7**.

EY’s Qualifications

9. The Debtors are familiar with the professional standing and reputation of EY LLP. EY LLP has significant qualifications and experience and extensive knowledge in the fields related to providing cash forecasting, cash management, cash reporting, and analysis concerning (i) potential 503(b)(9) administrative claims and (ii) the impact of rejecting certain executory contracts contemplated in the Engagement Letters. With respect to providing Tax services, EY LLP has significant qualifications and experience related to providing federal and state tax advice to companies in Chapter 11. EY LLP is well qualified to provide financial and tax advisory services to the Debtors. EY LLP is recognized for its experience in providing these services to financially distressed companies, including advising debtors, creditors, and other constituents in chapter 11 proceedings in numerous cases.

10. Before the Petition Date, EY LLP provided the Company certain professional services, such as cash forecasting, cash reporting, and analysis concerning (i) potential 503(b)(9) administrative claims and (ii) the impact of rejecting certain executory contracts. EY LLP has also provided a variety of tax services to the Company in the years prior to the Petition Date. In the course of performing these prepetition services, EY LLP developed institutional knowledge of the Debtors’ businesses. Accordingly, EY LLP already possesses the necessary background and familiarity with the Debtors’ affairs to assist the Debtors in effectively addressing

issues that may arise in the context of providing financial and tax advisory services in connection with these chapter 11 cases.

11. As a result of its prepetition services rendered and in light of EY LLP's renowned expertise, the Debtors believe that EY LLP is well suited and uniquely qualified to be their financial and tax advisor in these chapter 11 cases. Accordingly, the Debtors propose to engage EY LLP as their financial and tax advisor in these chapter 11 cases, and respectfully submit that EY LLP's retention is in the best interest of the Debtors, their estates and other parties-in-interest.

Scope of Services

12. As set forth in further detail in the Engagement Letters, EY LLP has agreed to provide certain financial and tax advisory services (the "**Services**") to the Debtors in connection with these Chapter 11 proceedings. A summary description of each of the Services is summarized below and fully described in the Engagement Letters³:

A. Financial Advisory Services

- i. Assist with the development and revision of a short term DIP cash flow forecasting and related budget to actual variance analysis;
- ii. Assist with reporting to key stakeholders;
- iii. Assist with tracking, reporting, and implementing liquidity-preservation and maximization workstreams;
- iv. Assist with identifying risks associated with strategies to deal with critical vendors;
- v. Assist with bankruptcy reporting requirements and diligence requests;
- vi. Assist preparing a plan of reorganization and disclosure statement;
- vii. Assist with claims analysis and resolution process;
- viii. Develop an integrated, detailed 3-statement financial model for FY21 through FY 23;
- ix. Provide ad-hoc analysis;

³ The summaries of certain terms of the Engagement Letters herein are qualified in their entirety by reference to the provisions of the Engagement Letters themselves. To the extent there is any discrepancy between the summaries contained in this Application and the terms of the Engagement Letters themselves, the terms of the Engagement Letters shall control. Unless otherwise defined, capitalized terms used in these summaries shall have the meanings ascribed to them in the Engagement Letters.

- x. Advise and assist in refreshing a business plan and financial forecast;
and
- xi. Report to Management and/or the Board of Directors on the status of
the above activities.

B. Bankruptcy Tax Services

- i. Advise and assist with federal, state and local income tax analysis and
the calculations required as related to the bankruptcy filing;
- ii. Advise and assist with non-income tax analysis and support related to
the bankruptcy filing;
- iii. Provide research and documentation in support of federal, state and
local tax issues related to the bankruptcy filing;
- iv. Provide guidance and support for tax operation and procedural issues
impacted by the bankruptcy filing; and
- v. Advise and assist with the resolution of bankruptcy tax claims.

C. Sales and Use Tax Recovery Services

- i. Assist company with identifying and recovering potential sales and use
tax overpayments.

Professional Compensation and Reimbursement of Expenses

13. EY LLP has agreed to provide the Debtors with financial advisory and
bankruptcy tax services at a discounted hourly rate of between \$750 to \$995 for Partners,
Principals, and Executive Directors, \$675 to \$795 for Senior Managers, \$560 to \$675 for
Managers, and \$235 to \$560 for Staff and Senior Consultants.

14. In addition to the fees set forth above, the Debtors shall reimburse EY LLP
for expenses incurred in connection with the performance of its financial and tax advisory services,
including reasonable and customary out-of-pocket expenses such as travel, meals,
accommodations, and other expenses specifically related to this engagement.

15. Pursuant to the terms and conditions of the Statement of Work for Sales and
Use Tax Recovery Services, EY LLP will charge the Debtors based on a percentage of the Gross
Refunds (as defined in the Sales and Use Tax SOW- Exhibit A-7) that it is able to identify and

recover on the Debtors' behalf. EY LLP's fee for refund claims filed will be payable in two installments: 50% upon filing of the refund claim and the remainder upon the Debtors' receipt of the refunds or notification of offset by the governmental agency.

16. With respect to the Sales and Use Tax Recovery Services, EY LLP will be employed by the Debtors to perform specialized and discrete tasks and a carefully delineated set of services, and accordingly, EY LLP will not be compensated upon time and effort expended. Instead, EY LLP will be compensated based on a percentage of the recoveries it is able to garner on the Debtors' behalf. Requiring EY LLP to record and submit detailed time entries in light of the percentage-based fee structure proposed under the relevant SOW, would be unduly burdensome to EY LLP. Upon completion of the Sales and Use Tax Recovery Services for the Debtors, EY LLP will file a final fee application for review by the Bankruptcy Court and parties in interest pursuant to section 328 of the Bankruptcy Code for all Sales and Use Tax Recovery Services.

17. The Ernst & Young global network comprises independent professional services practices conducted by separate legal entities throughout the world. Such legal entities are members of Ernst & Young Global Limited ("EYGL"), a company incorporated under the laws of England and Wales and limited by guarantee, with no shareholders and no capital. The member firms of EYGL (each, an "EYGL Member Firm") have agreed to operate certain of their professional practices in accordance with agreed standards, but remain separate legal entities.

18. If EY LLP is requested or authorized by the Debtors, or is required by government regulation, subpoena or other legal process, to produce its documents or personnel as witnesses with respect to the Services or the Engagement Letters, the Debtors would, so long as EY LLP is not a party to the proceeding in which the information is sought, reimburse EY LLP

for its professional time and expenses, as well as the fees and expenses of EY LLP's counsel, incurred in responding to such requests.

19. EY LLP may receive rebates in connection with certain purchases, which are used to reduce charges that EY LLP would otherwise pass onto its clients.

No Duplication of Services

20. The Debtors believe that EY LLP's services will not be duplicative of the services that other professionals will be providing during these cases. Specifically, EY LLP will carry out unique functions and will use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid unnecessary duplication of services.

EY LLP's Disinterestedness

21. To the best of the Debtors' knowledge, EY LLP does not have any connection with or any interest adverse to the Debtors, their creditors, or any other party in interest, except as may be set forth herein and in the Ficks Retention Declaration.

22. EY LLP will periodically review its files during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise and make additional disclosures to this Court if necessary or otherwise appropriate.

23. Except as set forth in the Ficks Retention Declaration, EY LLP will not share any compensation to be paid by the Debtors, in connection with services to be performed after the Petition Date, with any other person, other than the principals and employees of EY LLP, to the extent required by section 504 of the Bankruptcy Code.

24. On or about May 4, 2020, EY LLP received a retainer from the Debtors in the amount of approximately \$200,000 for financial and tax advisory services (the "**Retainer**"). On or about June 25, 2020 and July 11, 2020, EY LLP received an increase in its Retainer of approximately \$100,000 and an additional \$375,000, respectively. As of the Petition Date, the

balance of the Retainer was approximately \$150,000. EY LLP shall apply the remaining balance of the Retainer toward post-petition fees and expense reimbursements that the Debtors are authorized to pay to EY LLP during these chapter 11 cases.

25. During the ninety (90) days immediately preceding the Petition Date, the Debtors paid to EY LLP amounts totaling approximately \$5,394,000, of which approximately \$4,668,000 constituted Retainer payments.

26. As of the Petition Date, EY LLP does not hold a prepetition claim against the Debtors in respect of services provided by EY LLP prior to the Petition Date.

27. Based upon the Ficks Retention Declaration, EY LLP is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code as modified by section 1107(b) of the Bankruptcy Code. If any new material relevant facts or relationships are discovered, EY LLP will supplement its disclosure to the Court accordingly.

Basis for Relief

24. The Debtors seek approval of the Engagement Letters pursuant to sections 327(a) and 328(a) of the Bankruptcy Code. Section 327(a) of the Bankruptcy Code authorizes a debtor to employ professionals that “do not hold or represent an interest adverse to the estate, and that are disinterested persons.” 11 U.S.C. § 327(a). Section 1107(b) of the Bankruptcy Code modifies section 101(14) by providing that “a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.” 11 U.S.C. § 1107(b). As discussed above and in the Ficks Retention Declaration, EY LLP satisfies the disinterestedness standard in section 327(a) of the Bankruptcy Code.

25. Section 327(a) of the Bankruptcy Code, which provides that a debtor is authorized to employ professional persons “that do not hold or represent an interest adverse to the

estate, and that are disinterested persons, to represent or assist the [debtors] in carrying out the [debtors'] duties under this title.” 11 U.S.C. § 327(a). As discussed above and as further detailed in the Haines Declaration, to the best of the Debtor’s knowledge, EY LLP is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtor’s estates.

26. Further, the Debtor seeks approval of the Engagement Letters, including the compensation set forth therein, pursuant to section 328(a) of the Bankruptcy Code, and submit that the retention of EY LLP under the terms described in this Application are appropriate under section 328(a) of the Bankruptcy Code.

27. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person “on any reasonable terms and conditions of employment, including on a retainer . . . on a fixed or percentage fee basis, or on a contingency fee basis” 11 U.S.C. § 328(a). Section 328 permits the compensation of professionals on more flexible terms that reflect the nature of their services and market conditions. For instance, in *In re Farmland Indus., Inc.*, the Court of Appeals for the Eighth Circuit cited with approval the bankruptcy court’s order approving compensation to Ernst & Young on a contingency fee basis based on the amounts recovered. 397 F.3d 647, 649 (8th Cir. 2005). As the United States Court of Appeals for the Fifth Circuit has recognized:

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present §330 of the Bankruptcy Code, which provides that the court award to professional consultants “reasonable compensation” based on relevant factors of time and comparable costs, etc. Under present §328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

In re National Gypsum Co., 123 F.3d 861, 862 (5th Cir. 1997) (internal citations omitted).

28. Furthermore, under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, certain modifications were made to section 328(a) of the Bankruptcy Code, which now provides as follows:

The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly bases, on a fixed percentage fee basis, or on a contingent fee basis.

11 U.S.C. § 328(a).

29. EY LLP's strategic and financial expertise were all important factors in determining the fee structure. The Debtor believes that the ultimate benefit of EY LLP's services cannot be measured solely by reference to the number of hours to be expended by EY LLP's professionals in the performance of such services. Accordingly, the Debtor submits that the fee structure is both fair and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code.

30. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Bankruptcy Code, Bankruptcy Rules and Local Rules to support entry of an order authorizing the Debtors to retain and employ EY LLP in these chapter 11 cases on the terms described herein and in the Engagement Letters.

Notice

31. Notice of this Application will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to JPMorgan Chase Bank, N.A., as the administrative agent and collateral agent under the ABL Credit Facility and DIP Facility; (iv) Pryor Cashman LLP (Attn: Seth H. Lieberman, Esq. and David W. Smith, Esq.), as counsel

to Wilmington Trust, N.A., as successor indenture trustee under the Unsecured Notes, and (v) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Notice Parties**”). Notice of this Application and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

32. The Debtors respectfully submit that no further notice is required. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 20, 2020
Wauwatosa, Wisconsin

Respectfully submitted,

Briggs & Stratton Corporation (for itself and on behalf of each of its affiliated debtors as Debtors and Debtors in Possession)

/s/ Kathryn M. Buono

Name: Kathryn M. Buono

Title: Vice President, Corporate Counsel & Secretary

Filed by:

/s/ Robert E. Eggmann

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*Proposed Local Counsel to the Debtors and
Debtors in Possession*

-and-

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In re:
Briggs & Stratton Corporation
Debtor

Case No. 20-43597-bss
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0865-4

User: admin
Form ID: pdf02

Page 1 of 1
Total Noticed: 7

Date Rcvd: Jul 20, 2020

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jul 22, 2020.

aty +Andrew Citron, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153-0119
aty +Corey D. Berman, Weil, Gotshal & Manges LLP, 1395 Brickell Avenue, Miami, FL 33131-2825
aty +Debra A. Hoehne, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153-0119
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aty +Ronit J. Berkovich, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153-0119

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jul 22, 2020

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on July 20, 2020 at the address(es) listed below:

Angela L Drumm on behalf of Debtor Briggs & Stratton Corporation ald@carموديامكدونالد.com
Brian C. Walsh on behalf of Creditor JPMorgan Chase Bank, N.A. brian.walsh@bclplaw.com
Christopher J. Lawhorn on behalf of Debtor Briggs & Stratton Corporation
cjl@carموديامكدونالد.com, txs@carموديامكدونالد.com;aep@carموديامكدونالد.com
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TOTAL: 12