

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

BRIGGS & STRATTON CORPORATION,
et al.,

Debtors.

Case No. 20-43597-399
(Jointly Administered)

**LIMITED OBJECTION OF FR GEORGIA, LLC
TO NOTICE OF POTENTIAL ASSUMPTION OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND CURE AMOUNTS**

FR Georgia, LLC ("FRG"), a counter-party to an unexpired lease listed in the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection with Sale [Docket No 514]* (the "Cure Notice") as one that may be assumed and assigned in connection with the Sale Transaction¹, hereby objects to the amount of the proposed Cure Costs to be paid to FRG upon assumption pursuant to 11 U.S.C. § 365 as follows:

1. On July 20, 2020 (the "Petition Date"), the Debtors commenced these jointly administered cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").
2. As of the Petition Date, FRG and the debtor, Briggs & Stratton Corporation ("Debtor"), were parties to a Standard Form Industrial Building Lease dated as of December 15, 2019, as amended by the First Amendment to Lease Agreement (the "Lease Agreement"). Pursuant to the Lease Agreement, FRG agreed to lease commercial real estate and building commonly known as 5356 E Ponce de Leon, Stone Mountain, Georgia 30083 (the "Factory") to the Debtors in exchange for payment.

¹ Capitalized terms not herein defined shall have the meanings ascribed in the Cure Notice.



3. As of the Petition Date, the Debtor had allowed, in violation of the terms of the Lease Agreement, multiple parties to assert mechanic's liens against the Factory in the total amount of **\$641,580.50** for work done that the Debtor failed to pay ("Lien Amount"). Debtor acknowledges that the amount to cure the mechanic's liens is \$641,580.50.

4. In the Cure Notice, the Debtor indicates that the Lease Agreement is among those executory contracts and unexpired leases that is subject to potential assumption by the Debtor and assignment to the highest bidder in connection with the Sale Transaction in progress. In the Cure Notice, however, the proposed "cure" payment is listed as \$0.00 and the Cure Notice is silent as to how the Debtors will cure the Lien Amount. Under the terms of the Lease Agreement, the Lien Amount needs to be paid before any assumption of the Lease Agreement may take place.

5. Nonetheless, 11 U.S.C. § 365(b)(1) states, in pertinent part:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). A cure under 11 U.S.C. § 365 means that all unpaid amounts due under the agreement have been paid. *In re Network Access Solutions, Corp.*, 330 B.R. 67, 76 (Bankr. D. Del. 2005).

6. While FRG does not object to the proposed assumption and assignment of the Lease Agreement generally, MSC submits that assumption of the Lease Agreement under 11 U.S.C. 365 must be conditioned on the timely payment of the Lien Amount, *plus* any post-petition invoices that remain outstanding as of the time of assumption (the "FRG Cure").

