

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re: § Chapter 11
BRIGGS & STRATTON §
CORPORATION, *et al* § Case No. 20-43597-339
Debtors. § Jointly Administered
§
§

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF DEERE & COMPANY
TO DEBTORS' NOTICE OF SATISFIED CLAIMS**

Deere & Company (“**Deere**”), by and through its counsel, Seth A. Albin and Summers Compton Wells, LLC and Matthew T. Gensburg and Gensburg Calandriello & Kanter, P.C., and hereby files this Limited Objection and Reservation of Rights (“**Objection**”) with respect to the Debtors’ Fourth Notice of Satisfaction of Claims [Doc. No. 1891]. In support of its Objection, Deere respectfully represents as follows:

BACKGROUND

1. On July 20, 2020 (the “**Petition Date**”), the above-captioned Debtors filed a voluntary petition for Bankruptcy relief under 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Eastern District of Missouri.

2. As of the Petition Date, Deere and the Debtors were parties to a series of agreements, pursuant to which the Debtors agreed to manufacture on a production basis various goods including engines which are placed into Deere equipment or machines, and service parts therefor (collectively, the “**Products**”), to be sold under the John Deere brand name (as amended and modified, collectively the “**Supply Agreement**”).

3. Pursuant to Section 10.1 of the Supply Agreement, the Debtors agreed to warrant to Deere that the Products shall (i) conform to all specifications applicable for the Products, (ii) be



free from defects in material or workmanship, (iii) be free from defects in design, (iv) comply with all applicable safety standards, and (v) be free of asbestos.

4. Pursuant to Article 11 of the Supply Agreement, it was agreed, among other matters, that Deere would provide a pass-through warranty from the Debtors for the Products to retail end users. The agreement provided that the Debtors would be responsible for administering the warranty and for making timely payment to Deere, Deere dealers and/or distributors for claims for the Products.

5. Further, pursuant to Section 12.1 of the Supply Agreement, the Debtors agreed to:

Protect, defend, hold harmless and indemnify Deere and Deere's officers, directors, employees, agents successors, assigns, and customers, from and against any and all claims, lawsuits, allegations, judgments, actions, liabilities, losses, damages, costs and expenses * * * including without limitation reasonable attorney and expert witness fees for injury, loss or damage of any kind claimed by a person not a party to this Agreement caused by or arising from, or alleged to have been caused by or arise from the design, manufacture, sale or use of the Products, including but not limited to product liability, negligence, or breach of the Agreement * * * by [the Debtors] * * * *.

6. In addition to the known and identified warranty claims, Deere suspects there exists latent or inchoate prepetition warranty claims of an indeterminate amount, which have yet to be discovered or disclosed. Similarly, Deere suspects that there may be latent or inchoate indemnity claims under both the Supply Agreement which also have not been discovered which inure to the benefit of Deere. Other, yet undiscovered, claims may exist due to Debtors' failure to otherwise perform under the Warranty Agreement, Master Bailment Agreement and Mutual Nondisclosure Agreement (collectively the "**Claim**").

7. On August 19, 2020, the Debtors filed its *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* ("**Notice of Cure Costs**") [Doc. No. 514]. Deere filed its *Limited Objection and Reservation*

of Rights [Doc. No. 858] (the “**Assumption Objection**”) to the Notice of Cure Costs on September 12, 2020, and therein Deere alleges that i) it has determined that there exist known Post Petition warranty claims covered by the Supply Agreements in the approximate amount of \$172,247.00 and ii) it suspects that there may be latent or inchoate indemnity claims which also have not been discovered which inure to its benefit. The Assumption Objection has not yet been ruled upon by this Court.

8. Pursuant to Section 12.2 of the Supply Agreement, the Debtors similarly agreed to protect, defend, hold harmless and indemnify Deere and Deere’s officers, directors, employees, agents successors, assigns, and customers, from and against claims arising from the infringement of any patent, trademark or copyright, or wrongful use of third-party trade secret or proprietary information.

9. Deere timely filed Proof of Claims No. 1696 (the “**Deere Claim**”) disclosing the known prepetition claims which existed as of the Petition Date. On September 3, 2021, the Debtors filed its *Fourth Notice of Satisfaction of Claims Against Debtor Briggs & Stratton Corporation* (“**Notice of Satisfaction of Claims**”) [Doc. No. 1891], in which the Debtors allege that the Deere Claim has been satisfied.

ARGUMENT

10. Deere respectfully suggests that it would be inappropriate to modify Deere’s prepetition claim without this Court first substantively addressing the Assumption Objection and the cure claims arising from the Debtors’ assumption of the Supply Agreement. As set forth in more detail in Deere’s Assumption Objection, the Supply Agreement is an integrated agreement between the parties pursuant to which the Debtors i) agreed to manufacture for Deere on a production basis various goods, ii) provide to Deere warranties of material and workmanship, iii)

provide to Deere a pass-through warranty for goods purchased to retail end users, and iv) defend Deere from the infringement of any patent, trademark or copyright, or wrongful use of third-party trade secret or proprietary information. In its Assumption Objection, Deere identified two types of claims which needed to be cured by the Debtors prior to assumption and assignment; i) the value of the known warranty claims covered by the Supply Agreements, which have arisen or became due on or after the Petition Date, in the approximate amount of \$172,247.00 and ii) the suspected latent or inchoate pre-petition warranty or indemnity claims, of an indeterminate amount, which have yet to be discovered or disclosed.

11. The Debtors' obligation to cure, or provide adequate assurances of a prompt cure, is a precondition of assumption of executory contracts. *See*, 11 U.S.C. § 365(b)(1)(A); *In re Superior Toy and Manufacturing Co.*, 78 F.3d 1169 (7th Cir. 1996). The requirement that the Debtors cure existing defaults under the Supply Agreement as a prerequisite of assumption would necessarily include the Deere Claim which arose prepetition, which is at issue in the Debtors' Notice of Satisfaction of Claim. Therefore, whether the prepetition claims held by Deere have been satisfied is not ripe for review until the Court rules upon the Assumption Objection. *See*, *Ohio Forestry Assn., Inc. v. Sierra Club*, 523 U.S. 726 (1998)(environmental group's challenge is not ripe when permission to engage in logging has not yet been granted).

12. However, in the event the Court takes up both the Debtors' Notice of Satisfaction of Claim and Deere's Assumption Objection simultaneously, then Deere responds to the Notice of Satisfaction of Claim as follows: Section 101(5) of the Bankruptcy Code defines the term 'claim' to be the "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . ." When parties agree in advance that one party will indemnify the other

in the event of a certain occurrence, there exists a "right to payment", albeit contingent, upon the signing of the agreement. *In re Metco Mining and Minerals, Inc.*, 171 B.R. 210, 216-17 (Bankr. W.D. Pa. 1994). "That payments became due after the bankruptcy filing does not alter the conclusion that the payments are pre-petition obligations." *In re Stewart Foods, Inc.*, 64 F.3d 141, 146 (4th Cir. 1995) (citing *Chiasson v. J. Louis Matherne & Assocs. (In re Oxford Mgmt., Inc.)*, 4 F.3d 1329, 1335 n.7 (5th Cir. 1993)). A claim is prepetition if, at the time the bankruptcy petition is filed, the debt is absolutely owed but is not presently due, or when a definite liability has accrued but is not yet liquidated. *In re Young*, 144 B.R. 45, 46-47 (Bankr. N.D. Tex. 1992).

13. In the ordinary course of the Debtors' and Deere's respective businesses, there likely exists additional latent or inchoate prepetition warranty and indemnity claims arising under or related to the Supply Agreement, which have yet to be discovered by Deere, or fixed and settled by the Debtors. Such prepetition claims have, obviously, not yet been satisfied. Further, Deere has not been provided with adequate information to determine whether all previously identified warranty claims have been fully resolved and settled and, therefore, is unable to confirm whether such claims have actually been satisfied.

14. Based upon the uncertainty associated with the aforementioned facts and events, including but not limited to the as-of-yet unresolved nature of the Notice of Cure Costs, Deere now makes this limited objection to the Debtors' Notice of Satisfied Claims.

RESERVATION OF RIGHTS

15. Deere objects to the Debtors' Notice of Satisfaction of Claims to the extent it would preclude Deere from asserting any unknown, unmatured, inchoate, or contingent liabilities related to the Supply Agreement. Deere further objects to the Debtors' Notice of Satisfied Claims to the extent the Debtors have not provided Deere with sufficient evidence that any previously identified

warranty claim have, in fact, been satisfied. Deere does not intend and hereby does not waive any rights or remedies it may otherwise assert against the Debtors. Deere reserves the right to amend and/or supplement this Objection.

CONCLUSION

WHEREFORE, Deere and Company respectfully requests that this Court enter an order, substantially in the form attached hereto, sustaining its limited objection to the Debtors' Notice of Satisfied Claims, and granting such other and further relief as may be just and proper under the circumstances.

Respectfully submitted,

SUMMERS COMPTON WELLS LLC

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was filed electronically on October 4, 2021 with the United States Bankruptcy Court for the Eastern District of Missouri and has been served on the parties in interest via e-mail by the Court’s CM/ECF System as listed on the Court’s Electronic Mail Notice List. I further certify that a true and correct copy of the foregoing document has also been served by Regular United States Mail Service, first class, postage fully pre-paid, addressed to those parties listed below on October 4, 2021.

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