

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)
)
Debtors.)
)
)

OBJECTION AND RESERVATION OF RIGHTS
OF BOYD CORPORATION AND WHOLLY OWNED SUBSIDIARIES
AAVID THERMALLOY, LLC AND A.B. BOYD CO. TO DEBTORS'
AMENDED NOTICE OF CURE COSTS AND PROPOSED ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES IN CONNECTION WITH SALE

COME NOW, Aavid Thermalloy, LLC ("Aavid") and A.B. Boyd Co. ("AB", and collectively with Aavid, the "Boyd Companies"), by and through their undersigned counsel, and for their Objection and Reservation of Rights of Boyd Corporation and Wholly Owned Subsidiaries Aavid Thermalloy, LLC and A.B. Boyd Co. to Debtors' Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection With Sale, state to this Honorable Court as follows:

1. Aavid and AB are wholly owned subsidiaries of Boyd Corporation and respectively have supplied certain castings and breather tubes to Debtors to Briggs & Stratton Corporation, et. al. ("Debtors") for decades. These products are necessary for the continuity of Debtors' manufacturing operations. Although Debtors have represented to Aavid and to AB that continued supply of the foregoing castings and breather tubes is critical to Debtors' ability to continue their manufacturing operations, Debtors have not yet designated either Aavid or AB as a "critical vendor" pursuant to the authority and discretion granted them by this Court pursuant to its orders



of July 22, 2020 and August 20, 2020 [Doc. Nos. 145 and 534] granting on an interim, and then a final basis, Debtors' motion to approve certain ordinary course operations and payment of critical vendors [Doc. #30].

2. Debtors and the Boyd Companies operate through certain Purchase Orders (each a "PO") whereby either Aavid or AB manufactures and supplies Debtors with property used by Debtors in the manufacturing process of their products. See *Declaration of John Monti*, attached hereto as **Exhibit A** and incorporated herein (the "**Monti Declaration**"), at ¶5.

3. The POs require the respective Boyd Companies to provide goods over a significant period of time, and Debtors provide certain orders to either Aavid or AB indicating the quantity of goods that Aavid or AB should deliver by a certain date, and the location to which the goods should be delivered.

4. As of the July 20, 2020 commencement of these proceedings (the "**Petition Date**"), Aavid was owed approximately \$183,100.58 and AB was owed approximately \$96,914.00 for goods sold pursuant to the POs. Post-petition, the Boyd Companies have continued to sell goods to Debtors on credit consistent with the parties' prepetition business practices and, as such, the amount actually due and owing at this date and at the date of the effective assumption, will change significantly. Monti Declaration, at ¶7-10.

5. On August 19, 2020 the Debtors filed five (5) separate notices with respect to cure costs relative to executory contracts, each entitled "*Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection With Sale*" (each a "**Contract Assumption Notice**") [Doc. Nos. 513, 514, 515, 516, and 537]. Said Contract Assumption Notices purport to list some 35,000 executory contracts with little identifying

information or description. The Boyd Companies filed a timely objection to the Contract Assumption Notice directed to them [Doc. No. 766].

6. Thereafter, Debtors filed their *Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* (the “Amended Assumption Notice”) [Doc. No. 879]. In their Amended Assumption Notice, Debtors identify the following alleged executory contracts with Boyd Companies”

Court Docket #	Counterparty	Contract Description	Cure Amount
879-2	Aavid Allcast	Confidentiality Agreement	\$0.00
879-2	A.B. Boyd Co.	Tooling Products Agreement Dated April 12, 2018	\$0.00
879-2	A.B. Boyd Co.	Confidentiality Agreement	\$0.00

7. With respect to the Confidentiality Agreements identified in the Amended Assumption Notice, same appear to be subject to the right of either party to terminate same at will. Aavid objects to the assumption of a confidentiality agreement with “Aavid Allcast, LLC” as that is not the correct legal name of Aavid and to ensure that the correct contact is identified. The Boyd Companies do not object to assumption and assignment of any binding confidentiality agreements, to the extent same are executory, so long as Debtors and the Buyer do not seek to amend, revise, or alter the terms of said agreements including the termination provisions.

8. With respect to the Tooling Products Agreement identified on Doc. No. 879-2, Debtor has taken the position that said agreement was fully performed by the parties in 2018 and that it is not executory. Given the foregoing, the Boyd Companies would submit that the Debtor has not established that the agreement is executory and thus capable of assumption and assignment. The Boyd Companies note that AB and Debtor have operated under a Blanket Purchase Order dated July 4, 2018 (the “July Blanket PO”) under which Debtor continues to make purchases/releases and under which Debtors owe AB in excess of \$96,914.00 for amounts that have been invoiced but not paid. To the extent that Debtor seeks to assume the July Blanket PO as the aforementioned “Tooling Products Agreement”, AB states that Amended Assumption Notice incorrectly identifies the assumed contract and incorrectly states the cure cost.

9. To the extent that the contracts identified in the Amended Assumption Notice are intended to supplement or to replace the executory contracts identified in the original Contract Assumption Notice [Doc. No. 513], both AB and Aavid object and restate and reallege the arguments made in their objection to the original Contract Assumption Notice [Doc. No. 766].

10. To the extent that the Debtor seeks to assume and assign any executory contract with either AB or Aavid, each of the respective Boyd Companies submit that the cure costs are

accurately stated in paragraph four (4) of their objection to the original Contract Assumption Notice [Doc. No. 766] (which amounts will need to be adjusted as of the date of proposed assumption) and that, pursuant to 11 USC § 365(b)(1), Aavid and AB are each entitled to a cure of all defaults at the time of any assumption. Accordingly, if the Debtors are to assume and assign the POs, the Debtors must first pay the Boyd Companies all prepetition and post-petition amounts owing thereunder through the effective date of assumption, as a condition to such assumption or assumption and assignment.

11. To the extent that the Contract Assumption Notices and the Amended Assumption Notice misstate the cure amounts, Aavid and AB object to the assumption or the assumption and assignment of any executory contracts or POs.

12. Until and unless each of Aavid and AB is fully paid for all cure amounts due and owing, each objects to the assumption or the assumption and assignment thereof of any executory contract by Debtors and each respectfully submits that each is entitled to be paid the correct cure amount in full *before or at the time of* assumption. Consequently, the respective Boyd Companies request that any Court order assuming or assuming and assigning a contract or agreement with any of the Boyd Companies direct that the full, correct cure amount be paid to the respective Boyd Companies as a condition precedent to contract assumption or assumption and assignment.

13. The Boyd Companies reserve their rights to supplement or to otherwise amend this Objection as the Debtors more accurately and more particularly describe any contracts with Boyd Corporation or any subsidiary thereof, to raise additional grounds for objection at the hearing, and to join in objection(s) filed by others.

WHEREFORE, the Boyd Companies respectfully pray that the Court allow assumption or assumption and assignment of any contract between any of the Debtors and the Boyd Companies

only after or the same time as the correct cure amount is paid. The Boyd Companies further pray that the Contract Assumption Notices be amended to accurately describe the contracts being assumed, the date of assumption, and the full, correct cure amount. Finally, the Boyd Companies pray that the Court grant them 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 hat on this 21st day of September, 2020, I served the foregoing ***Objection and Reservation of Rights of Boyd Corporation and Wholly Owned Subsidiaries Aavid Thermalloy, LLC and A.B. Boyd Co. to Debtors' Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection With Sale*** on the parties identified on the attached Notice List, by first-class mail, postage prepaid, unless said parties received service by the court's CMECF system.

/s/ Robert A. Breidenbach

**UNITED STATES BANKRUPTCY COURT
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BRIGGS & STRATTON,) Case No. 20-43597-399
CORPORATION, *et. al.*,)
) (Jointly Administered)
Debtor.)
)
)

DECLARATION OF JOHN MONTI

John Monti, being duly sworn, declares as follows:

1. I am a resident of the state of Arizona and am over the age of 18.
2. I am a Vice President of Corporate Finance for Boyd Corporation (“BoydCO”).
Wholly owned subsidiaries of BoydCO include A.B. Boyd Co. (“AB”) and Aavid Allcast, LLC (“Aavid”).
3. I make this declaration based upon the books and records of BoydCo, AB, and Aavid.
4. I am familiar with the facts and circumstances set forth in this Declaration and, if called upon, I can testify to the facts and circumstances described in this Declaration which are true and accurate to the best of my knowledge, information and belief. BoydCo, through its wholly owned subsidiaries AB and Aavid manufactures and sells castings and plastic/rubber tubing for Briggs & Stratton Corporation (“Debtor”) which Debtor then uses to manufacture products for its customers.
5. BoydCo and its subsidiaries AB and Aavid typically operate under one or more Purchase Orders (each a “PO”) whereby Debtor requires the respective BoydCO entity

to provide goods to Debtor over a significant period of time at agreed-upon pricing and delivery terms. Thereafter, Debtor provides releases to confirm timing of deliveries to coincide with Debtor's manufacturing schedules.

6. Significantly, BoydCO and its subsidiaries AB and Aavid frequently must contract with their suppliers (i.e. "Boyd Suppliers") to obtain product used to manufacture the goods ordered by Debtor and often must pay Boyd Suppliers before receiving payment from Debtor. Further, Boyd Suppliers are in foreign countries and require a significant lead time and volume commitments such that BoydCo, AB, and Aavid have significant exposure should Debtor either not pay or should Debtor attempt to cancel or change its BPO terms.
7. As of July 20, 2020 (the "Petition Date"), AB was owed \$96,914.00 for goods sold to Debtor, of which \$65,835.00 was delivered to Debtor in the twenty (20) days before the commencement of these Chapter 11 proceedings.
8. As of July 20, 2020 (the "Petition Date"), Aavid was owed \$183,100.58 for goods sold to Debtor, of which \$51,372.00 was delivered to Debtor in the twenty (20) days before the commencement of these Chapter 11 proceedings.
9. The foregoing \$65,835.00 and \$51,372.00 amounts (the "503(b)(9) Claims") are set out in additional detail in the attached summary.
10. AB and Aavid have continued to provide goods to Debtor after the filing of these bankruptcy proceedings. As such, the amount actually due as set out above may change significantly as of the effective date of any assumption.
11. After the commencement of these proceedings, Debtor has repeatedly informed AB and Aavid that they were "critical vendors" or "strategic vendors" and has further

represented to said entities that if they refused to perform under the POs they would shut down Debtors' manufacturing operations and be in breach of the POs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2020



John Monti