

Oct 15 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Husqvarna Consumer Outdoor Products N.A., ) Civil Action No. 2021CP3801115  
Inc.; Modern Rentals Inc., )

Plaintiffs, )

v. )

Briggs & Stratton LLC, )

Defendant. )

**ORDER GRANTING PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION AND DENYING IN  
PART DEFENDANT’S MOTION TO  
COMPEL ARBITRATION**

On October 7, 2021, the Court held a hearing via WebEx and heard from counsel for Plaintiffs Husqvarna Consumer Outdoor Products N.A., Inc. (“Husqvarna”) and Modern Rentals Inc. (collectively, “Plaintiffs”) regarding Plaintiffs’ Motion for Preliminary Injunction, Defendant Briggs & Stratton LLC’s (“B&S”) Motion to Compel Arbitration, and Defendant’s Motion to Dissolve the TRO. The Court issues this Order.

**MOTIONS ADDRESSED DURING OCTOBER 7, 2021 HEARING**

1) The parties filed and submitted the following motions which were fully briefed, argued at the October 7, 2021 hearing, and ripe for decision:

- a. Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary injunction on September 20, 2021 and a Supplemental Brief in Support of Motion for Preliminary Injunction and Opposition to Motion to Dissolve the Temporary Restraining Order on October 5, 2021;
- b. Defendant filed a Motion to Alter or Amend or Dissolve on October 1, 2021 and supporting memoranda on October 4, 2021;
- c. Defendant filed a Motion to Stay Proceedings in this Action and Compel Arbitration and a separate Response in Opposition to Plaintiffs’ Motion to Enjoin B&S from Participating in Arbitration Proceedings on September 27, 2021;

- d. Plaintiffs filed a Motion to Enjoin B&S from Participating in Arbitration Proceedings and a separate Response in Opposition to Defendant's Motion to Stay Proceedings in this Action and Compel Arbitration on September 27, 2021; and
- e. Plaintiffs filed a Motion for Rule to Show Cause on October 4, 2021, and, in response, Defendant filed a Memorandum in Opposition to the Motion for Rule to Show Cause; and
- f. The parties submitted briefing and various evidence in support of certain of their respective positions.

### **PROCEDURAL HISTORY**

2) On September 20, 2021, the Court entered an *ex parte* Temporary Restraining Order in this matter, in which it found that (a) Husqvarna, Modern Rentals, Husqvarna's customers and Husqvarna's employees will be immediately and irreparably harmed by B&S's failure to supply engines to Husqvarna and that there is no adequate remedy at law to address this irreparable harm; (b) Husqvarna is likely to prevail on the merits of its claims as B&S has unjustifiably acted to breach and anticipatorily repudiate a valid existing contract between the parties, the General Supply Agreement; (c) the public interest would be served by the enforcement the General Supply Agreement; and (d) B&S would not be harmed as it will be compensated for the engines.

3) In the September 20 TRO, the Court specifically ordered that: (a) B&S shall not provide or sell any of the engines that are subject to the Deemed Orders to any purchaser, user or customer other than Husqvarna in accordance with its obligations under Section 8.1 of the October 1, 2015 General Supply Agreement; (b) B&S shall continue to perform its obligations under the October 1, 2015 General Supply Agreement, including all preparations to perform those obligations as would be required to satisfy the Deemed Orders; and (c) B&S shall fulfill the

Deemed Orders made by Husqvarna, a list of which is set forth on Exhibit A to the September 20 TRO, in full and by the delivery date indicated on Exhibit A, in accordance with its obligations under the October 1, 2015 General Supply Agreement and amendments.

4) The Court held a second hearing two days later in which counsel for both parties presented argument regarding the propriety of a TRO and its extension. During that hearing the Court reiterated its findings in the TRO and extended the same for another 10 days to October 10, 2021. The Court specifically found that due to Defendant's failure to comply with the first Order and due to logistics of scheduling a preliminary injunction hearing, the original TRO should be extended. In the September 23 Order extending the TRO, the Court again emphasized that "B&S shall continue to build and deliver the engines noted in Exhibit A to the September 20 TRO."

5) Both TRO Orders provide that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of the TRO Orders.

6) On September 24, 2021, B&S filed with the American Arbitration Association a Demand for Arbitration against Husqvarna, a Demand for Arbitration against Modern Rentals and a Request for Immediate Appointment of Arbitrator and Emergency Preliminary Relief and a Proposed Order (collectively, the "B&S Arbitration").

7) On September 28, 2021, the Court entered an Order staying the B&S Arbitration pending the October 7, 2021 preliminary injunction hearing and stating that B&S remains subject to and must comply with the Court's September 20 TRO as extended by the Court's September 23, 2021 Order and that B&S shall continue to build and deliver engines noted on Exhibit A to the September 20 TRO.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8) Husqvarna is a manufacturer of, among other things, riding lawn mowers, which are referred to by the parties as “tractors.” All of Husqvarna’s tractors are made in Orangeburg, South Carolina. Tractors, and other large mowers such as zero-turn mowers, utilize a particular type of engine called a large vertical shaft engine (“LVSE”). B&S is the primary supplier of LVSEs for Husqvarna’s tractors, and it has supplied engines of various types to Husqvarna for approximately forty years. There are two other U.S.-based suppliers of LVSEs, Kawasaki and Kohler, which also manufacture engines that can be used in Husqvarna tractors. Husqvarna purchases LVSEs from both Kawasaki and Kohler. Engines from these companies are primarily used for zero-turn mowers, although some are used in tractors. Husqvarna sells its tractors to large retail customers, such as Lowe’s, and also through a network of independently-owned dealers, which includes Plaintiff Modern Rentals, Inc.

9) On or about October 12, 2016, Husqvarna and B&S entered into a General Supply Agreement that was effective October 1, 2015 (the “GSA”). Pursuant to the GSA, each October, the parties are required to negotiate an Appendix B to the GSA. (GSA, at § 3.1). The Appendix B designates the Products (engines) that will be sold to Husqvarna, the end-goods (mowers) onto which the engines will be installed (called the “Configuration”), the purchase prices, and the lead times required for B&S to produce an engine once it is ordered by Husqvarna. (*Id.*).

10) The Appendix B is adopted in October because October is the traditional beginning of the “build season.” The build season means that in order for tractors to be in stores for sale in the Spring, the tractors must be assembled in the prior Fall and throughout the Winter. Husqvarna’s build season typically runs from October until April with some additional assembly

in May and June. Without a steady supply of engines during the build season, Husqvarna will be unable to assemble a sufficient number of tractors to meet consumer demand in the Spring season.

11) For all products on a given Appendix B, Husqvarna must purchase all of its requirements for engines from B&S. (GSA, at § 2.3). If Husqvarna uses a competitor's engine in one of its end goods, the GSA requires Husqvarna to pay an appropriate measure of compensation to B&S, the amount of which is negotiated by the parties. (*Id.*). Because Husqvarna must purchase its requirements for engines from B&S, B&S is not permitted under the GSA to reject Husqvarna's purchase orders, provided that the purchase order is submitted in accordance with the parties' agreed lead times in Appendix B. (*Id.* at § 2.1). A purchase order submitted within the appropriate lead time is called a "Deemed Order." (*Id.*). When a Deemed Order is placed, Husqvarna identifies "any given delivery date" for delivery, (*id.* at § 2.1(a)), and B&S "shall deliver the Products as per the dates specified in each Deemed Order." (*Id.* at § 4.2). Additionally, the GSA provides that Husqvarna has priority status in terms of engine allocation relative to all other purchasers or users of B&S engines. (*Id.* at § 8.1). The purpose of the priority provision is to ensure that Husqvarna has an uninterrupted and continued flow of engines during a shortage. (*Id.*).

12) Husqvarna experienced engine shortages and delayed deliveries in late 2020 and early 2021. Husqvarna repeatedly requested to visit B&S's engine plants in Statesboro and Auburn to "lend their experience to help [B&S] if possible." (Briggs-SC-0000634). B&S denied those requests, citing the pandemic. (*Id.*) But at least by early 2021, B&S was aware that it would likely be unable to supply Husqvarna's requirements for engines. On February 4, 2021, Kim Stamper, B&S Director of Sales, sent an internal email in which she wrote "the allocation situation with Husqvarna is beginning to come off the tracks." (Briggs-SC-0000634). She explained that even if B&S were to hit all of its production goals, it would finish the production year approximately

50,000 engines short of Husqvarna's overall demand. In her internal email, Ms. Stamper wrote: "By the end of the fiscal year, HOP [Husqvarna] will be ~50k engines short to demand if we hit all our current allocation and rates (HOP IS NOT AWARE OF THE LONG TERM VIEW)." (capital letters original). Randy Ballard indicated that B&S would be short of Husqvarna's overall demand a day later, noting to Husqvarna's VP of Operations, Jim Moore, "I cannot commit to hitting your demand." (10/3/2021 Ballard Affidavit, Ex. D.)

13) Concerned about the ongoing shortages and delays, Husqvarna asked for assurances and received them. On February 26, 2021, Husqvarna sent a letter to B&S seeking adequate assurance under the Uniform Commercial Code that B&S would perform its contractual obligations. (September 19, 2021 Affidavit of Manish Mathur, Ex. C). On March 9, 2021, B&S responded to the letter and wrote that "To remove any doubt, Briggs continues to provide Husqvarna with priority status, which, at times, is to the detriment of other customers. . . Briggs further assures Husqvarna that it will continue to perform its obligations as outlined in the GSA, including Section 8.1. . . Further, Briggs continues in its efforts to keep Husqvarna fully apprised of its expected Product availability." (*Id.*) The statements in B&S's response to Husqvarna's adequate assurance letter were untrue. At the time B&S's March 9 letter was sent, it was aware that it would not fill Husqvarna's demand, but it represented to Husqvarna that it would perform its obligations under the GSA and that it would keep Husqvarna informed about its production status. It did neither.

14) On or about May 12, 2021, B&S gave notice under the GSA that it intended to terminate the GSA, effective September 30, 2021. (10/3 Ballard Aff. Ex. E. The GSA remained in effect until September 30, 2021. In the notice of termination, B&S wrote that it wished to continue its supply relationship with Husqvarna under a new agreement.

15) On May 22, 2021, Husqvarna placed two orders for approximately 48,000 engines from B&S. Both of these orders were Deemed Orders under the GSA. The Deemed Orders were due to be delivered on or about September 22 (the “May Orders”). (Mathur Aff. ¶ 6, Ex. E). After receiving the May Orders, B&S discussed the order internally. In a May 26 email, Ms. Stamper wrote that because the order “was placed within the GSA, they [Husqvarna] are expecting MY21 pricing and supply.” (BRIGGS-SC-0000987). That same day, B&S attempted to reject the May Orders. The GSA does not permit B&S to reject Husqvarna’s Deemed Orders, which B&S has admitted through the deposition of its corporate representative.

16) Through the summer of 2021, Husqvarna placed other Deemed Orders (as that term is defined in the GSA) with B&S. In total, Husqvarna placed Deemed Orders for approximately 150,000 engines, with delivery beginning in September 2021 and extending into 2022. A summary of Husqvarna’s open purchase orders is attached hereto as Exhibit A, along with a copy of the purchase orders that support the summary. Although B&S delivered a small number of engines to Husqvarna in September to fulfill some of the Deemed Orders due in September, the parties do not dispute that the vast majority of these orders, including the May Order (also to be delivered in September), have not been filled.

17) By the summertime, B&S had determined that it would cease or dramatically reduce its business with Husqvarna. In making the decision to “dramatically short Husqvarna,” B&S discussed with Lowe’s to see how Lowe’s felt about Husqvarna not being able to supply tractors if B&S didn’t supply the engines. (BRIGGS-SC-0000149-50). B&S also wondered if “they [Husqvarna] lose Lowes do we have legal ramifications?” (*Id.*) As of August 3, B&S internal documents showed that it would fill 96% of Deere’s orders and 22% of Husqvarna’s orders from July 2021 through June 2022, manufacturing 200,000 more MY2022 engines for Deere than

it did in MY2021, 50,000 more for MTD and 80,000 less for Husqvarna. (BRIGGS-SC-0000149-150). B&S's Rule 30(b)(6) representative, Randy Ballard, testified that B&S projects to produce close to 1,000,000 engines in 2021 and that in September it manufactured approximately 2,500 engines per day in its Statesboro and Auburn plants combined. Notwithstanding Section 8.1 of the GSA, which required B&S to give priority to Husqvarna, B&S was manufacturing engines for other customers in substantially larger numbers than for Husqvarna. B&S has the capacity to make engines for Husqvarna, it is just choosing to allocate its engines to other customers.

18) B&S, despite its decision to short Husqvarna on engine supply and allocate engines to other customers, continued to make representations to Husqvarna that its orders were delayed because of the COVID-19 pandemic, not because B&S had made a strategic choice to support other customers notwithstanding its priority obligations to Husqvarna in the GSA. For example, on June 25, B&S sent an email to Husqvarna that purported to attach new lead times for "all new orders" from its plants. On June 29, Ms. Stamper, B&S's Director of Sales, asked her boss in an internal email whether he was "comfortable with this language for HOP [Husqvarna] US? Stating these lead times are valid for all 'new orders' is not really accurate here." BRIGGS-SC-00001353.

19) Throughout the Spring and Summer, B&S made several other representations to Husqvarna regarding its desire to enter into a new supply agreement with Husqvarna and that it would provide a supply plan for Husqvarna engines; indeed, in late July, B&S sent Husqvarna a new draft supply agreement.

20) According to Thomas Rugg, B&S's President, B&S decided in August 2021 to go in a different direction and not supply Husqvarna with any engines past September 30, 2021, based on several factors including retail projections, supply chain challenges, and contractual obligations to other customers. (Rugg Aff. ¶ 15.) On or about September 9, 2021, B&S informed Husqvarna

that it would not deliver the May Order, and it would not deliver any engines to Husqvarna after October 4, 2021, meaning that Husqvarna would not receive the vast majority of engines for which Deemed Orders were placed beginning in May 2021.

21) Upon learning that B&S would not fill its orders, Husqvarna began to seek engines from alternate suppliers. It contacted both Kohler and Kawasaki, but neither company could commit to supply additional engines. Husqvarna has also used Chinese engine suppliers, and uses Chinese engine suppliers for its European market, but it cannot utilize Chinese engines in the United States. This is because the International Trade Commission order that was issued in February 2021 that placed significant duties on Chinese engines for use in the United States, with some duties in excess of 450%. The ITC order was the result of a complaint filed by B&S in 2020. Accordingly, Husqvarna cannot adequately cover B&S's failure to supply engines.

22) If B&S does not supply Husqvarna with the engines that it ordered, Husqvarna will be forced to close one or more of its assembly lines, lay off workers, and will decline to hire workers that it had planned to hire in order to manufacture tractors for the Spring 2022 season. In addition, Husqvarna will forgo the purchase of parts and supplies from other suppliers that are used in the manufacture of its tractors. It will not be able to supply its independent dealer network, including Modern Rentals. For these small businesses that exclusively (or nearly exclusively) sell Husqvarna tractors, the loss of a season of revenue could be insurmountable. Husqvarna will also not be able to supply its retail customers like Lowe's and consumers will not be able to purchase Husqvarna tractors in Spring 2022. Its inability to produce Model Year 2022 tractors will damage Husqvarna's brand, reputation as a reliable supplier and goodwill.

**A. Arbitrability of Dispute and Authority to Enter Preliminary Injunction.**

23) This Court has the inherent authority to issue an injunction preserving the status quo. This is true even if the merits of the dispute will be ultimately arbitrated. *Merrill Lynch, Pierce, Fenner, & Smith, Inc. v. Bradley*, 756 F.2d 1048, 1052 (4th Cir. 1985) (holding that the Federal Arbitration Act, a court has the power to issue a preliminary injunction to preserve the status quo); *see also MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct. App. 2003) (“[A] court can, and should, grant a preliminary injunction in an arbitrable dispute whenever an injunction is necessary to preserve the status quo pending arbitration.”) (quoting *Teradyne, Inc. v. Mostek Corp.*, 797 F.2d 43, 47 (1st Cir. 1986)).

24) The Court finds that if it were not to issue an injunction that preserves the status quo, any arbitration proceeding, if necessary, would be a hollow formality for Plaintiffs’ claims for equitable relief, as Husqvarna could not recover monetary damages sufficient to compensate it for its losses. Plaintiffs seek the equitable remedy of specific performance to require B&S to deliver engines pursuant to Husqvarna’s Deemed Orders that were issued under the GSA. If Husqvarna does not immediately receive engines from B&S, it will be forced to shut down its assembly lines, will discontinue purchases of supplies and parts, and it will breach orders to its customers, potentially causing its permanent harm to its goodwill and reputation in the marketplace. Additionally, if Husqvarna goes an entire season without selling a material number of tractors, it may never be able to recover in the market. Furthermore, the Husqvarna’s employees would suffer irreparable harm if layoffs occur as a result of this dispute going unresolved. These ancillary damages to the employees and community of Orangeburg are also a factor that supports the issuance of judicial relief that will maintain the status quo.

25) B&S asked the Court to construe the agreement in its Motion to Alter, Amend or Dissolve the Court’s TRO orders based on how the Court interprets the GSA. The Defendant has

placed the question before this Court as to the GSA's meaning, and the Court answers the question submitted against the Defendant, as set forth herein.

26) Separately, the Court also finds that the GSA's arbitration clause supports the issuance of an injunction by this Court. The GSA is governed by New York law and its arbitration clause provides that:

[a]ny dispute or claim arising out of or in connection with this Agreement . . . shall be resolved exclusively by submitting such dispute to binding arbitration in New York pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Notwithstanding the foregoing, each party shall always be entitled to initiate proceedings with local courts . . . in order to (a) protect its intellectual property, (b) protect its tooling, or (c) seek immediate equitable or injunctive relief, pending and/or in aid of arbitration.

(GSA at § 9.14). This Court has determined that the parties did not intend to delegate the issue of determination of arbitrability to the arbitrator. In fact, the plain reading of the section is that the parties expressly intended to *exclude* these claims from the arbitrator. Although the first sentence of the section provides that any dispute or claim relating to the agreement must be resolved by arbitration, the second sentence includes a notwithstanding clause: "*Notwithstanding the foregoing, each party shall always be entitled to initiate proceedings with local courts.*" (Supply Agreement, § 9.14) (emphasis added). "'Notwithstanding' means 'takes precedence over' and thus negates any contrary provision." *RJE Corp. v. Northville Indus. Corp.*, 2002 U.S. Dist. LEXIS 11741, at \*15 (E.D.N.Y. June 25, 2002); *Warberg Opportunistic Trading Fund, L.P. v. GeoResources, Inc.*, 2013 NY Slip Op 6826, 112 A.D.3d 78, 973 N.Y.S.2d 187 (App. Div. 1st Dept.) ("the use of . . . a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section") (quoting *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 113 S. Ct. 1898 (1993)).

27) The Court finds that the second sentence of the arbitration provision is intended to override the first sentence – including the use of AAA rules – in three types of actions: (a) to

protect intellectual property, (b) protect its tooling, and (c) seeking injunctive and equitable relief, pending and/or in aid of arbitration. Plaintiffs here have sought equitable and injunctive relief, which are excluded from and override the use of AAA rules and, accordingly, the parties cannot be said to have “clearly and unmistakably intended” to delegate the issue of arbitrability to the arbitrator. *Archer & White Sales, Inc. v. Henry Schein, Inc.*, 935 F.3d 274, 278, 281-282 (5th Cir. 2019) *cert. dismissed as improvidently granted*, 141 S. Ct. 656 (2021) (“*Schein II*”). To the contrary, the plain reading of the section is that the parties expressly intended to *exclude* these issues from the arbitrator. *Schein II*, 935 F.3d at 281-282. For the reasons set forth herein, this Court, not an arbitrator, is responsible for determining the threshold question of arbitrability.

28) Based on the language of the arbitration clause in the GSA, the Court finds that the parties did not clearly and unmistakably intend to delegate the issue of the arbitrability of injunctive and equitable relief to an arbitrator. Accordingly, this Court has the authority and a duty to interpret the GSA and determine whether the parties intended to exclude a claim from arbitration. *AT&T Techs. v. Communs. Workers of Am.*, 475 U.S. 643, 651 (1986); *see also Partain v. Upstate Automotive Group*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010) (“The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.”) *accord Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007); *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020).

29) B&S argues that it is “well established” that where the parties agree to an arbitration provision, then the arbitrator should decide questions of arbitrability and not a court, relying on *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524 (2019) (“*Schein I*”). Defendant mistakenly relies on the holding in *Schein I*. The limited holding in *Schein I* is that a court may not rely on the so-called “wholly groundless” exception to resolve the merits of a dispute if the

parties have agreed to arbitration. *Schein I*, 139 S. Ct. at 530. Stated accurately, the Supreme Court in *Schein I* remanded the question of who decides arbitrability, and on remand, the Fifth Circuit held that the court, not the arbitrator, decided arbitrability in that circumstance. *Schein II*, 935 F.3d at 278, 281-282.

30) Since this Court has determined that it has the responsibility to determine whether the instant dispute is arbitrable, the Court now turns to that issue. The parties dispute what “pending and/or in aid of arbitration” means and whether a preliminary injunction would be in aid of arbitration. This Court finds that the preliminary injunction is in aid of arbitration because the injunction potentially reduces the amount of damages that Briggs could have to pay and it reduces the amount of damages Husqvarna would suffer due to the failure to deliver engines.

31) In addition to injunctive relief, Plaintiffs have also sought equitable relief in the form of specific performance, asking this Court to require B&S to perform its obligations under the GSA. Like the requested injunctive relief, the Court has jurisdiction to provide this requested equitable relief. In other words, it is outside of the mandatory arbitration clause and provides an independent basis to issue a preliminary injunction.

32) B&S’s arbitration demand does not divest this Court of its jurisdiction over Plaintiffs’ equitable and injunctive claims. First, as discussed above, *Merrill Lynch* makes clear that this Court *always* has the power to issue injunctive relief to preserve the status quo, regardless of whether an arbitration has been filed and regardless of the language of the parties’ arbitration clause. *Merrill Lynch*, 756 F.2d at 1052. Second, based on the language of the GSA, this Court, not the arbitrator, has the power to determine whether this matter is arbitrable. *Schein II*, 935 F.3d at 281-282; *see also AT&T Techs., Inc. v. Commc’n Workers of Am.*, 475 U.S. 643, 649 (1986) (explaining that the presumption is that the court, not the arbitrator, decides issues of arbitrability);

*see also Partain v. Upstate Automotive Group*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010) (“The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.”); *accord Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007); *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020); *Faltaous v. Anderson Ocean Club Development, LLC*, 388 S.C. 45, 48, 693 S.E.2d 434, 436 (Ct. App. 2010). For these rules to have any effect, this Court must retain jurisdiction regardless of whether an arbitration has been filed. Third, Defendant has requested that the Court rule on and interpret the GSA in several respects, and it has done so.

33) The Court further finds that the threatened harm to Plaintiffs outweighs any potential harm to B&S; even if this Court is incorrect, the harm to B&S is only that the arbitration is delayed, not precluded, whereas the harm to Plaintiffs at having to arbitrate an issue to which they have not agreed to arbitrate is irreparable. *Merrill Lynch Inv. Managers v. Optibase, Ltd.*, 337 F.3d 125, 129 (2d Cir. 2003).

#### **B. Preliminary Injunctive Relief.**

34) The Court may issue a preliminary injunction upon a finding that the plaintiff “(1) is likely to succeed on the merits, (2) he or she is likely to suffer irreparable harm in the absence of preliminary injunctive relief, and (3) there is inadequate remedy at law.” *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009). The court must also “balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant.” *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

35) First, it appears to the Court that Husqvarna is likely to succeed on the merits of its claims. The Supreme Court of South Carolina has held that “[w]hen seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present “a

fair question to raise as to the existence of such a right.” *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912).

- a. “Under New York law, an action for breach of contract requires proof of (1) a contract; (2) performance of the contract by one party; (3) breach by the other party; and (4) damages.” *First Investors Corp. v. Liberty Mut. Ins. Co.*, 152 F.3d 162, 168 (2d Cir. 1998). Husqvarna satisfies each element. The GSA is a valid and enforceable written agreement between Husqvarna and B&S, and Husqvarna has performed. Because B&S has breached the agreement, causing damages to Plaintiffs, Husqvarna is likely to prevail on its contract claim.
- b. The GSA is a requirements contract. If Husqvarna places its engine orders within the appropriate lead time, B&S’s obligation to supply Husqvarna is mandatory: “Supplier shall sell to Husqvarna and Husqvarna shall buy such Products as may be subject to a Deemed Order initiated by Husqvarna from time to time during the Term.” (GSA, at § 2.1).
- c. There are only two requirements under the GSA to create a binding order (and binding contract) between Husqvarna and B&S: (1) Husqvarna must initiate, during the Term, (2) a Deemed Order. (GSA at § 2.1). The agreement contains no language about B&S’s acceptance of an order or its ability to reject an order.
- d. All that is required is that the order be initiated during the Term; to be effective, an order need not be confirmed, accepted, shipped, or paid for. (GSA, at § 2.1). Husqvarna initiated the Deemed Orders listed on Exhibit A during the Term. The GSA’s Term ended on September 30, 2021. B&S has not filled the Deemed Orders listed on Exhibit A.

- e. The Court also finds that Husqvarna has shown a likelihood of success on the merits for its claim of promissory estoppel. A claim of promissory estoppel requires “(1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.” *Satcher v. Satcher*, 351 S.C. 477, 483-84, 570 S.E.2d 535, 538 (Ct. App. 2002). The doctrine should be applied where failure to do so would be “virtually to sanction the perpetration of a fraud or would result in other injustice.” *Id.* at 484, 570 S.E.2d at 538. “Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property.” *Id.* at 484, 570 S.E.2d at 538-39.
- f. In this situation, B&S repeatedly promised and represented to Husqvarna that would give Husqvarna priority in its production of engines and that it would deliver engines to Husqvarna in response to its orders. Indeed, although B&S now contends that it did not have an obligation to fill Deemed Orders after the termination of the GSA, its own documents show that it did not reject Husqvarna’s purchase order until approximately September 14, and even at that time did not notify Husqvarna that its orders were rejected. (BRIGGS-SC-0000919.) Furthermore, it was reasonable for Husqvarna to rely on B&S’s promises. Husqvarna had a long, forty-year relationship with B&S as an engine supplier, and it was reasonable for it to rely on B&S’s representations. This is

particularly so given that Husqvarna sent a formal request under the Section 2-609 of the Uniform Commercial Code seeking adequate assurance that B&S would perform its obligations. B&S provided a formal response that affirmed not only that it would perform its obligations, but that it would continue to give Husqvarna priority and keep Husqvarna apprised of its production plans. For the same reasons, it should have been foreseeable to B&S that Husqvarna would rely on these representations. Finally, as previously explained, Husqvarna has suffered injury in reliance on B&S's promises.

36) Second, the Court finds that Briggs' failure to supply the orders made by Husqvarna prior to the termination of the GSA will cause irreparable harm to Plaintiffs, including the loss of an entire build season and the reputational damage that coincides with such a catastrophic event. In addition to the irreparable harm Plaintiffs themselves will suffer if Husqvarna is unable to manufacture tractors for the 2022 model season, hundreds of Husqvarna employees will have to be laid off, the Orangeburg facility will likely have to shut down, and Husqvarna will have to breach contracts with its buyers. The cascading effect these outcomes would have on Husqvarna's market share would be immediate and likely irreparable.

- a. Husqvarna has shown that it is unable to find another supplier of engines that will be able to manufacture engines in time for the 2022 Model Year, and it is impossible for Husqvarna to cover B&S's breach. Without the engines it ordered from B&S, Husqvarna has shown that it will shut down assembly lines, lay off hundreds of employees, and reduce a significant portion of Husqvarna's \$85 million in supply purchases within the state of South Carolina, thereby in turn causing those suppliers to furlough or lay off their South Carolina workers. Husqvarna has shown that it

will be unable to meet its obligations to customers such as Lowe's and its dealers, such as Modern Rentals, and for the small businesses that exclusively (or nearly exclusively) sell Husqvarna tractors, the loss of a season of revenue could be insurmountable. Husqvarna's brand and reputation as a reliable supplier will be damaged. Husqvarna and Modern Rentals have shown they will suffer these injuries.

- b. Husqvarna has shown that there is a "likelihood that immediate, irreparable harm will occur" absent injunctive relief. *Hodges v. Abraham*, 253 F. Supp. 2d 846, 864 (D.S.C. 2002); *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366 (2011). Irreparable harm is the inevitable result from a "supplier's refusal to deliver components." *Sogefi USA, Inc.*, 2021 WL 1602427, at \*4; *see also P&L Dev. LLC v. Bionpharma Inc.*, No. 1:17CV1154, 2018 WL 11154178, at \*4 (M.D.N.C. Jan. 26, 2018); *Eberspaecher N. Am., Inc. v. Nelson Global Prods., Inc.*, 2012 U.S. Dist. LEXIS 52207, at \*15-16 (E.D. Mich. 2012).
- c. Likewise, the economic hardship to the Orangeburg and South Carolina communities at large, and the disruption of services to the public are oft-cited examples of public interest factors that weigh in favor of an injunction in federal court. *E.g.*, *Sogefi*, 2021 U.S. Dist. LEXIS 78552, at \*13; *P&L Dev.*, 2018 U.S. Dist. LEXIS 240231, at \*11; *Almetals, Inc. v. Wickeder Westfalenstahl, GmbH*, No. 08-10109, 2008 U.S. Dist. LEXIS 87403, at \*10 (E.D. Mich. Oct. 29, 2008).

37) Third, the Court believes that due to the timing and Husqvarna's need to manufacture tractors during the upcoming build season, mere monetary damages would be inadequate. The preliminary injunction ordering B&S to supply the 150,000 engines is the only

way to maintain the status quo pending and/or in aid of arbitration. Considering the arguments made during the hearing and the documents reviewed, the Court finds that the status quo under these circumstances is B&S delivering all orders made by Husqvarna prior to the termination of the GSA. Due to B&S's notice of termination of the GSA on May 12, 2021, the Supply Agreement terminated on September 30, 2021. The "order date[s]" in Exhibit A to the TRO all occur before September 30, 2021; therefore, B&S is responsible for supplying those engines as the GSA was still in place at that time.

- a. Husqvarna has shown that it has an inadequate remedy at law. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (Ct. App. 2005). South Carolina courts have recognized that where severe harm would immediately befall a plaintiff absent injunctive relief, monetary damages are an inadequate remedy. *Id.* at 457, 626 S.E.2d at 37-38.
- b. Injunctive relief by means of specific performance is an appropriate remedy. *Bidwell v. Long*, 14 A.D.2d 168, 218 N.Y.S.2d 108 (1961) (specific performance was a proper remedy when seller attempted to breach written contract to sell a bakery route business); *Dexter Bishop Co.*, 58 A.D.2d 755 (granting specific performance of contract to supply unique machines used by plaintiff to process butter and margarine); *Clardy*, 383 S.C. 418, 426-28, 679 S.E.2d 527, 531-32 (equitable remedy of specific performance warranted where buyer attempted to breach written contract to sell motels).
- c. Courts have granted injunctive relief by means of specific performance to enforce a supply contract when alternate sources of supply are not available. *See, e.g., Sogefi USA Inc. v. Interplex Sunbelt, Inc.*, 2021 U.S. Dist. LEXIS 87926 at \*11-19

(S.D. W.Va. 2021) (granting preliminary injunctive relief of specific performance where significant harm would result to the buyer’s employees, its reputation, the economy, and consumers, while in contrast, an order that the supplier “continue to timely supply the parts to Sogefi [buyer] merely maintains the status quo.”) (citing *Key Safety Sys., Inc. v. Invista, S.A.R.L., LLC*, 2008 U.S. Dist. LEXIS 70117 (E.D. Mich. 2008)) (granting injunctive relief of specific performance where cover was not available, testing and qualification of a new supplier would take months, and the preliminary injunction would avoid automotive plant shutdowns, layoffs, and resulting harm to the economy); *see also Eberspaecher N. Am., Inc. v. Nelson Global Prods., Inc.*, 2012 U.S. Dist. LEXIS 52207 (E.D. Mich. 2012) (granting injunctive relief of specific performance where Tier 2 auto parts supplier refused to fill purchase orders unless the buyer, Tier 1 auto parts supplier, paid a higher price, leaving the buyer unable to manufacture goods as there was no alternate source of supply, resulting in loss of customer goodwill, disruption of the supply chain, shut down of assembly lines and layoff of employees).

38) Finally, in considering the damage to Briggs versus the damage to Husqvarna in enforcing the preliminary injunction, it appears to the Court that Briggs has the capacity to supply the 150,000 engines to Husqvarna without suffering the damage faced by Husqvarna and that B&S will not be harmed by selling engines to Husqvarna and receiving payment for such engines.

- a. In considering the balance of the equities between the parties, the court “must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant.” *Strategic Resources Co.*, 627 S.E.2d at 689, 367 S.C. at 544.

- b. Here, the requested relief is an injunction by which a contracting party is “required to do what it previously agreed to do under” the GSA, so as to prevent the other party from suffering immediate irreparable harm, the balance of the equities weighs in favor of granting an injunction. *See P&L Dev. LLC v. Bionpharma Inc.*, No. 1:17CV1154, 2018 WL 11154178, at \*4 (M.D.N.C. Jan. 26, 2018).

39) Additionally, the Court believes a preliminary injunction is appropriate given the conversation that occurred between B&S and Lowe’s. Husqvarna currently supplies its tractors to Lowe’s yet B&S discussed with Lowe’s whether it would be a loss to lose Husqvarna as a supplier. The fact that B&S proposed this question to Lowe’s is cause for concern and compels the Court to believe the injunction is all the more necessary in this instance.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Plaintiffs’ Motion for Preliminary Injunction is **GRANTED** as follows:
  - a. Defendant Briggs & Stratton LLC shall not provide or sell any of the engines that are subject to the Deemed Orders to any purchaser, user or customer other than Husqvarna in accordance with its obligations under Section 8.1 of the October 1, 2015 General Supply Agreement;
  - b. Defendant Briggs & Stratton LLC shall continue to perform its obligations under the October 1, 2015 General Supply Agreement, including all preparations to perform those obligations as would be required to satisfy the Deemed Orders;
  - c. Defendant Briggs & Stratton LLC is ordered to fulfill the Deemed Orders made by Husqvarna, a list of which is set forth on Exhibit A hereto, in full and by the delivery date indicated on Exhibit A, in accordance with its obligations under the October 1,

2015 General Supply Agreement and amendments thereto except as modified herein:

- i. With respect to Deemed Orders on Exhibit A with a delivery date after the date of this Order, Briggs & Stratton LLC is ordered to fulfill the Deemed Orders made by Husqvarna in full and by the delivery date indicated on Exhibit A;
- ii. With respect to the Deemed Orders on Exhibit A for approximately 49,000 engines with a delivery date prior to the date of this Order (“Past Due Deemed Orders”) and which are now overdue, Briggs & Stratton LLC shall deliver 15,000 engines that are the subject of the Past Due Deemed Orders of a model and type satisfactory to Husqvarna by October 21, 2021 to permit Husqvarna to reasonably operate, assemble and manufacture tractors and mowers;
- iii. With respect to the Past Due Deemed Orders that remain unfilled or partially filled as of October 21, 2021, Briggs & Stratton LLC shall deliver the remaining engines on a schedule to be agreed upon between the parties and submitted to the Court within seven (7) days of this Order for approval and supplementation of this Order; and,
- d. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this grant of preliminary injunctive relief.

2. Defendant's Motion to Stay Proceedings in this Action and Compel Arbitration and Plaintiffs' Motion to Enjoin B&S from Participating in Arbitration Proceedings are **DENIED IN PART AND GRANTED IN PART** as follows:

- a. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of the preliminary injunctive relief that is the subject of this Order;
- b. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order;
- c. Briggs & Stratton is enjoined from proceeding in arbitration with respect to the arbitrability of the GSA, the preliminary injunctive relief that is the subject of this Order or any issue addressed or decided in this Order;
- d. Subject to the Court's preliminary injunction, the parties may proceed to arbitration on the amount of damages Husqvarna may suffer and the damages Briggs & Stratton could have to pay and all matters arising from or related to the GSA, excluding the interpretation, implementation, or enforcement of this preliminary injunction and Order;
- e. The Court's preliminary injunction shall remain in effect throughout the duration of any arbitration proceeding and until an award is entered by the arbitrator;

3. Plaintiffs' Motion to Show Cause is **CONTINUED** pending Defendant's compliance with this Order. While any future consideration of a rule to show cause will relate to the preliminary injunction, should Defendant fail to comply, the Court will evaluate any potential costs or fines from the date of the original TRO, September 20, 2021.

4. Defendant's Motion to Dissolve Temporary Restraining Order is **DENIED**.

5. As required by SCRCP Rule 65(c), Plaintiffs shall post a bond in the amount of \$1 million as a condition of obtaining the preliminary injunction.

6. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Court's Orders.

**IT IS SO ORDERED.**

October \_\_, 2021

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Edgar W. Dickson  
Circuit Court Judge

**EXHIBIT B**

ELECTRONICALLY FILED - 2021 Sep 20 4:51 PM - ORANGEBURG - COMMON PLEAS - CASE#2021CP3801115

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Husqvarna Consumer Outdoor Products N.A., Inc.; ) Civil Action No.  
Modern Rentals Inc., )

Plaintiffs, )

v. )

Briggs & Stratton LLC, )

Defendant. )

  
**PROPOSED TEMPORARY  
RESTRAINING ORDER**

This matter came to be heard upon Motion for Temporary Restraining Order of Plaintiff Husqvarna Consumer Outdoor Products N.A., Inc. (“Husqvarna”) and Plaintiff Modern Rentals Inc. (collectively “Plaintiffs”), further supported by a Verified Complaint, affidavits, and other supplemental filings. Plaintiffs requested an order immediately requiring Defendant Briggs & Stratton LLC (“B&S”) to fulfill Husqvarna’s purchase orders that had been provided to B&S pursuant to the terms of the General Supply Agreement, pending a hearing on Husqvarna’s pending motion for a preliminary injunction.

The Court finds that a proper showing has been made from for the relief requested because it appears from the evidence presented by Plaintiffs that:

(1) Husqvarna will be immediately and irreparably injured by B&S’s failure to supply engines to Husqvarna, including the shutdown of its Orangeburg manufacturing facility, causing it to lay off hundreds of workers, inability to supply Lowe’s, Modern Rentals, and its network of dealers, and, more likely than not, incalculable and substantial damage to Husqvarna and its independent dealers’ business, customer relations, goodwill, and reputations;

(2) Husqvarna, Modern Rentals, Husqvarna’s customers, and the people and the city of Orangeburg, South Carolina will be immediately and irreparably harmed by B&S’s failure to

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supply engines to Husqvarna including the loss of approximately 400 jobs and an addition 150 full-time equivalent employees that Husqvarna will not hire;

(3) Husqvarna is likely to prevail on the merits of its claims as B&S has unjustifiably acted to breach and anticipatorily repudiate a validly existing contract between the parties, the General Supply Agreement, by failing to give Husqvarna priority over other customers as required by the General Supply Agreement, failing to supply products pursuant to Deemed Orders Husqvarna issued under the General Supply Agreement, communicating that it would enter into a new supply agreement with Husqvarna but then abruptly ending negotiations and refusing to fulfill Deemed Orders past the first week of October, all causing damage to Husqvarna as it is not able to obtain an alternate source of supply; and

(4) the public interest would be served by the enforcement of parties' General Supply Agreement and B&S would not be harmed as it will be compensated for the engines.

These factors, on balance, favor the issuance of the following temporary restraining order:

**NOW, THEREFORE**

**IT IS HEREBY ORDERED THAT:**

1. The Motion for a temporary restraining order is GRANTED as set forth herein;
2. Defendant Briggs & Stratton LLC shall not provide or sell any of the engines that are subject to the Deemed Orders to any purchaser, user or customer other than Husqvarna in accordance with its obligations under Section 8.1 of the October 1, 2015 General Supply Agreement;

3. Defendant Briggs & Stratton LLC shall continue to perform its obligations under the October 1, 2015 General Supply Agreement, including all preparations to perform those obligations as would be required to satisfy the Deemed Orders;

4. Defendant Briggs & Stratton LLC is ordered to fulfill the Deemed Orders made by Husqvarna, a list of which is set forth on Exhibit A hereto, in full and by the delivery date indicated on Exhibit A, in accordance with its obligations under the October 1, 2015 General Supply Agreement and amendments thereto;

5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order.

This order expires within ten days from the following date and time: September 30, 2021, at 2 P.M. Eastern Standard Time, and may be extended by this Court pursuant to the South Carolina Rules of Civil Procedure.

**IT IS SO ORDERED.**

September 20, 2021



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The Honorable Edgar W. Dickson  
Circuit Court Judge

### EXHIBIT A

PO #	PO Line #	Order Date	Delivery Date	Product	Description	Qty Ordered	Qty Received	Qty Open
629860	10	7/27/2021	11/16/2021	597360001	ENGINE.BSm40.ENDUR.SER7200.EU	141	-	141
629826	10	7/27/2021	11/18/2021	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	2,950	-	2,950
625249	2	6/8/2021	10/1/2021	529581901	ENG.BSm44.INTK.22HP.LT.US/CAN	1,272	-	1,272
629861	10	7/27/2021	11/19/2021	597360001	ENGINE.BSm40.ENDUR.SER7200.EU	400	-	400
629867	10	7/27/2021	11/19/2021	597818301	ENGINE.BSm40.SER7200.INTEK.EU	1,060	-	1,060
633833	10	9/9/2021	1/4/2022	597367101	ENGINE.BSm44.ENDUR.SER824.EU	24	-	24
623822	6	5/22/2021	9/22/2021	529581901	ENG.BSm44.INTK.22HP.LT.US/CAN	33,147	-	33,147
632970	10	8/26/2021	12/28/2021	597367101	ENGINE.BSm44.ENDUR.SER824.EU	54	-	54
625224	2	6/8/2021	10/11/2021	501258601	ENG.BSm40.ENDUR.RS.20hp.LT.CAN	96	-	96
629868	10	7/27/2021	11/30/2021	597818301	ENGINE.BSm40.SER7200.INTEK.EU	1,650	-	1,650
632968	10	8/26/2021	12/30/2021	597360001	ENGINE.BSm40.ENDUR.SER7200.EU	24	-	24
622129	2	5/6/2021	9/13/2021	597971301	ENGINE.BS.M33.18_5HP.LT.US/CAN	192	-	192
623821	2	5/22/2021	9/29/2021	597895801	ENGINE.BSm44.ENDU.RS.LT.US/CAN	6,041	-	6,041
623822	2	5/22/2021	9/29/2021	597971301	ENGINE.BS.M33.18_5HP.LT.US/CAN	9,115	-	9,115
633834	10	9/9/2021	1/17/2022	597818301	ENGINE.BSm40.SER7200.INTEK.EU	360	-	360
629833	10	7/27/2021	12/6/2021	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	134	-	134
632969	10	8/26/2021	1/5/2022	597360001	ENGINE.BSm40.ENDUR.SER7200.EU	90	-	90
629881	10	7/27/2021	12/7/2021	588640901	ENGINE.BSm33.INTK.18_5HP.LT.US	200	-	200
633835	10	9/9/2021	1/25/2022	597818301	ENGINE.BSm40.SER7200.INTEK.EU	168	-	168
630340	10	8/3/2021	12/20/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	14,424	-	14,424
633836	10	9/9/2021	1/31/2022	597818301	ENGINE.BSm40.SER7200.INTEK.EU	280	-	280
629827	10	7/27/2021	12/29/2021	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	4,500	-	4,500
629834	10	7/27/2021	12/29/2021	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	185	-	185
629853	10	7/27/2021	12/29/2021	589812301	ENG.BS40.ENDU.20HP.3350+/-100	349	-	349
629862	10	7/27/2021	12/29/2021	597360001	ENGINE.BSm40.ENDUR.SER7200.EU	255	-	255
629862	20	7/27/2021	12/29/2021	597367101	ENGINE.BSm44.ENDUR.SER824.EU	104	-	104
629874	10	7/27/2021	12/29/2021	597818301	ENGINE.BSm40.SER7200.INTEK.EU	800	-	800
629874	20	7/27/2021	12/29/2021	599562301	ENG.RZ.BS.ENDU.22HP.2800+/-100	110	-	110
629863	10	7/27/2021	12/30/2021	597360001	ENGINE.BSm40.ENDUR.SER7200.EU	97	-	97
629870	10	7/27/2021	12/30/2021	597469801	ENG.BSm49.VANG.26HP.2900+/-100	20	-	20
633837	10	9/9/2021	2/21/2022	597818301	ENGINE.BSm40.SER7200.INTEK.EU	612	-	612


631687	10	8/15/2021	2/2/2022	590033301	ENG.BSM44.ENDU.24HP.3500+/-100	51	-	51
631686	10	8/15/2021	2/3/2022	599562301	ENG.RZ.BS.ENDU.22HP.2800+/-100	24	-	24
630341	10	8/3/2021	2/1/2022	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	11,776	-	11,776
629875	10	7/27/2021	1/26/2022	597818301	ENGINE.BSm40.SER7200.INTEK.EU	375	-	375
629835	10	7/27/2021	2/1/2022	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	200	-	200
629854	10	7/27/2021	2/2/2022	589812301	ENG.BS40.ENDU.20HP.3350+/-100	433	-	433
629828	10	7/27/2021	2/3/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	3,237	-	3,237
629878	10	7/27/2021	2/3/2022	599562301	ENG.RZ.BS.ENDU.22HP.2800+/-100	79	-	79
631691	10	8/15/2021	3/3/2022	597469801	ENG.BSm49.VANG.26HP.2900+/-100	13	-	13
633838	10	9/9/2021	3/30/2022	597360001	ENGINE.BSm40.ENDUR.SER7200.EU	48	-	48
633839	10	9/9/2021	3/30/2022	597818301	ENGINE.BSm40.SER7200.INTEK.EU	408	-	408
629864	10	7/27/2021	2/22/2022	597360001	ENGINE.BSm40.ENDUR.SER7200.EU	130	-	130
629876	10	7/27/2021	2/23/2022	597818301	ENGINE.BSm40.SER7200.INTEK.EU	678	-	678
629836	10	7/27/2021	3/2/2022	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	125	-	125
629855	10	7/27/2021	3/2/2022	589812301	ENG.BS40.ENDU.20HP.3350+/-100	400	-	400
629821	10	7/27/2021	3/3/2022	529581901	ENG.BSm44.INTK.22HP.LT.US/CAN	1,752	-	1,752
629829	10	7/27/2021	3/3/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	2,253	-	2,253
631688	10	8/15/2021	3/31/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	2,919	-	2,919
630342	10	8/3/2021	3/28/2022	588640901	ENGINE.BSm33.INTK.18_5HP.LT.US	103	-	103
630343	10	8/3/2021	3/29/2022	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	4,800	-	4,800
630348	2	8/3/2021	3/31/2022	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	2,496	-	2,496
629837	10	7/27/2021	3/29/2022	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	185	-	185
629856	10	7/27/2021	3/30/2022	589812301	ENG.BS40.ENDU.20HP.3350+/-100	450	-	450
629877	10	7/27/2021	3/30/2022	597818301	ENGINE.BSm40.SER7200.INTEK.EU	472	-	472
629822	10	7/27/2021	3/31/2022	529581901	ENG.BSm44.INTK.22HP.LT.US/CAN	4,302	-	4,302
629879	10	7/27/2021	3/31/2022	599562301	ENG.RZ.BS.ENDU.22HP.2800+/-100	59	-	59
632284	10	8/20/2021	4/25/2022	590033301	ENG.BSM44.ENDU.24HP.3500+/-100	24	-	24
631689	10	8/15/2021	4/28/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	1,051	-	1,051
630344	10	8/3/2021	4/27/2022	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	6,509	-	6,509
630388	10	8/3/2021	4/28/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	750	-	750
629843	10	7/27/2021	4/27/2022	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	260	-	260
629857	10	7/27/2021	4/27/2022	589812301	ENG.BS40.ENDU.20HP.3350+/-100	425	-	425
633283	10	9/1/2021	6/2/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	145	-	145
629823	10	7/27/2021	4/28/2022	529581901	ENG.BSm44.INTK.22HP.LT.US/CAN	3,837	-	3,837

629830	10	7/27/2021	4/28/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	897	-	897
629871	10	7/27/2021	4/28/2022	597469801	ENG.BSm49.VANG.26HP.2900+/-100	15	-	15
632966	10	8/26/2021	5/31/2022	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	38	-	38
629824	10	7/27/2021	6/1/2022	529581901	ENG.BSm44.INTK.22HP.LT.US/CAN	1,500	-	1,500
629844	10	7/27/2021	6/1/2022	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	60	-	60
629858	10	7/27/2021	6/1/2022	589812301	ENG.BS40.ENDU.20HP.3350+/-100	475	-	475
632967	10	8/26/2021	7/1/2022	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	125	-	125
633311	10	9/1/2021	7/23/2022	589812301	ENG.BS40.ENDU.20HP.3350+/-100	48	-	48
631690	10	8/15/2021	7/7/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	500	-	500
633304	10	9/1/2021	7/27/2022	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	1,313	-	1,313
631685	10	8/15/2021	10/13/2021	590033301	ENG.BSM44.ENDU.24HP.3500+/-100	100	-	100
632694	2	8/23/2021	10/27/2021	597469801	ENG.BSm49.VANG.26HP.2900+/-100	5	-	5
629845	10	7/27/2021	10/4/2021	588640901	ENGINE.BSm33.INTK.18_5HP.LT.US	96	-	96
629818	10	7/27/2021	10/7/2021	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	577	-	577
629838	12	7/27/2021	10/7/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	20	-	20
629846	10	7/27/2021	10/13/2021	589812301	ENG.BS40.ENDU.20HP.3350+/-100	213	-	213
629847	10	7/27/2021	10/13/2021	589812301	ENG.BS40.ENDU.20HP.3350+/-100	237	-	237
629852	10	7/27/2021	10/13/2021	590033301	ENG.BSM44.ENDU.24HP.3500+/-100	51	-	51
629831	10	7/27/2021	10/19/2021	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	48	-	48
629832	10	7/27/2021	10/20/2021	586116201	ENG.BSm49.ENDU.27hp.3500+/-100	116	-	116
629840	10	7/27/2021	10/21/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	802	144	658
629841	10	7/27/2021	10/21/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	894	-	894
632704	2	8/23/2021	11/18/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	3,408	-	3,408
629849	10	7/27/2021	10/27/2021	589812301	ENG.BS40.ENDU.20HP.3350+/-100	113	-	113
629872	10	7/27/2021	10/27/2021	599562301	ENG.RZ.BS.ENDU.22HP.2800+/-100	115	-	115
625261	2	6/8/2021	9/9/2021	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	456	240	216
625260	4	6/8/2021	9/9/2021	590033301	ENG.BSM44.ENDU.24HP.3500+/-100	120	-	120
629842	10	7/27/2021	10/28/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	1,048	-	1,048
629819	10	7/27/2021	11/3/2021	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	450	-	450
629848	10	7/27/2021	11/3/2021	588640901	ENGINE.BSm33.INTK.18_5HP.LT.US	200	-	200
629820	10	7/27/2021	11/4/2021	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	200	-	200
629825	10	7/27/2021	11/4/2021	529582001	ENGINE.BS.M44.INTK.24HP.LT.U/C	1,062	-	1,062
629850	10	7/27/2021	11/4/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	681	-	681
629851	10	7/27/2021	11/4/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	804	-	804

629869	10	7/27/2021	11/4/2021	597469801	ENG.BSm49.VANG.26HP.2900+/-100	70	-	70
630339	10	8/3/2021	11/11/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	332	-	332
625258	2	6/8/2021	9/17/2021	589812301	ENG.BS40.ENDU.20HP.3350+/-100	168	-	168
629873	10	7/27/2021	11/7/2021	597818301	ENGINE.BSm40.SER7200.INTEK.EU	357	2	355
625259	2	6/8/2021	9/20/2021	589812301	ENG.BS40.ENDU.20HP.3350+/-100	408	-	408
629859	10	7/27/2021	11/9/2021	597367101	ENGINE.BSm44.ENDUR.SER824.EU	78	-	78
629866	10	7/27/2021	11/9/2021	597818301	ENGINE.BSm40.SER7200.INTEK.EU	590	-	590
629882	10	7/27/2021	11/11/2021	586306801	ENGINE.BSm33.INTK.18.5LT.CAN/A	1,159	-	1,159
<b>Total</b>						<b>149,572</b>	<b>386</b>	<b>149,186</b>

# EXHIBIT C

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Husqvarna Consumer Outdoor Products N.A., ) Civil Action No.  
Inc.; and Modern Rentals, Inc., )  
 )  
Plaintiffs, )   
 ) ~~PROPOSED~~ ORDER GRANTING  
 ) MOTION FOR EXPEDITED DISCOVERY

v. )  
 )  
Briggs & Stratton LLC, )  
 )  
Defendant. )

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For good cause shown, it is hereby ORDERED AND ADJUDGED that Plaintiffs' Motion for Expedited Discovery is GRANTED as follows:

- (a) The parties are excused from any requirement to conduct a discovery conference under Rule 26 of the South Carolina Rules of Civil Procedure;
- (b) Defendant Briggs & Stratton LLC ("B&S") is required to respond to and produce documents within seven (7) days after service of Plaintiffs' requests for production;
- (c) B&S is required to respond to Plaintiffs' interrogatories and requests for admission within seven (7) days of service;
- (d) B&S is required to appear for depositions within two (2) days following the date upon which documents are to be produced, as noticed by Plaintiffs; and
- (e) Plaintiffs are permitted to take nonparty discovery immediately in accordance with Rule 45 of South Carolina Rules of Civil Procedure.

**IT IS SO ORDERED.**

September 20, 2021



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The Honorable Edgar W. Dickson  
Circuit Court Judge

# EXHIBIT D

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Husqvarna Consumer Outdoor Products N.A., ) Civil Action No.  
Inc.; Modern Rentals Inc., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
Briggs & Stratton LLC, )  
 )  
Defendant. )

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**ORDER EXTENDING**  
**SEPTEMBER 20, 2021 TEMPORARY**  
**RESTRAINING ORDER**

On September 22, 2021, this matter came to be heard regarding Defendant's compliance with the September 20, 2021 Temporary Restraining Order entered by this Court, a copy of which is attached as **Exhibit 1** and which is incorporated in this order ("September 20 TRO").

Counsel for Plaintiffs Husqvarna Consumer Outdoor Products N.A., Inc. ("Husqvarna"), Modern Rentals Inc. and counsel for Briggs & Stratton LLC ("B&S") each appeared on behalf of their respective clients via WebEx. At the end of the conference, Plaintiffs requested an order extending the September 20 TRO.

The Court finds that pursuant to Rule 65, SCRCP, there is good cause for the extension of the September 20 TRO.

(1) Husqvarna claimed that B&S did not deliver the engines in accordance with the parties' agreement and the September 20 TRO. The Court addressed any confusion that B&S may have had regarding its obligations under the September 20 TRO, to wit: the September 20 TRO requires B&S to build and deliver the engines noted in and accordance with Exhibit A to the September 20 TRO; and

(2) The timing of the parties' anticipated motion practice will likely extend beyond the expiration of the September 20 TRO;

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These factors constitute good cause for the extension of the September 20 TRO.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**


1. The September 20 TRO is extended ten days from the date of its expiration;
2. To avoid any misunderstanding of the September 20 TRO, B&S shall continue to build and deliver the engines noted in Exhibit A to the September 20 TRO; and
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order.

This order and the September 20 TRO expire on **October 10, 2021, at 2:00 P.M.**

**Eastern Standard Time.**

**IT IS SO ORDERED.**

  
September 23, 2021

  
\_\_\_\_\_  
The Honorable Edgar W. Dickson  
Circuit Court Judge

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STATE OF SOUTH CAROLINA )  
 COUNTY OF ORANGEBURG )  
 )  
 )  
 Husqvarna Consumer Outdoor Products )  
 N.A., Inc. and Modern Rentals, Inc., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 Briggs & Stratton LLC, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

CASE NO. 2021-CP-38-01115

**ORDER**

On September 27, 2021, the Court received submissions from Plaintiffs Husqvarna Consumer Outdoor Products N.A., Inc. (“Husqvarna”) and Modern Rentals Inc. (collectively, “Plaintiffs”) regarding Plaintiffs’ Motion to Enjoin Briggs & Stratton LLC (“B&S”) from Participating in Arbitration Proceedings and Defendant’s Motion to Stay Proceedings in this Action and Compel Arbitration.

**PROCEDURAL BACKGROUND**

On September 20, 2021, the Court entered an *ex parte* Temporary Restraining Order in this matter, in which it found that (a) Husqvarna, Modern Rentals, Husqvarna’s customers and Husqvarna’s employees will be immediately and irreparably harmed by B&S’s failure to supply engines to Husqvarna and that there is no adequate remedy at law to address this irreparable harm; (b) Husqvarna is likely to prevail on the merits of its claims as B&S has unjustifiably acted to breach and anticipatorily repudiate a valid existing contract between the parties, the General Supply Agreement; (c) the public interest would be served by the enforcement the General Supply Agreement; and (d) B&S would not be harmed as it will be compensated for the engines.

In the September 20 TRO, the Court specifically ordered that: (a) B&S shall not provide or sell any of the engines that are subject to the Deemed Orders to any purchaser, user or customer

other than Husqvarna in accordance with its obligations under Section 8.1 of the October 1, 2015 General Supply Agreement; (b) B&S shall continue to perform its obligations under the October 1, 2015 General Supply Agreement, including all preparations to perform those obligations as would be required to satisfy the Deemed Orders; and (c) B&S shall fulfill the Deemed Orders made by Husqvarna, a list of which is set forth on Exhibit A to the September 20 TRO, in full and by the delivery date indicated on Exhibit A, in accordance with its obligations under the October 1, 2015 General Supply Agreement and amendments.

The Court held a second hearing two days later in which counsel for both parties presented argument regarding the propriety of a TRO and its extension. Despite Defendant's arguments, the Court reiterated its findings in the TRO and extended the same for another 10 days to October 10, 2021. The Court specifically found that due to Defendant's failure to comply with the first Order and due to logistics of scheduling a preliminary injunction hearing, the original TRO should be extended. In the September 23 Order extending the TRO, the Court again emphasized that "B&S shall continue to build and deliver the engines noted in Exhibit A to the September 20 TRO." Both TRO Orders provide that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of the TRO Orders.

On September 24, 2021, B&S filed with the American Arbitration Association a Demand for Arbitration against Husqvarna, a Demand for Arbitration against Modern Rentals and a Request for Immediate Appointment of Arbitrator and Emergency Preliminary Relief and a Proposed Order (collectively, the "B&S Arbitration"). In response, Plaintiffs filed a Motion to Enjoin B&S from Participating in Arbitration Proceedings and Defendant filed a Motion to Stay Proceedings in this Action and Compel Arbitration.

**CONCLUSION**

After careful consideration of the parties' submissions, including the arguments and authorities presented in the same, the Court orders as follows:

- (1) A preliminary injunction hearing will be held on October 7 or 8, 2021, via WebEx, to allow all parties the opportunity to be heard on the issues and to allow the Court to conduct its own discovery into the dispute. In addition to the above referenced submissions, the Court is also in receipt of several hundred pages of documents which need reviewed and discussed with the parties before the Court can make its decision.
- (2) B&S's arbitration demand is stayed until the preliminary injunction hearing is held next week, at which point the Court will make its final decision.
- (3) All other matters contained within the parties' briefs are also stayed pending the preliminary injunction hearing.
- (4) Pending the preliminary injunction hearing, B&S remains subject to and must comply with the Court's September 20 Temporary Restraining Order ("TRO"), which was extended on September 23, 2021 and will expire on October 10, 2021.
- (5) Pursuant to that TRO, B&S shall continue to build and deliver the engines noted in Exhibit A to the September 20 TRO.

**AND IT IS SO ORDERED!**

\_\_\_\_\_, 2021  
Orangeburg, South Carolina

\_\_\_\_\_  
Edgar W. Dickson  
Presiding Judge, First Judicial Circuit



Orangeburg Common Pleas

**Case Caption:** Husqvarna Consumer Outdoor Products, N.A., Inc. , plaintiff, et al VS  
Briggs & Stratton Llc  
**Case Number:** 2021CP3801115  
**Type:** Order/Other

So Ordered

s/ Edgar W. Dickson #2153