

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:)	
)	
Montreal Maine & Atlantic Railway Ltd.,)	Case No. 13-10670
)	
Debtor.)	
)	

**WHEELING & LAKE ERIE RAILWAY COMPANY’S OBJECTION TO THE
STIPULATION DISMISSING MOTION FOR ORDER PURSUANT TO
11 U.S.C. § 542(b)**

Now comes the Wheeling & Lake Erie Railway Company (“Wheeling”) and objects to the Stipulation Dismissing Motion for Order Pursuant to 11 U.S.C. § 542(b) (the “Stipulation”) [D.E. # 306], filed by Robert J. Keach, the chapter 11 trustee in this case (the “Trustee”), and Irving Paper Limited (“IPL”), Irving Pulp & Paper, Limited (“IP&P”) and J.D. Irving, Limited (“JDI”) (IPL, IP&P and JDI shall be referred to collectively as the “Irving Paper Entities”) for the reasons set forth herein.

1. On August 7, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”). On August 21, 2013, the United States Trustee appointed Robert J. Keach, Esq. to serve as the Trustee in the Debtor’s Chapter 11 case (the “Case”) pursuant to 11 U.S.C. § 1163.

2. The Debtor is a Delaware corporation that has, since January of 2003, operated in an integrated, short-line freight railroad system with its wholly owned Canadian subsidiary, Montreal Maine & Atlantic Co. (“MMA Canada”). On August 7, 2013, MMA Canada filed for protection from creditors in a concurrent proceeding under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended.

3. Prior to the Petition Date, Wheeling provided the Debtor with a \$6,000,000 secured line of credit (the “LOC”) pursuant to the terms of a certain Line of Credit and Security

Agreement dated June 9, 2009, as such agreement may have been amended, modified, renewed, or extended thereafter. In order to secure the Debtor's obligations under the LOC, the Debtor granted Wheeling a first priority security interest in and to the Debtor's accounts receivable, inventory, and the proceeds thereof, including insurance proceeds (collectively, the "Collateral"). Wheeling timely and properly perfected its security interest in the Collateral by filing a UCC-1 Financing Statement with the Secretary of State of Delaware.

4. As of the Petition Date, the Debtor had fully drawn down the LOC. As a result, as of the Petition Date, the Debtor was indebted to Wheeling in the principal amount of \$6,000,000, plus interest, fees, costs of collection and other applicable charges.

5. On August 30, 2013, the Trustee filed his Motion for Order Pursuant to 11 U.S.C. § 542(b) (the "Turnover Motion") [D.E. # 124]. In that Motion, he sought issuance of an order under 11 U.S.C. § 542(b) (i) compelling the Irving Paper Entities to pay a past due balance on an account owed to the Debtor of approximately \$885,733 (the "Irving Debt"); and (ii) compelling Great Northern Paper ("GNP") to pay a past due balance on an account owed to the Debtor of approximately \$422,625 (the "GNP Debt"). According to the Turnover Motion, the Irving Debt and the GNP Debt arose from the ordinary course provision of transport services to Irving and GNP. Turnover Motion, ¶¶ 8, 9. As a result, both the Irving Debt and the GNP Debt constitute accounts receivable of the Debtor and such accounts, and any proceeds thereof, are Wheeling's Collateral.

6. The Trustee scheduled the Turnover Motion for a preliminary hearing on September 5, 2013 (the "Preliminary Hearing").

7. Prior to the Preliminary Hearing, both the Irving Paper Entities and GNP filed objections to the Turnover Motion, and/or to the Trustee's request that it be heard on an expedited basis [D.E. ## 149, 151]¹.

8. On September 5, 2013, the Court conducted the Preliminary Hearing. During that Hearing, the Trustee announced that he had resolved his dispute with GNP and that GNP would pay the estate the sum of \$225,000 in satisfaction of the GNP Debt. This agreement was memorialized in the Court's September 5, 2013 Order on the Turnover Motion (the "Turnover Order") [D.E. # 174].

9. During the Preliminary Hearing, Irving announced its intent to dispute the merits of the Turnover Motion based on, *inter alia*, an offset defense. Irving's dispute on the merits of the Turnover Motion created a contested matter under Rule 9014 of the Federal Rules of Bankruptcy Procedure (the "Irving Contested Matter"). With the agreement of the Trustee and the Irving Paper Entities, the Court scheduled a continued evidentiary hearing on the Irving Debt for Monday, September 16, 2013 at 9:00 a.m. (the "Irving Evidentiary Hearing") [D.E. # 163].

10. Following the Preliminary Hearing, Wheeling filed its Notice of Intent to Participate And Be Heard In Proceedings Related to the Trustee's Pending Motion for Order Pursuant to 11 U.S.C. § 542(b) (the "Notice") [D.E. # 184] based on 11 U.S.C. § 1109(b) and the fact that the Irving Debt constitutes Wheeling's Collateral (as well as cash collateral).

11. On or about September 13, 2013, the Court held a hearing on various matters. During that hearing – and over the objection of the Trustee – the Court recognized Wheeling's right to participate in the Irving Contested Matter, with full rights of discovery and participation in the Irving Evidentiary Hearing.

¹ Wheeling respectfully submits that these pleadings constitute "answers" in a contested matter context for purposes of Fed.R.Civ.P. 41(a)(1)(A)(i).

12. By agreement of the parties and with the consent of the Court, the Irving Evidentiary Hearing was later rescheduled to Tuesday October 1, 2013 at 9:00 a.m.

13. On October 1, 2013, immediately prior to the Irving Evidentiary Hearing, the Trustee and Irving filed the Stipulation and at the same time filed a Motion for Order Approving Compromise and Settlement With Irving Paper, Limited, Irving Pulp & Paper, Limited and J.D. Irving, Limited (the "9019 Motion") [D.E. # 307].

14. Wheeling objects to the 9019 Motion and intends to file a timely written objection thereto. Further, Wheeling objects to the Stipulation because it violates the provisions of Fed.R.Civ.P. 41(a) (made applicable by Rules 9014 and 7041 of the Federal Rules of Bankruptcy Procedure). Under these rules, and in the absence of a Court Order, a stipulation of dismissal can be filed only when "signed by *all parties who have appeared.*" Fed.R.Civ.P. 41(a)(1)(A)(ii) (emphasis added). The Stipulation was not signed by Wheeling, which has appeared in the Irving Contested Matter. It is therefore null and void and of no force or effect.

CONCLUSION

WHEREFORE, Wheeling respectfully requests that the Court enter an Order:

- A. Determining that the Stipulation is null and void, and that the Irving Contested Matter remains pending and unresolved; and
- B. Granting such other relief as the Court deems appropriate.

Dated: October 2, 2013

/s/ George J. Marcus

George J. Marcus
David C. Johnson
Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway
Company

MARCUS, CLEGG & MISTRETТА, P.A.
One Canal Plaza, Suite 600
Portland, ME 04101
207.828.8000