

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670

Chapter 11

ROBERT J. KEACH, solely in his capacity as
the chapter 11 trustee for MONTREAL,
MAINE & ATLANTIC RAILWAY, LTD.,

Plaintiff

v.

RED SHIELD ACQUISITION, LLC
d/b/a OLD TOWN FUEL & FIBER

Defendant.

Adversary Proceeding No.

COMPLAINT

Robert J. Keach, solely in his capacity as the chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd. (the "Trustee"), by and through his undersigned counsel, brings this Complaint asserting direct claims against Defendant Red Shield Acquisition, LLC d/b/a Old Town Fuel & Fiber ("Old Town" or "Defendant"). In support of this Complaint, the Trustee avers as follows:

PARTIES

1. On August 21, 2013, the Trustee was appointed bankruptcy trustee for Montreal, Maine & Atlantic Railway, Ltd. ("MMA") pursuant to 11 U.S.C. § 1163, and has, since that date, continued to function as the Court-supervised fiduciary of MMA. MMA, the debtor in this

chapter 11 case, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Hermon, Maine.

2. Upon information and belief, Defendant is a limited liability corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Old Town, Maine.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2). This Adversary Proceeding is a core matter over which the Court may, consistent with the United States Constitution, exercise the judicial power of the United States of America.

COUNT I (BREACH OF CONTRACT)

6. In or about May 2009, MMA and Defendant entered in a credit terms agreement (the "Agreement"), whereby the Debtor agreed to provide Defendant with certain rail services (the "Rail Services").

7. Pursuant to the terms of the Agreement, Defendant is obligated to pay MMA for the Rail Services.

8. At all relevant times, the Agreement was a valid and enforceable contract.

9. MMA has fully performed all of its obligations under the Agreement.

10. Pursuant to the Agreement, Defendant presently owes MMA approximately \$41,845.20 for the Rail Services, as provided in the ordinary course of business after August 7, 2013. Additionally, as set forth in the Agreement, Defendant agreed to pay finance charges of

1.5% per month on all accounts that are over 30-days past due. Accordingly, Defendant is also indebted to MMA for accruing late charges.

11. Defendant repeatedly breached the Agreement by refusing to pay MMA the payments guaranteed to it by the Agreement, despite MMA's demands for such payments as evidenced by the daily invoices provided by MMA to Defendant (the "Invoices").

12. As a direct and proximate result of these breaches of contract, MMA has suffered damages in the amount of approximately \$41,845.20, plus interest, in addition to attorneys fees incurred in attempting to enforce the Agreement, including by bringing this action.

13. MMA's damages, including actual, consequential, and incidental damages, is an amount to be determined at trial, but no less than \$41,845.20.

COUNT II
(ACCOUNT STATED)

14. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 13 of this Complaint.

15. MMA rendered to Defendant a full and true account of the indebtedness owed by Defendant to MMA as a result of Defendant's breach of the Agreement in the amount of approximately \$41,845.20, which account statements were delivered to and accepted by Defendant without objection in an account stated for the amount of approximately \$41,845.20.

16. By reason of the forgoing, Defendant is indebted to MMA in the sum of approximately \$41,845.20, plus interest, no part of which has been paid although duly demanded.

COUNT III
(UNJUST ENRICHMENT)

17. The Trustee repeats and realleges, as if set forth at length herein, each and every

allegation of paragraphs 1 through 16 of this Complaint.

18. At Defendant's insistence and request, MMA provided Defendant with the Rail Services.

19. The reasonable value of the Rail Services for which MMA has not been paid is approximately \$41,845.20, and the furnishing of such services by MMA has resulted in Defendant receiving a benefit.

20. Defendant has been unjustly enriched by having accepted and retained said benefits without paying the approximately \$41,845.20 in value due to MMA.

21. By reason of the forgoing, Defendant is indebted to MMA in the sum of approximately \$41,845.20, plus interest, no part of which has been paid although duly demanded.

COUNT IV
(QUANTUM MERUIT)

22. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 21 of this Complaint.

23. From January 28, 2014 through April 1, 2014, MMA provided Rail Services to Defendant.

24. Defendant received the benefit of the Rail Services rendered by MMA but has refused to pay MMA the fees agreed upon in the Agreement.

25. By reason of the forgoing, Defendant is indebted to MMA in the sum of approximately \$41,845.20, plus interest, no part of which has been paid although duly demanded.

WHEREFORE, Robert J. Keach, in his capacity as the trustee of Montreal, Maine & Atlantic Railway, Ltd., respectfully requests that this Court enter judgment in favor of the bankruptcy estate and against Defendant Red Shield Acquisition, LLC d/b/a Old Town Fuel & Fiber in an amount to be determined at trial, but an amount no less than \$41,845.20.

Dated: April 16, 2014

ROBERT J. KEACH, solely in his capacity
as the chapter 11 trustee of Montreal, Maine
& Atlantic Railway, Ltd.

/s/ Michael A. Fagone

Michael A. Fagone
BERNSTEIN SHUR
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029
(207) 774-1200 (telephone)
(207) 774-1127 (facsimile)
mfagone@bernsteinshur.com