

**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.

HELM FINANCIAL CORP.

Defendant.

Adv. Proc. No. 15-_____

COMPLAINT

Robert J. Keach, solely in his capacity as the chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd. (the “Trustee”), brings this Complaint against Helm Financial Corp. n/k/a First Union Rail (the “Defendant”) seeking the avoidance and recovery of preferential transfers received by the Defendant (among other relief), pursuant to 11 U.S.C. (the “Bankruptcy Code”) §§ 547 and 550. In support hereof, the Trustee states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(a) and 1334(b), and District of Maine Local Rule of Civil Procedure 83.6, whereby all civil proceedings arising under the Bankruptcy Code, or arising in or related to cases under the Bankruptcy Code, are automatically referred to this Court.

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

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (F), and this Court has authority to enter final orders and judgment herein.

4. The Trustee consents to the entry of final orders by the Bankruptcy Court in this adversary proceeding.

BACKGROUND, PARTIES, AND STANDING

5. On August 7, 2013 (the "Petition Date"), Montreal, Maine & Atlantic Railway, Ltd. (the "Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. On August 21, 2013, the Trustee was appointed as the Debtor's chapter 11 bankruptcy trustee pursuant to § 1163 of the Bankruptcy Code, and has, since that date, continued to function as the Court-supervised fiduciary of the Debtor's estate.

7. The Trustee has standing to bring the causes of action herein pursuant to §§ 547(b) and 550(a) of the Bankruptcy Code.

8. The Debtor is a corporation organized and existing under the laws of the State of Delaware, which historically conducted its business operations from its principal office in Hermon, Maine.

9. Upon information and belief, the Defendant was a corporation organized under the laws of the State of California, with its principal place of business at 505 Sansome Street, Suite 1800, San Francisco, California. Upon information and belief, the Defendant was acquired by First Union Rail Corp., a corporation organized and existing under the laws of the state of North Carolina.

10. Prior to the Petition Date, the Defendant and the Debtor engaged in business transactions, whereby the Defendant provided the Debtor with goods and/or services.

11. During the 90-day period prior to the Petition Date (the “Preference Period”), the Debtor transferred property to or for the benefit of the Defendant through payments aggregating an amount not less than \$50,600.00. The details of each of the transfers (collectively, the “Transfers,” and each individually a “Transfer”) are set forth on Exhibit A, which is attached hereto and incorporated by reference.

FIRST CAUSE OF ACTION
(Avoidance of Preferential Transfers – 11 U.S.C. § 547)

12. The Trustee repeats each of the allegations contained above as though fully set forth herein.

13. During the Preference Period, the Defendant was a creditor of the Debtor because the Defendant supplied goods and/or services to the Debtor, and the Debtor was obligated to pay for such goods and/or services.

14. Each Transfer identified on Exhibit A was made by the Debtor to the Defendant and paid from the Debtor’s bank account at TD Bank.

15. Each Transfer identified on Exhibit A was made to or for the benefit of the Defendant, as payment for goods and/or services provided by the Defendant to the Debtor.

16. Each Transfer was made for or on account of an antecedent debt or debts owed by the Debtor to the Defendant before such Transfer was made, as asserted by the Defendant and memorialized in the invoices identified on Exhibit A, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of the Defendant prior to being paid by the Debtor.

17. Each Transfer was made by the Debtor during the Preference Period.

18. Each Transfer was made while the Debtor was insolvent (as that term is defined in the Bankruptcy Code).

19. As reflected by the terms of the Disclosure Statement filed in the Debtor's case and the chapter 7 liquidation analysis set forth therein, each Transfer enabled the Defendant to receive more than the Defendant would have received if: (a) the Debtor's case was a case under chapter 7 of the Bankruptcy Code; (b) the Transfer had not been made; and (c) the Defendant received payment on account of the debt paid by the Transfer to the extent provided by the Bankruptcy Code.

20. The Trustee is therefore entitled to avoid the Transfers as preferences pursuant to § 547(b) of the Bankruptcy Code.

SECOND CAUSE OF ACTION
(Recovery of Property – 11. U.S.C. § 550)

21. The Trustee repeats each of the allegations contained above as though fully set forth herein.

22. The Defendant is the initial transferee of each of the Transfers because the Debtor made the Transfers directly to the Defendant by check or wire transfer, as reflected in **Exhibit A**.

23. Because the Trustee is entitled to avoid the Transfers for the reasons set forth above, and because the Defendant is the initial transferee, the Trustee is entitled to recover the value of the Transfers from the Defendant pursuant to § 550 of the Bankruptcy Code.

THIRD CAUSE OF ACTION
(Disallowance of Claim – 11. U.S.C. § 502(d))

24. The Trustee repeats each of the allegations contained above as though fully set forth herein.

25. On or about June 13, 2014, the Defendant filed proof of claim 232-1, alleging an unsecured claim in the amount of \$1,467,183.30 (the "Claim").

26. Because the Trustee is entitled to avoid and recover the Transfers for the reasons set forth above, pursuant to § 502(d) of the Bankruptcy Code, the Claim should be disallowed unless and until the Defendant pays the full amount of the Transfers set forth in **Exhibit A**.

27. WHEREFORE, the Trustee seeks entry of judgment: (A) avoiding the Transfers pursuant to § 547 of the Bankruptcy Code; (B) recovering the value of the Transfers from the Defendant pursuant to § 550 of the Bankruptcy Code, along with his costs incurred herein, including attorneys' fees, and pre- and post-judgment interest to the fullest extent allowed by applicable law; (C) disallowing the Defendant's Claim unless and until the Defendant pays the full amount of the Transfers; and (D) granting the Trustee such other and further relief as the Court deems just and appropriate.

Dated: August 6, 2015

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

/s/ Sam Anderson, Esq.
Sam Anderson, Esq.
Michael A. Siedband, Esq.
BERNSTEIN SHUR
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029
(207) 774-1200 (telephone)
(207) 774-1127 (facsimile)

Exhibit A

Case: Montreal Maine & Atlantic Ltd.

Preference Period: (5/9/2013 - 8/7/2013)


Vendor: Helm Financial Corporation

#	Dates of Payments/ Open Invoices	Check No.	Check Amount	Amount Paid or Value of Transfers	Invoice Date	Invoice No.	Invoice Amount	Check Clear Date
1	7/5/2013	16668	50,600.00	25,300.00	6/27/2013	X1253	25,300.00	7/9/2013
2	7/5/2013	16668	50,600.00	25,300.00	6/27/2013	X1251	25,300.00	7/9/2013
				\$ 50,600.00				\$ 50,600.00

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Robert J. Keach, solely in his capacity as the chapter 11 trustee for Montreal, Maine & Atlantic Railway, Ltd.	DEFENDANTS Helm Financial Corp.	
ATTORNEYS (Firm Name, Address, and Telephone No.) D. Sam Anderson, Esq. Michael Sledband, Esq. Timothy Mckeon, Esq. Bernstein Shur Sawyer & Nelson, P.A. 100 Middle Street, Portland, ME 04104 (207) 774-1200	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Avoidance and recovery of preferential transfers.		
NATURE OF SUIT		
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$ 50,600.00	
Other Relief Sought		

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Montreal, Maine & Atlantic Railway, Ltd.		BANKRUPTCY CASE NO. 13-10670
DISTRICT IN WHICH CASE IS PENDING Maine	DIVISION OFFICE Portland	NAME OF JUDGE Judge Peter G. Cary
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE August 6, 2015	PRINT NAME OF ATTORNEY (OR PLAINTIFF) D. Sam Anderson, Esq.	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.