

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**OBJECTION TO PROOF OF CLAIM FILED BY THE MEREDITH
MANAGEMENT GROUP, INC. ON THE BASIS THAT
SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

Robert J. Keach, the chapter 11 trustee (the “Trustee”) of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), hereby objects (the “Objection”) to Proof of Claim No. 78-1 filed by The Meredith Management Group, Inc. (“Meredith”). As set forth below, the Trustee objects to Anderson’s asserted claim on the basis that such claim must be disallowed as it is unenforceable against the Debtor. In support of this Objection, the Trustee states as follows:

JURISDICTION AND VENUE

1. The United States District Court for the District of Maine (the “District Court”) has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Objection pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court’s local rules, the District Court has authority to refer and has referred this chapter 11 case, and, accordingly, this Objection, to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter judgment in this action.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Objection is predicated upon sections 502(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 3001 and 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Maine (the “Local Rules”).

BACKGROUND

A. The Derailment and the Debtor’s Bankruptcy Filing

5. On July 6, 2013, an unmanned eastbound MMA train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the “Derailment”). The transportation of the crude oil had begun in New Town, North Dakota by the Canadian Pacific Railway (“CP”) and the Debtor’s wholly owned subsidiary, Montreal Maine & Atlantic Canada Co. (“MMA Canada”), later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick.

6. The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor in both the United States and Canada. After the Derailment, Canadian train activity was temporarily halted between Maine and Québec on the MMA Canada line, resulting in the Debtor losing much of its freight business. These effects of the Derailment caused the Debtor's aggregate gross revenues to fall drastically to approximately \$1 million per month.

7. On August 7, 2013, the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the “Case”). Simultaneously, MMA Canada filed for protection under

Canada's Companies' Creditors Arrangement Act (Court File No. 450-11-000167-134). On August 21, 2013, the U.S. Trustee appointed the Trustee to serve as trustee in the Debtor's Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

B. The Debtor's Scheduled and Meredith's Proof of Claim

8. On September 11, 2013, the Debtor filed its schedule of assets and liabilities and statement of financial affairs [D.E. 216] (collectively, the "Schedules"). The Schedules listed Meredith as having two contingent, unliquidated and disputed general unsecured claims *against MMA Canada* in the amounts of \$128,263.38 and \$210,022.01, for a total of \$338,285.39 (the "C/U/D Scheduled Amount"). See Schedule F (Creditors Holding Unsecured Nonpriority Claims, p. 141-142 of 244. The Debtor's books and records reflect no amounts owed to Meredith by MMA, contingent, unliquidated or disputed or otherwise.

9. On May 5, 2014, Meredith filed a proof of claim pursuant to Bankruptcy Code section 502(a) (the "Claim"). The Claim asserts a general unsecured claim against the Debtor in the amount of \$778,995.14 in the nature of "Pre-Petition Services," and attaches a spreadsheet calculating amounts allegedly due and non-detailed invoices supporting the alleged amounts (collectively, the "Invoices"). The Claim includes no copy of any agreement between the Debtor and Meredith, and each Invoice itemizes merely "Personnel Charges Per Daily Report," "Equipment Charges Per Daily Report", and "Expense Charges Per Daily Report." The Invoices provide no additional detail as to what these line items account for, and the Debtor's books and records do not reflect any further information.

RELIEF REQUESTED

10. By this Objection, the Trustee requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3001 3007, and Local Rule 3007-1, (a) sustaining

the Objection, (b) disallowing the Claim in its entirety, and (c) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

A. The Legal Standard

11. Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Bankruptcy Code section 502(b)(1) provides that if an objection to a claim is filed, the court, after notice and a hearing, “shall allow such claim . . . except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor” 11 U.S.C. § 502(b)(1).

12. The Bankruptcy Code defines a “claim” as a “right to payment.” 11 U.S.C. § 101(5)(A). Because a “right to payment” constitutes a claim, “the first step in the claims [allowance] process is always to determine whether there *is* a right to payment.” In re Taylor, 289 B.R. 379, 383 (Bankr. N. D. Ind. 2003) (emphasis added). A claim with “no basis in fact or law” must be disallowed. In re Hann, 476 B.R. 344, 354 (B.A.P. 1st Cir. 2012), aff’d, 711 F.3d 235 (1st Cir. 2013).

13. Bankruptcy Rule 3001 requires that when a claim is “based on a writing, a copy of the writing shall be filed with the proof of claim.” Fed. R. Bankr. P. 3001(c)(1). Significantly, “[w]hen a claimant fails to comply with the Rule 3001 documentation requirements, the claimant is not entitled to prima facie validity of the claim.” In re Residential Capital, LLC, No. 12-12020 (MG), 2013 WL 6227582, at *5 (Bankr. S.D.N.Y. Nov. 27, 2013) (internal citations omitted).

A. Meredith Has Failed to Comply with Bankruptcy Rule 3001 and Thus Cannot Demonstrate A Right to Payment

14. Meredith has demonstrated no right to payment from the Debtor under applicable law, and thus its Claim must be disallowed pursuant to Bankruptcy Code section 502(b)(1). Bankruptcy Rule 3001 requires that when a claim is “based on a writing, a copy of the writing shall be filed with the proof of claim.” Fed. R. Bankr. P. 3001(c)(1). While a properly completed proof of claim ordinarily constitutes prima facie evidence of that claim, “[w]hen a claimant fails to comply with the Rule 3001 documentation requirements, the claimant is not entitled to prima facie validity of the claim.” Residential Capital, 2013 WL 6227582, at *5 (internal citations omitted). This rule facilitates the debtor’s (and the Court’s) assessment of whether a party indeed has a “right to payment” from the estate: absent documentation supporting a claim that is based on a writing, that determination cannot reliably be made. See Taylor, 289 B.R. at 383.

15. As Meredith failed to include (a) a writing substantiating the line items included on the Invoices or (b) a writing demonstrating the Debtor’s obligation to pay those amounts, it failed to comply with Rule 3001, and thus, its Claim is not entitled to prima facie validity. See Residential Capital, 2013 WL 6227582, at *5. The Claim stripped of prima facie validity, Meredith has failed to assert a claim that is “enforceable against the debtor” because it cannot prove its “right to payment” under applicable law. See id., Taylor, 289 B.R. at 383 (finding that in assessing whether to allow a claim, the first step is for the court to determine whether there exists a right to payment under applicable non-bankruptcy law). Accordingly, the Claim should be disallowed in its entirety. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with “no basis in fact or law” must be disallowed).

RESERVATION OF RIGHTS

16. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Trustee's right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

NOTICE

17. Notice of this Objection was served on the following parties on the date and in the manner set forth in the certificate of service: (a) Debtor's counsel; (b) U.S. Trustee; (c) counsel to the Official Committee of Victims; and (d) counsel to Meredith. The Trustee submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Trustee requests that the Court enter an order, substantially in the form annexed hereto, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3001 and 3007 and Local Rule 3007-1, (i) sustaining this Objection; (ii) disallowing the Claim in its entirety; and (iii) granting such other and further relief as may be just.

Dated: August 11, 2015

**ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ Lindsay K. Zahradka

Sam Anderson

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**ORDER SUSTAINING OBJECTION TO PROOF OF CLAIM FILED BY
THE MEREDITH MANAGEMENT GROUP, INC. ON THE BASIS THAT SUCH
CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

This matter having come before the Court on the *Objection to Proof of Claim Filed by The Meredith Management Group, Inc. on the Basis that Such Claim is Unenforceable Against the Debtor* (the “Objection”) filed by Robert J. Keach, the chapter 11 trustee (the “Trustee”) of Montreal Maine & Atlantic Railway, Ltd., in relation to Amended Proof of Claim No. 78-1 (the “Claim”) filed by The Meredith Management Group, Inc., and after such notice and opportunity for hearing as was required by the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court’s local rules, and after due deliberation and sufficient cause appearing therefore; it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. The Objection is sustained.
2. Claim No. 78-1 shall be disallowed in its entirety.

Dated: _____, 2015

Honorable Peter J. Cary
Chief Judge, United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

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NOTICE OF HEARING

On August 11, 2015, Robert J. Keach, the chapter 11 trustee in the above-captioned case (the "Trustee"), filed the *Objection to Proof of Claim Filed by The Meredith Management Group, Inc. on the Basis that Such Claim is Unenforceable Against the Debtor* (the "Objection"). A hearing to consider the Objection has been scheduled for **October 6, 2015 at 9:00 a.m. ET.**

If you wish to respond to the Objection, then **on or before September 29, 2015 at 5:00 p.m. (ET).** you or your attorney must file with the Court a response to the Objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
202 Harlow Street
Bangor, Maine 04401

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court will receive it **on or before September 29, 2015 at 5:00 p.m. (ET).**

You may attend the hearing with respect to the Objection, which is scheduled to be held on **October 6, 2015 at 9:00 a.m.** at the Bankruptcy Court, 537 Congress Street, 2nd Floor, Portland, Maine. If no responses are timely filed and served, then the Court may enter a final order sustaining the Objection without any further hearing.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought, and may enter an order granting the requested relief without further notice or hearing.

Dated: August 11, 2015

**ROBERT J. KEACH
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ Lindsay K. Zahradka
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