

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)	
)	
Montreal Maine & Atlantic Railway Ltd.,)	Case No. 13-10670
)	
Debtor.)	Related to Docket Entry 1598
)	

**WHEELING & LAKE ERIE RAILWAY COMPANY’S REPLY TO
“OBJECTION TO PROOF OF CLAIM FILED BY WHEELING & LAKE ERIE
RAILWAY COMPANY PURSUANT TO BANKRUPTCY CODE SECTION 502(d)
OR, ALTERNATIVELY, ON THE BASIS THAT SUCH CLAIM SHOULD BE
DECREASED TO THE EXTENT ALREADY SATISFIED”**

NOW COMES Wheeling and Lake Eire Railway Company (“Wheeling”) and files this reply (the “Reply”) to the above-referenced Objection [D.E. 1598] (the “Objection”) to Wheeling’s Proof of Claim [119-1] (the “POC”), filed by Robert J. Keach in his capacity as the duly-appointed chapter 11 trustee (the “Trustee”) of the above-referenced debtor (the “Debtor”).¹

Overview

1. As the Court is aware, Wheeling claims that as of the date of filing of the petition initiating this case, it was owed Six Million Dollars (\$6,000,000) in principal, plus interest and costs, pursuant to a line of credit facility with the Debtor. In addition, as security for the facility, Wheeling claims a first priority security interest in, among other things, all payment rights of the Debtor, including “accounts” and “payment intangibles” as those terms are defined under Title 11 of the Maine Revised Statutes (the “Maine UCC”). This Court, in other proceedings before it, has determined that Wheeling’s security interest is valid, perfected and enforceable.

¹ Capitalized terms not defined herein shall have the meaning set forth in the Objection.

2. The Trustee has filed his Revised First Amended Plan Of Liquidation Dated July 15, 2015 [D.E. 1534] (the “Plan”), pursuant to which Wheeling’s secured claim is treated as “unimpaired.”

3. Against, this back-drop, Wheeling replies to the Objection as follows:

I. Disallowance Of Wheeling’s POC Is Premature Because The Avoidance Action Is Pending.

4. It is premature for this Court to determine the impact, if any, on Wheeling’s POC of the Trustee’s pending avoidance action pending in this Court with an Adversary Number of 15-1011 (the “Avoidance Action”). Wheeling has filed a motion to dismiss the Avoidance Action in its entirety, and the Court has not yet ruled on that motion or any other portion of the case. As such, until such time as there is a final determination that Wheeling is liable for repayment of an avoided transfer, there are no grounds to disallow any portion of Wheeling’s claim. The general rule, long-settled by the Supreme Court, is that the mere allegation of a voidable transfer is an insufficient basis to permanently disallow a claim. *Katchen v. Landy*, 382 U.S. 323, 328 (1996) (decided under § 57(g) of the Bankruptcy Act of 1898, the predecessor to § 502(d) of the Bankruptcy Code); *In re Southern Air Transport, Inc.*, 294 B.R. 293, 295-97 (Bankr. S.D. Ohio 2003) (applying *Katchen* to answer the question of whether the allegation of a preference alone is sufficient to disallow a claim and holding that it is not). “Courts have consistently recognized that when an objection to a claim is based upon the ground that the claimant has failed to surrender a voidable transfer, ‘the claim can neither be allowed nor disallowed until the preference matter is adjudicated.’” *In re Coral Petroleum, Inc.*, 60 B.R. 377, 382 (Bankr. S.D. Tex. 1986) (*quoting Katchen*). Rather, there must be an actual determination that there was a voidable transfer. *In re Southern Air Transport, Inc.*, 294 B.R. at 296-97.

5. In light of the foregoing authorities, the Court should take no action at this time with respect to Wheeling's POC based on the mere pendency of the Avoidance Action. No further action should be taken with respect to the POC until, if at all, there is a final order in the Avoidance Action.

6. The Trustee also cites authorities for the proposition that a claim can be temporarily disallowed in connection with plan voting. Maybe so, but that point is entirely irrelevant as to Wheeling because its secured claim is treated as **unimpaired** under the Trustee's Plan. *See* Plan, Article 4.1(a). As such, Wheeling does not claim a right to vote for or against confirmation of the Trustee's Plan and the Court should disregard the point.

II. The Amounts Received By Wheeling On Its Claim Have Not Been Finally Determined; A Scheduling Order Should Issue For Proceedings To Determine The Amounts Already Paid To Wheeling.

7. In principal, Wheeling agrees that the amount of its POC should be reduced to account for the amounts that it has received on account of its claim. That said, further proceedings are needed to determine the amount that has been received by Wheeling once other matters have been resolved. For example, Wheeling holds an allowed superpriority administrative claim for \$695,640.93. Order On Wheeling & Lake Erie Railway Company's Motion To Enforce Cash Collateral Orders, ¶ 4 [D.E. 1511]. This claim represents the value of Wheeling pre-petition collateral that has been expended by the Trustee in this case. It has yet to be paid, and, as this Court has previously ruled, it is not subject to disallowance pursuant to § 502(d) of the Bankruptcy Code. Order On Wheeling & Lake Erie Railway Company's Motion To Enforce Cash Collateral Orders, ¶ 5 [D.E. 1511]. Further, Wheeling claims that settlement proceeds that the Trustee expects to receive in conjunction with the Plan also constitute

Wheeling collateral. Until these claims are resolved, it will be impossible to make a final determination of the amount of Wheeling's claim.

8. Wheeling respectfully submits that at this time, determination of the final allowed amount of its claim is premature.

Conclusion

WHEREFORE, Wheeling respectfully requests that the Court deny the Trustee's Objection, that it hold a preliminary hearing with respect to the POC and Objection in accordance with D. Me. LBR 3007-1, and that it grant such further and additional relief as the Court deems just and proper.

Dated: September 29, 2015

/s/ Andrew C. Helman

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CERTIFICATE OF SERVICE

I, Andrew C. Helman, being over the age of eighteen hereby certify that on September 29, 2015 I caused the above document to be filed via the CM/ECF System. Persons who are served as part of the CM/ECF system are designated in the Electronic Mail Notice List section of the attached service below:

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