

**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 C.S. DES SOMMETS ON THE BASIS
THAT SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”),¹ hereby objects (the “Objection”) to Proof of Claim No. 34 (the “Claim”) filed by C.S. Des Sommets (“CSDS”). As set forth below, the Estate Representative objects to the Claim on the basis that such Claim must be disallowed because it is unenforceable against the Debtor under the Bankruptcy Code. In support of this Objection, the Estate Representative 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.

¹ In accordance with the *Trustee’s Chapter 11 Plan of Liquidation, dated July 15, 2015 (As Amended on October 8, 2015)* [D.E. 1822] (the “Plan”), upon the Effective Date of the Plan (which occurred on December 22, 2015, *see* D.E. 1927), Robert J. Keach is no longer the chapter 11 trustee of the Debtor’s estate, but is the Estate Representative of the Post-Effective Date Estate (as defined in the Plan). *See* Plan § 6.1(a).

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 section 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”),² 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.

² MMA Canada is an unlimited liability company organized under the laws of the Canadian province of Nova Scotia.

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 Office of the United States Trustee (the “U.S. Trustee”) appointed Robert J. Keach as chapter 11 trustee in the Debtor’s Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

B. The Debtor’s Schedules, the Bar Date Order and the Filing of the 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 CSDS as having a contingent, unliquidated and disputed general unsecured claim *against MMA Canada* in the amount of \$1,028.89 (the “Scheduled Unsecured Claim”). See Schedule F (Creditors Holding Unsecured Nonpriority Claims), p. 71 of 244.

9. On March 20, 2014, the Court entered the *Order Pursuant to 11 U.S.C. Sections 105(a) and 502(b)(9), Fed. R. Bankr. P. 3002 and 3003(c)(3), and D. Me. LBR 3003-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof* [D.E. 783] (the “Bar Date Order”). The Bar Date Order set certain rules for filing proofs of claim, including that claims be in English. See Bar Date Order at ¶ 2(b).

10. On June 12, 2014, CSDS filed Claim 34 pursuant to Bankruptcy Code section 502(a). The Claim asserts a claim against the Debtor in the amount of \$13,503.95. The backup invoices provided with the Claim are all addressed to MMA Canada. Moreover, the Claim asserts no basis for its alleged secured status, and identifies no collateral securing the asserted obligation.

RELIEF REQUESTED

11. By this Objection, the Estate Representative requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3001 and 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

i. Disallowance of Claims in Chapter 11

12. 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).

13. The Bankruptcy Code defines a “claim” as a “right to payment,” 11 U.S.C. § 101(5)(A), “usually referring to a right to payment recognized under state law,” In re Hann, 476 B.R. 344, 354 (B.A.P. 1st Cir. 2013), aff’d, 711 F.3d 235 (1st Cir. 2013) (quoting Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co., 549 U.S. 443, 451 (2007)). 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. Hann, 476 B.R. at 354.

14. Bankruptcy Rule 3001(c)(1) 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).

ii. Allowance of Secured Claims

15. Section 506(a) of the Bankruptcy Code provides, in pertinent part:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property . . . and is an unsecured claim to the extent that the value of such creditor’s interest . . . is less than the amount of such allowed claim.

11 U.S.C. § 506(a).

16. A creditor must thus identify the property of the estate in which it claims a security interest. *See id.* (allowing a secured claim “to the extent of the value of such creditor’s interest in the estate’s interest in *such property*”). In particular, a creditor’s description of its collateral must “reasonably identif[y]” the alleged collateral. *See* U.C.C. § 9-108(a). In addition, the Bankruptcy Rules require evidence that the security interest has been perfected. *See* Fed. R. Bankr. P. 3007(d) (“If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.”).

B. The Claim is Unenforceable Against the Debtor

17. CSDS has demonstrated no interest in property of the Debtor, and thus the Claim must be disallowed pursuant to Bankruptcy Code section 502(b)(1).

18. Bankruptcy Code section 506(a) provides that claims are secured “to the extent of the value of [a] creditor’s interest *in the estate’s interest in [] property.*” *See* 11 U.S.C. § 506(a) (emphasis added). As an initial matter then, CSDS has identified no interest in *any* property in which it has an interest, let alone in property *of MMA* (as opposed to, *e.g.*, property

MMA Canada, against which CSDS's claim might be properly asserted). CSDS thus fails the requirements of Bankruptcy Code section 506(a).

19. In addition, 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). In the context of an asserted secured claim, a creditor claiming a security interest must "reasonably identif[y]" its alleged collateral in a filing asserting the security interest. *See* U.C.C. § 9-108(a). In this vein, Bankruptcy Rule 3001 requires that a "proof of claim [] be accompanied by evidence that [any asserted] security interest has been perfected." Fed. R. Bankr. P. 3001(d). 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.

20. As CSDS failed to include documentation evidencing (a) any security interest at all, (b) any property to which that security interest might attach, or (c) perfection of any such asserted security interest, CSDS has also failed to comply with Bankruptcy Rule 3001, and thus, the Claim is not entitled to *prima facie* validity. *See Residential Capital*, 2013 WL 6227582, at *5. The Claim stripped of *prima facie* validity, CSDS 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).

21. Finally, the Claim is defective because its supporting documentation is in French, in violation of the Bar Date Order. The Bar Date Order requires that: “Proofs of Claim, other than Derailment Claims[. . .], must: (i) be written in the English language;” *See* Bar Date Order, ¶ 2(b).³ This is for good reason: the Estate Representative cannot evaluate the sufficiency of the supporting documentation or reconcile any amounts set forth therein when such supporting documentation is in a foreign language. Accordingly, for the additional reason that the Claim was submitted not in compliance with the Bar Date Order, the Estate Representative submits that it should be disallowed.

RESERVATION OF RIGHTS

22. 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 Estate Representative’s right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

NOTICE

23. 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; and (c) CSDS or its counsel. The Estate Representative submits that no other or further notice need be provided.

³ The Claim is not a Derailment Claim.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Estate Representative requests that the Court enter an order 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: February 19, 2016

**ROBERT J. KEACH, ESTATE
REPRESENTATIVE OF THE POST-
EFFECTIVE DATE ESTATE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ 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 C.S. DES SOMMETS 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 C.S. Des Sommets on the Basis that Such Claim is Unenforceable Against the Debtor* (the “Objection”)¹ filed by Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), in relation to Proof of Claim No. 34 (the “Claim”) filed by the C.S. Des Sommets 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 **DECREEED** that:

1. The Objection is sustained.
2. Claim No. 34 shall be disallowed in its entirety and expunged from the Debtor’s claims register.

Dated: _____, 2016

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

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Objection.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

NOTICE OF HEARING

On February 19, 2016, Robert J. Keach, the estate representative for the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (the "Estate Representative"), filed the *Objection to Proof of Claim Filed by C.S. Des Sommets on the Basis that Such Claim is Unenforceable Against the Debtor* (the "Objection"). A hearing to consider the Objection has been scheduled for **April 5, 2016 at 9:00 a.m. ET.**

If you wish to respond to the Objection, then **on or before March 21, 2016 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 and the Estate Representative at:

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

-and-

Sam Anderson, Esq.
Bernstein, Shur, Sawyer & Nelson, P.A.
100 Middle Street, PO Box 9729
Portland, Maine 04101-5029

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court and the Estate Representative will receive it **on or before March 21, 2016 at 5:00 p.m. (ET).**

You may attend the hearing with respect to the Objection, which is scheduled to be held on **April 5, 2016 at 9:00 a.m. ET** 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: February 19, 2016

ROBERT J. KEACH
ESTATE REPRESENTATIVE OF THE POST-
EFFECTIVE DATE ESTATE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

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