

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**AMENDED OBJECTION TO PROOF OF CLAIM FILED BY
FRED'S PLUMBING AND HEATING, INC. ON THE BASIS THAT
CERTAIN OF THE AMOUNTS ASSERTED IN SUCH CLAIM ARE
UNENFORCEABLE UNDER THE BANKRUPTCY CODE**

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 files this amended objection (the "Amended Objection")² to Proof of Claim No. 44 (the "Claim") filed by Fred's Plumbing and Heating, Inc. ("Fred's"). As set forth below, the Estate Representative objects to the Claim on the basis that certain amounts asserted in the Claim must be disallowed as unenforceable under the Bankruptcy Code against the Debtor. In support of this Amended 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 Amended Objection pursuant to 28 U.S.C. § 1334(b). Pursuant to

¹ In accordance with the *Trustee's Revised First Amended 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, Robert J. Keach became the Estate Representative of the Post-Effective Date Estate (as defined in the Plan). See Plan § 6.1(a).

² By the *Trustee's First Omnibus Objection to Certain Proofs of Claim on the Basis that Such Claims (A) Are Duplicative of Other Claims (B) Were Not Timely Filed, (C) Otherwise Do Not Comply with the Applicable Rules or Orders of This Court, or (D) Were Released or Mooted Pursuant to the Confirmation Order* [D.E. 1978] (the "First Omnibus Claims Objection"), the Estate Representative Objected to Claim 44. By the revised form of order sustaining the First Omnibus Objection [D.E. 2042], the Estate Representative withdrew his objection to Claim 44 contained in the First Omnibus Claims Objection and now instead submits this Amended Objection.

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 Amended 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 Amended Objection is predicated upon sections 502(b)(1) and (g)(1) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 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 "Petition Date"), 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 Robert J. Keach as chapter 11 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 Schedules, the Bar Date Order, the Claim and Objections Thereto

8. On September 11, 2013, the Debtor filed its schedule of assets and liabilities and statement of financial affairs [D.E. 216] (the "Schedules"). The Schedules list Fred's as having a general unsecured claim in the amount of \$24,797.38. *See* Schedule F (Creditors Holding Unsecured Nonpriority Claims), pp. 104 of 244.

9. On March 18, 2014, Fred's filed Claim 44 pursuant to Bankruptcy Code section 502(a), asserting a general unsecured claim against the Debtor in the amount of \$79,449.60.

10. 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 provided, in pertinent part: “Proofs of Claim, other than Derailment Claims³ . . . , must: . . . (iv) set forth with specificity the legal and factual basis for the alleged claim; (v) include supporting documentation for the claim or an explanation as to why such documentation is not available.” See Bar Date Order, ¶ 2(b). Fred’s never amended the Claim to comply with the Bar Date Order.

11. In February 2016, the Estate Representative filed the First Omnibus Claim Objection which, *inter alia*, objected to Claim 44 as continuing insufficient documentation in violation of the Bankruptcy Rules and the Bar Date Order.

12. On February 25, 2016, Fred’s responded to the First Omnibus Claim Objection by, among other things,⁴ supplying supporting documentation in the form of a summary statement reflecting all invoices outstanding (the “Summary Documentation”). See D.E. 2031.

13. Counsel to the Estate Representative subsequently requested copies of three of the invoices that were identified in the Summary Documentation, but with respect to which the Estate Representative had no record of amounts owing, as well as the corresponding delivery tickets (the amounts represented in such invoices, the “Disputed Amounts”):

Invoice #	Invoice Date	Amount
76861	5/28/13	\$4,116.07
77844	6/3/13	\$9,369.69
78545	6/7/13	\$4,892.14
Total		\$18,377.90

³ “Derailment Claims” shall mean any and all claims against MMA and/or MMA Canada arising out of or related to the Derailment, including, but not limited to, wrongful death, personal injury, property damage, contribution, and/or indemnity claims, among others. See Bar Date Order, ¶2(b), n.2.

⁴ Fred’s also indicated that it had supplied the Trustee with such supporting invoices in connection with a different part of the Debtor’s chapter 11 case.

14. Counsel to Fred's provided such invoices, but indicated that Fred's no longer has copies of the associated delivery tickets due to a fire incident. Without the delivery tickets, the Estate Representative was unable to confirm that the Disputed Amounts were actually owing.

RELIEF REQUESTED

15. By this Amended Objection, the Estate Representative requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1, (a) sustaining the Amended Objection, (b) disallowing the Disputed Amounts, and (c) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

16. 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). 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. 2012), 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).

17. 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.” 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). This rule facilitates a trustee’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 In re Taylor*, 289 B.R. 379, 383 (Bankr. N. D. Ind. 2003). The Bar Date Order reinforces this requirement: “Proofs of Claim, other than Derailment Claims[] . . . , must: . . . (iv) set forth with specificity the legal and factual basis for the alleged claim; (v) include supporting documentation for the claim or an explanation as to why such documentation is not available” Bar Date Order, ¶ 2(b).⁵

18. As Fred’s has not been able to produce a delivery ticket substantiating the Disputed Amounts (and the Estate Representative has no record of the Disputed Amounts being due), Fred’s has failed to comply with Rule 3001 and the Bar Date Order, and thus, Claim 44 is not entitled to *prima facie* validity with respect to such Disputed Amounts. *See Residential Capital*, 2013 WL 6227582, at *5. Claim 44 stripped of *prima facie* validity with respect to the Disputed Amounts, Fred’s failed to assert a claim that is “enforceable against the debtor” with respect to the Disputed Amounts 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 Disputed Amounts should be disallowed in their entirety and Claim 44 should be reduced accordingly. *See* 11 U.S.C. § 502(b)(1); In re Hann, 476 B.R. 344, 355 (B.A.P. 1st Cir. 2012), *aff’d* 711 F.3d 235 (1st Cir. 2013) (quoting

⁵ Claim 44 is not a Derailment Claim. But even if it were, Bankruptcy Rule 3001(c) still applies.

Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co., 549 U.S. 443, 451 (2007))

(finding that a claim with “no basis in fact or law” must be disallowed).

RESERVATION OF RIGHTS

19. 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

20. Notice of this Amended Objection was served on Fred’s or its counsel on the date and in the manner set forth in the certificate of service. The Estate Representative submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Estate Representative requests that the Court enter an order, substantially in the form annexed hereto, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1, (i) sustaining this Amended Objection; (ii) disallowing the Disputed Amounts and reducing Claim 44 for such disallowed Disputed Amounts, (iii) granting such other and further relief as may be just.

Dated: March 30, 2016

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

By his attorneys:

/s/ Sam Anderson
Sam Anderson, Esq.
Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104
Telephone: (207) 774-1200
Facsimile: (207) 774-1127

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER SUSTAINING AMENDED OBJECTION TO PROOF OF CLAIM
FILED BY FRED'S PLUMBING AND HEATING, INC. ON THE BASIS THAT
CERTAIN OF THE AMOUNTS ASSERTED IN SUCH CLAIM ARE
UNENFORCEABLE UNDER THE BANKRUPTCY CODE**

This matter having come before the Court on the *Amended Objection to Proofs of Claim Filed by Fred's Plumbing and Heating, Inc. on the Basis that Certain of the Amounts Asserted in Such Claim Are Unenforceable Under the Bankruptcy Code* (the "Amended 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. 44 filed by the Fred's Plumbing and Heating, 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 Amended Objection is sustained.
2. The Disputed Amounts asserted in Claim No. 44 (\$18,377.90) shall be disallowed in their entireties. The balance of Claim 44 shall remain on the Debtor's claims register, subject to the Estate Representative's rights to object to the revised Claim on any other grounds in accordance with the Plan and Confirmation Order.

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

Dated: _____, 2016

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.

Bk. No. 13-10670

Chapter 11

**NOTICE OF HEARING ON AMENDED OBJECTION TO PROOF OF CLAIM FILED
BY FRED'S PLUMBING AND HEATING, INC. ON THE BASIS THAT
CERTAIN OF THE AMOUNTS ASSERTED IN SUCH CLAIM ARE
UNENFORCEABLE UNDER THE BANKRUPTCY CODE**

On March 30, 2016, Robert J. Keach, the estate representative (the "Estate Representative") of Montreal, Maine & Atlantic Railway, Ltd. (the "Debtor"), filed the *Amended Objection to Proof of Claim Filed by Fred's Plumbing and Heating, Inc. on the Basis that Certain of the Amounts Asserted in Such Claim Are Unenforceable Under the Bankruptcy Code* (the "Amended Objection"). A hearing to consider the Amended Objection has been scheduled for **May 10, 2016 at 9:00 a.m. ET.**

If you oppose the relief requested in the Amended Objection, then on or before **April 29, 2016** (the "Response Deadline"), you or your attorney must file with the Court a response to the Amended 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

-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 **April 29, 2016.**

You may attend the hearing with respect to the Amended Objection, which is scheduled for **May 10, 2016 at 9:00 a.m. ET** (the "Hearing") before the Honorable Judge Peter G. Cary, the United States Bankruptcy Court for the District of Maine (the "Court"), 537 Congress Street, 2nd Floor, Portland, Maine.

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 sustaining the Amended Objection without further notice or hearing.

Nothing in this Notice or the accompanying Amended Objection constitutes a waiver of any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions, or any other bankruptcy claims against you.

Dated: March 30, 2016

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

By his attorneys:

/s/ Sam Anderson

D. Sam Anderson, Esq.
Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104
Telephone: (207) 774-1200
Facsimile: (207) 774-1127
Email: sanderson@bernsteinshur.com
lzahradka@bernsteinshur.com