

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

	*	
In re:	*	
	*	
Montréal, Maine & Atlantic	*	Chapter 11
Railway, Ltd.	*	Case No. 13-10670
	*	
Debtor	*	

OBJECTION TO PROPOSED ORDER

NOW COME Sabrina Nadeau, Joel Rochon, and Daniel R. LaRochelle (collectively, the “Respondents”), and object to the Proposed Order filed as Docket No. 2201 (the “Proposed Order”) in this case as follows:

1. Paragraphs 2 and 3 of the Proposed Order should be deleted since they consist of factual findings. This Court did not indicate that factual findings would be included as part of the Proposed Order.

2. Paragraph 4 of the Proposed Order provides that certain specific Canadian counsel “Joel Rochon and Daniel Larochelle” shall withdraw the Nadeau Motion. Naming specific Canadian attorneys is inappropriate here. For example, Joel Rochon never signed the Nadeau Motion, never appeared to argue it, and is not an attorney of record in that proceeding. Therefore, he is not in a position to withdraw that motion. Instead, that Motion was signed by two other attorneys, only one of whom is named as a party to this proceeding, and was argued before the Canadian Court by still another attorney who is also not a party to this proceeding.

3. Paragraph 4 of the Proposed Order provides that Ms. Nadeau and her Canadian counsel shall “immediately” take certain actions. This term is vague. Instead, a definite time should be inserted for filing of appropriate paperwork to withdraw the Nadeau Motion.

4. The Proposed Order requires the withdrawal of the Nadeau Motion so that “no aspect of” that Motion “is either heard or determined by the Canadian Court”. This provision is overbroad in two respects. First, the Canadian Court has already heard arguments on the Nadeau Motion. Second, the Respondents cannot control what the Canadian Court might do with respect to the Motion, since it is possible that it might want to hold a hearing on the withdrawal. Therefore, the phrase “fully so that no aspect of the Nadeau Motion is either heard or determined by the Canadian Court” should be deleted from ¶ 4 of the Proposed Order.

5. Paragraph 5 of the Proposed Order requires an “in-person meeting”, which essentially is to be a mediation session. This Court has repeatedly stated that it does not order parties to mediate. The Respondents do not disagree that the parties might want to mediate, and, frankly, support such an action, but this Court should not order them to do so. Additionally, that paragraph contemplates that the WD Trustee could be the mediator. This is inappropriate since, if an agreement is not reached, he would then be in a position to make a decision upon the substantive issues which were the subject of that mediation. In fact, having the WD Trustee as the mediator may actually hinder mediation since parties may be reluctant to make statements there which might be used against them later.

6. The last sentence of ¶ 6 of the Proposed Order permits the WD Trustee to issue “any orders he determines in his sole discretion are necessary and proper”. The WD Trustee is not a judge and cannot issue orders. He can ask for the parties to do certain things and take what they do or do not do into account in reaching a final decision. Therefore, such a provision should not be included in any Order entered by this Court.

7. The Family Members’ Motion makes it unclear whether they seek sanctions through contempt, through the Court’s general equitable powers, or both. As a result, limiting the later hearing to a finding of contempt and imposition of sanctions does not fairly state what may happen there. Additionally, what the Family Members are really seeking, and the most that they can seek, are costs, fees, and other damages here.

8. Attached as Exhibit A to this Objection is a proposed Order which takes into account the comments made in this Objection.

WHEREFORE, the Respondents pray that this Court enter an Order as set forth in Exhibit A to this Objection and not as set forth in the Proposed Order.

DATED at Portland, Maine, this 12th day of July, 2016.

/s/ F. Bruce Sleeper
F. Bruce Sleeper
Attorney for Respondents

JENSEN BAIRD GARDNER & HENRY
Ten Free Street
P.O. Box 4510
Portland, ME 04112
(207) 775-7271
bsleeper@jbgh.com

CERTIFICATE OF SERVICE

I certify that, on July 12 2016, all parties listed on the Notice of Electronic Filing in this case were served electronically with a copy of the above Objection.

/s/ F. Bruce Sleeper
F. Bruce Sleeper
Attorney for Respondents

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Case No. 13-10670
Chapter 11

**ORDER GRANTING IN PART MOTION OF FAMILY MEMBERS FOR
ORDER: (I) ENFORCING CONFIRMED CHAPTER 11 PLAN, (II) HOLDING
CONTEMNORS IN CIVIL CONTEMPT, AND (III) IMPOSING SANCTIONS**

Upon consideration of the *Motion of Family Members for Order: (1) Enforcing Confirmed Chapter 11 Plan, (II) Holding Contemnors in Civil Contempt, and (III) Imposing Sanctions* [Docket No. 2180] (the "Motion"), and after expedited hearings on July 7, 2016 and July 12, 2016, and after proper notice and a hearing, it is hereby

ORDERED as follows:

1. The Motion is granted in part, as set forth below.
2. Within ___ days of the date of this Order, Ms. Nadeau and her Canadian counsel shall take all action necessary to withdraw the Nadeau Motion fully.
3. The WD Trustee shall set a schedule for further submissions and replies related to the parties' entitlement to distributions from the WD Trust related to the death of Eric Pepin Lajeunesse (the "Dispute"), and, if agreed by the parties, for an in-person meeting between the designee(s) of the WD Trustee, Ms. Nadeau, the Family Members, and their respective counsel to attempt to resolve the Dispute.

4. If the parties cannot resolve the Dispute following the any in-person meeting, or if no in-person meeting is scheduled by agreement of the parties within ___ days from the date of this Order, the WD Trustee shall promptly hear and determine the Dispute, subject to exclusive *de novo* review in this Court pursuant to section 5.10 of the Plan.

5. If any party disagrees with the WD Trustee's determination, they may seek *de novo* review exclusively in this Court.

6. Further proceedings on the entitlement of the Family Members to, and, if so entitled, the amount of, any award of costs, fees, and other damages in this proceeding, and any related matters, shall be set for hearing on _____, 2016 at _____ a/p.m. The Family Members shall file all materials which they contend support any such entitled and the amount of the same no later than _____, 2016, and Ms. Nadeau and her Canadian counsel, Joel Rochon, and Daniel LaRochelle, shall file any opposition to the same no later than _____, 2016.

DATED:

United States Bankruptcy Judge