

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**PRELIMINARY ORDER
CONCERNING MOTION TO APPROVE SETTLEMENT**

Following his appointment, the chapter 11 trustee brought motions under 11 U.S.C. §542(b) to compel the turnover of accounts receivable as part of his efforts to raise cash for operations.¹ One such motion, against Irving Paper Limited, Irving Pulp & Paper, Limited, and J. D. Irving, Limited (collectively, “Irving”), sought \$885,000. Irving objected for several reasons, including an alleged pre-petition setoff of \$761,000. Wheeling & Lake Erie Railway Company, (“Wheeling”) appeared and requested full-party status in the Irving turnover proceeding based upon its assertion of a floating lien covering the Irving receivable.² I granted Wheeling’s request for full-party standing and set a final evidentiary hearing on the trustee’s motion. Prior to the final hearing, the trustee and Irving executed a stipulation to settle the § 542(b) dispute, subject to notice and hearing on the trustee’s motion to compromise under Rule 9019.³ Wheeling was not a party to the stipulation.

The final hearing on the trustee’s § 542(b) motion occurred before the hearing on the

¹ All references to statutory sections are to the Bankruptcy Code of 1978, as amended, 11 U.S.C. § 101, *et.seq.* All references to rules are to the Federal Rules of Bankruptcy Procedure.

² Wheeling holds a security interest in all of the debtor’s pre- and post-petition accounts receivable by virtue of a pre-petition security agreement containing a floating lien and six post-petition consensual interim cash collateral orders.

³ If the compromise is approved, Irving is to pay to the trustee \$531,000 in full and final settlement of the trustee’s claim. Of that sum, \$150,000 is to be paid within two business days of the order approving the compromise. The remaining \$381,000 is to be paid within two business days after such order becomes final.

trustee's motion to compromise. At that time, the trustee asked that there be no evidentiary hearing because he had reached an settlement with Irving. Wheeling protested on many grounds including a violation of Rule 7041 because of its full-party status. To counter this charge, the trustee declared that the § 542(b) motion had been withdrawn. In his view, the stipulation was simply the product of the trustee's authority to conduct business in the normal course. Wheeling was not placated. It insisted that its floating lien prevented the trustee from settling the Irving account. Faced with these new issues, I ordered the parties to supply written arguments.

The hearing on the motion to compromise was held on October 31, 2013. At that time Wheeling conceded that the trustee's § 542(b) motion had been withdrawn. Wheeling also agreed that its floating lien, as such, provided no legal impediment to the settlement between the trustee and Irving. See In re Resource Technology Corp., 430 F. 3d 884, 888 (7th Cir. 2005). Instead, Wheeling argued that the circumstances of this case, namely, those reflected in paragraph 5 of the sixth interim cash collateral order, require the trustee to hold the entire Irving account in escrow "without deduction" following the closing of the trustee's loan with Camden National Bank.⁴ The parties agree that this closing has occurred. Thus, according to Wheeling, the Irving account may not be reduced without Wheeling's consent. The trustee does not agree.

A bankruptcy court plainly has jurisdiction to interpret its own orders. See Travelers Indemnity Co. v. Bailey, 557 U.S. 137, 151 (2009). The disputed language in paragraph 5 of the sixth cash collateral order provides in pertinent part:

On and after the date of the Closing [meaning the day the trustee closed on a new credit facility with Camden National Bank], and as and for additional adequate protection, the Trustee shall establish a segregated escrow account . . .

⁴ Camden National Bank has replaced Wheeling as the trustee's post-petition lender.

and shall deposit therein any and all amounts collected by the Trustee, without deduction, from the payment of accounts receivable that were created at any time prior to the date of the Closing

This language, like the entire order and those that preceded it, was drafted and submitted as a proposed form of order by Wheeling and the trustee. It reflects their common intention to prevent an erosion in the value of the accounts receivable securing the advances made by Wheeling. Despite their common intention, they differs on the meaning of the words. Wheeling understands paragraph 5 to mean that the existing accounts, as such, must be held for Wheeling “without deduction.” The trustee understands it to mean that only actual proceeds of the accounts receivable are to be held without reduction.

I interpret the language to refer to collected proceeds, not accounts. Moreover, there is nothing in the language of the order to restrict the trustee’s hand in the collection of the accounts. Therefore, the trustee did not violate the letter or intent of the sixth interim cash collateral order when he agreed to settle the Irving account.

All other issues on the trustee’s motion to compromise are reserved.

SO ORDERED.

DATED: December 9, 2013



Louis H. Kornreich, Chief Judge
U. S. Bankruptcy Court

District/Off: 0100-1
Case: 13-10670

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