

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re)	Chapter 11
)	Case No. 13-10670
MONTREAL MAINE & ATLANTIC)	
RAILWAY, LTD.,)	
)	
Debtor.)	

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING
THE DEBTOR’S REJECTION OF CERTAIN LEASES**

***Contract Counterparties Receiving This Motion
Should Locate Their Names On The Attached Exhibit A***

Montreal, Maine & Atlantic Railway Ltd. (“MMA” or “Debtor”), debtor-in-possession in the above captioned case, through its undersigned proposed counsel, moves this Court for an order, pursuant to 11 U.S.C. §§ 365(a), (g) and Fed. R. Bankr. P. 6006(a), approving the Debtor’s rejection of certain leases as of August 7, 2013 (the “Motion”). In support of the Motion, the Debtor states as follows:

I. Jurisdiction and Venue

1. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 & 1334 and D. Me. Local R. 83.6(a), pursuant to which all cases filed in Maine under 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”) are referred to bankruptcy judges of this district. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding over which the Court has jurisdiction and Constitutional authority to enter a final order.

II. Procedural Background

2. On August 7, 2013, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Petition Date”).

3. The Debtor remains in possession and control of its property and continues to operate as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code and this Court's Order Authorizing the Debtor's Continued Business Operations Pending Appointment of a Chapter 11 Railroad Trustee. [ECF Dkt. No. 34].

III. Factual Background

4. Reference is made to the affidavit of M. Donald Gardner, Jr. for the factual background of MMA and the events leading to this bankruptcy case [ECF Dkt. No. 11]. Said facts are incorporated herein as if set forth in full.

IV. Relief Requested

5. The Debtor seeks the entry of an order approving its rejection of certain executory contracts more specifically described on Exhibit A attached hereto (the "**Rejected Leases**").

6. The Debtor may, subject to the Court's approval, assume or reject any executory contract or unexpired lease. 11 U.S.C. § 365(a). The Debtor's decision to assume or reject is subject to the business judgment standard. *See Sharon Steel Corp. v. National Fuel Distribution Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 162 (Bankr. D. Del. 2006) ("Courts have uniformly deferred to the business judgment of the debtor to determine whether the rejection of an executory contract or unexpired lease by the debtor is appropriate under section 365(a) of the Bankruptcy Code."). It is enough if the Debtor determines – in its business judgment – that no benefit will be realized by assuming the contracts or leases to be rejected. *In re Sharon Steel Corp.*, 872 F.2d at 39-40, *citing In re Wheeling Pittsburgh Steel Corp.*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). The business judgment standard requires the court approve the Debtor's business decision unless that judgment is the

product of bad faith, whim, or caprice. *Lubrizol Enterprises v. Richmond Metal Finishers, Inc.* (*In re Richmond Metal Finishers, Inc.*), 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986). The Debtor has appropriately exercised its business judgment in rejecting the Rejected Leases.

7. The Rejected Leases do not generate sufficient value for the estate to justify assumption and, consequently, are not likely to be viewed as a valuable asset by any potential purchaser. The revenues that can be earned by the use of the cars subject to the Rejected Leases is not sufficient to warrant incurring continued payment obligations that exceed the current market rates for comparable cars. Therefore, the Debtor views the Rejected Leases as more burdensome to the estate than useful, justifying rejection. *Bezanson v. Metropolitan Ins. and Annuity Co.*, 952 F.2d 1, 7 (1st Cir. 1991).

8. Given the extraordinary remedies available to the lessors pursuant to 11 U.S.C. § 1168, it is equitable for the court to approve the rejection of the Rejected Leases retroactive to the Petition Date. *See In re Thinking Machines Corp.*, 67 F.3d 1021, 1028 (1st Cir. 1995) (dictum) (rejection of a nonresidential lease becomes effective only after judicial approval, but retroactive rejection appropriate “as long as it promotes the purposes of section 365(a)”). Moreover, using the Petition Date as the date of rejection is consistent with section 365(g), which provides that, except with respect to certain circumstances inapplicable to the Motion, “the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease . . . if such contract or lease has not been assumed . . . , immediately before the date of the filing of the petition.” 11 U.S.C. § 365(g).

VI. Notice

9. The Debtor, through counsel, will cause this Motion, as well as the proposed Order and Notice of Hearing, to be served by first class U.S. mail, postage prepaid and, as applicable, by electronic mail or Federal Express on (i) the United States Trustee; (ii) the 20 largest unsecured creditors in this case; (iii) the Federal Rail Administration; (iv) Wheeling & Lake Erie Railway Company; (v) the United States Secretary of Transportation; (vi) the Surface Transportation Board; (vii) all parties requesting notice in this case; and (viii) all parties to the Rejected Leases, at the address listed on Exhibit A. The Debtor respectfully requests that the Court find such notice to constitute fair, adequate, and sufficient notice of all matters set forth in this Motion.

WHEREFORE, the Debtor respectfully requests entry of an Order granting the relief requested herein and such other and further relief as is just and proper.

Dated: August ___, 2013

Respectfully submitted,

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

/s/ Roger A. Clement, Jr.

Roger A. Clement, Jr., Esq.
Nathaniel R. Hull, Esq.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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In re)	Chapter 11
)	Case No. 13-10670
MONTREAL MAINE & ATLANTIC)	
RAILWAY, LTD.)	
)	
Debtor.)	
_____)	

ORDER APPROVING THE DEBTOR’S REJECTION OF CERTAIN LEASES

Upon consideration of the *Debtor’s Motion for Entry of an Order Approving the Debtor’s Rejection of Certain Leases* (the “**Motion**”), filed by Montreal, Maine & Atlantic Railway Ltd. (“**MMA**” or “**Debtor**”), debtor-in-possession in the above captioned case, and it appearing that due and proper notice of the Motion has been given, and that no other or further notice need be given; and with objections thereto, if any, having been withdrawn or overruled; and after due deliberation and sufficient cause appearing therefore and after such hearing as was necessary being held, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

- A. The Motion is **GRANTED**; and it is further **ORDERED, ADJUDGED, and DECREED**
- B. That the rejection of the Rejected Leases is authorized and approved pursuant to 11 U.S.C. § 365(a); and it is further **ORDERED, ADJUDGED, and DECREED**
- C. That all the Debtor’s rights to claim that the Rejected Leases expired by their own terms or were terminated prior to the Filing Date are fully preserved; and it is further **ORDERED, ADJUDGED, and DECREED**
- D. That, to the extent that the Rejected Leases identified on Exhibit A to the Motion have not otherwise terminated pursuant to applicable non-bankruptcy law, pursuant to sections

105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the Rejected Leases are rejected as of August 7, 2013; and it is further **ORDERED, ADJUDGED, and DECREED**

E. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: August ____, 2013

Honorable Louis H. Kornreich
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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In re)	
)	Chapter 11
MONTREAL MAINE & ATLANTIC)	Case No. 13-10670
RAILWAY, LTD.,)	
)	
Debtor.)	
_____)	

NOTICE OF HEARING

PLEASE TAKE NOTE that on **October 3, 2013, at 10:00 a.m.** a hearing shall be held on the *Debtor’s Motion for Entry of an Order Approving the Debtor’s Rejection of Certain Leases* (the “**Motion**”). Pursuant to the Motion, the Debtor seeks to reject, as of **August 7, 2013**, certain leases as listed on Exhibit A attached hereto.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the Court to approve the Motion on **October 3, 2013 at 10:00 A.M.**, then on or before **September 12, 2013 at 4:00 P.M.**, you or your attorney must file with the Court a written response or objection explaining your position to the Court at the following address:

Alec Leddy, Clerk
United States Bankruptcy Court
22 Harlow Street
Bangor, ME 04401

You must also mail or provide a copy of your response to:

Roger A. Clement, Jr., Esq.
Nathaniel R. Hull, Esq.
Verrill Dana LLP
One Portland Square
P. O. Box 586
Portland, ME 04112-0586
rclement@verrilldana.com
nhull@verrilldana.com

You may attend the continued hearing with respect to the Motion scheduled for **October 3, 2013 AT 10:00 A.M.** at the United States Bankruptcy Court, 202 Harlow Street, 3rd Floor, Bangor, Maine.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting the relief requested therein.

Dated: August 21, 2013

Respectfully submitted,

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

/s/ Roger A. Clement, Jr.

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**UNITED STATES BANKRUPTCY COURT
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August 2013, I caused to be served on the parties set forth below by first class U.S. mail, postage prepaid, Federal Express or electronic mail, as indicated, a true and correct copy of *Debtor's Motion for Entry of an Order Approving the Debtor's Rejection of Certain Leases*, dated August 21, 2013, together with a *proposed Order and Notice of Hearing*.

All parties listed on the Electronic Mail Notice List have been served electronically through the Court's ECF system.

Dated: August 21, 2013

/s/ Marilyn J. Henderson
Marilyn J. Henderson

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207-774-4000
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Service List

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P.O. Box 1508
Auburn, ME 04211-1508

Canadian Pacific Railway Co.
Lockbox M101979
P.O. Box 2078, Station B
Montreal, PQ H3B 4H4
CANADA

Canadian Pacific Railway Co.
P.O. Box 2078
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Cattron Theimeg
Box 200477
Pittsburgh, PA 15251-0477

Debroussailleurs GSL Inc
5646 Chemin Saint-Remi
St-Adien-De-Ham, PQ J0A 1C0
CANADA

Flex Leasing I, LLC
SDS 12-2315
P.O. Box 86
Minneapolis, MN 55486-0086

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Calgary, AB T2P 4V5
CANADA

Helm Financial Corporation
Lockbox 13499
13499 Collections Center Drive
Chicago, IL 60693

Maine Northern Railway
P.O. Box 905, Station A
71 Alison Boulevard
Fredericton, NB E3B 5B4
CANADA

Maine, State of
Maine Revenue Services
Attn: Stanley D. Campbell
Deputy Director
P.O. Box 9107
Augusta, ME 04332-9107

New Brunswick Southern
Petro Sud-Ouest Inc.
619, Laurent
Granby, PQ J2G 8Y3
CANADA

Progress Rail Services
24601 Network Place
Chicago, IL 60673-1246

RWC Inc.
248 Lockhouse Road
P.O. Box 876
Westfield, MA 01086-0876

Railway Company Limited
P.O. Box 5777
Saint John, NB E2L 4M3
CANADA

Rail World, Inc.
6400 Shafer Court, Suite 275
Rosemont, IL 60018

Rail World Locomotive Leasing
6400 Shafer Court, Suite 275
Des Plaines, IL 60018

St. Lawrence & Atlantic RR
M2118, Case Postale 11500
Succursale Centre-Ville
Montreal, PQ H3C 5N7
CANADA

Valero Marketing & Supply Co.
One Valero Way
San Antonio, TX 78249-1616

Ville De Sherbrooke
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C P 610
Sherbrooke, QC J1H 5H9
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Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

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Attn: Vice President Operations
One Embarcadero Center, Suite 3700
San Francisco, CA 94111

The Cit Group/Equipment Financing, Inc.
Attn: SVP Sales/Motive Power
30 South Wacker Drive, Suite 2900
Chicago, IL 60606

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Chicago, IL 60661-3677

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- Pamela W. Waite pam.waite@maine.gov

Exhibit A - Schedule of Rejected Leases

<u>Name & Address of Party to Lease or Contract</u>	<u>Type of Lease or Contract</u>	<u>Location/Description</u>
ALLFIRST BANK Bank Mail Code 101-460 25 South Charles Street Baltimore, Maryland 21201 Attn: Vice President	SCHEDULE NO. 1 TO MASTER EQUIPMENT LEASE AGREEMENT dated February 17, 2003	48 Plate F. double plug door, 263 GRL, 100-ton boxcars, built in 1973 and rebuilt in 1993, as identified on Exhibit A to Schedule No. 1.
CENTER BEAM FLAT CAR COMPANY, INC. c/o Helm Financial Corporation One Embarcadero Center, Suite 3700 San Francisco, CA 94111 Attn: Vice President Operations	LEASE OF RAILROAD EQUIPMENT dated January 13, 2003	95 73 foot, 100-ton centerbeam flatcars, manufactured by Thrail Car, AAR mechanical designation FBC identified on Schedule 1 to the lease
THE CIT GROUP/EQUIPMENT FINANCING, INC., 30 South Wacker Drive, Suite 2900, Chicago, Illinois, 60606 Attn: SVP Sales/Motive Power	MASTER NET LOCOMOTIVE LEASE dated MARCH 18, 2013	MASTER LEASE
THE CIT GROUP/EQUIPMENT FINANCING, INC., 30 South Wacker Drive, Suite 2900, Chicago, Illinois, 60606 Attn: SVP Sales/Motive Power	SCHEDULE NO. 01 TO MASTER EQUIPMENT LEASE dated MARCH 18, 2013	5 SD-40-2 6 AXLE, 3000 HP LOCOMOTIVES, Nos.: CITX 3053, 3057, 3091, 3097 & CEFX 3166
THE CIT GROUP/EQUIPMENT FINANCING, INC., 30 South Wacker Drive, Suite 2900, Chicago, Illinois, 60606 Attn: SVP Sales/Motive Power	SCHEDULE NO. 02 TO MASTER EQUIPMENT LEASE dated MARCH 18, 2013	5 SD-40-2 6 AXLE, 3000 HP LOCOMOTIVES, Nos.: CITX 3082, 3071, 3101 & CEFX 3163, 3172
GATX FINANCIAL CORPORATION 500 West Monrow Street Chicago, Illinois 60661-3677 Attn: Contract Administrator	GATX RAIL - Car Net Lease (Contract No. 5554) dated July 1, 2003	MASTER LEASE
GATX FINANCIAL CORPORATION 500 West Monrow Street Chicago, Illinois 60661-3677 Attn: Contract Administrator	RIDER NUMBER 1 to RAIL SERVICE CONTRACT No. 5554	3 DOT 111-A-100-W-1 non-coiled, Nos. 80420, 81094, 29765
GATX FINANCIAL CORPORATION 500 West Monrow Street Chicago, Illinois 60661-3677 Attn: Contract Administrator	RIDER NUMBER 2 to RAIL SERVICE CONTRACT No. 5554	40 50 foot, 70-ton cushioned boxcars with 8' double sliding doors, Nos.: SLC 040700 - SLC040739 (inclusive).

Exhibit A - Schedule of Rejected Leases

MIDWEST RAILCAR CORPORATION 4949 Autumn Oaks Suite B Maryville, IL 62062	EXTENSION NO. 1 TO SCHEDULE NO. 1 dated October 2, 2012 pursuant to a Master Equipment Lease Agreement dated February 17, 2003	48 50 foot boxcars identified on Exhibit A to the Extension No. 1 to Schedule No. 1 dated October 2, 2012
NARCAT, LLC 480 West Dussel Drive, Suite R Maumee, Ohio 43537	NET LEASE AGREEMENT NO. 0508207MMA	NET LEASE AGREEMENT
NARCAT, LLC 480 West Dussel Drive, Suite R Maumee, Ohio 43537	NET LEASE AGREEMENT RIDER DEAL NO. C01125	279 Boxcars identified on Exhibit A to Rider Deal No. C01125