

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

**MOTION TO EXPEDITE WHEELING & LAKE ERIE RAILWAY COMPANY’S
MOTION TO ENFORCE CASH COLLATERAL ORDERS**

Now comes the Wheeling & Lake Erie Railway Company (“Wheeling”) and files this motion (the “Motion to Expedite”) seeking an order for an expedited hearing on the *Wheeling & Lake Erie Railway Company’s Motion to Enforce Cash Collateral Orders* (the “CC Enforcement Motion”)¹. In support of the relief requested herein, Wheeling states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334 as well as the standing order of the United States District Court for the District of Maine (the “District Court”) dated August 1, 1984, pursuant to which all cases filed in Maine under the Bankruptcy Code are automatically referred by the District Court to this Court. The relief requested by the Motion to Expedite is based upon Federal Rule of Bankruptcy Procedure 2002 and D. Me. LBR 9013-1(i).

2. This is a core matter, pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter final judgment in this proceeding.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

4. On August 7, 2013 (the “Petition Date”), the Montreal, Maine & Atlantic Railway, Ltd. (the “Debtor”) filed a voluntary petition for relief under chapter 11 of 11 U.S.C.

¹ Defined terms shall have the same meanings as ascribed to them in the CC Enforcement Motion unless otherwise noted herein.

§ 101 *et seq.* (the “Bankruptcy Code”). On August 21, 2013, the United States Trustee appointed Robert J. Keach, Esq. (the “Trustee”) to serve as Chapter 11 Trustee in the Debtor’s Chapter 11 case (the “Case”) pursuant to 11 U.S.C. § 1163.

5. The Debtor is a Delaware corporation that has, since January of 2003, operated in an integrated, shortline freight railroad system with its affiliate, Montreal Maine & Atlantic Co. (“MMA Canada”). On August 7, 2013, MMA Canada filed for protection from creditors in a concurrent proceeding under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended.

6. As is described in more detail in the CC Enforcement Motion, Wheeling is a secured creditor of the Debtor and, since the Petition Date, the Debtor and the Trustee have been utilizing Wheeling’s cash collateral pursuant to the terms of a number of cash collateral orders, including the current Sixth CC Order. Under the terms of that Order, the Trustee is required to, *inter alia*, escrow hand over to Wheeling all accounts receivable generated prior to October 18, 2014 (the “Pre-Closing A/R”).

7. The Trustee has taken the position that certain accounts receivable, including the Canadian Receivables, are not Pre-Closing A/R and therefore do not need to be escrowed and turned over. Weekly reporting supplied by the Trustee shows that as of the week ending January 24, 2104, the amount of these withheld funds total more than \$630,000. Upon information and belief, these funds have been disbursed by the Trustee to, *inter alia*, fund the Debtor’s operations.

8. Recent discovery in the Chapter 11 case has demonstrated that the Canadian Receivables are in fact Pre-Closing A/R and therefore must be escrowed and turned over to Wheeling on a monthly basis.

9. Given that the Trustee has declined to turn over what is clearly Pre-Closing A/R and Wheeling’s general uncertainty about the sources and uses of the Canadian Receivables and

the other withheld funds, Wheeling has filed the CC Enforcement Motion, which seek (a) turnover of all accounts receivable that constitute Wheeling's Collateral pursuant to the terms of the Sixth CC Order and the Prior CC Orders; (b) an accounting for the sources and uses of all withheld accounts receivable, including the Canadian Receivables; and (c) provision of additional adequate protection to Wheeling depending on what the accounting reveals.

10. Given the importance of the issues raised in CC Enforcement Motion and the time-sensitive nature of the same, Wheeling is requesting hearing on the same on an expedited basis.

Relief Requested

11. By this Motion to Expedite, the Trustee requests that this Court (a) schedule a hearing on the CC Enforcement Motion for Tuesday, February 18, 2014 at 10:00 a.m.; (b) set a deadline for objections to the CC Enforcement Motion (and this Motion to Expedite) of Thursday, February 13, 2014; and (c) approve service of the Motion to Expedite and the CC Enforcement Motion in the manner set forth herein.

Basis For Relief

12. As is set forth in the CC Enforcement Motion, Wheeling has serious and well-founded concerns about whether the Trustee is complying with the Sixth CC Order and its predecessors and whether Wheeling is being adequately protected for the Trustee's apparently on-going use of Wheeling's cash collateral.

13. More specifically, it appears that the Trustee is not segregating and turning over Pre-Closing A/R to Wheeling as required by the Sixth CC Order and is instead using those funds to fund operations. As a result, Wheeling is not receiving the adequate protection it bargained for and was granted and Wheeling is consequently suffering continuing diminution of its Collateral in contravention of both the Sixth CC Order and the Code.

14. The on-going nature of these problems requires that the Court hold a hearing on the CC Enforcement Motion on an expedited basis to prevent the Wheeling from suffering what could be irreparable harm, given the Debtor's current strained financial condition and what appears to be the Trustee's continued use of Pre-Closing A/R.

15. The Trustee does not consent to the relief requested herein.

Notice

16. Notice of the Motion to Expedite and the CC Enforcement Motion, together with a Notice of Hearing and proposed forms of order, were served on the (a) Trustee; (b) the United States Trustee's Office; (c) Debtor's counsel; (d) counsel to MMA Canada; (e) counsel to the Monitor; (f) counsel to the Official Committee of Derailment Victims; and (g) and all other parties receiving notice through the Court's electronic filing system. Wheeling hereby requests that this Court find that such service is sufficient notice to all parties in interest in this case.

Conclusion

For the reasons set forth herein, Wheeling respectfully requests that the Court enter an Order:

- A. Finding that service of the Motion to Expedite and the CC Enforcement Motion in the manner described herein was sufficient to all parties in interest under the circumstances of this case;
- B. Granting the Motion to Expedite;
- C. Setting a hearing on the CC Enforcement Motion for Tuesday, February 18, 2014 at 10:00 a.m.;
- D. Setting a deadline of Thursday, February 13, 2014 at for any objections to the Motion to Expedite and the CC Enforcement Motion; and
- E. Granting such other relief as the Court deems just and appropriate.

Dated: January 30, 2014

/s/ David C. Johnson
George J. Marcus
David C. Johnson
Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway
Company

MARCUS, CLEGG & MISTRETТА, P.A.
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CERTIFICATE OF SERVICE

I, Holly C. Pelkey, hereby certify that I am over eighteen years old and that I caused a true and correct copy of the above document, proposed Order and Notice of Hearing to be served upon the parties and at the addresses set forth on the Service List attached hereto either electronically or via first class mail, postage prepaid, on 30th day of January, 2014.

/s/ Holly C. Pelkey

Holly C. Pelkey
Legal Assistant

Mailing Information for Case 13-10670

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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Manual Notice List

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**ORDER GRANTING MOTION TO EXPEDITE WHEELING & LAKE ERIE RAILWAY
COMPANY'S MOTION TO ENFORCE CASH COLLATERAL ORDERS**

UPON CONSIDERATION of the above-referenced Motion to Expedite Wheeling & Lake Erie Railway Company's Motion to Enforce Cash Collateral Orders (the "Motion to Expedite",¹ the Proposed Order and Notice of Hearing having been served as set forth in the Motion to Expedite, good cause having been shown and pursuant to § 105 of the Bankruptcy Code and Rule 9013-1(i) of the Local Bankruptcy Rules, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that:

1. Service of the Motion to Expedite, Proposed Order, and Notice of Hearing in the manner described in the Motion was sufficient notice to all parties in interest under the circumstances of this case and the relief requested in the Motion;
2. The Motion is **GRANTED** in all respects;
3. A hearing shall be set for on the CC Enforcement Motion for February 18, 2014 at 10:00 a.m., and all objections to same shall be filed on or before February 13, 2014.

Dated: _____

Louis H. Kornreich., Judge
United States Bankruptcy Court

¹ Capitalized terms not defined herein shall have the meaning set forth in the Motion to Expedite.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Tuesday, February 18, 2014, at 10:00 a.m.** a hearing will be held at the United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine, on ***Motion to Expedite Wheeling & Lake Erie Railway Company’s Motion to Enforce Cash Collateral Orders*** (the “Expedited Hearing Motion”).

If any party in interest shall have an objection to the Expedited Motion, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **on or before February 13, 2014**, and concurrently serve (by facsimile and first class U.S. mail, postage prepaid) upon counsel for Wheeling & Lake Erie Railway Company, David C. Johnson, Esq., MARCUS, CLEGG & MISTRETTA, P.A., One Canal Plaza, Suite 600, Portland, ME 04101-4035, facsimile no. 207-773-3210. Unless an objecting party appears at the hearing to assert the basis for such objection before the Bankruptcy Court, and timely files a written statement, such objection shall be deemed to have been waived and abandoned.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE RELIEF REQUESTED IN THE EXPEDITED HEARING MOTION MAY BE GRANTED BY DEFAULT WITHOUT FURTHER NOTICE OR HEARING.

If the Expedited Hearing Motion is granted at that time, the Court will immediately thereafter conduct a preliminary hearing to consider, and may grant at that time ***Wheeling & Lake Erie Railway Company’s Motion to Enforce Cash Collateral Orders*** (the “CC Enforcement Motion”).

If any party in interest shall have an objection to the CC Enforcement Motion, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **on or before February 13, 2014**, and concurrently serve (by facsimile and first class U.S. mail, postage prepaid) upon counsel for Wheeling & Lake Erie Railway Company, David C. Johnson, Esq., MARCUS, CLEGG & MISTRETTA, P.A., One Canal Plaza, Suite 600, Portland, ME 04101-4035, facsimile no. 207-773-3210. Unless an objecting party appears at the hearing to assert the basis for such objection before the Bankruptcy Court, and timely files a written statement, such objection shall be deemed to have been waived and abandoned.

Dated: January 30, 2014

/s/ David C. Johnson

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