

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**CONSENT MOTION FOR AN ORDER GRANTING BANGOR SAVINGS BANK
RELIEF FROM THE AUTOMATIC STAY AND AUTHORIZING THE
ALLOWANCE AND PAYMENT OF AN ADMINISTRATIVE
EXPENSE CLAIM**

Robert J. Keach, the trustee (the “Trustee”) of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), by and through his undersigned counsel, and pursuant to 11 U.S.C. §§ 362(d), 503(b) and 507(a), Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 4001 and 9013 and D. Me. Local Bankruptcy Rules (the “Local Rules”) 3002-2, 4001-1, 4001-4, 9013-1 and 9019-1 and, with the consent Bangor Savings Bank (“BSB”), LMS Acquisition Corporation (“LMS”) and Rail World Locomotive Leasing, Inc. (“Railworld”), moves this Court for an order granting relief from the automatic stay imposed by 11 U.S.C. § 362(a) in relation to certain locomotives pledged to BSB as collateral and authorizing the allowance and payment of an administrative expense claim of BSB upon the terms set forth herein (the “Motion”). In support of the Motion, the Trustee states as follows:

JURISDICTION, VENUE, AND STATUTORY BASIS

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 Motion pursuant to 28 U.S.C. § 1334(b). Pursuant to 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 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 proceeding.

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 Motion is predicated upon 11 U.S.C. §§ 362(d), 503(b) and 507(a), Bankruptcy Rules 4001(d) and 9013, and D. Me. LBR 3002-2, 4001-1, 4001-4, 9013-1 and 9019-1(b).

BACKGROUND

5. On or about August 7, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Maine. Simultaneously, the Debtor's wholly-owned subsidiary, Montreal Maine & Atlantic Canada Co. ("MMA Canada") and together with the Debtor, the "Sellers") filed for protection under Canada's Companies' Creditors Arrangement Act (the "Canadian Case"). On or about August 21, 2013, the United States Trustee appointed the Trustee to serve as trustee in the Debtor's chapter 11 case pursuant to 11 U.S.C. § 1163.

6. Prior to the Petition Date, LMS, an affiliate of the Debtor, entered into a Promissory Note (the "Note") with BSB in the original principal amount of \$4,000,000.00 (the "LMS Loan"). In connection therewith, on or about November 20, 2009, the Debtor and BSB entered into the Unconditional Guaranty of Payment and Performance (the "Guarantee") whereby the Debtor guaranteed certain obligations of LMS under the Note. The Debtor's

obligations under the Guarantee are secured by certain assets of the Debtor, including twenty-five (25) locomotives (the “Locomotives”).

7. The Debtor has continued to utilize and operate the Locomotives during the Debtor’s chapter 11 case. The Locomotives are identified by the following rail marks of the Debtor:

MMA 21	MMA 23	MMA 79	MMA 100	MMA 2000
MMA 3000	MMA 3603	MMA 3609	MMA 3613	MMA 3614
MMA 5016	MMA 5017	MMA 5018	MMA 5021	MMA 5023
MMA 5026	MMA 5078	MMA 8525	MMA 8541	MMA 8546
MMA 8553	MMA 8569	MMA 8578	MMA 8583	MMA 8592

8. On January 24, 2014, the Court entered an order (the “Sale Order”) approving the sale (the “Sale”) of substantially all of the Sellers’ assets to Railroad Acquisition Holding LLC (or its designee, the “Purchaser”) [D.E. 594]. The Locomotives were explicitly excluded from the Sale by an Amendment to Asset Purchase Agreement.

9. On or about April 1, 2014, BSB submitted a proof of claim against the Debtor (the “POC”) alleging a secured claim in the amount of \$3,693,045.52 (the “BSB Asserted Claim”) based on the Debtor’s alleged obligations and liabilities under the Guarantee.

10. In light of the fact that the Locomotives were excluded from the Sale, the Trustee and BSB have been in discussions concerning the turnover of the Locomotives to BSB upon the terms and conditions set forth herein. As a result of these discussions, the Trustee and BSB have reached an agreement to resolve the issues relating to the Debtor’s post-petition use of the Locomotives, as well as an agreement relating to relief from the automatic stay in relation to the

Locomotives. The general terms of the agreement are as follows:

- (a) Immediately upon entry of an order approving this Motion, BSB shall be granted relief from the automatic stay imposed by section 362 of the Bankruptcy Code in relation to the Locomotives and BSB shall be solely responsible for the Locomotives. By agreement between the Debtor and BSB, BSB shall assume sole responsibility for all insurance relating to the Locomotives effective July 1, 2014.
- (b) In order to provide for an orderly turnover of the Locomotives, the vast majority of the Locomotives have been returned by the Debtor to the Derby, Maine facility of the Debtor. The locomotives shall be turned over to BSB from the current location of each locomotive as of the date of the filing of this Motion. The Debtor shall have no obligation to move or transport any of the Locomotives for the benefit of BSB.
- (c) In full and final satisfaction of any post-petition obligations of the Debtor owed to BSB, BSB shall be granted an administrative expense claim against the Debtor in the amount of \$37,000.00 (the "Administrative Claim"), which amount equals a per diem rate of \$75.00 for each Locomotive utilized by the Debtor from and after February 10, 2014 through to the May 15, 2014 (the date of the closing of the sale of the Debtor's assets). The Debtor shall provide BSB with payment of one-half of the Administrative Claim, in the amount of \$18,500.00, within ten (10) days of an order approving this Motion becoming a final order. The Debtor shall provide BSB with payment of the second half of the Administrative Claim upon the date all other allowed administrative claims against the Debtor's estate become payable. Any and all rights of all parties with respect to insurance claims, if any, related to the Locomotive bearing the rail mark MMA 8583 are reserved.
- (d) BSB is currently seeking a buyer for the Locomotives and has tentatively scheduled an auction of the Locomotives for August 5, 2014. In the event the obligations owed to BSB under the Note are paid in full through any means of recovery, the proceeds generated by the sale of the Locomotives shall be deemed to be the last proceeds received by BSB and, in the event the proceeds from the sale of the Locomotives are applied to the Note obligations in advance of the other proceeds, BSB shall immediately remit to the Debtor's estate an amount equal to the amount that the payments to BSB exceed the obligations owed under the Note.¹

¹ In addition to the Locomotives, the sale will likely include three (3) additional locomotives (the "Railworld Locomotives") that were subject to a lease agreement between the Debtor and Railworld, which was rejected by the Trustee in the Chapter 11 Trustee's First Omnibus Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 365 for Authorization to Reject Executory Contracts and Unexpired Leases as of the Closing of the Sale of the Debtor's Assets (the "Rejection Motion") [D.E. 881]. The Railworld Locomotives were also pledged to secure the Note. The marshalling concept described in paragraph 10(d) above will apply equally to the Railworld Locomotives and the excess proceeds over the Note shall be distributed pro rata between the Debtor and Railworld based on the value obtained for the Locomotives and the Railworld Locomotives.

11. The Trustee believes that it is in the best interest of the estate and its creditors to grant BSB relief from the automatic stay with respect to the Locomotives in accordance with the terms outlined above and to grant the other relief requested herein.

RELIEF REQUESTED

12. The Trustee requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested herein, including granting BSB relief from the automatic stay in relation to the Locomotives, subject to the terms and conditions set forth above, and granting adequate protection as provided for herein.

13. The Trustee, BSB, LMS and Railworld have consented to the relief requested in this Motion.

BASIS FOR REQUESTED RELIEF

A. Relief from the Automatic Stay

14. Section 362(a) of the Bankruptcy Code prohibits “any act to create, perfect, or enforce any lien against property of the estate.” 11 U.S.C. § 362(a)(4). However, section 362(d)(1) provides that a party in interest may be granted relief from the automatic stay “for cause, including lack of adequate protection of an interest in property.” 11 U.S.C. § 362(d)(1). “Cause” is not explicitly defined in the Bankruptcy Code and determining whether cause exists is a matter committed to the discretion of the bankruptcy court. Matter of Holtkamp, 669 F.2d 505, 507 (7th Cir. 1982). Additionally, a party in interest may also be granted relief from the automatic stay with respect to certain property if “such property is not necessary to an effective reorganization.” 11 U.S.C. § 362(d)(2)(B).

15. As set forth above, the Trustee and BSB (among others) have consented to the relief requested herein. Accordingly, this constitutes “cause” for the Court to grant BSB relief from the automatic stay with respect to the Locomotives.

16. Alternatively, as discussed above, because the Locomotives were excluded from the Sale and because the Debtor is no longer the operator of a freight railroad system following the Sale, the Locomotives are no longer necessary for the Debtor's operations or reorganization. Accordingly, BSB is entitled to relief from the automatic stay with respect to the Locomotives under section 362(d)(2)(B) of the Bankruptcy Code under the terms set forth above.

B. Allowance of an Administrative Expense Claim

17. Section 503(b)(1)(A) of the Bankruptcy Code provides that the "actual, necessary costs and expenses of preserving the estate" shall be allowed as administrative expenses. 11 U.S.C. § 503(b)(1)(A). For a claim to be entitled to administrative priority under section 503(b)(1)(A), the debt must arise from a transaction with the debtor-in-possession and the consideration supporting the claimant's right to payment must be beneficial to the debtor-in-possession in the operation of the business. In re O'Brien Environmental Energy, Inc., 181 F.3d 527, 533 (3d Cir. 1999). Additionally, under the Bankruptcy Code, a debtor may pay its post-petition obligations on a current basis. See In re Sheehan Memorial Hospital, 301 B.R. 777, 780 (Bankr. W.D.N.Y. 2003).

18. In the current case, the Debtor's post-petition use of the Locomotives was a necessary expense of preserving the estate as the Locomotives were used to deliver product for the Debtor's customers and contributed to the Debtor remaining as a going concern through the sale of the Debtor's assets. The Debtor's resulting indebtedness to BSB, therefore, gives rise to an administrative claim pursuant to 11 U.S.C. § 503(b)(1)(A).

19. The Trustee believes that the terms providing for the calculation of BSB's administrative expense claim are fair and equitable and saves the estate from the prospect of BSB asserting a larger claim against the Debtor.

NOTICE

20. Notice of this Motion was served on the following parties on the date and in the manner set forth in the certificate of service: (a) the United States Trustee; (b) the Debtor's counsel; (c) applicable federal and state taxing authorities; (d) counsel for the committee appointed pursuant to 11 U.S.C. § 1102(a)(2); (e) counsel for BSB, LMS, and Railworld Locomotive Leasing, Inc.; and (f) others who have, as of the date of the motion, entered an appearance and requested service of papers in the chapter 11 case. In light of the nature of the relief requested in the Motion, the Trustee requests that the Court approve notice to, and service of the Motion on, the parties set forth above as adequate and sufficient notice under the circumstances.

CONCLUSION

Based upon the foregoing, the Trustee respectfully requests that the Court enter the proposed order: (a) granting this Motion; (b) finding that notice to and service upon the parties and in the manner set forth is appropriate; and (c) granting such other and further relief as may be just and equitable.

Dated: July 11, 2014

ROBERT J. KEACH
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Sam Anderson

D. Sam Anderson, Esq.
Timothy J. McKeon, Esq.
BERNSTEIN, SHUR, SAWYER & NELSON
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029
Tel: (207) 774-1200
Fax: (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 GRANTING CONSENT MOTION FOR AN ORDER GRANTING BANGOR
SAVINGS BANK CONDITIONAL RELIEF FROM THE AUTOMATIC STAY AND
AUTHORIZING THE ALLOWANCE AND PAYMENT OF AN
ADMINISTRATIVE EXPENSE CLAIM OF
BANGOR SAVINGS BANK**

This matter came before this Court on the Consent Motion for an Order Granting Bangor Savings Bank Conditional Relief from the Automatic Stay and Authorizing the Allowance and Payment of an Administrative Expense Claim of Bangor Savings Bank (the "Motion"), filed by Robert J. Keach, the Trustee of Montreal Maine & Atlantic Railway, Ltd, appointed pursuant to 11 U.S.C. § 1163, and sufficient notice of the Motion having been given, and the Court having reviewed and considered the Motion, and the Trustee and BSB consenting to the relief sought in the Motion, and objections to the Motion, if any, having been resolved or overruled, and after due deliberation and sufficient cause appearing thereof, the Court hereby **ORDERS**, **ADJUDGES**, and **DECREES** as follows:¹

1. The Motion is granted in its entirety.
2. BSB is granted relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2)

with respect to the Locomotives.

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Motion.

3. BSB is allowed an administrative claim pursuant to 11 U.S.C. § 503(b)(1)(A) in the amount of \$37,000 and shall receive payment in relation to such claim upon the terms set forth in the Motion in full and final satisfaction of any and all post-petition claims against the Debtor. Any and all rights of all parties with respect to insurance claims, if any, related to the Locomotive bearing the rail mark MMA 8583 are reserved.

Dated:

The Honorable Louis H. Kornreich
United States Bankruptcy Judge for the
District of Maine