

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**MOTION TO AUTHORIZE ABANDONMENT OF
THE HERMON PARCEL PURSUANT TO 11 U.S.C. § 554(a)**

Robert J. Keach, the chapter 11 trustee of Montreal Maine & Atlantic Railway, Ltd. (the “Trustee”), hereby moves this Court (the “Motion”) pursuant to 11 U.S.C. § 554(a) for authority to abandon a certain parcel of land as more particularly described on **Exhibit A** attached hereto and incorporated by reference (the “Hermon Parcel”). In support of the Motion, the Trustee states as follows:

JURISDICTION

1. The district court has original but not exclusive jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157 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 the bankruptcy court.

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

3. Venue of this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue of this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The statutory predicate and applicable rules for the relief sought herein are section 554(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 6007 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule”) and Rule 6007-1 of this Court’s local rules.

BACKGROUND

5. On August 7, 2013, Montreal Maine & Atlantic Railway, Ltd., the above-captioned debtor (the “Debtor”), filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code. Simultaneously, the Debtor’s wholly-owned subsidiary, Montreal Maine & Atlantic Canada Co. (“MMA Canada”) filed for protection under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36. On August 21, 2013, the United States Trustee appointed the Trustee to serve in the Debtor’s chapter 11 case pursuant to 11 U.S.C. § 1163 [D.E. 64], and on October 18, 2013, the Court authorized the appointment of an official committee of derailment victims (the “Official Committee”).

6. On January 24, 2014, the Court entered an order approving the sale (the “Sale”) of substantially all of the Debtor’s and MMA Canada’s assets to Railroad Acquisition Holding LLC (the “Purchaser”). See D.E. 594. In connection therewith, the Debtor, MMA Canada, and the Purchaser executed that certain Asset Purchase Agreement dated December 12, 2013 (the “APA”). Certain critical issues remained after the execution of the APA which prevented consummation of the Sale. One of the issues remaining was the Purchaser’s environmental concerns with the Hermon Parcel.

7. The Hermon Parcel contains a pile of used railroad ties that may contain creosote and/or other contaminants. The State of Maine Department of Environmental Protection (the “MDEP”) has raised concerns regarding whether the Hermon Parcel poses long-term environmental risks because of the potential creosote in the ties.

8. To accelerate the closing of the Sale, which provided liquidity to the Debtor's estate and helped sustain MMA Canada's business operations, the Debtor, MMA Canada, and the Purchaser reached an agreement to resolve the remaining critical issues. The terms of that agreement are contained in the Third Amendment to Asset Purchase Agreement (the "APA Amendment"). See D.E. 847. The APA Amendment provided, *inter alia*, that the Sale would exclude the Hermon Parcel due to the alleged potential long-term environmental risks associated with the property.

9. Since entering the APA Amendment, no party has expressed interest in purchasing the Hermon Parcel and the Trustee does not believe there is any equity in the Hermon Parcel, nor does the Trustee reasonably expect that there will ever be any equity in the Hermon Parcel that would inure to the benefit of creditors.¹

10. Absent abandonment, the estate will continue to bear the burden of maintaining the Hermon Parcel including addressing any potential long-term environmental concerns. The estate lacks sufficient resources to cover the considerable costs associated with maintenance or to address any potential environmental liability. Further, the Hermon Parcel does not produce any value for the estate or its creditors. The Hermon Parcel, however, poses no imminent threat to the health, safety, or welfare of the public.

RELIEF REQUESTED

11. By this Motion, the Trustee seeks authority to abandon the Hermon Parcel pursuant to 11 U.S.C. § 554(a).

¹ The Hermon Parcel may be subject to mortgages held by the Federal Railroad Administration and/or the Maine Department of Transportation.

BASIS FOR RELIEF

12. Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). Property which is not abandoned or administered in the debtor’s bankruptcy case remains property of the estate. See id. at § 554(d). Bankruptcy Rule 6007 further provides that the Court shall set a hearing on abandonment only if an objection is made within fourteen (14) days of the mailing of the notice of abandonment. See Fed. R. Bankr. P. 6007(a).

13. The decision to abandon property of the estate is evaluated under the business judgment test; accordingly, “[g]ood faith, reasonable basis, and statutory authority” to abandon will be presumed unless an objecting party can “demonstrate some likely benefit to the estate.” In re Dilley, 378 B.R. 1, 7 (Bankr. D. Me. 2007). The intent to abandon property of the estate “must be clear and unequivocal.” In re Furlong, 660 F.3d 81, 88 (1st Cir. 2011) (internal citations omitted).

14. Moreover, In re Malden Mills Industries, Inc., 303 B.R. 688 (B.A.P. 1st Cir. 2004), the Bankruptcy Appellate Panel for the First Circuit (the “Panel”) addressed the issue of abandonment and articulated the “imminent threat” standard as follows:

With respect to the bankruptcy court’s conditioning the Debtor’s abandonment, given the bankruptcy court’s factual finding, no basis exists under the Bankruptcy Code to condition the Debtor’s abandonment of the personal property in the Building upon the Debtor’s removal of the property from the Building or the Debtor’s reimbursing Maroun for the cost of removal, with such expense or reimbursement being paid on an administrative basis. In Midlantic Nat’l Bank v. New Jersey Dept. of Env’tl. Prot., 474 U.S. 494, 106 S.Ct. 755, 88 L.Ed.2d 859 (1986), the Supreme Court held that “[t]he Bankruptcy Court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public’s health and safety.” 474 U.S. at 506-07, 106 S.Ct. 755. However, the Supreme Court noted that “[t]his exception to the

abandonment power vested in the trustee by § 554 is a narrow one.” 474 U.S. at 507 n.9, 106 S.Ct. 755.

The bankruptcy court did not make a finding that the property left behind in the Building, which the Debtor sought to abandon to Maroun, posed an imminent threat to the public’s health and safety nor did the court articulate any other basis for imposing conditions as an exception to the abandonment power vested in a trustee or debtor in possession. In the absence of sufficient reason for limiting the abandonment power of the debtor in possession, the Panel must vacate that portion of the bankruptcy court’s order imposing conditions (i.e. removal of abandoned property) on abandonment.

Malden Mills, 303 B.R. at 701-02.

15. In this case, abandonment of the Hermon Parcel is clearly within the Trustee’s sound business judgment. No party has expressed interest in purchasing the property and, as a result, the Debtor’s estate continues to incur costs to maintain the property, costs that are extremely burdensome to the estate.

16. Although the MDEP has raised concerns regarding the Hermon Parcel’s potential environmental risks, as noted by the Panel in Malden Mills, the exception to the abandonment power under section 554, as established in Midlantic, is narrow. The court must determine that the property the debtor seeks to abandon poses an imminent threat to the public’s health and safety as a consequence of a possible immediate or short-term discharge of hazardous material; no such threat exists here. There is not now, nor has there been, any threat of imminent harm to the public health and safety as a consequence of possible creosote in the ties. Abandonment simply takes the Hermon Parcel outside the estate, and the MDEP is free to take steps under applicable law with respect to compliance or testing.

17. Furthermore, the Hermon Parcel has no value to the estate. There is no equity in the property, and maintenance of the property would only result in a net loss to the bankruptcy

estate, to the detriment of its creditors. Accordingly, abandonment of the Hermon Parcel is well within the Trustee's sound business judgment.

NOTICE

18. 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 Debtor; (b) the Debtor's counsel; (b) the United States Trustee; (c) the Official Committee; (d) applicable federal and state taxing authorities; (e) the holders of secured claims against the Debtor, or if applicable, the lawyers representing such holders; (f) the MDEP; (g) the Federal Railroad Administration; (h) the Maine Department of Transportation; and (i) others who have, as of the date of the Motion, entered an appearance and requested service of papers in the Case.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter an order authorizing the immediate abandonment of the Hermon Parcel and granting such other and further relief as the Court deems just and equitable under the circumstances.

Dated: July 17, 2015

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

By his attorneys:

/s/ Robert J. Keach

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A certain lot or parcel of land and any improvements thereon generally located North of Odlin Road and East of Coldbrook Road at Northern Maine Junction in Hermon, County of Penobscot, State of Maine, said parcel being bounded and described as follows:

COMMENCING at a southeast corner of land described in a deed from CAMPDAVIS, LLC to ERDT REALTY dated June 13, 2013 and recorded in Penobscot County Registry of Deeds in Book 13215, Page 323, being the same property described in a deed from BANGOR & AROOSTOOK RAILROAD COMPANY to C.M.J. RAILROAD, LLC dated June 21, 2005 and recorded in Book 9964, Page 122;

THENCE S89°33'20"E along the north line of land described in a deed from THE LANE CONSTRUCTION CORPORATION to DYSARTS SERVICE dated May 2, 1986 and recorded in Book 3812, Page 97 a distance of 87.90 feet to an iron rod found in the northeast corner of said DYSARTS SERVICE;

THENCE S89°47'10"E a distance of 869.70' to the POINT OF BEGINNING, said POINT being 13' northeast of the centerline of Track #24;

THENCE S53°16'37"E along a line that is 13' northeast of and parallel to said centerline of Track #24 a distance of 1315.21' to the point of curvature of a tangent curve to the left, said curve having a radius of 676.50' and a chord bearing of S72°43'32"E and chord distance of 450.50';

THENCE continuing southeasterly and easterly along said curve, also continuing to be 13' northeast and north of, and parallel to said centerline of Track #24, an arc distance of 459.27'

THENCE N53°16'37"W a distance of 1,740.00 feet;

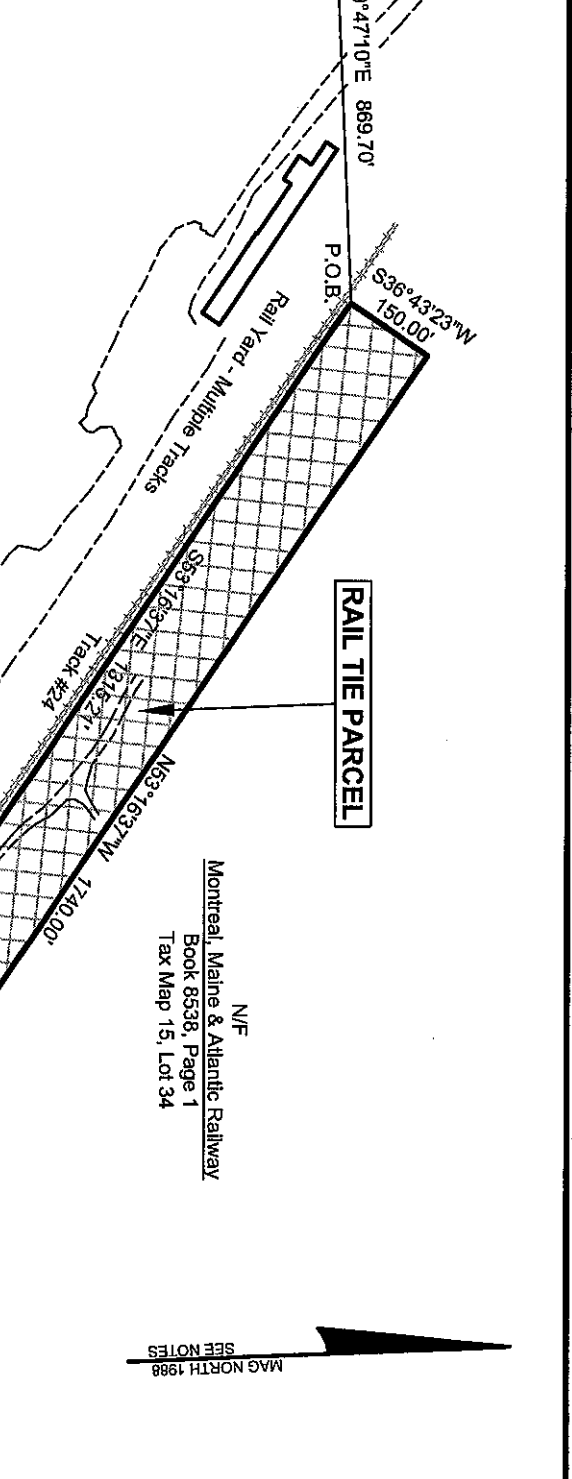
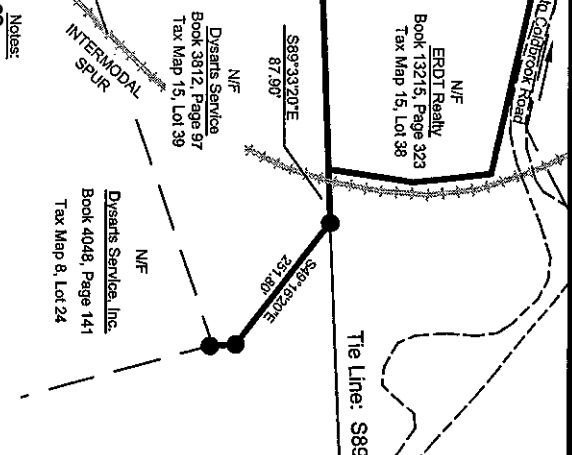
THENCE S36°43'23"W a distance of 150.00 feet to the POINT OF BEGINNING

Containing 5.528 acres.

INCLUDING an easement for vehicular and pedestrian access to and from the above described parcel, including the right to maintain and improve said access including grading, paving, installation of drainage systems and also including the right to install utilities both above and below ground, said access to be over and along the gravel road as it now exists starting at the southeast end of the above described parcel and going in a generally southerly direction to the north line of Odlin Road, said easement being approximately located as shown on the attached sketch.

Meaning and intending to describe a portion of the land described in a deed from BANGOR & AROOSTOOK RAILROAD COMPANY, THE NORTHERN VERMONT RAILROAD COMPANY INCORPORATED, and LOGISTICS MANAGEMENT SYSTEMS, INC. to MONTREAL, MAINE & ATLANTIC RAILWAY, LTD dated December 27, 2002 and recorded in the Penobscot County Registry of Deeds Book 8538, Page 1. This description was prepared by Shyka, Sheppard & Garster, Land Surveyors, and is based on a plan entitled, "Rail Tie Parcel – Northern Maine Junction – Hermon, Maine" prepared by Shyka, Sheppard and Garster, Land Surveyors, dated April 29, 2014. Bearings reference Magnetic North, 1988. This legal description is subject to final determination of metes and bounds of the Hermon parcel pursuant to Section 2.2(h) of the Asset Purchase Agreement dated

December 12, 2013 (as amended, the "APA"). Such amendment of this legal description shall be effective as of the date of the MMA Assets Closing (as such term is defined in the APA).



Notes:
 The Rail Tie Parcel shown here is based on dimensional information provided by Montreal, Maine & Atlantic Railway, LTD personnel.
 The gravel roads and buildings were scaled onto the sketch using the Maine Geodetic Survey 1 ft. resolution orthophotos from the 2003-2005 series. Some adjacent property lines were scaled from Hermon Tax Maps.
 Reference is made to a plan entitled "Plan of Restored Area - Former B&A Railroad - Soil Stockpile" dated April 30, 2013, prepared by Shyka, Sheppard & Garster, Land Surveyors, Proj. No. 13-105.
 Some variations between distances and bearings shown hereon and those contained in previous deeds and plans are not noted because such variations are insignificantly small, due to obvious scrivener's errors, or due to the basis of bearings shown. No description, complete survey plan, or report was prepared, research was limited to the source deed provided by client (8538/1), parcel conformity with town zoning requirements was not examined and no monuments were set.
 5. Area of Rail Tie Parcel: 5.528 Acres.

**SCHEDULE A-2
 RAIL TIE PARCEL**

**NORTHERN MAINE JUNCTION
 HERMON, MAINE**

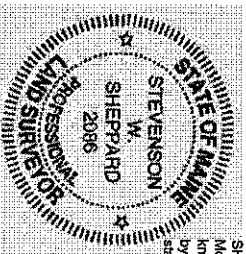
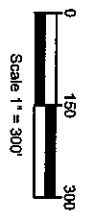
prepared for
**MONTREAL, MAINE &
 ATLANTIC RAILWAY, LTD**
 15 Iron Road, Hermon, Maine 04401

Shyka, Sheppard & Garster Land Surveyors
 6 State Street, Suite 301, Bangor, Maine 04401
 Job No. 14-111 April 29, 2014 Page 2 of 2

lines scaled from tax map (typ.)
 D'sartz, Inc.
 Book 2893, Page 233
 Tax Map 8, Lot 29

N/F
 Montreal, Maine & Atlantic Railway
 Book 8538, Page 1
 Tax Map 15, Lot 34

N/F
 Montreal, Maine & Atlantic Railway
 Book 8538, Page 1
 Tax Map 15, Lot 34



CERTIFICATION
 SHYKA, SHEPPARD & GARSTER, Land Surveyors, hereby certifies to Montreal, Maine & Atlantic Railway LTD, exclusively, that to the best of our knowledge and belief this survey conforms to Standards of Practice adopted by the Maine Board of Licensure for Professional Land Surveyors, except as stated in the notes.

SHYKA, SHEPPARD & GARSTER
 LAND SURVEYORS

Steven M. Sheppard
 Maine Prof. Land Surveyor #2086

N/F
 Kenneth E. & Phyllis M. McAvoy
 Book 6853, Page 208
 Tax Map 8, Lot 32

N/F
 Lane Construction Corp.
 Book 4822, Page 251
 Tax Map 16, Lot 1

Access Easement
 appurtenant to Rail Tie Parcel along this existing gravel road to Odlin Road.

L=459.27'
 R=676.50'
 (Chord S72°43'32"E
 450.50')

MAG NORTH 1988
 SEE NOTES

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER AUTHORIZING ABANDONMENT OF
THE HERMON PARCEL PURSUANT TO 11 U.S.C. § 554(a)**

This matter having come before the Court on the *Motion to Authorize Abandonment of the Hermon Parcel Pursuant to 11 U.S.C. § 554(a)* (the “Motion”)¹ filed by the Trustee seeking authority to abandon the Hermon Parcel pursuant to 11 U.S.C. § 554(a), and after notice and opportunity for hearing, and the Court finding that the Hermon Parcel is burdensome to the estate and abandonment of the Hermon Parcel is a proper exercise of the Trustee’s business judgment, and in the best interests of the estate, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. The Motion is granted.
2. The Trustee is authorized to immediately abandon the Hermon Parcel as set forth in the Motion, and to take such acts, record such documents, provide such notice as is necessary to evident and implement such abandonment.

Dated:

The Honorable Peter G. Cary
Chief Judge of the United States
Bankruptcy Court for the District of
Maine

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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670

Chapter 11

NOTICE OF HEARING

Robert J. Keach, the chapter 11 trustee of Montreal Maine & Atlantic Railway, Ltd. (the “Trustee”), has filed the Motion to Authorize Abandonment of the Hermon Parcel Pursuant to 11 U.S.C. § 554(a) (the “Motion”).

A hearing to consider the Motion is scheduled for **August 20, 2015 at 9:00 a.m.** (the “Hearing”) before the Honorable Judge Peter G. Cary, the United States Bankruptcy Court for the District of Maine (the “Court”), 537 Congress Street, 2nd Floor, Portland, Maine.

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

If you do not want the Court to approve the Motion, then **on or before July 31, 2015**, you or your attorney must file with the Court a response or objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
537 Congress Street
2nd Floor
Portland, ME 04101

If you do have to mail your response or objection to the Court for filing, then you must mail it early enough so that the Court will receive it **on or before July 31, 2015**.

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 requested relief without further notice or hearing.

Dated: July 17, 2015

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

By his attorneys:

/s/ Robert J. Keach

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