UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

OBJECTION TO PROOF OF CLAIM FILED BY MIDWEST RAILCAR CORPORATION ON THE BASIS THAT SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR

Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), hereby objects (the "Objection") to Proofs of Claim No. 24-1 (the "Claim") filed by Midwest Railcar Corporation ("Midwest"). As set forth below, the Trustee objects to the Claim on the basis that such Claim must be disallowed as unenforceable against the Debtor under the Bankruptcy Code. In support of this Objection, the Trustee states as follows:

JURISDICTION AND VENUE

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 Objection 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, and, accordingly, this Objection, 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 action.

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 Objection is predicated upon section 502(b)(1) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 3001 and 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Maine (the "Local Rules").

BACKGROUND

A. The Lease

5. Prior to the Petition Date, the Debtor was party to a Master Equipment Lease Agreement dated as of February 17, 2003 (as amended or supplemented, the "Lease"[1]) with Allfirst Bank ("Allfirst"). Among other things, the Lease provided that upon an event of default, the lessor could elect to recover from the lessee an amount equal to the present value (calculated at a 3% discount rate) of future amounts due under the Lease (the "Present Value Claim"). See Lease, ¶ 19(c)(iii), (d).

6. At the time of the Lease's execution, Allfirst was headquartered in Baltimore, Maryland. By its terms, the Lease was governed by and construed in accordance with the laws of the state of Maryland (the "Choice of Law Provision"). See Lease, ¶ 22(k).

7. Less than one month after execution of the Lease, Allfirst assigned its interest in the Lease to Midwest pursuant to an Assignment of Lessor's Interests in Lease dated as of March 13, 2003 (the "Assignment"[2]). By its terms, the Assignment was governed by and construed in accordance with the laws of the state of Maryland. See Assignment, ¶ 4(i).

8. Midwest's corporate headquarters are located in Maryville, Illinois.[3]

[1] The Lease is included as an exhibit to the Claim.

[2] The Assignment is included as an exhibit to the Claim.

[3] See http://www.midwestrailcar.com/Locations.html, viewed Aug. 11, 2015. Midwest also has offices in Maryland, Minnesota, Iowa and Tennessee. Id.

9. Upon information and belief, since March 13, 2003, the State of Maryland has had no relationship with or interest in the Debtor or Midwest in relation to the Lease (other than the fact that Midwest has one office in Maryland that is unrelated to the Lease).

10. Prior to expiration of the Lease, the Debtor and Midwest entered into Extension No. 1 to Schedule No. 1 to the Lease, dated as of October 2, 2012, extending the Lease for a period commencing on June 1, 2013 and continuing through May 31, 2018.

11. As of the Petition Date, the Debtor's records reflect having made a payment of $16,080 (or the $335 per car monthly payment on each of the forty-eight (48) cars covered by the Lease) on July 5, 2013 (the "July 5 Payment")—the day before the Derailment (as defined below). See Schedules (as defined below), Ex. 1, p. 15. According to the Debtor's records, the July 5 Payment made them current under the Lease as of the date of such payment.

B. The Derailment and the Debtor's Bankruptcy Filing

12. On July 6, 2013, an unmanned eastbound MMA train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the "Derailment"). The transportation of the crude oil had begun in New Town, North Dakota by the Canadian Pacific Railway ("CP") and the Debtor's wholly owned subsidiary, Montreal Maine & Atlantic Canada Co. ("MMA Canada"), later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick.

13. The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor in both the United States and Canada. After the Derailment, Canadian train activity was

temporarily halted between Maine and Québec on the MMA Canada line, resulting in the Debtor losing much of its freight business. These effects of the Derailment caused the Debtor's aggregate gross revenues to fall drastically to approximately $1 million per month.

14. On August 7, 2013, the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the "Case"). Simultaneously, MMA Canada filed for protection under Canada's Companies' Creditors Arrangement Act (Court File No. 450-11-000167-134). On August 21, 2013, the Office of the United States Trustee (the "U.S. Trustee") appointed the Trustee to serve as trustee in the Debtor's Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

C. Rejection of the Agreement, the Claim and the Admin Claim Motion

15. On August 21, 2013 (the "Motion Date"), the Debtor filed a motion to reject, *nunc pro tunc* to the Petition Date, certain executory contracts and unexpired leases that were of no value, in the Debtor's business judgment, to the estate [D.E. 66] (the "Motion"). Among other of the Debtor's executory contracts and unexpired leases, the Lease was the subject of the Motion. See D.E. 67. Midwest thus received notice of the Debtor's intent to reject its contract on August 21, 2013.

16. On September 11, 2013, the Debtor filed its schedule of assets and liabilities and statement of financial affairs [D.E. 216] (collectively, the "Schedules"). The Schedules listed Midwest as having a non-contingent, liquidated and undisputed general unsecured claim in the amount of $16,245. See Schedule F (Creditors Holding Unsecured Nonpriority Claims, p. 143 of 244. This amount represents the August payment due under the Lease plus $245 of additional fees in connection therewith.

17. Seventy-two days after the Motion Date, on November 1, 2013, the Court granted the Motion, including with respect to the Lease. See D.E. 421 (the "Order"). By virtue of the Order, the Lease was rejected as of August 7, 2013 (the "Rejection Date"). Id.

18. On November 26, 2013, Midwest filed Claim 24-1 pursuant to Bankruptcy Code section 502(a). Claim 24-1 asserts a general unsecured claim against the Debtor in the amount of $1,360,665.60, comprising: (a) a Present Value Claim of $869,337.60; (b) $167,328.00 in post-petition claims attributable to freight to return cars to Midwest's possession (the "Return Claim"); and (c) $324,000.00 in post-petition claims attributable to in repair costs for the cars covered by the Lease (the "Repair Claim"). The Claim provides no calculation for the Present Value Claim or backup or substantiation for the Return Freight or Repair Costs.

19. On May 7, 2014, the Trustee filed the *Consent Motion for an Order Authorizing the Allowance and Payment of An Administrative Expense Claim of Midwest Railcar Corporation* [D.E. 853] (the "Consent Motion"). Pursuant to the Consent Motion, among other things, the Trustee agreed to pay Midwest certain amounts "[i]n full and final satisfaction of any and all post-petition claims of Midwest against the Debtor . . . ." Consent Mot. ¶ 10(a). In particular, the Trustee paid Midwest on account of any amounts arising under the Lease accruing through "the earlier of the [date of the closing of the Debtor's asset sale in the U.S.] and the [date of surrender of the cars subject to the Lease]." Consent Mot. ¶ 14. Midwest consented to the relief requested. Consent Mot. ¶ 14.

20. On May 15 2014, the sale of substantially all the Debtor's assets closed in the U.S. Upon information and belief, Midwest signed a new lease with the purchaser of the Debtor's assets substantially contemporaneously with the closing of the asset sale in the U.S. (the "New Lease").

21. On June 3, 2014, the Court entered an order approving the Consent Motion [D.E. 930] (the "Consent Order"). The Consent Order reiterated that "Midwest is allowed an administrative claim in the amount of the Claim Payments [as defined in the Consent Motion] . . . ***in full and final satisfaction of any and all post-petition claims against the debtor***." Consent Order ¶ 2 (emphasis added).

22. In accordance with the Consent Order, after entry thereof, the Trustee paid Midwest the Lease payments that accrued postpetition through May 2014. The Claim was never amended to reflect amounts paid pursuant to the Consent Order, or to reflect damages mitigated pursuant to the New Lease.

RELIEF REQUESTED

23. By this Objection, the Trustee requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3001 and 3007, and Local Rule 3007-1, (a) sustaining the Objection, (b) disallowing the Present Value Claim in its entirety or, as an alternative, reducing the Present Value Claim as set forth below, (c) disallowing the Return Claim and the Repair Claim in their entireties, and (d) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

A. The Legal Standard

i. Disallowance of Claims in Chapter 11

24. Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Bankruptcy Code section 502(b)(1) provides that if an objection to a claim is filed, the court, after notice and a hearing, "shall allow such claim . . . except to the extent that—(1)

such claim is unenforceable against the debtor and property of the debtor . . . ." 11 U.S.C. § 502(b)(1).

25. The Bankruptcy Code defines a "claim" as a "right to payment," 11 U.S.C. § 101(5)(A), "usually referring to a right to payment recognized under state law," In re Hann, 476 B.R. 344, 354 (B.A.P. 1st Cir. 2012), aff'd, 711 F.3d 235 (1st Cir. 2013) (quoting Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co., 549 U.S. 443, 451 (2007)). Because a "right to payment" constitutes a claim, "the first step in the claims [allowance] process is always to determine whether there *is* a right to payment." In re Taylor, 289 B.R. 379, 383 (Bankr. N. D. Ind. 2003) (emphasis added).

26. Bankruptcy Code section 365(g) provides that "the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease— (1) if such contract or leas has not been assumed . . ., immediately before the date of the filing of the petition . . . ." 11 U.S.C. § 365(g). Bankruptcy Code section 502(g)(1) provides that a claim "arising from the rejection, under section 365 of [Title 11] . . . of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined . . . the same as if such claim had arisen before the date of the filing of the petition." 11 U.S.C. § 502(g)(1).

27. Bankruptcy Rule 3001(c)(1) requires that "when a claim . . . is based on a writing, a copy of the writing shall be filed with the proof of claim." Fed. R. Bankr. P. 3001(c)(1). Significantly, "[w]hen a claimant fails to comply with the Rule 3001 documentation requirements, the claimant is not entitled to prima facie validity of the claim." In re Residential Capital, LLC, No. 12-12020 (MG), 2013 WL 6227582, at *5 (Bankr. S.D.N.Y. Nov. 27, 2013) (internal citations omitted).

ii. Enforceability of Liquidated Damages Provisions

28. Under Maine state law, "to be valid, a liquidated damages provision must meet two requirements: the damages caused by the breach are very difficult to estimate accurately and the amount so fixed is a reasonable forecast of the amount necessary to justly compensate one party for the loss occasioned by the other's breach." Pacheco v. Scoblionko, 532 A.2d 1036, 1038 (Me. 1987) (internal quotations omitted).

29. Under Maryland state law[4]:

> Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to the lessor's residual interest, may be liquidated in the lease agreement ***but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default*** or other act or omission."

Md. Code Ann., Com. Law § 2A-504(1) (West 2015) (emphasis added). The Maryland Court of Appeals has stated that "one of the most difficult and perplexing inquiries encountered in the construction of written agreements is determining whether a contractual clause should be regarded as a valid and enforceable liquidated damages provision or as a penalty." Barrie School v. Patch, 401 Md. 497, 511 (Md. 2007) (quoting Willson v. M. & C.C. of Baltimore, 83 Md. 203, 211 (Md. 1896)) (internal quotations omitted). Thus, "if there is doubt whether a contract provides for liquidated damages or a penalty, the provision will be construed as a penalty." Barrie, 401 Md. at 511 (quoting Goldman v. Conn. Gen. Life Ins. Co., 251 Md. 575, 581 (Md. 1968)).

30. The annotations to the Maryland statute give a few examples of "liquidated damages formula[s] [ ] common in leasing practice," one of which is a provision calculated as "the sum of lease payments past due, accelerated future lease payments, and the lessor's estimated residual interest, ***less the net proceeds of disposition (whether by sale or re-lease) of***

[4] As set forth below, the Trustee contests the applicability of Maryland state law to interpretation of the Lease.

the leased goods . . . ." Md. Code Ann., Com. Law § 2A-504 cmt. (West 2015) (emphasis added) (the "Maryland Model Liquidated Damages Provision").

iii. Enforceability of Choice of Law Provisions

31. A federal court must apply the choice of law rules of the forum state. See In re OSC 1 Liquidating Corp., 529 B.R. 825, 831 (Bankr. D. Del. 2015) ("[A] federal court must apply the choice of law principles of the state in which it sits.") (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981). With regard to choice of laws disputes, Maine courts have adopted the guidelines of the Restatement (Second) Conflict of Laws section 187(2) (the "Restatement"). Schroeder v. Rynel, Ltd., 720 A.2d 1164, 1166 (Me. 1998). In accordance with the Restatement, Maine courts will enforce a contractual choice of law provision unless:

> either (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or (b) the application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue.

Schroeder, 720 A.2d at 1166 (quoting Restatement (Second) Conflict of Laws § 187(2) (1971)). This test is a disjunctive one. See id.

iv. Duty of Non-Breaching Party to Mitigate

32. Under Maine State Law, a non-breaching counterparty has a duty to mitigate its damages. Schiavia Mobile Homes Inc. v. Gironda, 463 A.2d 722, 724 (Me. 1983) ("It has long been the rule in [Maine] that when a contract is breached, the non-breaching party has an affirmative duty to take reasonable steps to mitigate his damages."). This is true despite a valid liquidated damages provision. Cf. In re Union Air Conditioning, Inc., CIV. No. 89-0054-P., 1990 WL 19989, at *4 n.4 (D. Me. 1990) (a party likely cannot waive the significant duty to mitigate damages). Thus, an otherwise valid liquidated damages award must be reduced by the amount of damages that the non-breaching party could reasonably have mitigated. See id.

33. Under Maryland state law, a non-breaching counterparty likewise has a duty to mitigate its damages. Barrie, 401 Md. at 512-13. In the absence of a statute mandating mitigation, however, Maryland law does not require mitigation in the face of a valid liquidated damages provision. Id. at 514-15.

B. The Present Value Claim is Unenforceable As Asserted

i. The Present Value Claim Constitutes an Unenforceable Penalty and Thus Must be Disallowed

34. The Present Value Claim is not an enforceable liquidated damages provision under applicable state law and thus must be disallowed as an unenforceable penalty. This is true regardless of whether Maine or Maryland state law applies, though as set forth below, the Trustee contends that Maine state law is applicable. Absent a valid liquidated damages provision, Midwest must prove its damages and comply with its duty to mitigate them.

35. Under Maine state law, "to be valid, a liquidated damages provision must meet two requirements: the damages caused by the breach [must have been] very difficult to estimate accurately and the amount so fixed [must have been] a reasonable forecast of the amount necessary to justly compensate one party for the loss occasioned by the other's breach." Pacheco, 532 A.2d at 1038 (internal quotations omitted). Though the Trustee contends that Maine state law is applicable, the result is the same in Maryland. Under Maryland law, a clause purporting to provide liquidated damages for breach of a lease will be enforced only if it provides for damages in "an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission." Md. Code Ann., § 2A-504(1). In addition, "if there is doubt whether a contract provides for liquidated damages or a penalty, the provision will be construed as a penalty." Barrie, 401 Md. at 511 (quoting Goldman, 251 Md. at 581).

36. As an initial matter, designing a liquidated damages provision to comprise the sum of all payments due under the full life of a contract (albeit discounted at a modest rate to account for the time value of money) is not "a reasonable forecast of the amount necessary to justly compensate one party for the loss occasioned by the other's breach," Pacheco, 532 A.2d at 1038, or "reasonable in light of the then anticipated harm," Md. Code Ann., § 2A-504(1). See, e.g., In re Admetric Biochem, Inc., 284 B.R. 1, 10-11 (Bankr. D. Mass. 2002) (applying Massachusetts law, which uses a test substantially similar to those of Maine and Maryland, and finding unenforceable a liquidated damages provision that comprised all post-breach payments that would have come due under the balance of a five-year commercial lease); see also Maryland Model Liquidated Damages Provision (deducting from the sum of future payments due under the lease the net proceeds of disposition (whether by sale or re-lease) of the leased goods). Such a calculation effectively obviates the contract counterparty's common law obligation to mitigate its damages in the event of a breach. See, e.g., Admetric Biochem, 284 B.R. at 10-11 ("The liquidated damages provision makes a mockery of [counterparty's] duty to mitigate damages."); Arrowhead Sch. Dist. No. 75, Park County v. Klyap, 79 P.3d 250, 264 (Mont. 2003) (noting that attempts to waive the general duty to mitigate damages can render a liquidated damages clause unconscionable). In other words, it is not reasonable to presume, at the time of execution of a contract, that the non-breaching party will have *no* ability to mitigate its damages upon a breach. (This is especially when the terms of the contract are as relatively commonplace as a railcar lease.) And to the extent it is a close call as to whether the Present Value Claim constitutes a liquidated damages provision or a penalty (though the Trustee submits that it is not), "the provision [should] be construed as a penalty." Barrie, 401 Md. at 511 (quoting Goldman, 251 Md. at 581).

37. Having failed the test for an enforceable liquidated damages provision under both Maine and Maryland state law, the Present Value Claim constitutes a penalty and is thus unenforceable against the Debtor. The Present Value Claim should thus be disallowed in its entirety. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with "no basis in fact or law" must be disallowed).

ii. Even if Valid, the Present Value Claim Must Be Reduced to Reflect Amounts Paid and Midwest's Duty to Mitigate Damages

38. Even if the Court were to uphold the Present Value Claim as a valid liquidated damages provision, it is improperly calculated because it does not credit the estate for amounts that the Trustee paid pursuant to the Consent Order. Moreover, the Choice of Law Provision is unenforceable, and under applicable law, Midwest has a duty to mitigate its damages. Accordingly, the Present Value Claim must be reduced to reflect (a) amounts paid pursuant to the Consent Order and (b) Midwest's duty to mitigate damages, including but not limited to payments Midwest received under the New Lease.

39. As an initial matter, the Present Value Claim was improperly calculated and must be reduced to account for amounts paid pursuant to the Consent Order.[5] As set forth in the Schedules, the Debtor's books reflect $16,245 in prepetition Lease payments outstanding (the "Prepetition Payments").[6] And the Trustee's review of the Lease reveals that the "future value" of unremitted payments that would have come due over the balance of the Lease is $771,840 (the "Future Payments"). This amount reflects that fact that the Trustee has already paid amounts accrued through May 2014 pursuant to the Consent Order. Using a 3% discount rate (as provided by the Lease), the present value of the Future Payments is $710,330, and when

[5] As set forth above, the Claim does not provide a calculation for the Present Value Claim. Moreover, the Claim was filed prior to entry of the Consent Order, pursuant to which the Trustee paid all post-petition amounts due under the Lease through May 2014. The Claim was never amended to reflect receipt of such payments.

[6] The Trustee reserves the right to amend the Schedules in accordance with the Bankruptcy Code and the Bankruptcy Rules.

combined with the Prepetition Payments, these amounts total $726,575. The Present Value Claim should thus be adjusted to $726,575 (before accounting for Midwest's duty to mitigate damages, as set forth below). The difference between the asserted Present Value Claim of $869,337.60 and the adjusted Present Value Claim of $726,575.00 is $142,762.60 (the "Excess Claim"). Accordingly, the Excess Claim is not a claim that is "enforceable against the debtor." See Taylor, 289 B.R. at 383 (finding that in assessing whether to allow a claim, the first step is for the court to determine whether there exists a right to payment under applicable non-bankruptcy law). The Excess Claim should thus be disallowed in its entirety. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with "no basis in fact or law" must be disallowed).

40. In addition, because the Choice of Law Provision is unenforceable, the Present Value Claim must be further reduced to reflect Midwest's duty to mitigate its damages. A federal court must apply the choice of law rules of the forum state. See OSC, 529 B.R. at 831 (internal citations omitted). The Court sits in the State of Maine, and Maine courts will enforce a contractual choice of law provision unless:

> ***either*** (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, ***or*** (b) the application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue.

Schroeder, 720 A.2d at 1166 (quoting Restatement (Second) Conflict of Laws § 187(2) (1971)) (emphasis added).

41. The Choice of Law Provision is unenforceable in the case at bar because Maryland (a) has no "substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice [of law]" and (b) application of Maryland law would be contrary to a fundamental policy of Maine law. Rather, under applicable choice of

law rules (those of the state of Maine, where the Court sits), Maine substantive law should apply, which imposes upon Midwest a duty to mitigate damages. Accordingly, the Present Value Claim must be further reduced by the amount of damages that Midwest could have mitigated (some of which Midwest actually did mitigate in executing the New Lease).

42. First, as set forth above, Maryland's only "relationship to the parties or the transaction" at the time of execution of the Lease was that Allfirst's principal place of business was in Maryland.[7] While the law of a counterparty's principal place of business may have been an appropriate choice of law for interpretation of the Lease at the time of its execution, less than one month later, Allfirst assigned its interest in the Lease to Midwest. As set forth above, Midwest's principal place of business is in Illinois, and the cars that were the subject of the Lease were at no relevant time in Maryland. Maryland thus has no interest whatsoever in the adjudication of the parties' rights under the Lease, the validity of the Claim, or the resolution of the Debtor's chapter 11 case. The Choice of Law Provision thus fails the first disjunctive prong of the test for enforceability.

43. Second, Maine has a materially greater interest in the validity of the Claim than does Maryland, and application of Maryland law would be contrary to a fundamental policy of Maine law—that non-breaching contract counterparties must mitigate damages. With respect to the competing interests of Maine and Maryland in the validity of the Claim, the vast majority of the Debtor's creditors are Maine or Canadian residents; fewer than five are from Maryland. And Maine has a strong policy in favor of requiring non-breaching contract counterparties to mitigate damages. See Schiavia Mobile Homes, 463 A.2d at 724 ("It has long been the rule in [Maine] that when a contract is breached, the non-breaching party has an affirmative duty to

[7] Incidentally, Midwest—the party to which Allfirst assigned the Lease, has a Maryland location (though its corporate headquarters are in Illinois). But upon information and belief, the Maryland office has no dealings with the Debtor under the Lease.

take reasonable steps to mitigate his damages."). Under Maryland law, on the other hand, there is no duty to mitigate damages in the face of a valid liquidated damages provision. See Barrie, 401 Md. at 514-15. Accordingly, to the extent the Present Value Claim constitutes a valid liquidated damages provision (though the Trustee contends that it does not), Maryland and Maine law are directly contrary to one another. The Choice of Law Provision thus fails the second disjunctive prong of the test for enforceability.

44. As the Choice of Law Provision fails both prongs of the test for determining whether a choice of law provision should be enforced (though a provision need only fail one prong to be rendered unenforceable), Maine substantive law should be applied. See Schroeder, 720 A.2d at 1166. Under Maine law, the duty to mitigate damages likely cannot be waived, by agreement to a valid liquidated damages provision or otherwise. See Union Air Conditioning, 1990 WL 19989, at *4 n.4 ("in light of strong judicial doctrine against penalty provisions in contracts and in favor of mitigating damages, . . . it is unlikely that parties to a contract can waive their responsibility to mitigate damages in a reasonable fashion.") (internal citations omitted).[8] Midwest had seventy-two days from receipt of notice that the Debtor intended to reject the Lease until entry of the Order. Accordingly, Midwest had ample time to mitigate the vast majority of any damages it suffered. Midwest thus cannot recover from the Debtor amounts corresponding to damages that Midwest could reasonably have mitigated (and especially cannot recover amounts that Midwest did *actually* mitigate by executing the New Lease), and the Present Value Claim must be reduced by a like amount.

[8] Several other jurisdictions also require a non-breaching party to mitigate damages despite a valid liquidated damages provision. See, e.g., Watts Bldg. Corp. v. Schoel, Ogle, Benton, Gentle, & Centeno, 598 So. 2d 832, 834-35 (Ala. 1992) (upholding rent acceleration clauses only when the duty to mitigate damages is enforced); Aurora Bus. Park Assocs. v. Michael Albert, Inc., 548 N.W.2d 153, 157 (Iowa 1996) (rent acceleration clause was valid as it properly provided for landlord's duty to mitigate damages); Arrowhead, 79 P.3d at 264 (noting that attempts to waive the general duty to mitigate damages can render a liquidated damages clause unconscionable).

iii. The Bankruptcy Court Has Equitable Power to Limit a Claim in the Interests of Fairness to Other Creditors

45. Even if the Present Value Claim is upheld as a valid liquidated damages provision, and even if the Present Value Claim is not required to be reduced to reflect Midwest's duty to mitigate damages, the Bankruptcy Court is empowered to modify Midwest's Claim to protect the interests of other creditors of the Debtor's estate. Applicable state law "does not [] limit the bankruptcy court's equitable consideration of factors such as the actual economic harm sustained [], [the non-breaching party's] ability to protect itself from such harm, and fairness to other creditors." See generally Adelphia Bus. Solutions, Inc. v. Abnos, 482 F.3d 602, 610 (2d Cir. 2007) (holding that state contract law allowing commercial lessor to recover damages stemming from debtor's rejection of lease without requiring mitigation "does not affect the bankruptcy court's equitable consideration of the practical effect of [lessor's] ability to protect himself by reletting the premises."); Admetric Biochem, 284 B.R. at 11 (stating that Bankruptcy Code's policies of fairness and equality of distribution among similarly situated creditors compels bankruptcy court to recognize actual economic harm suffered; rejecting claim for liquidated damages "far in excess of that harm and grossly disproportionate to any reasonable estimate of actual damages."); GRJH, Inc. v. McCarthy, No. 05-12844, 2008 WL 305099, at *10 (N.D.N.Y. Jan. 31, 2008) (declining to grant appeal of non-breaching contract party on the basis that it had no duty to mitigate under applicable state law, instead finding that the bankruptcy court had the equitable power to consider actual harm). Accordingly, the Present Value Claim should be reduced by the amount Midwest could have mitigated regardless of whether it is required to do so under applicable state law.

C. The Return and Repair Claims are Unenforceable Against the Debtor

i. Midwest Settled the Return and Repair Claims Pursuant to the Consent Order

46. As set forth above, Midwest and the Trustee agreed to settle "***any and all post-petition claims*** of Midwest against the Debtor" in connection with the Consent Motion. Consent Mot. ¶ 10(a) (emphasis added). The Consent Motion was granted on June 3, 2014, and the order reiterated that "Midwest is allowed an administrative claim . . . ***in full and final satisfaction of any and all post-petition claims against the debtor***." Consent Order ¶ 2 (emphasis added). The amounts remitted to Midwest pursuant to the Consent Order were thus in "full and final satisfaction" of any post-petition claims, and the Repair and Return Claims are post-petition claims. Accordingly, the Repair and Return Claims are not "enforceable against the debtor" because they have been released by agreement in accordance with applicable non-bankruptcy law. See Taylor, 289 B.R. at 383 (in assessing whether to allow a claim, the first step is to determine whether there exists a right to payment under applicable non-bankruptcy law). The Repair Claim and the Return Claim should thus be disallowed in their entireties. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with "no basis in fact or law" must be disallowed).

ii. Midwest has Failed to Comply with Bankruptcy Rule 3001 and Thus Cannot Demonstrate a Right to Payment to Substantiate the Return or Repair Claim

47. Regardless of the Consent Order, Midwest has demonstrated no right to payment from the Debtor under applicable law with respect to the Return Claim or the Repair Claim, and thus those Claims must be disallowed pursuant to Bankruptcy Code section 502(b)(1). Bankruptcy Rule 3001 requires that when a claim is "based on a writing, a copy of the writing shall be filed with the proof of claim." Fed. R. Bankr. P. 3001(c)(1). While a properly completed proof of claim ordinarily constitutes prima facie evidence of that claim, "[w]hen a

claimant fails to comply with the Rule 3001 documentation requirements, the claimant is not entitled to prima facie validity of the claim." Residential Capital, 2013 WL 6227582, at *5 (internal citations omitted). This rule facilitates the debtor's (and the Court's) assessment of whether a party indeed has a "right to payment" from the estate: absent documentation supporting a claim that is based on a writing, that determination cannot reliably be made. See Taylor, 289 B.R. at 383.

48. As Midwest failed to include a writing substantiating the amounts comprising the Repair Claim and the Return Claim, it failed to comply with Rule 3001, and thus, those Claims are not entitled to prima facie validity. See Residential Capital, 2013 WL 6227582, at *5. The Repair Claim and the Return Claim stripped of prima facie validity, Midwest has failed to assert a claim (with respect to the Repair Claim and the Return Claim) that is "enforceable against the debtor" because it cannot prove its "right to payment" under applicable law. See id., Taylor, 289 B.R. at 383 (finding that in assessing whether to allow a claim, the first step is for the court to determine whether there exists a right to payment under applicable non-bankruptcy law). Accordingly, the Repair Claim and the Return Claim should be disallowed in their entireties. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with "no basis in fact or law" must be disallowed).

RESERVATION OF RIGHTS

49. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Trustee's right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

NOTICE

50. Notice of this Objection was served on the following parties on the date and in the manner set forth in the certificate of service: (a) Debtor's counsel; (b) U.S. Trustee; (c) counsel to the Official Committee of Victims; and (d) counsel to Midwest. The Trustee submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Trustee requests that the Court enter an order, substantially in the form annexed hereto, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3001 and 3007 and Local Rule 3007-1, (i) sustaining this Objection; (ii) disallowing the Present Value Claim in its entirety or, in the alternative, reducing it as set forth herein, (iii) disallowing the Return Claim and the Repair Claim in their entireties, and (iv) granting such other and further relief as may be just.

Dated: August 14, 2015

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

By his attorneys:

/s/ Lindsay K. Zahradka

Sam Anderson
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

ORDER SUSTAINING OBJECTION TO PROOF OF CLAIM FILED BY MIDWEST RAILCAR CORPORATION ON THE BASIS THAT SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR

This matter having come before the Court on the *Objection to Proof of Claim Filed by Midwest Railcar Corporation on the Basis that Such Claim is Unenforceable Against the Debtor* (the "Objection") filed by Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd., in relation to Proof of Claim No. 24-1 (the "Claim") filed by Midwest Railcar Corporation and after such notice and opportunity for hearing as was required by the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court's local rules, and after due deliberation and sufficient cause appearing therefore; it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. The Objection is sustained.

2. Claim No. 24-1 shall be disallowed in its entirety.

Dated: _____, 2015

_____
Honorable Peter J. Cary
Chief Judge, United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

NOTICE OF HEARING

On August 14, 2015, Robert J. Keach, the chapter 11 trustee in the above-captioned case (the "Trustee"), filed the *Objection to Proof of Claim Filed by Midwest Railcar Corporation on the Basis that Such Claim is Unenforceable Against the Debtor* (the "Objection"). A hearing to consider the Objection has been scheduled for **October 6, 2015 at 9:00 a.m. ET.**

If you wish to respond to the Objection, then **on or before September 29, 2015 at 5:00 p.m. (ET)**, you or your attorney must file with the Court a response to the 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
202 Harlow Street
Bangor, Maine 04401

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court will receive it **on or before September 29, 2015 at 5:00 p.m. (ET).**

You may attend the hearing with respect to the Objection, which is scheduled to be held on **October 6, 2015 at 9:00 a.m.** at the Bankruptcy Court, 537 Congress Street, 2nd Floor, Portland, Maine. If no responses are timely filed and served, then the Court may enter a final order sustaining the Objection without any further hearing.

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 or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought, and may enter an order granting the requested relief without further notice or hearing.

Dated: August 14, 2015

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

By his attorneys:

/s/ *Lindsay K. Zahradka*
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