

**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 PROGRESS
RAIL LEASING ON THE BASIS THAT SUCH CLAIM IS
UNENFORCEABLE AGAINST THE DEBTOR AS ASSERTED**

Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”),¹ hereby objects (the “Objection”) to Proof of Claim No. 18 (the “Claim”) filed by Progress Rail Leasing (“Progress Rail”). As set forth below, the Estate Representative objects to the Claim on the basis that such Claim must be disallowed as unenforceable as asserted against the Debtor under the Bankruptcy Code. In support of this Objection, the Estate Representative 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.

¹ In accordance with the *Trustee’s Chapter 11 Plan of Liquidation, dated July 15, 2015 (As Amended on October 8, 2015)* [D.E. 1822] (the “Plan”), upon the Effective Date of the Plan (which occurred on December 22, 2015, *see* D.E. 1927), Robert J. Keach is no longer the chapter 11 trustee of the Debtor’s estate, but is the Estate Representative of the Post-Effective Date Estate (as defined in the Plan). *See* Plan § 6.1(a).

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 Lease Agreement dated October 29, 2004 (as amended or supplemented, the “Lease”²) with FCM Rail, Ltd. (“FCM”). Progress Rail issued invoices to the Debtor under the Lease with FCM. *See* invoices attached to Claim.

B. The Derailment and the Debtor’s Bankruptcy Filing

6. 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.

² The Lease is included as an exhibit to the Claim.

7. 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.

8. 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 Robert J. Keach as chapter 11 trustee in the Debtor's Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

C. The Debtor's Schedules, the Filing of the Claim and the Assumption of the Lease

9. 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 Progress Rail as having a non-contingent, liquidated and undisputed general unsecured claim in the amount of \$595.00 (the "Scheduled Unsecured Claim"). See Schedule F (Creditors Holding Unsecured Nonpriority Claims), p. 163 of 244.

10. On October 25, 2013, Progress Rail filed Claim No. 18 pursuant to Bankruptcy Code section 502(a). The Claim asserts a secured claim against the Debtor in the amount of \$1,785.00. The Claim asserts no basis for its alleged secured status, and identifies no collateral securing the asserted obligation.

11. On January 24, 2014, the Court entered an order approving the sale of substantially all the Debtor's assets pursuant to Bankruptcy Code section 363 (the "Sale") to Railroad Acquisition Holdings LLC (the "Purchaser"), including the assumption and assignment to the Purchaser of certain executory contracts and unexpired leases. *See* D.E. 594 (the "Sale Order"). Pursuant to asset purchase agreement approved by the Sale Order (Exhibit B to D.E. 579, the "APA"), the Lease was assumed and assigned to the Purchaser. *See* Sale Order (approving APA); APA at §§ 2.1(a)(vi), 2.3(a)(i), Sched. 3.8B at 7.

12. The Sale closed on May 15, 2014. *See* D.E. 1535, at 38. In connection with closing of the Asset Sale and the assumption and assignment of the Lease to the Purchaser, FCM was paid \$1,785 to cure all amounts due and owing under the Lease.

13. The Claim was never amended to reflect that it was satisfied in connection with the closing of the Sale.

RELIEF REQUESTED

14. By this Objection, the Estate Representative 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 Claim in its entirety as having already been satisfied, and (c) 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

15. 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).

16. 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. 2013), 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). A claim with “no basis in fact or law” must be disallowed. Hann, 476 B.R. at 354.

17. 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. Allowance of Secured Claims

18. Section 506(a) of the Bankruptcy Code provides, in pertinent part:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property . . . and is an unsecured claim to the extent that the value of such creditor’s interest . . . is less than the amount of such allowed claim.

11 U.S.C. § 506(a).

19. To start off with, then, a creditor must identify the property in which it claims a security interest. *See id.* (allowing a secured claim “to the extent of the value of such creditor’s

interest in the estate's interest in *such property*"). In particular, a creditor's description of its collateral must "reasonably identif[y]" the alleged collateral. *See* U.C.C. § 9-108(a). In addition, the Bankruptcy Rules require evidence that the security interest has been perfected. *See* Fed. R. Bankr. P. 3007(d) ("If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.").

B. The Claim is Unenforceable Against the Debtor

i. The Claim Was Satisfied in Connection with the Closing of the Sale

20. As an initial matter, as set forth above, the Claim was satisfied in connection with closing of the Sale, and thus must be disallowed lest Progress Rail receive double recovery on account of its claim.

ii. In any Event, the Claim Fails to Comply with the Bankruptcy Rules and Thus is Not Entitled to Prima Facie Validity

21. Moreover, Progress Rail has demonstrated no interest in property of the Debtor with respect to the Claim, and thus that Claim must be disallowed pursuant to Bankruptcy Code section 502(b)(1). In the context of an asserted secured claim, a creditor claiming a security interest must "reasonably identif[y]" its alleged collateral in a filing asserting the security interest. *See* U.C.C. § 9-108(a). Bankruptcy Rule 3001 further requires that if "a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected." Fed. R. Bankr. P. 3001(d). In short, in the context of proving a secured claim in bankruptcy, a claimant must "reasonably identify" the assets in which it claims such security interest, and must substantiate the basis for such interest with evidence that the security interest has been perfected.

22. 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.

23. As Progress Rail failed to include a writing substantiating its asserted security interest in the Debtor's assets (or even identify which assets those might be), it has failed to comply with Bankruptcy Rule 3001, and thus, the Claim is not entitled to *prima facie* validity. See Residential Capital, 2013 WL 6227582, at *5. The Claim stripped of *prima facie* validity, Progress Rail has failed to assert a 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 Claim should 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).

RESERVATION OF RIGHTS

24. 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 Estate Representative's right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

NOTICE

25. 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; and (c) counsel to Progress Rail. The Estate Representative submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Estate Representative 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 Claim in its entirety, and (iii) granting such other and further relief as may be just.

Dated: February 19, 2016

**ROBERT J. KEACH, ESTATE
REPRESENTATIVE OF THE POST-
EFFECTIVE DATE ESTATE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ 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 PROGRESS RAIL LEASING 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 Progress Rail Leasing on the Basis that Such Claim is Unenforceable Against the Debtor* (the “Objection”)¹ filed by Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), in relation to Proof of Claim No. 18 (the “Claim”) filed by Progress Rail Leasing 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. 18 shall be disallowed in its entirety.

Dated: _____, 2016

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

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Objection.

**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 February 19, 2016, Robert J. Keach, the estate representative for the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (the "Estate Representative"), filed the *Objection to Proof of Claim Filed by Progress Rail Leasing on the Basis that Such Claim is Unenforceable Against the Debtor as Asserted* (the "Objection"). A hearing to consider the Objection has been scheduled for **April 5, 2016 at 9:00 a.m. ET.**

If you wish to respond to the Objection, then **on or before March 21, 2016 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 and the Estate Representative at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
202 Harlow Street
Bangor, Maine 04401

-and-

Sam Anderson, Esq.
Bernstein, Shur, Sawyer & Nelson, P.A.
100 Middle Street, PO Box 9729
Portland, Maine 04101-5029

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court and the Estate Representative will receive it **on or before March 21, 2016 at 5:00 p.m. (ET).**

You may attend the hearing with respect to the Objection, which is scheduled to be held on **April 5, 2016 at 9:00 a.m. ET** 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: February 19, 2016

ROBERT J. KEACH
ESTATE REPRESENTATIVE OF THE POST-
EFFECTIVE DATE ESTATE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

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