

**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
MUNICIPALITE DE MONT-SAINT-GREGOIRE ON THE BASIS THAT
SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

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. 55 (the “Claim”) filed by Municipalite de Mont-Saint-Gregoire (“MMSG”). As set forth below, the Estate Representative 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 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 Derailment and the Debtor’s Bankruptcy Filing

5. 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”),² 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.

6. 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

² MMA Canada is an unlimited liability company organized under the laws of the Canadian province of Nova Scotia.

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.

7. 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].

B. The Debtor's Schedules, the Bar Date Order, the Filing of the Claim and the Payment of the Claims

8. 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 MMSG as having a contingent, unliquidated and disputed general unsecured claim *against MMA Canada* in the amount of \$2,743.91. *See* Schedule F (Creditors Holding Unsecured Nonpriority Claims), p. 146 of 244.

9. 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"). *See* D.E. 594 (the "Sale Order").

10. On March 20, 2014, the Court entered the *Order Pursuant to 11 U.S.C. Sections 105(a) and 502(b)(9), Fed. R. Bankr. P. 3002 and 3003(c)(3), and D. Me. LBR 3003-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof* [D.E. 783] (the "Bar Date Order"). The Bar Date Order set certain rules for filing proofs of claim, including that claims be in English. *See* Bar Date Order at ¶ 2(b).

11. On April 3, 2014, MMSG filed Claim 55 pursuant to Bankruptcy Code section 502(a). The Claim asserts a secured claim against the Debtor in the amount of \$5,325.32.³ The Claim provides no substantiation for its alleged secured or priority status.

12. The Sale closed on May 15, 2014 and upon final regulatory approval, the sale of MMA Canada's assets closed on June 30, 2014. *See* D.E. 1535, at 38. In connection with closing of the Sale, MMA Canada paid all Canadian municipalities—including MMSG—the full amount of taxes owed. In particular, MMSG was paid \$5,510.58, comprising (a) \$4,230.58 for municipal taxes and (b) \$1,280.00 for school taxes.

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). When the claim at issue is asserted to be a priority claim (as opposed to a general unsecured claim), the claimant bears the burden of showing entitlement to priority status. *In re*

³ The Claim also asserts a priority claim in the same amount; the Estate Representative presumes that these amounts represent the same claim, but to the extent they are cumulative, the Estate Representative also objects to the priority claim in the amount of \$5,325.32.

Trentadue, 527 B.R. 328, 332 (Bankr. E.D. Wis.) *aff'd sub nom. Trentadue v. Gay*, 538 B.R. 770 (E.D. Wis. 2015).⁴

16. 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). 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:

⁴ See also In re Micek, 473 B.R. 185, 188 (Bankr. E.D. Ky. 2012) (same); In re Clark, 441 B.R. 752, 755 (Bankr. M.D.N.C. 2011) (same); cf. In re PMC Mktg. Corp., 517 B.R. 386, 391 (B.A.P. 1st Cir. 2014) (“An administrative expense claimant bears the burden of establishing that its claim qualifies for priority status.”) (internal citations omitted).

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. A creditor must thus identify the property of the estate 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

20. MMA has already remitted to MMSG more than the full amount of the Claim—\$5,510.58, and in any event, MMSG has demonstrated no interest in property of the Debtor and no entitlement to priority status with respect to the Claim. The Claim must thus be disallowed pursuant to Bankruptcy Code section 502(b)(1).

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

21. As an initial matter, as set forth above, the Claim was satisfied in connection with closing of the Sale, and the Claim should thus be disallowed. In particular, MMA Canada paid MMSG the full amount of taxes owed: \$5,510.58. The Claim must thus be disallowed as having already been fully satisfied.

ii. MMSG is Not Entitled to a Secured Claim

22. Bankruptcy Code section 506(a) provides that claims are secured “to the extent of the value of [a] creditor's interest *in the estate's interest in [] property.*” *See* 11 U.S.C.

§ 506(a) (emphasis added). 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). In addition, Bankruptcy Rule 3001 requires that a “proof of claim [] be accompanied by evidence that [a claimed] security interest has been perfected.” Fed. R. Bankr. P. 3001(d). In short then, to prove a secured claim in a bankruptcy case, a claimant must “reasonably identify” the assets in which it claims a security interest and substantiate the basis for such interest with evidence that the security interest has been perfected. As MMSG has identified no interest in *any* property in which it has an interest, let alone property of MMA (as opposed, for instance, to property of MMA Canada, against whom its claim appears to truly be asserted), MMSG fails the requirements for meriting a secured claim.

23. In addition, 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). As MMSG failed to include documentation evidencing (a) any security interest at all, (b) any property to which that security interest might attach, or (c) perfection of any such asserted security interest, MMSG has also 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, MMSG 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).

iii. MMSG is Not Entitled to a Priority Claim

24. Moreover, to the extent the asserted priority claim is separate from the asserted secured claim, MMSG has failed to carry its burden in establishing entitlement to priority status. While on the face of the Claim MMSG has indicated that the Claim is entitled to priority status, that assertion is not supported in the documentation underlying the Claim, and it is the claimant's burden to establish its entitlement to priority status. See Trentadue, 527 B.R. at 332. In particular, each supporting invoice was issued to MMA Canada; MMSG has thus asserted no claim *against MMA* at all—whether entitled to the priority afforded under Bankruptcy Code section 507(a)(8) or otherwise. For this reason, MMSG has failed to assert *any* claim that is “[enforceable against the debtor” because it has failed to prove its “right to payment” from the Debtor. See 11 U.S.C. § 502(b)(1); Taylor, 289 B.R. at 383. Accordingly, the Claim should be disallowed in its entirety.

iv. The Claim Does Not Comply with the Bar Date Order

25. Finally, the Claim is defective because its supporting documentation is in French, in violation of the Bar Date Order. The Bar Date Order requires that: “Proofs of Claim, other than Derailment Claims[. . .], must: (i) be written in the English language;” See Bar Date Order, ¶ 2(b).⁵ This is for good reason: the Estate Representative cannot evaluate the sufficiency of the supporting documentation or reconcile any amounts set forth therein when such supporting documentation is in a foreign language. Accordingly, for the additional reason that the Claim was submitted not in compliance with the Bar Date Order, the Estate Representative submits that it should be disallowed.

⁵ The Claim is not a Derailment Claim.

RESERVATION OF RIGHTS

26. 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

27. 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 MMSG. 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 22, 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
MUNICIPALITE DE MONT-SAINT-GREGOIRE 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 Municipalite de Mont-Saint-Gregoire 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. 55 (the “Claim”) filed by the Municipalite de Mont-Saint-Gregoire, 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. 55 shall be disallowed in its entirety and expunged from the Debtor’s claims register.

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 22, 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 Municipalite De Mont-Saint-Gregoire on the Basis that Such Claim is Unenforceable Against the Debtor* (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 22, 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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