

Response of Fred's Plumbing & Heating, Inc.

Page 1

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

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

**RESPONSE TO TRUSTEE'S AMENDED OBJECTION TO PROOF OF CLAIM FILED BY FRED'S PLUMBING AND HEATING, INC. ON THE BASIS THAT CERTAIN OF THE AMOUNTS ASSERTED IN SUCH CLAIM ARE UNENFORCEABLE UNDER THE BANKRUPTCY CODE**

NOW COMES, Fred's Plumbing & Heating, Inc., by and through Counsel and for its Response to the Trustee's Amended Objection to Certain Proofs of Claim, states as follows:

1. On March 18, 2014 Fred's Plumbing and Heating, Inc. ("Fred's") filed a proof of claim in this case. Claim No. 44-1. The Bar Date Order set June 13, 2014 as the deadline to file proofs of claim.
2. The Claim was filed on Official Bankruptcy Form No. 10 in the amount of \$79,449.60 which included a statement from Fred's relating to the balance claimed in said Proof of Claim.
3. Subsequently on August 6, 2015, Trustee Robert J. Keach as Chapter 11 Trustee filed an Adversary Proceeding case number 15-01018, seeking demand of \$82,000.00 from Fred's Plumbing & Heating, Inc. for payments relating to Claim No. 44-1.
4. As part of the Adversary proceeding, the Trustee was in possession of the records relating to the above referenced claim as this was directly related to the Adversary proceeding.

*Response of Fred's Plumbing & Heating, Inc.*

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5. On November 30, 2015 a settlement agreement was made in the aforementioned Adversary Proceeding wherein Fred's Plumbing & Heating, Inc. maintained its rights to Claim No. 44-1 filed the Court's Claim Register.
6. On February 17, 2016 the Chapter 11 Trustee filed a "Trustee's First Omnibus Objection to Certain Claims..." including Fred's Plumbing & Heating, Inc. Reason for objection was no supporting documentation filed with claim.
7. This Objection is not well founded as Fred's supplied supporting documentation at the time the claim was filed as well as further detailed supporting information through the adversary proceeding referenced above.
8. Previously the supporting documentation was provided to the Trustee and subsequently the Trustee withdrew his Objection.
9. Then shortly after the withdrawal of his first Objection the Trustee has not filed an Amended Objection to Fred's Proof of Claim, Claim 44.
10. As previously stated, all supporting documentation that is available supporting Fred's Claim 44 has previously been supplied to the Trustee.
11. The Trustee has requested further supporting documentation however no additional records are available beyond what was supplied.
12. On July 23, 2014, Fred's Energy's offices in Derby, Vermont was struck by lightning during a thunder storm resulting in a both Vermont and Canadian fire crews responding to the fire. The fire caused extensive damage to the offices of Fred's Energy resulting in the destruction of Fred's Energy's paper records, including but not limited to the delivery tickets invoices for products delivered to MMAR. (See Affidavit of Angel Graves attached hereto as Exhibit 1) (See news report from Newport Dispatch from July 23,

2014 attached as Exhibit 2).

13. The Trustee further claims in para 13 of his Amended Objection that three specific invoices are not supported. Fred's has provided the invoices to the Trustee showing the relevant information relating to the delivery of High Sulfur Diesel to MMAR at the MMAR rail facility at South Yard Road, Newport Vermont.
14. As noted above, the paper records of these deliveries were lost as a result of the fire that destroyed Fred's offices. The Trustee was so advised of this which presumably resulted in the filing of their renewed objection.
15. Attached to this pleading are electronic copies of the invoices in dispute along with an accompanying affidavit from the Office Manager at Fred's. (See Affidavits of Angel Graves attached hereto as Exhibits 1, 3 & 4)
16. Because of the fire, the delivery tickets generated as a result of the delivery of fuel as it relates to the "Disputed Amounts" were lost. Ms. Graves however was able to review the electronic records of Fred's and confirm that deliveries were requested on the occasions listed as disputed, that deliveries were assigned to drivers, that drivers for Fred's made the deliveries requested and the MMAR was subsequently billed for said deliveries in the normal and ordinary course of business. (See Exhibits 1, 3 & 4)
17. Therefore, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1, the Trustee's request for relief should be denied as Fred's did comply with and supply all available supporting documentation to the Trustee.
18. The Trustee here is seeking a potential windfall in the denial of Claim 44 due to the misfortune of Fred's suffering a fire and losing the paper records maintained at it's business.

*Response of Fred's Plumbing & Heating, Inc.*

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19. Fred's has supplied ample evidence of its claim and its right to repayment under State law. Further, the sworn affidavits and electronic records would be more than sufficient to prove its right to repayment under applicable law. *See In re Taylor*, 289 B.R. 379, 383 (Bankr. N. D. Ind. 2003)
20. Further, the Trustee has given no basis to not rely on the evidence and representations supplied. The Trustee has reviewed the Debtor's financial records very thoroughly looking for every possible payment that can be challenged as a potential preference payment so is well aware of the business relationship between MMAR and Fred's.
21. The Trustee has no basis to contest the Proof of Claim other than the Trustee was subsequently made aware that paper records of three deliveries are not available to supplement a claim due to a catastrophic fire.

WHEREFORE, Creditor, Fred's Plumbing & Heating, Inc. having satisfied the supporting documentation requisite request that this Honorable Court deny the Chapter 11 Trustee's Amended Objection in regards to Fred's Plumbing & Heating, Inc., Claim 44 and for such other and further relief this honorable Court may deem just and fair.

Respectfully submitted,  
Fred's Plumbing & Heating, Inc.  
By its attorneys,

Dated: 04/25/2016

/s/ Dennis L. Morgan  
Dennis L. Morgan, Esq.(BNH 06138)  
Cooper Cargill Chant, P.A.  
2935 White Mountain Highway  
North Conway, NH 03860  
(603) 356-5439  
dmorgan@coopercargillchant.com

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

In re:	)	
	)	
	)	Chapter 11
MONTREAL, MAINE & ATLANTIC	)	No. 13-110670
RAILWAY, LTD.,	)	
Debtor.	)	
	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of this Answer were served electronically on Sam Anderson, counsel for Robert J. Keach, Chapter 11 Trustee of Montreal, Maine & Atlantic Railway, Ltd., 100 Middle Street, PO Box 9729, Portland, ME 04104-5029 and at [tmckeon@bernsteinshur.com](mailto:tmckeon@bernsteinshur.com).

04/25/2016  
Date

/s/ Dennis L. Morgan  
Dennis L. Morgan

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670  
Chapter 11

**AFFIDAVIT OF ANGEL GRAVES**

I, Angel Graves, on oath state and depose the following:

1. I am a United States citizen of the age of majority, and reside in Vermont.
2. I am the Office Manager at Fred's Plumbing & Hearing, Inc., ("Fred's Energy") and have been at all times relevant.
3. I am familiar with the books and records of Fred's Energy and am responsible to maintaining same and am therefor familiar with the facts of this case and specifically the purchase, delivery and payment for High Sulfur Diesel fuel by Montreal, Maine & Atlantic Railway, Ltd.
4. Fred's Energy is a locally owned and operated heating and plumbing specialist, retailer of heating fuels as well as supplier of variety of fuels to our commercial customers including diesel fuel.
5. Montreal, Maine & Atlantic Railway, Ltd. ("MMAR") was a regular commercial customer of Fred's Energy.
6. Each of Fred's Energy's commercial customers has an internally designated customer number for all transactions with that specific customer. The customer number for MMAR is 8092.
7. As part of their normal business practice, MMAR would call Fred's Energy and request deliveries to railroad engines coming into the MMAR railyard in Newport, Vermont.



8. Roger Geoffroy, an employee of Fred's Energy took the orders from MMAR when calls came in requesting deliveries for fuel.
9. Mr. Geoffroy then assigned drivers and provided the driver a delivery ticket to make the deliveries to specific locations printed on the delivery ticket for the requested fuel.
10. MMAR placed an order with Fred's Energy on May 28, 2013 for High Sulfur Diesel fuel to be delivered by Fred's Energy to MMAR's facility at South Yard Road, Newport, Vermont.
11. Delivery of 1,296.4 gallons of High Sulfur Diesel was made to MMAR at South Yard Road, Newport Vermont on May 28, 2013.
12. Mr. James Blais, an employee of Fred's Energy was the driver who made said delivery of High Sulfur Diesel fuel to MMAR on May, 28, 2013.
13. The unit price per gallon of High Sulfur Diesel fuel was \$3.175 on May 28, 2013.
14. The total cost of fuel delivered to MMAR on May 28, 2013 was \$4,116.07.
15. A delivery ticket was generated in the normal and ordinary course of business by Fred's Energy for this order placed by MMAR with Freds Energy which reflects the account of the customer, dates of deliveries, gallons delivered, fuel type, Driver number, truck number and amount.
16. Mr. James Blais, as part of his duties in making the delivery of High Sulfur Diesel fuel to MMAR on May 28, 2103, completed the delivery ticket related to said delivery to MMAR.
17. As a result of said delivery and information contained on the delivery ticket, Invoice #76861 was generated in the normal and ordinary course of business. (electronic copy attached hereto as Exhibit A)
18. The original Invoice #76861 and delivery ticket were stored and maintained at Fred's Energy's Derby, Vermont offices.
19. On July 23, 2014, Fred's Energy's offices in Derby, Vermont was struck by lightning during a thunder storm resulting in a both Vermont and Canadian fire crews responding to the fire. The fire caused extensive damage to the offices of Fred's Energy resulting in the destruction of Fred's Energy's paper records, including but not limited to the delivery tickets invoices for products delivered to MMAR.

20. Exhibit A is a true and exact copy of the original Invoice #76861, but for the date it was generated, otherwise it contains all of the same information regarding the delivery of fuel by Fred's Energy to MMAR.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY,

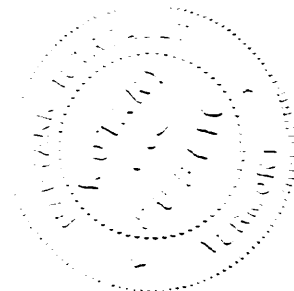
Dated: 4/18/16

[Signature]  
Angel Graves

STATE OF VERMONT  
COUNTY OF ORLEANS

Personally appeared the above named, Angel Graves, and acknowledged the foregoing to be true and correct, before me this 18 day of April, 2016.

[Signature]  
Notary Public/Justice of the Peace  
My Commission Expires: 2-10-2019







# INVOICE

Feb 29, 2016

Montreal Maine Atlantic Railroad  
P.O.Box 39  
Newport, VT 05855

Customer #:	8092
Invoice #:	76861
Invoice Date:	5/28/13
Invoice Total:	\$4,116.07

TERMS: Net Due in 5 Days.

Amount Enclosed: \$ \_\_\_\_\_

*Please Return This Portion With Your Payment*

Description:

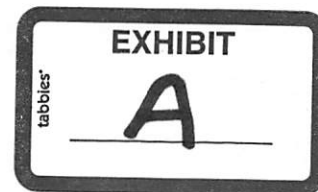
Quantity	Description	Unit Price	Amount
1296.4	High Sulfur Diesel	\$3.175	\$4,116.07

Sub Total: \$4,116.07

Tax Total: \$0.00

Total Due: \$4,116.07

Same owner, same company with a new name.



For Fuel or Service At: Montreal Maine Atlantic Railroad  
South Yard Rd  
Newport, VT 05855

Fred's Energy  
328 Main Street  
Derby, VT 05829  
802-766-4949

Customer #: 8092  
Invoice #: 76861  
Invoice Date: 5/28/13



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## Fred's Plumbing and Heating in Derby catches fire

*Published on July 23, 2014 — in Derby/Newport/News/Stanstead — by Dispatch Media*

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DERBY — Fred's Plumbing and Heating in Derby had its offices struck by lightning during the thunderstorms Wednesday afternoon,

causing the building to go up in flames.

There was a tower on the building that fell during the

EXHIBIT

2

tabbics

**Do you want:  
To semi-retire?  
Try out your cooking skills?  
Have your own business?  
Be creative?**

THESE ARE ONLY A FEW REASONS WHY THIS SMALL 25-40 SEAT RESTURANT IS JUST THE RIGHT BUSINESS FOR YOU. LOCATED ON THE CANADIAN BORDER, THIS WELL ESTABLISHED CAFE NOW SERVES ONLY A BREAKFAST AND LUNCH MENU, BUT HAS THE CAPABILITY OF EXPANDING.

SALES INCLUDES EQUIPMENT AND STOCK. OWNER IS RETIRING AND NEEDS TO SELL IMMEDIATELY.

FOR MORE INFORMATION CALL RACHEL DURING BUSINESS HOURS AT:  
802-873-3505



blaze, which almost hit a Newport City firetruck.

Fire crews from the surrounding areas, including Stanstead, Quebec, were called onto the scene.

These images from the fire were sent in by Margarita Brown:





The following photo by Rachel Laplume:



The following image was taken by Becky Deyo:



FACEBOOK

TWITTER

GOOGLE

PINTEREST

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670  
Chapter 11

**AFFIDAVIT OF ANGEL GRAVES**

I, Angel Graves, on oath state and depose the following:

1. I am a United States citizen of the age of majority, and reside in Vermont.
2. I am the Office Manager at Fred's Plumbing & Hearing, Inc., ("Fred's Energy") and have been at all times relevant.
3. I am familiar with the books and records of Fred's Energy and am responsible to maintaining same and am therefor familiar with the facts of this case and specifically the purchase, delivery and payment for High Sulfur Diesel fuel by Montreal, Maine & Atlantic Railway, Ltd.
4. Fred's Energy is a locally owned and operated heating and plumbing specialist, retailer of heating fuels as well as supplier of variety of fuels to our commercial customers including diesel fuel.
5. Montreal, Maine & Atlantic Railway, Ltd. ("MMAR") was a regular commercial customer of Fred's Energy.
6. Each of Fred's Energy's commercial customers has an internally designated customer number for all transactions with that specific customer. The customer number for MMAR is 8092.
7. As part of their normal business practice, MMAR would call Fred's Energy and request deliveries to railroad engines coming into the MMAR railyard in Newport, Vermont.



8. Roger Geoffroy, an employee of Fred's Energy took the orders from MMAR when calls came in requesting deliveries for fuel.
9. Mr. Geoffroy then assigned drivers and provided the driver a delivery ticket to make the deliveries to specific locations printed on the delivery ticket for the requested fuel.
10. MMAR placed an order with Fred's Energy on June 3, 2013 for High Sulfur Diesel fuel to be delivered by Fred's Energy to MMAR's facility at South Yard Road, Newport, Vermont.
11. Delivery of 2,998.3 gallons of High Sulfur Diesel was made to MMAR at South Yard Road, Newport Vermont on June 3, 2013.
12. Mr. Ronney Gauvin, an employee of Fred's Energy was the driver who made said delivery of High Sulfur Diesel fuel to MMAR on June 3, 2013.
13. The unit price per gallon of High Sulfur Diesel fuel was \$3.175 on June 3, 2013.
14. The total cost of fuel delivered to MMAR on June 3, 2013 was \$9,369.69.
15. A delivery ticket was generated in the normal and ordinary course of business by Fred's Energy for this order placed by MMAR with Freds Energy which reflects the account of the customer, dates of deliveries, gallons delivered, fuel type, Driver number, truck number and amount.
16. Mr. Ronney Gauvin, as part of his duties in making the delivery of High Sulfur Diesel fuel to MMAR on June 3, 2103, completed the delivery ticket related to said delivery to MMAR.
17. As a result of said delivery and information contained on the delivery ticket, Invoice #77844 was generated in the normal and ordinary course of business. (electronic copy attached hereto as Exhibit A)
18. The original Invoice #77844 and delivery ticket were stored and maintained at Fred's Energy's Derby, Vermont offices.
19. On July 23, 2014, Fred's Energy's offices in Derby, Vermont was struck by lightning during a thunder storm resulting in a both Vermont and Canadian fire crews responding to the fire. The fire caused extensive damage to the offices of Fred's Energy resulting in the destruction of Fred's Energy's paper records, including but not limited to the delivery tickets invoices for products delivered to MMAR.

20. Exhibit A is a true and exact copy of the original Invoice #77844, but for the date it was generated, otherwise it contains all of the same information regarding the delivery of fuel by Fred's Energy to MMAR.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY,

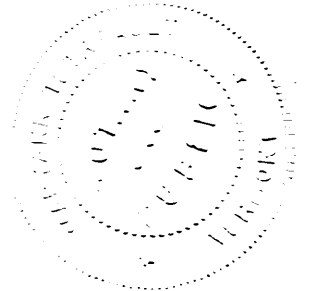
Dated: 4/18/16

Angel Graves  
Angel Graves

STATE OF VERMONT  
COUNTY OF ORLEANS

Personally appeared the above named, Angel Graves, and acknowledged the foregoing to be true and correct, before me this 18 day of April, 2016.

Maureen Streat  
Notary Public/Justice of the Peace  
My Commission Expires: 2-10-2019





# INVOICE

Feb 29, 2016

Montreal Maine Atlantic Railroad  
P.O.Box 39  
Newport, VT 05855

Customer #:	8092
Invoice #:	77844
Invoice Date:	6/3/13
Invoice Total:	\$9,369.69

**TERMS: Net Due in 5 Days.**

Amount Enclosed: \$ \_\_\_\_\_

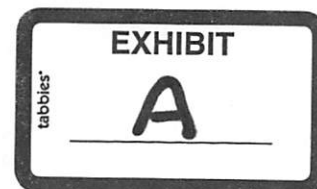
*Please Return This Portion With Your Payment*

Description:

Quantity	Description	Unit Price	Amount
2998.3	High Sulfur Diesel	\$3.125	\$9,369.69

Sub Total: \$9,369.69  
Tax Total: \$0.00  
Total Due: \$9,369.69

Same owner, same company with a new name.



For Fuel or Service At: Montreal Maine Atlantic Railroad  
South Yard Rd  
Newport, VT 05855

Fred's Energy  
328 Main Street  
Derby, VT 05829  
802-766-4949

Customer #: 8092  
Invoice #: 77844  
Invoice Date: 6/3/13



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670  
Chapter 11

**AFFIDAVIT OF ANGEL GRAVES**

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2. I am the Office Manager at Fred's Plumbing & Hearing, Inc., ("Fred's Energy") and have been at all times relevant.
3. I am familiar with the books and records of Fred's Energy and am responsible to maintaining same and am therefor familiar with the facts of this case and specifically the purchase, delivery and payment for High Sulfur Diesel fuel by Montreal, Maine & Atlantic Railway, Ltd.
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9. Mr. Geoffroy then assigned drivers and provided the driver a delivery ticket to make the deliveries to specific locations printed on the delivery ticket for the requested fuel.
10. MMAR placed an order with Fred's Energy on June 7, 2013 for High Sulfur Diesel fuel to be delivered by Fred's Energy to MMAR's facility at South Yard Road, Newport, Vermont.
11. Delivery of 1,545.7 gallons of High Sulfur Diesel was made to MMAR at South Yard Road, Newport Vermont on June 7, 2013.
12. Mr. Douglas Cota, an employee of Fred's Energy was the driver who made said delivery of High Sulfur Diesel fuel to MMAR on June 7, 2013.
13. The unit price per gallon of High Sulfur Diesel fuel was \$3.165 on June 7, 2013.
14. The total cost of fuel delivered to MMAR on June 7, 2013 was \$4,892.14.
15. A delivery ticket was generated in the normal and ordinary course of business by Fred's Energy for this order placed by MMAR with Freds Energy which reflects the account of the customer, dates of deliveries, gallons delivered, fuel type, Driver number, truck number and amount.
16. Mr. Douglas Cota, as part of his duties in making the delivery of High Sulfur Diesel fuel to MMAR on June 7, 2103, completed the delivery ticket related to said delivery to MMAR.
17. As a result of said delivery and information contained on the delivery ticket, Invoice #78545 was generated in the normal and ordinary course of business. (electronic copy attached hereto as Exhibit A)
18. The original Invoice #78545 and delivery ticket were stored and maintained at Fred's Energy's Derby, Vermont offices.
19. On July 23, 2014, Fred's Energy's offices in Derby, Vermont was struck by lightning during a thunder storm resulting in a both Vermont and Canadian fire crews responding to the fire. The fire caused extensive damage to the offices of Fred's Energy resulting in the destruction of Fred's Energy's paper records, including but not limited to the delivery tickets invoices for products delivered to MMAR.

20. Exhibit A is a true and exact copy of the original Invoice #78545, but for the date it was generated, otherwise it contains all of the same information regarding the delivery of fuel by Fred's Energy to MMAR.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY,

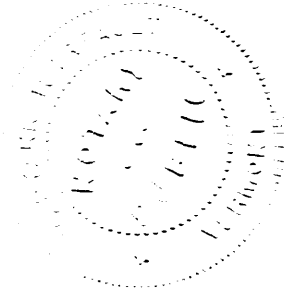
Dated: 4/18/16

Angel Graves  
Angel Graves

STATE OF VERMONT  
COUNTY OF ORLEANS

Personally appeared the above named, Angel Graves, and acknowledged the foregoing to be true and correct, before me this 18 day of April, 2016.

Maureen Streat  
Notary Public/Justice of the Peace  
My Commission Expires: 2-10-2019





# INVOICE

Feb 29, 2016

Montreal Maine Atlantic Railroad  
P.O.Box 39  
Newport, VT 05855

Customer #:	8092
Invoice #:	78545
Invoice Date:	6/7/13
Invoice Total:	\$4,892.14

TERMS: Net Due in 5 Days.

Amount Enclosed: \$ \_\_\_\_\_

*Please Return This Portion With Your Payment*

Description:

Quantity	Description	Unit Price	Amount
1545.7	High Sulfur Diesel	\$3.165	\$4,892.14

Sub Total: \$4,892.14

Tax Total: \$0.00

Total Due: \$4,892.14

Same owner, same company with a new name.



For Fuel or Service At: Montreal Maine Atlantic Railroad  
South Yard Rd  
Newport, VT 05855

Fred's Energy  
328 Main Street  
Derby, VT 05829  
802-766-4949

Customer #: 8092  
Invoice #: 78545  
Invoice Date: 6/7/13