

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION**

**IN RE:**

**ROGER BAILEY III and  
GLORIA BAILEY,**

**Debtor(s).**

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**Case No. : 01-80531**

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**ORDER**

This matter came on for hearing before the undersigned Bankruptcy Judge upon William Murphy's Objection to Proposed Plan of Reorganization. Appearing before the Court were Neil M. O'Toole, attorney for the debtor, Jim H. Joyner, attorney for William T. Murphy d/b/a William T. Murphy Plumbing Company ("Murphy"), Jason Crump, attorney for C & C Enterprises, Inc. ("C & C"), and Richard M. Hutson, Chapter 13 Trustee. The issue before the Court is whether Murphy, a subcontractor with a properly filed Claim of Lien, is entitled to priority in payment as against the claim of the general contractor C & C.

This court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (K) and (L) which this court may hear and determine.

Murphy was a plumbing subcontractor employed in the construction of the home of the Debtor. Murphy provided labor and materials to general contractor C & C in the amount of \$5,594.00 during the period from September 15, 1997 through April 2, 1998. On May 7, 1998, C & C filed a Claim of Lien, pursuant to N.C.G.S. § 44A-12, which indicates that the first date of

furnishing labor and materials on the Debtor's property was April 1997. C & C obtained a judgment against the Debtors on September 28, 1999 for \$43,265.98. Murphy filed a Claim of Lien on July 14, 1998 which indicates that the first date of furnishing labor and materials on the Debtor's property was September 15, 1997 and served notice of that claim of a lien on C & C on July 22, 1998. Murphy also gave notice in writing to the Debtor of a lien upon funds pursuant to N.C.G.S. § 44A-18 on November 3, 1998.

The Debtor filed for relief under 11 U.S.C. Chapter 13 on February 21, 2001. Notice of Proposed Plan was filed on April 6, 2001. Murphy objected to the proposed plan on the basis that Murphy's secured status was impaired and not recognized by the proposed plan of confirmation. On July 5, 2001, an Order was entered confirming the Debtor's Plan without prejudice as to the treatment of Murphy's claim and a hearing was scheduled to determine the treatment of Murphy's claim in this case.

C & C claims that its lien has a priority date of April 1997, which is the date that it first furnished labor and materials to the Debtor. Murphy contends that C & C's lien only has priority from the date of entry of the judgment, September 28, 1999, because of certain defects in the judgment which render it a simple money judgment. N.C.G.S. § 44A-10 provides that a materialmen's lien relates back to the time of first furnishing of labor or materials. N.C.G.S. § 44A-11 provides that a materialmen's lien shall be perfected as of the time set forth in N.C.G.S. § 44A-10 upon filing a claim of lien pursuant to N.C.G.S. § 44A-12 and may be enforced pursuant to N.C.G.S. § 44A-13. A judgment to enforce a materialmen's lien must state the effective date of the lien and contain a general description of the real property subject to the lien to provide notice that it is more than a money judgment. Miller v. Lemon Tree Inn of Roanoke Rapids, Inc., 32 N.C. App. 524, 529 (1977). The judgment must also direct the sale of the real

property subject to the lien thereby enforced. N.C.G.S. § 44A-13(b). The judgment did not (1) state the effective date of the lien; (2) contain a general description of the real property; or (3) direct the sale of the real property subject to the lien thereby enforced. Therefore, C & C only has a money judgment which was effective as of the date of entry on September 28, 1999. The judgment entered by the Superior Court judge states as follows: “Evidence by both plaintiff and defendants was presented in such a way as to make it extremely difficult to define or delineate the legal issues.” This Court finds it is very plausible that the Court only intended to enter a money judgment for breach of contract.

Murphy argues that its claim has priority because of (1) a valid lien on funds as provided by N.C.G.S. § 44A-18 with a perfection date of November 3, 1998 or (2) a lien on the real property pursuant to subrogation under N.C.G.S. § 44A-23 with a priority date of September 15, 1997, the date that materials were first furnished. Murphy’s lien on funds was perfected by serving the Debtor, as the obligor, pursuant to N.C.G.S. § 44A-18. This lien on funds continues upon the funds in the hands of a general contractor who receives payment. N.C.G.S. § 44A-20(b). In addition, an obligor who makes payment to a contractor after receipt of notice from a subcontractor is personally liable up to the amount of such wrongful payments. Id.

Murphy also claims a subrogation lien created by N.C.G.S. § 44A-23. Under that section, subcontractors have the right to step into the shoes of the general contractor and, to the extent of the subcontractor’s claim, enforce the contractor’s lien on that land. This lien is subject to all defenses that could have asserted against the general contractor, including payment. The subcontractor’s subrogation rights can be destroyed if the general contractor waives its lien rights before the subcontractor perfects its subrogation lien. C & C does not deny that Murphy has properly perfected its lien in this case.

As a first tier subcontractor, Murphy has perfected his statutory lien on funds owed to the general contractor, pursuant to N.C.G.S. § 44A-18, et seq. This lien is not on the land but is a direct lien on the funds owed to the general contractor. C & C does not deny that Murphy has a lien upon funds owed to him but contends that the amount of the lien is only \$3,000 and not \$5,594.

N.C.G.S. § 44A-18 provides that upon compliance with Article 2 of Chapter 44A, a subcontractor who provides labor and materials is entitled to a lien upon funds owed to the contractor. N.C.G.S. § 44A-18(1). The subcontractor may perfect its lien by filing written notice with the obligor. N.C.G.S. § 44A-18(6). Perfection of the lien entitles a creditor to priority over the interest or claims of others in the funds. N.C.G.S. § 44A-22. Murphy perfected its lien on July 24, 1998 and now has a secured claim and is entitled to be paid in full prior to any payments being dispersed to C & C.

Accordingly, it is **ORDERED, ADJUDGED AND DECREED** that W.T. Murphy be paid the sum of \$5,594.00 under this Chapter 13 plan before any monies are paid to C & C Enterprises and that when Murphy is paid in full, C & C shall be entitled to payment under its allowed claim in this proceeding.

This the 17 day of October, 2001.

CATHARINE R. CARRUTHERS

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Catharine R. Carruthers  
United States Bankruptcy Judge