

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

SHARON A. CRUTCHFIELD,

Case No. 02-12671-MAM-11

Debtor.

**ORDER OVERRULING DEBTOR'S OBJECTION TO
THE CLAIM OF MORGAN AND BLAKE KITCHENS**

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This case is before the Court on Sharon A. Crutchfield's objection to claim no. 4 filed by Morgan and Blake Kitchens in her chapter 11 bankruptcy case. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and the Court has the authority to enter a final order. For the reasons given below, the Court holds that the debtor's objection to the claim of Morgan and Blake Kitchens is overruled and the claim is allowed as filed.

FACTS

On September 25, 1997, Morgan and Blake Kitchens executed a \$1,470,287.54 mortgage on certain real property located in Baldwin County, Alabama in favor of AmSouth Bank ("AmSouth Mortgage"). The mortgage was recorded in the Baldwin County Probate Court records in Real Property Book 780, at Page 1692. The Kitchens subsequently acquired additional real property in Baldwin County and sold it to Sharon A. Crutchfield for \$900,000 on May 8, 1998.

Ms. Crutchfield paid the Kitchens \$90,000 in cash and executed an \$810,000 promissory note payable to the Kitchens for the balance of the purchase price on May 8, 1998. The Kitchens gave Ms. Crutchfield a warranty deed and retained a vendor's lien on the property to secure payment of the promissory note ("Kitchens' Lien"). The Kitchens' Lien was recorded in Real Property Book 824, Page 1280 and it stated that the sale of the property was subject to both the AmSouth Mortgage and a separate agreement signed on the same day (May 8, 1998) between the Kitchens and AmSouth that was recorded in Real Property Book 824, Page 1271.

The separate agreement referenced in the Kitchens' Lien stated that the Kitchens and Ms. Crutchfield agreed that the Kitchens would collaterally assign their interest in the \$810,000 promissory and vendor's lien to AmSouth as additional collateral to secure payment of their \$1,470,287.54 mortgage ("AmSouth Assignment"). It was recorded in Real Property Book 824, Page 1286. In the AmSouth Assignment, the Kitchens agreed to "grant a security interest in and sell, transfer, assign, set over and convey to [AmSouth]" the Kitchens' Lien and promissory note on the property. The Kitchens further agreed to "remit, release, quitclaim and convey to [AmSouth] all of [the Kitchens'] respective right, title and interest in and to said real estate described in the Vendor's Lien Deed." However, the Kitchens also agreed that AmSouth could "bid at any sale for the foreclosure of the [Vendor's Lien and promissory note] and may purchase the Vendor's Lien if the highest bidder therefore, and the [Kitchens], jointly and severally further agree[d] to pay a reasonable attorney's fee to [AmSouth] . . . for the foreclosure . . . said fee to be a part of the Debt hereby secured." And finally, the Kitchens agreed that, so long as their debt to AmSouth had not been paid, they would not "cancel or satisfy the Assigned Note or the Vendor's Lien or release the obligors thereon" without AmSouth's prior written consent.

On February 12, 2002, AmSouth filed a "Satisfaction of Mortgage" which stated:

KNOW ALL MEN BY THESE PRESENTS, That, the undersigned, AmSouth Bank, acknowledges full payment of the indebtedness secured by that certain MORTGAGE, executed by, MORGAN D. KITCHENS, A/K/A MORGAN DWAYNE KITCHENS AND BLAKELY M. KITCHENS A/K/A BLAKELY MARSTON KITCHENS A MARRIED MAN, the date of 09/25/1997, which said MORTGAGE was recorded in the office of JUDGE OF PROBATE, BALDWIN County, ALABAMA, BOOK # REAL 824, PAGE # 1280, which said MORTGAGE in the amount of (\$1,470,287.54)ONE MILLION FOUR HUNDRED SEVENTY THOUSAND TWO HUNDRED EIGHTY SEVEN & 54/100 and the undersigned does further hereby release and satisfy MORTGAGE.

Ms. Crutchfield filed a chapter 11 bankruptcy case in this Court on May 14, 2002. In her amended schedules, Ms. Crutchfield listed the Kitchens as holding a \$650,980.96 claim secured by the Kitchens' Lien. The Kitchens filed claim no. 4 in the case on June 19, 2002 in the same amount. Ms. Crutchfield made regular payments to the Kitchens on the \$810,000 promissory note outside of her chapter 11 plan until August 8, 2002 when Ms. Crutchfield filed a motion for authority to refinance her promissory note with the Kitchens. Under the refinance agreement, the parties agreed to extend the term of the contract for two years with the Kitchens' Lien retained on the property. The Court granted Ms. Crutchfield's refinance motion on September 16, 2002.

On September 30, 2003, Ms. Crutchfield filed a motion to sell the real property securing the Kitchens' Lien. She stated in her motion that the Kitchens held a properly recorded first mortgage on the property on which they were owed \$630,000. The Court granted Ms. Crutchfield's motion to sell on October 10, 2003 and authorized her to pay the Kitchens' \$630,000 first mortgage lien from the proceeds. Ms. Crutchfield subsequently filed a motion to alter or amend the Court's order granting her motion to sell. In her motion to alter or amend, Ms. Crutchfield alleged that a title search on the property revealed that the Kitchens' Lien may have been cancelled by AmSouth's "Satisfaction of Mortgage" filing. If the Kitchens' Lien was

cancelled, Ms. Crutchfield states that the proceeds from the property sale could be used to pay all her unsecured creditors rather than just the Kitchens.

Ms. Crutchfield filed an objection to the Kitchens' \$650,980.96 claim in her case on January 6, 2004. In her objection, Ms. Crutchfield states that the Kitchens' claim is unsecured because the Kitchens' Lien was released by AmSouth's "Satisfaction of Mortgage." AmSouth filed a motion to intervene in Ms. Crutchfield's case on January 9, 2004 and its motion was granted on January 20, 2004. In its response to Ms. Crutchfield's objection, AmSouth states that it did not have authority to release the Kitchens' Lien, and even if it did, that its satisfaction was so defective and confusing on its face that it put Ms. Crutchfield on constructive notice that the Kitchens' Lien had not been effectively released. The Kitchens, through their own counsel, filed a response to Ms. Crutchfield's objection to their claim on March 11, 2004. The Kitchens adopt the position taken by AmSouth in its response to Ms. Crutchfield's objection, while reserving the right to present their own separate arguments and defenses pending the Court's decision in this case.

LAW

In this case, the Court must determine the effect of AmSouth's filing of a document titled "Satisfaction of Mortgage" that referenced, at least in part, a security agreement between Ms. Crutchfield and Morgan and Blake Kitchens. Outside of bankruptcy, this would not be difficult because no party has alleged that the real property has been sold to a bona fide purchaser or is subject to a judicial lien obtained by a judgment creditor. *See Haas v. Internal Revenue Service (In re Haas)*, 31 F.3d 1081, 1084 (11th Cir. 1994)("mistaken satisfaction of a mortgage does not affect the validity of an unpaid secured note secured by a mortgage where no rights of innocent third parties have intervened"). However, when the buyer filed a chapter 11 bankruptcy, she was

given the status of a bona fide purchaser and judicial lien holder under the Bankruptcy Code for the benefit of all of the creditors of the debtor. 11 U.S.C. §544.

An objection to a proof of claim is filed pursuant to § 502(a)(1). Under Fed. R. Bankr. P. 3001(f), “a proof of claim executed and filed in accordance with the[] [Bankruptcy] rules shall constitute prima facie evidence of the validity and the amount of the claim.” Therefore, Ms. Crutchfield bears the initial burden of proof as to the objection. Once an issue is presented, the burden shifts back to the claimant who then has the ultimate burden to prove entitlement. See *In re Consumers Realty & Dev. Co., Inc.* 238 B.R. 418, 422 (8th Cir. BAP 1999); *Matter of Missionary Baptist Foundation of America*, 818 F.2d 1135, 1143 (5th Cir. 1987); *In re Stoecker*, 143 B.R. 879, 883 (N.D. Ill. 1992), aff’d in part, vacated in part, 5 F.3d 1022 (7th Cir.), reh’g denied, (1993); *In re Harrison*, 987 F.2d 677, 680 (10th Cir. 1993); *In re Allegheny Int’l, Inc.*, 954 F. 2d 167, 173-74 (3rd. Cir. 1992).

The Court will discuss the Section 544 powers of the debtor and the status they give her, AmSouth’s powers under its security agreement with the Kitchens, constructive notice under Alabama law and how it relates to Ms. Crutchfield’s status, and the payments made by Ms. Crutchfield since the filing of the bankruptcy.

A.

SECTION 544 STRONG ARMS POWERS

Under §544 of the Bankruptcy Code, a chapter 11 debtor (as trustee) is given certain “strong arm” powers to “gather in the property of the estate.” *Kapila v. Atlantic Mortgage and Inv. Corp. (In re Halabi)*, 184 F.3d 1335, 1337 (11th Cir. 1999). These include the right to act as a bona fide purchaser of property for value under §544(a)(3) and the right to act as a hypothetical judicial lien holder under §544(a)(1). Both powers relate to the debtor’s “property or rights to property;” therefore, they are governed by state law.

Alabama is a “title theory” state that has adopted the general rule of “first in time, superior in right” regarding the filing of encumbrances against real property. *Bancboston Mortgage Corp. v. Gobble-Fite Lumber Co.*, 567 So.2d 1337, 1338 (Ala. 1990). The basis for this general rule is found in Ala. Code §35-4-90, which provides in relevant part:

(a) All conveyances of real property, deeds, mortgages, deeds of trust or instruments in the nature of mortgages to secure any debts are inoperative and void as to purchasers for a valuable consideration, mortgagees and judgment creditors without notice, unless the same have been recorded before the accrual of the right of such purchasers, mortgagees or judgment creditors.

Ala. Code §35-4-90(a). The Alabama Supreme Court has held that under this rule, “[t]he order of priority between persons claiming an interest in the same property, by mortgage or otherwise, is fixed by the order in which they are filed for record.” *Bancboston* at 1338 (emphasis added).

In this case, the Kitchens’ Lien against the property was properly recorded in Real Property Book 824, Page 1280 on May 8, 1998. It stated that the sale of the property was subject to the AmSouth Mortgage (a \$1,470,287.54 mortgage executed by the Kitchens in favor of AmSouth on September 25, 1997) and a separate agreement signed on the same day between the Kitchens and AmSouth that was recorded in Real Property Book 824, Page 1286. Upon filing, the AmSouth Mortgage and Kitchens’ Lien had priority against any subsequent person claiming an interest in the property. *Bancboston* at 1338.

On February 12, 2002, AmSouth mistakenly filed a “Satisfaction of Mortgage” stating it related to Real Property Book 824, Page 1280, where the Kitchens’ Lien (rather than the AmSouth Mortgage) was recorded. The buyer of the property, Ms. Crutchfield, filed a chapter 11 bankruptcy case on May 14, 2002 in this Court. She was given the §544 “strong arm” powers of being able to act as a bona fide purchaser and a judicial lien holder against the property as of her bankruptcy petition date. Although Ms. Crutchfield initially listed the Kitchens as holding a \$650,980.96 secured claim in her case, she subsequently filed a complaint seeking to avoid the

Kitchens' Lien apparently after she received a title report on the property which indicated that the Kitchens' Lien had been cancelled.¹

AmSouth has intervened in this case to argue that its "Satisfaction of Mortgage" did not cancel the Kitchens' Lien on the property and the Kitchens have adopted AmSouth's position. AmSouth makes two separate arguments to support its position. The first is that AmSouth lacked the authority to cancel the Kitchens' Lien under its security agreement with the Kitchens; therefore, AmSouth's satisfaction was void and ineffective. The second is that even if AmSouth had the authority to cancel the Kitchens' Lien, AmSouth's satisfaction was so defective and confusing on its face that it would have given Ms. Crutchfield constructive notice that the Kitchens' Lien had not been effectively released. The Court will examine each of AmSouth's arguments below.

B.

AMSOUTH'S AUTHORITY UNDER THE SECURITY AGREEMENT

When the Kitchens sold the property at issue in this case to Ms. Crutchfield, they contemporaneously entered into a security agreement with AmSouth under which the Kitchens assigned their interest in the \$810,000 promissory and vendor's lien to AmSouth as additional collateral to secure payment of their \$1,470,287.54 mortgage to AmSouth. In the AmSouth Assignment, the Kitchens agreed to "grant a security interest in and sell, transfer, assign, set over and convey to [AmSouth]" the Kitchens' Lien and promissory note on the property. They further agreed to "remit, release, quitclaim and convey to [AmSouth] all of [the Kitchens'] respective right, title and interest in and to said real estate described in the Vendor's Lien Deed."

¹There was no testimony received as to this fact, but no party disputed it. The Court did hold, in an oral ruling, that the title examiner could not testify as to her examination of the title, at least insofar as the testimony included an opinion on the ultimate issue. See, e.g., *Sagamore Park Centre Associates Limited Partnership v. Sagamore Park Properties*, 200 B.R. 332, 340-41 (N.D. Ind. 1996); *Hollis v. Alexander*, 101 So.2d 292 (Ala. 1958).

Notwithstanding this language, AmSouth argues that other provisions of the assignment show that only the Kitchens had the authority to cancel the Kitchens' Lien. In the provisions cited by AmSouth, the Kitchens agreed that AmSouth could "bid at any sale for the foreclosure of the [Vendor's Lien and promissory note] and may purchase the Vendor's Lien if the highest bidder therefore." They also agreed that, so long as their debt to AmSouth had not been paid, they would not "cancel or satisfy the Assigned Note or the Vendor's Lien or release the obligors thereon" without AmSouth's prior written consent."

The Court is not persuaded by AmSouth's arguments. In the assignment, the Kitchens agreed to "grant a security interest in and sell, transfer, assign, set over and convey to [AmSouth]" the Kitchens' Lien and promissory note on the property (emphasis added). Although it is clear that the Kitchens intended to grant AmSouth a security in Kitchens' Lien, it is just as clear that they intended to assign their interest in the Vendor's Lien and promissory note to AmSouth. The Kitchens also agreed to "grant a security interest in and sell, transfer, assign, set over and convey to [AmSouth]" the Kitchens' Lien and promissory note on the property. In the case of *Associates of Selma, Inc. v. Whetstone*, 628 So. 2d 578 (Ala. 1993), similar language led the Alabama Supreme Court to hold that an assignment was unconditional or unqualified. "[I]t is a complete transfer of the whole thing granted." *Associates*, 628 So.2d at 579.

AmSouth's argument that only the Kitchens retained the authority to cancel or satisfy the Kitchens' Lien is not supported by the assignment provisions it cites. The first provision prohibits the Kitchens, as a joint party to the Vendor's Lien and promissory note agreement, from cancelling or satisfying the Vendor's Lien without AmSouth's permission. It does not prohibit AmSouth from unilaterally doing the same thing. The second provision gives AmSouth the right to purchase the Vendor's Lien at a foreclosure sale if it is the highest bidder, charge its attorneys fees to the Kitchens, and consider its attorneys fees to be part of the Kitchens' debt secured by the

assignment and the AmSouth Mortgage. Like the first provision, this one does not prohibit AmSouth from cancelling or satisfying the Kitchens' Lien either. Rather, it simply demonstrates the parties' intent to allow AmSouth to participate in any foreclosure sale of the Vendor's Lien and promissory note and to add any attorneys fees it incurred to the amount of the Kitchens' debt secured by the AmSouth Mortgage and the assignment (this would increase the amount the Kitchens would have to pay to redeem their property after foreclosure). After considering the entire assignment, including all the provisions cited by the parties, the Court finds that AmSouth had the authority to cancel or satisfy the Kitchens' Lien.

C.

CONSTRUCTIVE NOTICE UNDER ALABAMA STATE LAW

Under Alabama state law, a party claiming to be a bona fide purchaser or priority judicial lien holder is charged with “not only actual knowledge but also constructive notice and inquiry notice.” *Haas v. Internal Revenue Service (In re Haas)*, 31 F.3d 1081, 1090 n.13 (11th Cir. 1994) (citing *White v. Boggs*, 455 So.2d 820, 821-22 (Ala. 1984)). “[P]urchasers of real estate are ‘presumed to have examined the title records and knowledge of the contents of those records is imputed [to them].’” *Haines v. Tanning*, 579 So.2d 1308, 1310 (Ala. 1991) (quoting *Walker v. Wilson*, 469 So.2d 580, 582 (Ala. 1985)). Upon examination of the records, “‘whatever is sufficient to put one on inquiry as to the titleholder is enough to charge him with notice . . . and whatever is sufficient to put one on guard, and call for inquiry, is notice of everything to which inquiry would lead.’” *Jones v. Marchman (In re Marchman)*, 268 B.R. 859, 864 (Bankr. M.D. Ala. 2001) (quoting *Bank of Huntsville v. Key*, 394 So.2d 67, 68 (Ala. Civ. App. 1981).

Although this is a high standard, it does not require a party claiming to be a bona fide purchaser or priority judicial lien holder to examine the title records with the precision of a lawyer or title examiner. Instead, only actual or constructive knowledge of the type that “‘would

cause a reasonable person to make an inquiry which would reveal the interest of a third party” is required. *Manning v. Wingo*, 577 So.2d 865, 868 (Ala. 1991) (quoting *Rolling “R” Constr., Inc. v. Dodd*, 477 So.2d 330, 331-32 (Ala. 1985) (emphasis added)). Therefore, the Court must determine whether Ms. Crutchfield had any actual or constructive knowledge regarding AmSouth’s satisfaction that would have led her, as a reasonable person, to discover that the satisfaction was mistakenly filed.

There is no dispute the Kitchens’ Lien would clearly have priority over any person subsequently claiming an interest in the property absent the “Satisfaction of Mortgage” mistakenly filed by AmSouth. However, after the mistaken satisfaction was filed, any person without actual knowledge or constructive notice that the satisfaction was filed by mistake could become a bona fide purchaser or priority judicial lien holder. *Haas v. Internal Revenue Service (In re Haas)*, 31 F.3d 1081, 1086 (11th Cir. 1994) (citing to *Bay Minette Production Credit Ass’n v. Citizens’ Bank*, 551 So.2d 1046, 1048 (Ala. 1989)) (“[p]ursuant to Ala. Code §35-10-28, a mortgagee’s recordation of satisfaction of a mortgage suffices to extinguish the lien of that mortgage”).

Ms. Crutchfield was given whatever rights a bona fide purchaser or judicial lien holder could have had against the property as of the day she filed bankruptcy by virtue of §544 of the Bankruptcy Code. 11 U.S.C. §544. She was also relieved of her actual knowledge of the Kitchens’ Lien under the same section. *Jones v. Marchman (In re Marchman)*, 268 B.R. 859, 864 (Bankr. M.D. Ala. 2001) (“§544 renders any actual knowledge of the [debtor] immaterial”). Therefore, Ms. Crutchfield is a bona fide purchaser of the property or priority judicial lien holder unless she had constructive notice that AmSouth’s “Satisfaction of Mortgage” was filed by mistake.

Ms. Crutchfield argues that her title search relating to the property at issue in this case did not give her any constructive notice or inquiry notice that AmSouth's satisfaction had been filed by mistake. She states that a reasonable person who searched the property records relating to the real property at issue in this case would not have discovered that AmSouth filed its satisfaction by mistake. A reasonable person would have compared the document titled "Satisfaction of Mortgage" with the document it referenced in the records, titled "Warranty Deed with Vendor's Lien Retained," and concluded that the Kitchens' Lien (the vendor's lien) had been released, according to Ms. Crutchfield.

AmSouth argues that discrepancies in the two documents would have given a reasonable person constructive notice, and subsequently, inquiry notice that the vendor's lien had not been released because AmSouth's satisfaction was filed by mistake. It calls attention to the titles of the two documents: one referencing a vendor's lien and the other a mortgage. AmSouth also points out that the satisfaction describes AmSouth's acknowledgment of full payment on a mortgage executed by the Kitchens, whereas the Kitchens' Lien describes the Kitchens as grantors who are selling (not mortgaging) property to Ms. Crutchfield. Finally, AmSouth states that the Satisfaction describes a \$1,470,287.54 mortgage executed on September 25, 1997 while the Kitchens' Lien describes an \$810,000 vendor's lien that was executed on May 8, 1998.²

As stated above, the burden of proof is initially on Ms. Crutchfield. The court concludes that her proof of the filing of the satisfaction of mortgage rebuts the Kitchens initial claim of security. The burden then falls on the Kitchens to overcome the validity of the satisfaction document.

² Although not argued by AmSouth, the Court notes that AmSouth's Satisfaction states that it is releasing a mortgage executed by the Kitchens on September 25, 1997 that was recorded in "Book # Real 824, Page # 1280" whereas the Kitchens' Lien states that it is subject to a mortgage executed by the Kitchens on September 25, 1997 that was recorded in "Real Property Book 780, Page 1692."

The Court concludes that the Kitchens sustained their burden. The decision rests on this Court's own view of what a reasonable person would see when looking at the title records. In this case, the documents on file raise enough red flags to lead a reasonable person to inquire further. The "Satisfaction of Mortgage" raises doubts as to its accuracy in three areas. First, the document states it is releasing a mortgage and not a vendor's lien. Second, the date of the mortgage and the vendor's lien are different. Third, the mortgage amount of \$1,470,287.54 is not close to the \$810,000 vendor's lien face amount.

The standard of inquiry that a bona fide purchaser must meet is set forth in the *Marchman* case cited above.

"[W]hatever is sufficient to put one on inquiry as to the titleholder is enough to charge him with notice. Means of knowledge may be equivalent to knowledge. Whatever is sufficient to put one on guard, and call for inquiry, is notice of everything to which inquiry would lead.

Jones v. Marchman (In re Marchman), 268 B.R. 859 (Bankr. M.D. Ala. 2001) (citing *First Alabama Bank of Huntsville v. Key*, 394 So.2d 67, 68 (Ala. Civ. App. 1981)).

Under this standard (or a very similar one in other jurisdictions), the cases that have held that a mistaken mortgage release is effective deal with release documents that have no discrepancies on their face. *Haas v. Internal Revenue Service (In re Haas)*, 31 F. 3d 1081 (11th Cir. 1994); *Sagamore Park Centre Associates Limited Partnership v. Sagamore Park Properties*, 200 B.R. 332 (N.D. Ind. 1996); *Collins v. Bank of New England-West, N.A. (In re Daylight Dairy Products, Inc.)*, 125 B.R. 1 (Bankr. D. Mass. 1991); *Central Bank v. McGregor (In re Whitlow)*, 116 B.R. 158 (Bankr. W.D. Mo. 1990); *In re Herr*, 79 B.R. 793 (Bankr. N.D. Ind. 1987).

In cases where at least one conspicuous discrepancy appeared, courts have held that constructive notice required more inquiry. *Jones v. Marchman (In re Marchman)*, 268 B.R. 859 (Bankr. M.D. Ala. 2001)(holding deed from one spouse where prior deed reflected husband and

wife ownership interests required inquiry); *Haines v. Tinning*, 579 So.2d 1308 (Ala. 1991) (holding two deeds with overlapping legal descriptions required inquiry); *Manning v. Wingo*, 577 So.2d 1865 (Ala. 1991)(holding record title in divorced husband(deceased) and wife precluded bona fide purchaser status to purchaser from heir of deceased husband); *J.S. Carroll Mercantile Co. v. Harrell*, 74 So. 252 (Ala 1917)(holding that deed with incorrect legal description that said land was “my share of the estate of heirs of W” sufficient to require inquiry); *Mosello v. Ali, Inc. (In re Mosello)*, 190 B.R. 65 (Bankr. S.D.N.Y. 1995)(holding document titled “Partial Release” sufficient to require inquiry when legal description described all property).

The cases require a “curiosity” about facts that do not fit. With not one but three such facts here, a bona fide purchaser would have to search further. What would a further inquiry reveal? That Kitchens had a mortgage to AmSouth Bank in the amount shown in the release that was executed on the date shown in the release. This knowledge would have led to inquiry of the Bank or the Kitchens as to the facts. The facts would have shown that the release was not of the Kitchens’ Lien but of the AmSouth mortgage.


D.

POSTPETITION LOAN PAYMENTS TO KITCHENS BY DEBTOR

Ms. Crutchfield also asserts that the sums she has paid on the mortgage since the filing of the case (Debtor’s Exh. 1) should be credited to the Kitchens’ alleged unsecured loan when Ms. Crutchfield proposes a chapter 11 plan. Since the court concludes that the lien is not avoidable, the payments are properly credited to the secured claim.

THEREFORE IT IS ORDERED that the objection of the debtor to claim no. 4 of Morgan and Blake Kitchens is OVERRULED and the claim is allowed as filed.

Dated: April 21, 2004


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE

