

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Angie Anderson  
SSN XXX-XX-4408

**CASE NO. 04-35217 GFK**

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. BAC Construction Services, LLC, dba Banner Roofing Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this objection at 10:30 a.m. on November 23, 2004, before the Honorable Gregory F. Kishel in Courtroom 228B at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on November 22, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than November 20, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed September 7, 2004. The case is now pending before this Court.
5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.
6. Debtor is indebted to Secured Creditor in the amount of \$7,146.00, as evidenced by that certain Findings of Fact, Conclusions of Law, Order for Judgment and Judgment ("Judgment"), a copy of

which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mechanic's lien on real estate in which Debtor has an interest as evidenced by that the Judgment dated November 4, 2003. Pursuant to the Judgment, Secured Creditor is entitled to its interest and to its costs as of the date of filing for a total amount owing of \$10,973.09.

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in her payments to Secured Creditor in the total amount of \$10,973.09, and that said delinquency existing in the Judgment cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrcty.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, fails to identify the manner and time of payment on the Judgment so it is not possible to determine if the plan complies with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. Said plan is further objected to on the basis that the plan understates the indebtedness to Secured Creditor.

11. The plan, as proposed, is not made in good faith by Debtor.

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 26th day of October, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, Minnesota 55125  
651-209-3300  
Attorney Reg. No. 14969X

STATE OF MINNESOTA

COUNTY OF DAKOTA

BAC Construction Services, LLC,  
dba Banner Roofing Corporation,

Plaintiff,

v.

Angie Anderson,

Defendants.

RECEIVED

DISTRICT COURT

2004 JUL 22 4 10 03 PM

FIRST JUDICIAL DISTRICT

DAKOTA COUNTY  
SHERIFF

DON GURMUCI  
SHERIFF  
DAKOTA COUNTY  
HASTINGS, MN

Case Type: Mechanic's Lien

Court File No.: 19-C0-03-8532

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
ORDER FOR JUDGMENT AND JUDGMENT**

The above entitled matter came on for hearing before one of the Judges of the above named Court at the Dakota County Judicial Center, City of Hastings, State of Minnesota, on November 4, 2003. Eric D. Cook of Wilford & Geske, appeared on behalf of Plaintiff and no other appearances were made. The Court having heard the testimony and being fully advised in the premises, upon all the files, pleadings and proceedings herein, makes the following:

**FINDINGS OF FACT**

1. Banner Roofing is a Minnesota corporation with its principal place of business located at 6015 Lyndale Avenue S., Minneapolis, MN 55419. At all times relevant, Banner Roofing has been engaged in the business of roofing and related repairs and labor.
2. Defendant, Angie Anderson ("**Defendant**"), resides at 4405 Braddock Trail, Eagan, Minnesota 55123, and is the fee owner of property commonly known as 4405 Braddock Trail, Eagan, Minnesota 55123, and legally described as follows:

Lot 8, Block 2, Lexington Point Seventh Addition

("Property").

FILED DAKOTA COUNTY  
VAN A. BROSTROM, Court Administrator

NOV 04 2003

BY RSK DEPUTY

STATE OF MINNESOTA, COUNTY OF DAKOTA  
Certified to be a true and correct copy of the original  
on file and of record in my office this 12th  
day of January, 2004  
VAN A. BROSTROM, COURT ADMINISTRATOR  
BY Janice Bergmark  
DEPUTY

**EXHIBIT** A

REC'D NOV 04 2003

3. On and between July 19, 2002 and August 15, 2002, Banner Roofing furnished labor, skill and material for improvement of the Property, including the removal of the existing roof, installation and construction of new roof.

4. The agreed upon price and reasonable value of the skill and materials furnished by Banner Roofing for the improvement of the Property that remains unpaid as of May 31, 2003, was \$4,863.84, together with interest thereon, costs and attorneys' fees as allowed by statute, and is still due and owing from the Defendant to Banner Roofing.

5. All of the labor, skill and material was furnished for and actually used in the improvement of the Property with the knowledge, consent and at the request of the Defendant.

6. Banner Roofing either has complied with all notices required to be given under Chapter 514 of Minnesota Statutes, or said notices were not required.

7. On or about December 10, 2002, and within 120 days after the date of the last furnishing of roofing materials and related labor for improvements to the Property, Banner Roofing filed for record in the office of the Dakota County Recorder, as Document No. 1969892, a Mechanic's Lien Statement, a copy of which is attached as Exhibit C and incorporated herein.

8. Banner Roofing did serve a copy of the Mechanic's Lien statement upon the Defendant by certified mail on December 9, 2002.

9. That the labor, skill and materials furnished by Banner Roofing constituted an improvement to the Property within the meaning of Chapter 514 of the Minnesota Statutes.

10. Banner Roofing's Mechanic's Lien on the Property is superior to the right, title, interest, mortgage or lien of any other entity or person, except those liens that the Court finds to be coordinate with or prior to Banner Roofing's lien.

11. For the purposes of prosecuting this matter, Banner Roofing has retained the services of Wilford & Geske, and has incurred, or will incur, expenses for attorney's fees, costs and disbursements.

12. Banner Roofing supplied roofing materials and related labor to the Property pursuant to an agreement, with a remaining balance owed as of May 31, 2003, of \$4,863.84 ("Agreement"), which sum together with additional accrued interest, remains unpaid.

13. Despite demand, the Defendant has refused and failed to pay in full as agreed under the Agreement, and continues to fail to pay the sums due to Banner Roofing pursuant to the Agreement and are in breach thereof.

14. The Defendant, the owner of the Property, authorized all roofing materials and related labor to be delivered and incorporated into the Property, and Banner Roofing relied on this knowledge and/or authorization and performed the work on the belief that it would be paid for the reasonable value of its materials and labor.

15. The Defendant knowingly accepted the materials and labor furnished and delivered by Banner Roofing.

16. The Defendant has been unjustly enriched by said materials and labor, and it would be inequitable to allow the Defendant to retain said benefits without making payment to Banner Roofing for the reasonable value of the materials and related labor.

17. The reasonable value of materials and related labor secured by Banner Roofing's Mechanic's Lien for which no payment has been received is \$4,863.84 as of May 31, 2003, plus interest and Banner Roofing's costs and reasonable attorneys' fees.

### CONCLUSIONS OF LAW

1. Adjudging that Banner Roofing has a valid Mechanic's Lien on the Property for the amount of \$4,863.84 as of May 31, 2003, together with interest and reasonable attorneys' fees and costs of \$2,282.16 for a total amount due of \$7,146.00 as of November 4, 2003, with interest to continue to accrue after November 4, 2003 at a rate of 1.33% per month, and such other and further sums as may be now or hereafter become payable to Plaintiff, which additional sums may be established post-judgment by the affidavit of Plaintiff or Plaintiff's attorney.

2. That Plaintiff is granted a decree of foreclosure of the Mechanic's Lien to satisfy said judgment; that the Property hereinbefore described be sold by the Sheriff of Dakota County in a manner provided by law; that the proceeds of said sale be applied, first, to the payment of costs and disbursements of said sale, and second, on the principal of said judgment; that the purchaser at said sale or assigns, if no redemption therefrom is made within the period fixed by statute therefore, be decreed to the absolute owner of the Property purchased at said sale;

3. That the lien of the Mechanic's Lien is prior, paramount and superior to all other liens or interest on, in or against said Property, and barring and foreclosing Defendants from any equity of redemption, equity, lien or interest in the Property, except the right to redeem from said foreclosure sale as provided by statute;

4. Adjudging that Plaintiff is entitled to judgment against Defendant for any deficiency which shall remain after applying the proceeds of said sale to the amount adjudged to be due and owing to Plaintiff.

**ORDER FOR JUDGMENT**

JUDGMENT SHALL BE ENTERED ACCORDINGLY, IMMEDIATELY AND FORTHWITH.

Dated: 11/4/03

*Duane R. Harves*

Judge of District Court  
DUANE R. HARVES

**JUDGMENT**

I hereby certify that the above Conclusions of Law and Order for Judgment constitute the Judgment of the Court.

(SEAL)

VAN A. BROSTROM  
Court Administrator

Dated: November 4, 2003

By: Sheila Gahler  
Deputy

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Angie Anderson  
SSN XXX-XX-4408

Debtor.

**CHAPTER 13 CASE**

**CASE NO. 04-35217 GFK**

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 26, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Angie Anderson  
4405 Braddock Trail  
Eagan, MN 55123-1929

David Gronbeck  
120 S 6<sup>th</sup> St Ste 1100  
Minneapolis, MN 55402

Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 26th day of October, 2004.

/e/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Angie Anderson  
SSN XXX-XX-4408

Debtor.

**CASE NO. 04-35217 GFK**

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This Chapter 13 Case came on before the Court on November 23, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed September 7, 2004, is denied.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court