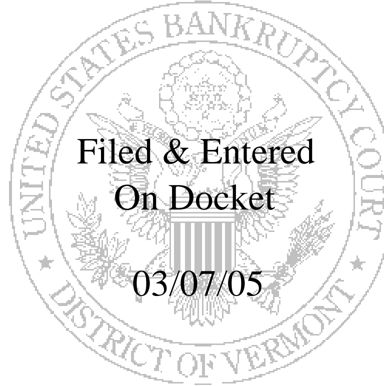
UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:
Rome Family Corporation,
Debtor.

Chapter 7 Case
 # 02-11771



John R. Canney, III, Successor Interim Chapter 7 Trustee of the Estate of Rome Family Corporation,
Plaintiff,
v.

Engelberth Construction, Inc.
Defendant.

Adversary Proceeding
 # 03-1023

Appearances:

John R. Kennelly Esq.
Pratt Vreeland Kennelly Martin & White, Ltd.
Rutland, VT
Attorney for the Plaintiff

Shireen Hart, Esq.
Eggleston & Cramer, Ltd.
Burlington, VT
Attorney for the Defendant

MEMORANDUM OF DECISION
DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Rome Family Corporation ("Rome") seeks a determination of the validity of a lien asserted by Engelberth Construction, Inc. ("Engelberth"). Engelberth moved for summary judgment (doc. #16) asserting that it holds a valid security interest as a matter of law in Rome's real property by virtue of a judgment and mechanic's lien ("Engelberth's Motion for Summary Judgment"). Rome cross-moved for judgment in its favor, asserting that Engelberth has no lien against any of Rome's real property. See Pl.'s Cross-Mot. Summ. J. (doc. #17) ("Rome's Cross-Motion").[1]

This Court has jurisdiction over the subject motions pursuant to 28 U.S.C. §§ 157(b)(2)(B) and 1334.

For the reasons set forth below, the Court denies Rome's Cross-Motion for Summary Judgment and grants Engelberth's Motion for Summary Judgment.

[1] Subsequent to the parties' filing of the cross-motions for summary judgment, the Debtor's chapter 11 case was converted to one under chapter 7 of the Bankruptcy Code. John R. Canney, III, in his capacity as chapter 7 trustee for the estate of Rome Family Corporation (the "Trustee"), moved for and obtained leave to amend the original complaint which, *inter alia,* named the Trustee as plaintiff. All references to Rome include the Trustee.

I. Background Facts

The parties submitted a Stipulated Statement of Undisputed Facts (doc. #10) which, pursuant to local rule are deemed admitted. See, e.g., Vt. LBR 7056-1(a)(3). Rome and Engelberth (collectively, the "Parties") entered into an agreement whereby Engelberth was to build a satellite campus for Rome on its real property located in Killington, Vermont, which Rome planned to lease to Green Mountain College. See Stipulated Statement at ¶3. Rome breached the terms of this agreement and failed to cure its breach. See id. at ¶4. As a result, on October 9, 2001, Engelberth filed a Notice of Lien pursuant to 9 V.S.A. § 1921 et seq. in the Town of Killington (the "Town") Land Records. See id. Thereafter, on December 18, 2001, Engelberth filed an action in state court. See id. at ¶5 (the "Recovery Action").

On January 7, 2002, to perfect its Notice of Lien, Engelberth recorded a Writ of Attachment it obtained on January 3, 2002 (the "Original Writ") in the Town Land Records.[2] The Original Writ contained a blanket reference to the Rome properties located within the Town. On January 9, 2002, Engelberth obtained a revised Writ of Attachment (the "Revised Writ") and recorded it in the Town Land Records on January 10, 2003.[3] The Revised Writ included a description of the property being attached, rather than merely a reference to the description in the Order of Approval.[4] Through mediation, the Parties settled all claims, the terms of which were memorialized in a settlement agreement dated March 29, 2002 (the "Settlement Agreement"). See id. at ¶7. The Settlement Agreement specifically included the language of the judgment to be entered against Rome in the Recovery Action. See id. at ¶8.

On September 5, 2002, the Parties entered into a separate agreement entitled "Agreement to Enter Judgment and to Stay Enforcement of Judgment" (the "Agreement to Enter Judgment"), which required the Parties to stipulate to the entry of a final judgment on September 5, 2003 (the "Stipulation to Final Judgment"). See id. at ¶9-10. In the Stipulation to Final Judgment, the Parties agreed to the immediate execution of the Final Judgment order that had been filed by Engelberth in the Recovery Action. See id. at ¶11. The Parties also agreed that Engelberth would need no court action or authorization to enforce its judgment in the Recovery Action. See id., Exhibit C, ¶ 10. There is no dispute that before the proposed Final Judgment was entered in the Recovery Action, both Parties had at least three opportunities to review its form

---

[2] The information regarding the Original Writ and Revised Writ was provided in Engelberth's Opposition to Rome's Cross-Motion for Summary Judgment (doc. #32) and supported by the Supplemental Affidavit of Pierre LeBlanc (Attach. #1 to doc. #32). Finding no objection to this "Additional Background," see Def.'s Opp. At 1-2, or the corresponding Supplemental Affidavit, the Court considers the facts about the Original Writ and Revised Writ as undisputed and, therefore, deems them admitted. See Vt. LBR 7056-1(a)(3).

[3] See supra note1.

[4] See supra note 1.

and content: (1) within the text of the Settlement Agreement; (2) when the proposed Final Judgment was filed with the state court; and (3) on September 5, 2002, when the Agreement to Enter Judgment and Stipulation to Final Judgment were executed. See Stipulated Statement at ¶13. The state court entered the Final Judgment on September 5, 2002, see id. at ¶12. Rome did not appeal the Final Judgment. See id. at ¶15.

On October 18, 2002, Engelberth filed a certified copy of the Final Judgment in the Town Land Records. See id. On December 6, 2002, Engelberth commenced a foreclosure action relative to the Final Judgment. See id. at ¶16. In response, on December 16, 2002, Rome filed for bankruptcy protection under chapter 11 of the Bankruptcy Code. See id. at ¶17. Rome's chapter 11 case converted to one under chapter 7 on March 11, 2004 (doc. #116).

II. SUMMARY JUDGMENT STANDARD

Summary judgment is proper only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See FED. R. CIV. P. 56(c); FED. R. BANKR. P. 7056. A genuine issue exists only when "the evidence is such that a reasonable [trier of fact] could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. See Anderson, 477 U.S. at 247. Factual disputes that are irrelevant or unnecessary are not material. See id. Furthermore, materiality is determined by assessing whether the fact in dispute, if proven, would satisfy a legal element under the theory alleged or otherwise affect the outcome of the case. See id. The court must view all the evidence in the light most favorable to the nonmoving party and draw all inferences in the nonmovant's favor. See Cruden v. Bank of New York, 957 F.2d 961, 975 (2d Cir. 1992). In making its determination, the court's sole function is to determine whether there is any material dispute of fact that requires a trial. See Anderson, 477 U.S. at 249; see also Palmieri v. Lynch, 392 F.3d 73, 82 (2d Cir. 2004); Delaware & Hudson Ry. Co. v. Conrail, 902 F.2d 174, 178 (2d Cir. 1990).

III. DISCUSSION

The gravamen of the cross-motions for summary judgment is the enforceability of Engelberth's security interest in Rome's real property. Both motions address four distinct arguments, dealing with the procedural sufficiency of the relevant lien-related documents: (1) whether Engelberth's asserted judgment lien was properly perfected under 12 V.S.A. §§ 2901 and 2904 even though the recorded stipulated Final Judgment did not contain a clerk certification of when the Final Judgment became final; (2) whether the property description in the Original Writ renders it void under 9 V.S.A. § 1921(e); (3) whether Engelberth's asserted

contractor's lien[5] is properly perfected under 9 V.S.A. §§ 1921 and 1924 even though the lien was not attached within three months of the Notice of Lien; and (4) whether Engelberth's asserted contractor's lien is properly perfected under 9 V.S.A. §§ 1921 and 1924 even though the Final Judgment did not contain a "brief statement of the contract."[6] As detailed in the background facts, *supra*, the judgment which gives rise to the subject judgment, lien, and writ was negotiated by and between Engelberth and Rome in the Stipulation of Final Judgment. By virtue of the underlying negotiations, Engelberth argues that Rome is estopped from challenging the enforceability of the subject judgment, lien and writ based upon its consent to the terms and entry thereof. The Trustee claims that Engelberth's estoppel argument cannot apply to the Trustee under 11 U.S.C. § 544(a)(1). The Court will address each argument in turn.

(A) Whether the Judgment Lien was Properly Perfected under 12 V.S.A. §§ 2901 and 2904

Rome argues that the judgment lien is not valid because it did not bear a certification of the date the judgment order became final. The controlling statutes are quite straightforward. They provide:

> **§ 2901. Creation of judgment lien**
> A final judgment issued in a civil action shall constitute a lien on any real property of a judgment debtor if recorded as provided in this chapter.
>
> **§ 2904. Recording**
> A judgment creditor may record a judgment lien at any time within eight years from the date the judgment becomes final in the town clerk's office of any town where real property of the debtor is located. Recording shall consist of filing a copy of the judgment **with the date when it became final, certified by the clerk of the court issuing the judgment.** The certification shall be recorded by the town clerk in the land records.

(emphasis added). Rome argues that Vermont law, specifically 12 V.S.A. § 2904, unequivocally provides that no valid lien is created under § 2901 where the judgment creditor failed to have the clerk certify the date the underlying judgment became final. It asserts that Engelberth's failure to include and file a certification of the date that the judgment became final is a fatal defect, rendering the judgment lien void. In making this assertion, Rome relies upon Purcell v. FDIC, 141 B.R. 480, 487 (Bankr. D. Vt., 1992), aff'd, 150 B.R. 111 (D. Vt. 1993). Engelberth counters that in the instant case, where there was a stipulation between the parties

[5] "'Contractor's lien' is merely Vermont's statutory term for 'mechanic's lien' and the two terms are used interchangeably by the Vermont Supreme Court." Glinka v. Hinesburg Sand and Gravel, Inc. (In re APC Construction, Inc.), 132 B.R. 690, 693 n. 2 (D. Vt.1991) (citations omitted).

[6] Rome also claims that if the contractor's lien was properly perfected, then it would only attach to the real estate upon which the improvements were made, relying upon 9 V.S.A. § 1921(e). Engelberth agrees and hence, the Court need not address that argument herein.

authorizing it to record the agreed-upon judgment, the judgment was final upon entry and, therefore, the requirement for certification of finality is unnecessary and its absence is of no legal effect. Engelberth relies upon V.R.C.P. Rules 54(a) and 79(b), as well as In re Howard Prussack, 1989 WL 360853, No. 88-00007, slip op. (Bankr. D. Vt. July 19, 1989) (Conrad, J.), to support its argument that the validity of a judgment is not dependent upon the presence of a clerk's certification of finality.

The Court finds that the stipulated judgment, which is entitled "Final Judgment," was final upon entry and the fact that the judgment did not contain a certification of finality is of no consequence in this instance. The Vermont Rules of Civil Procedure govern state Superior Court orders. Purcell, 141 B.R. at 487. Under those rules, a judgment becomes final by expiration of the time for appeal. V.R. CIV.P. 62(f). However, it is well established that when all parties to an action reach a consensual settlement, no appeal can follow. See In re M.C., 156 Vt. 642, 642, 590 A.2d 882, 882 (1991) (party must be "aggrieved" by decision in order to appeal); see also, In re Estate of Walsh, 133 Vt. 429, 430, 341 A.2d 706, 706 (1975) (party may appeal if party has some legal interest which may be, by the judgment appealed from, either enlarged or diminished). The essential information is the date that the judgment became final, and if, like here, the judgment itself indicates that it is final, the clerk need only certify the authenticity of the record. See Prussack, 1989 WL 360853, at * 3). As this Court (Conrad, J) recognized in Prussack, which also involved a stipulated judgment:

> Vermont case law indicates the finality of a judgment should be determined by case law. Subject to the provisions of V.R.Civ.P. 54(b), a judgment is effective upon entry by the Clerk, provided it is entered as directed in Rule 79(a). It is from the entry that an appeal lies, not the date the Court signed the order, unless of course, the parties stipulated otherwise.

Id. at *4.

The stipulated judgment is captioned "Final Judgment," its form had previously been approved and consented to by Rome, and it is clearly dated with the date it became final, thus negating the need for a separate certification. In Prussack, the Court considered whether a stipulated judgment order, signed by the Court, certified by the state clerk of court, and recorded by the Town Clerk all on the same day (i.e., recorded prior to the expiration of the appellate timetable) satisfied the statute. Id. The Prussack Court found the final judgment did not need the clerk's certification as to its finality. Conversely, in Purcell, where the judgment order was not a stipulated order, the Court found the lack of a clerk's certification that the judgment was final (i.e., that the appeal period had expired without an appeal being filed) was fatal to the creditor's claim of a secured status. 141 B.R. at 487. These are not inconsistent.

Rome makes a bold assertion that Prussack was an erroneous statement of state law by the Bankruptcy Court, without citation to any authority for its pronouncement. Rome simply insists that a "fair reading" of In re Purcell, 141 B.R. 480, clearly indicates that Prussack is no longer good law. The Court has a different

interpretation of Purcell and finds Prussack to be good law in this District. This interpretation is supported by the fact that the Purcell case cites Prussack with approval. See In re Purcell, 141 B.R. at 487.

Since the Final Judgment in the instant case was a stipulated Judgment and the title contained the word "Final," the Court finds that the lien complies with 12 V.S.A. §§ 2901 and 2904 and is valid notwithstanding the absence of the clerk's certification of finality. For the reasons set forth above, the Court finds Rome's position on this point to be without merit. See e.g., In re M.C., 156 Vt. at 642; In re Estate of Walsh, 133 Vt. at 430.

(B) Whether the Contractor's Lien is Valid under 9 V.S.A. §§ 1921 and 1924

______On October 9, 2001, Engelberth filed a Notice of Lien against certain Rome real property, pursuant to 9 V.S.A. § 1921. Thereafter, on December 18, 2001, Engelberth filed an action against Rome in state court and subsequently took actions to perfect its Notice of Lien by recording a writ of attachment (the "Writ") in the Town of Killington Land Records (the "Town Records") on January 10, 2002. Rome now argues that the Notice of Lien (colloquially referred to as a "contractor's lien") and Writ are procedurally defective and unenforceable. The Court does not find this position to be consistent with state law. The salient provisions of the relevant statutes of Title 9 of the Vermont Statutes articulate the following requirements:[7]

> **§ 1921. Extent of lien; notice**
>
> (a) When a contract or agreement is made, whether in writing or not, for erecting, repairing, moving or altering improvements to real properly or for furnishing labor or material therefor, the person proceeding in pursuance of such contract or agreement shall have a lien upon such improvements and the lot of land on which the same stand to secure the payment of the same.
>
> (b) A person who by virtue of a contract or agreement, either in writing or parol, with an agent, contractor or subcontractor of the owner thereof, performs labor or furnishes materials for erecting, repairing, moving or altering such improvements shall have a lien, to secure the payment of the same upon such improvements and the lot of land upon which the same stand, by giving notice in writing to such owner or his or her agent having charge of such property that he or she shall claim a lien for labor or material. Such lien shall extend to the portions of the contract price remaining unpaid at the time such notice is received.
>
> (c) A lien herein provided for shall not continue in force for more than one hundred and twenty days from the time when payment became due for the last of such labor performed or materials furnished unless a notice of such lien is filed in the office of the town clerk as hereinafter provided.

---

[7] Although the statute was amended in 2003, the events at issue took place in 2002, and the Court therefore applies the version of the contractor's lien statute in place as of that time. It is significant to observe that the amended statute extends the lien to continue in force for "180 days" as opposed to "one hundred and twenty days" as set forth in subsection (c). VT. ST. ANN. title 9, § 1921 (2004 Supp.).

. . . .

(e) The lot of land covered by such lien shall be deemed to be all the land owned or held by the owner and used or designed for use in connection with such improvements, but such lien shall not extend to other adjacent lands used for purposes of profit.

. . .

§ 1924. Action to enforce lien

Within three months from the time of filing such memorandum, if such payment is due at the time of such filing and within three months from the time such payment becomes due, if not due at the time of such filing, such person may commence his action for the same, and cause such real estate or other property to be attached thereon. If he obtains judgment in the action, the record of such judgment shall contain a brief statement of the contract upon which the same is founded.

(1) The property description satisfies 9 V.S.A. § 1921(e).

Rome asserts that the property description on the Notice of Lien, "all of the land and premises of Rome Family Corporation in the Town of Killington," is overly broad and fails to comply with the agreement between the parties, and more importantly, fails to comply with the statutory requirement that the lien apply only to such lands as were the subject of the construction contract. Importantly, however, Rome has not disputed Engelberth's response: The property description was corrected when the Revised Writ was recorded and Rome had notice of the property the parties agreed would be subject to the lien. Engelberth also argues that Rome never moved to dissolve the attachment under VT. RULES CIV. PRO. 4.1(e)(2) before the entry of the Final Judgment and, hence, cannot now complain in this Court.

The Court finds the property description in the Original Writ is not fatal to Engelberth's contractor's lien because the Revised Writ corrected the description, and because Rome never moved to dissolve the attachment. In sum, the Court finds Engelberth's argument on this issue to be persuasive and finds Rome's argument to be without merit.

(2) Engelberth's Revised Writ attached in a timely manner under § 1924.

Rome asserts that since the Revised Writ was not filed until the morning of January 10, 2002 it was not filed within three months of the October 9, 2001 Notice of Lien and is therefore not properly perfected under § 1924. However, Engelberth has satisfactorily demonstrated through the Supplemental Affidavit of Pierce LeBlanc, see doc. #32, Attachs. #2 and 3, that an original Writ (dated January 3, 2002) was actually recorded with the Killington Town Clerk on January 7, 2002, together with a letter to the Town Clerk,[8] and

[8] The Supplemental Affidavit indicates that the letter to the Killington Town Clerk specified that the Writ encumbered only the lands and premises described in the Order of Approval and not any other lands and premises. See Leblanc Supp. Aff, Attach. #2 at ¶4.

that this Original Writ was *revised* by the Revised Writ that was filed on January 10th. Thus, the Revised Writ recorded on January 10, 2002, relates back to the Original Writ that was timely recorded on January 7, 2003. Accordingly, the Court deems Engelberth's Revised Writ was timely filed.

(3) The record provided sufficient notice.

Rome also argues that Engelberth's failure to include a brief statement of the contract upon which the judgment is founded to be a fatal omission. In response, Engelberth observes that there is no case law in Vermont supporting this interpretation and points to the substantial record of litigation between the parties, which clearly identifies the contract underlying the subject judgment; Rainbow Trust, Bus. Trust v. Moulton Constr., Inc. (In re Rainbow Trust, Bus. Trust), 207 B.R. 70 (Bankr. D. Vt. 1997), aff'd sub nom, Official Unsecured Creditors' Comm of the Rainbow Trust (In re Rainbow Trust, Bus. Trust), 216 B.R. 77 (B.A.P. 2d Cir.); as well as the documented agreement between the parties, to support its position that the failure to identify the contract within the four corners of the judgment is not fatal. Engelberth cites Baldwin v. Spear Bros., 79 Vt. 43, 64 A. 235 (1906), a case from nearly a century ago, to illustrate Vermont's longstanding position that substantial compliance with the mechanic's liens statute is sufficient:

> The object of the statute creating mechanics' [contractor's] liens is security. The lien is purely statutory, and, if established, effects a preference. The person asserting it, therefore, should be held to a reasonably strict compliance with the statutory requirements. But the statute is a useful one and should not be so strictly construed as to defeat its purpose, or to render it impossible in the ordinary course of business for one entitled to secure its benefits. *A substantial compliance with its terms is all that is required*, and nicety of form is not essential.

Id. at 50, 237 (internal citations omitted) (emphasis added); see generally, Springer Land Ass'n v. Ford, 168 U.S. 513, 524 (1897). The Parties have presented, and the Court's independent research has found, no precedent to the contrary. Accordingly, the Court finds substantial compliance with the statute is sufficient.

It is undisputed that the stipulated Final Judgment does not refer to the contract between the Parties that gives rise to Engelberth's asserted lien. However, the Final Judgment, as recorded, specifically refers to the litigation between the Parties as does the Notice of Lien, the Original Writ, and the Revised Writ. The Notice of Lien, filed in the Town Land Records in accordance with § 1921, specifies that Engelberth provided labor and materials to Rome. The Court finds that the court records and the Town Land Records provided sufficient notice of the nature and scope of the contract to Rome and third parties. While the Final Judgment does not strictly comply with the statute, enough information was provided to give adequate notice and to substantially comply with the statute. Therefore, it is adequate. Further, as discussed in greater detail below, even if the lack of a statement of the contract could be construed to be fatal to Engelberth's contractor's lien, the doctrine of equitable estoppel precludes Rome from challenging the lien on this basis at this time.

C. Rome's challenges are barred by the doctrine of equitable estoppel.

Engelberth argues that, notwithstanding any of the possible defects in the underlying documents alleged by Rome, the Final Judgment entered by the Rutland Superior Court, upon consent of Rome, is unquestionably valid and binding under the doctrine of equitable estoppel. Moreover, it argues that Rome waived its right to object to the adequacy of the judgment by consenting to its entry.

The doctrine of equitable estoppel is "based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon." Gravel & Shea v. White Current Corp., 170 Vt. 629 (2000) (quoting Dutch Hill Inn, Inc. v. Patten, 131 Vt. 187, 193 (1973). Whether a party is estopped from a claim depends on whether conscience and duty of honest dealing should deny the party the right to repudiate the consequences of its representations or conduct. Id. Four elements must be established:

> (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon, or the conduct must be such that the party asserting estoppel has a right to believe it is intended to be acted upon; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped.

Id. at 629-30 (citing Fisher v. Poole, 142 Vt. 162, 168 (1982)). As a party to the Recovery Action, Rome had full knowledge of the facts and circumstances that gave rise to the Recovery Action, the Settlement Agreement, and the Stipulation to Final Judgment that resulted in the Final Judgment about which Rome complains. See Gravel & Shea v. White Current Corp., 170 Vt. 628, 630, 752 A.2d 19, 22 (2000) (signing agreement estopped certain claims and defenses). According to the Settlement Agreement, the settlement was designed to avoid further litigation between the Parties. Stipulated Statement, Exhibit C, ¶ 5. Rome knew of the allegations against it and knew that Engelberth was seeking to perfect and enforce a contractor's lien in the Recovery Action. Rome clearly intended that the various agreements be acted upon by the Parties. Under the terms of the Agreement to Enter Judgment, which expressly provided for a stay of Engelberth's enforcement of the Final Judgment, both Engelberth and Rome were proceeding on the premise that the Final Judgment would comply with the contractor's lien statute. Stipulated Statement, Exhibit D. The Parties' various agreements demonstrate that each party expected that the Final Judgment could and would be acted upon by Engelberth under certain circumstances and might result in a foreclosure. Rome received a stay from execution of the Final Judgment and intended Engelberth to rely upon its acquiescence to the various agreements between the Parties in consideration for the stay. The Agreement to Enter Judgment provides:

> The stay provided for by this judgment is not a judicial stay, but a stay by agreement. No court action or authorization is required for the plaintiff [Engelberth] to commence enforcement of its judgment under the terms of this Agreement.

Stipulated Statement, Exhibit D, ¶10. Rome reviewed the documents no fewer than three times and stipulated to the actual language of the Final Judgment. The language of the various agreements indicates that Engelberth had no indication that Rome would later contest the validity or enforceability of the Final Judgment. The Court is convinced that Engelberth detrimentally relied upon the Parties' negotiations and Rome's consent to the Final Judgment. Nothing in the record suggests that Rome ever questioned or objected to the adequacy of the Final Judgment which, at the time, the Parties clearly contemplated would create a valid and enforceable lien.

Although the Court finds the subject lien enforceable on its face, to the extent the Final Judgment is found to be procedurally insufficient due to the lack of a statement of the underlying contract, Rome would be estopped from attacking the validity or enforceability of the lien under the doctrine of equitable estoppel.

______The Trustee asserts that his claims would not be barred by the doctrine of equitable estoppel as a hypothetical lien creditor under § 544(a)(1). The Trustee asserts that a hypothetical lien creditor who filed a judicial lien on the date the bankruptcy case was commenced could have avoided the judgment filed by Engelberth due to Engelberth's failure to comply with either 9 V.S.A. § 1924 or 12 V.S.A. §§ 2901 and 2904. As set forth in detail above, we find that Engelberth's asserted liens substantially comply with the statutes and are not relying upon the equitable estoppel argument for our determination. Accordingly, we see no need to address the Trustee's § 544(a)(1) argument at this time.

D. The Trustee's Remaining Claims

Subsequent to the Parties' filing of their cross-motions for summary judgment, the Trustee sought and obtained leave to amend the Complaint (see docs. ## 44 and 53). In the Amended Complaint, the Trustee seeks to set aside Engelberth's lien, to the extent the Court determines one exists, under the so-called "strong arm powers" of § 544(a)(1) and to void the lien as a preferential transfer (see doc. # 56)(collectively, "Counts II and III"). The Trustee included arguments concerning these counts in supplemental briefing that, as per the direction of this Court was to specifically address Engelberth's asserted affirmative defense of equitable estoppel (docs. ## 43, 45, 61 and 62). Because these claims were not the subject of the Parties' cross-motions for summary judgment and discovery has yet to be conducted on these matters, the Court finds that the Trustee's request for summary judgment on Counts II and III is premature at this time. Accordingly, the Court denies, without prejudice, the Trustee's prayer for relief as to Counts II and III.

IV. CONCLUSION

The Court finds that there are no genuine issues of material fact, that each of the defects alleged by the Plaintiff are insignificant both in light of the entire record of litigation between the Parties, and under Vermont law. Therefore, the Court finds Engelberth's judgment is enforceable and that Engelberth is entitled to judgment as a matter of law. Hence, the Plaintiff's motion for summary judgment is denied and the Defendant's motion for summary judgment is granted.

This constitutes the Court's findings of fact and conclusions of law.

March 7, 2005
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge