

1356

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA  
(IN EQUITY)

BELCHER-EVANS MILLWORK CO., INC., )  
a corporation, )

Plaintiff, )

v. )

FULTON CONSTRUCTION COMPANY, )  
INC., et al., )

Defendants. )

CIVIL ACTION NO. CV-89-059 MJ



SUMMARY JUDGMENT

THIS CAUSE came on before the Court on defendant BancBoston Mortgage Corporation's Motion for Summary Judgment. Upon consideration of said Motion together with pleadings, answers to interrogatories, admissions, and documents of public record in support thereof, the Court finds:

A. That BancBoston Mortgage Corporation filed mortgages on real estate subject to this action generally described as Lot 90, Dearing Downs and Lot 73, Sandpiper Trail Subdivision prior to any materials being delivered or provided by plaintiff on any of said real estate.

B. That BancBoston Mortgage Corporation foreclosed on the real estate subject to its mortgages subsequent to materials being furnished or provided by plaintiff on said real estate and also subsequent to the filing of the lawsuit in this action to enforce plaintiff's materialmen's lien.

C. That Section 35-11-211, Alabama Code, 1975 as amended by Act H.136 provides in part:

Except to the extent provided in subsection (b) below, all liens, mortgages and incumbrances (in this Section, "mortgages and other liens") created prior to the commencement of such work shall have priority over all liens for such work. Enforcement of such lien of a mechanic, materialman, or other person created by section 35-11-210 (in this Section, "mechanic or materialman lien") shall not affect any prior mortgage or other lien, and the purchaser in connection with the enforcement of such mechanic or materialman lien shall take the property subject to such prior mortgages and other liens of which the purchaser has actual or constructive notice on the date of the purchase. Foreclosure of any prior mortgage or other lien shall terminate and extinguish such subordinate mechanic or materialman lien or other interest as to the land and the buildings and improvements thereon, whether or not at the time of such foreclosure such lien or interest has been perfected in accordance with the provisions of this division, and the mechanic, materialman or other person thereafter shall have, to the extent of his lawful claim under this division, the statutory right of redemption afforded under applicable redemption laws to a judgment creditor whose judgment was recorded on the date such work was commenced and such rights in any excess proceeds received by the foreclosing lienholder as provided by law.

D. That by virtue of the above amendment to Section 35-11-211, Alabama Code, 1975 the foreclosures by BancBoston Mortgage Corporation extinguished the materialman's liens held by plaintiff on the real estate made the basis of this action and subject to the mortgages of BancBoston Mortgage Corporation.

Accordingly, it is ORDERED, ADJUDGED AND DECREED by the Court:

1. That the defendant BancBoston Mortgage Corporation's Motion for Summary Judgment be, and the same is hereby granted and that the materialman's liens filed against the following described real estate located in Shelby County, Alabama are hereby extinguished:

Lot 90, according to the survey of Dearing Downs, 6th Addition, Phase II, as recorded in Map Book 11, page 31, in the Probate Office of Shelby County, Alabama situated in the Town of Helena, Shelby County, Alabama, and as re-recorded in Map Book 11, page 80.

Lot 73, according to the survey of Sandpiper Trail Subdivision, Sector II, as recorded in Map Book 12, Pages 44, 45, 46 and 47 in the Probate Office of Shelby County, Alabama

2. That Plaintiff, Belcher-Evans Millwork Company, Inc., a corporation, has to the extent of its claim on the above described real estate a statutory right of redemption afforded under the redemption laws to a judgment creditor.

3. That the complaint in case CV-89-059 in the Circuit Court of Shelby County, Alabama is hereby dismissed as to Defendant BancBoston Mortgage Corporation. In addition, that part of the said complaint seeking to assert a lien against the aforesaid real estate described within the said complaint also is dismissed.

As this Court determines that there is no just reason for delay it directs that this order be entered as a final judgment in this cause.

Court costs are taxed as paid.

DONE this 6th day of November, 1990.

BOOK 318 PAGE 958

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

90 NOV 19 PM 3:54

JUDGE OF PROBATE

D. Al Crowson  
D. Al Crowson  
Circuit Judge

1. Dead Tax	-----	\$	-----
2. Mig. Tax	-----	\$	-----
3. Recording Fee	-----	\$	7.50
4. Indexing Fee	-----	\$	3.00
5. No Tax Fee	-----	\$	-----
6. Certified Fee	-----	\$	1.00
Total	-----	\$	11.50