

3054

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

SOUTHERN MILLWORK, INC.,

Plaintiff

vs.

CIVIL ACTION NO. CV 91-194

FALCON PROPERTIES, INC., AMSOUTH BANK,
N.A., et al,

Defendants

ORDER



This above case having been brought before the Court on the Motion for Summary Judgment filed by AmSouth Bank, N.A. and the Court being informed that the attorney for Southern Millwork, Inc. did not object to the granting of the Motion, the Court finds that a Partial Summary Judgment is due to be granted.

1. Based on the representations of the Plaintiff, the Court finds that AmSouth Bank, N.A. is due to be dismissed as a party Defendant and AmSouth Mortgage Company, Inc. is due to be added as a party Defendant, with John R. Frawley, Jr. accepting service for AmSouth Mortgage Company, Inc.

2. The Court further finds that the mechanic's liens filed by Southern Millwork, Inc. and Alpha Lumber, Inc. on

Lot 41, according to the map and survey of Southlake, a residential subdivision, as recorded in Map Book 11, Page 85 A, B & C, in the Probate Office of Shelby County, Alabama.

are due to be declared void. Based on the uncontroverted evidence and affidavits submitted by AmSouth Mortgage Company, Inc. along with the case citations contained in its Motion for Summary Judgment, the Court finds that the liens of Southern Millwork, Inc. and Alpha Lumber, Inc. are subordinate to the prior recorded Future Advance Mortgage of AmSouth Mortgage Company, Inc. and, as there is no surplus of funds remaining after the disposition of the

John R. Frawley, Jr.

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property, the Court finds that there is no fund upon which the liens may attach and they are therefore void and due to be struck.

Therefore, it is hereby:

ORDERED, ADJUDGED AND DECREED, That AmSouth Bank, N.A. be and is hereby dismissed as a party Defendant in this case and AmSouth Mortgage Company, Inc., by agreement of the parties, is hereby added as a party Defendant, with service being perfected upon its attorney. It is further ORDERED that the lien of Southern Millwork, Inc., upon which this suit is partially based, as well as the lien of Alpha Lumber, Inc., upon which no suit to perfect has been filed and the time having run for same as set forth in Title 35-11-210 & 211 of the Code of Alabama, are hereby due to be struck and declared null and void. The Court further finds that there is no just reason for any delay in the finality of this Order and therefore certifies same as a Final Judgment pursuant to Alabama Rules of Civil Procedure 54(b).

The Court further finds that the remaining claims of Southern Millwork, Inc. are not affected by this ruling and are hereby held for future determination and action.

JUDGED AND ORDERED this the 9th day of August, 1991.

STATE OF ALABAMA
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[Signature]
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I certify that I have served a copy of the above and foregoing pleading on the following by mailing a copy of the same to their address, postage prepaid, this the 7th day of August, 1991.

Honorable Bill Delgrosso
1117 22nd Street S.
Birmingham, Alabama 35205

[Signature]
OF COUNSEL