

A. F. HOUSE, TRUSTEE *v.* JAMES SCOTT, D/B/A
SCOTT LUMBER COMPANY ET AL

5-4556

429 S. W. 2d 62

Opinion delivered May 27, 1968
[Rehearing denied July 15, 1968.]

MECHANIC'S LIENS—PRIORITIES—STATUTORY PROVISIONS. — Where claimant for mechanic's lien had a contract only with mortgagor, its sole remedy was for a lien upon fixtures and premises to the extent allowed by statute where mortgagees had no connection with mortgagor's business.

Appeal from Pulaski Chancery Court, Third Division, *Kay L. Matthews*, Chancellor; reversed and remanded.

James L. Sloan and *Stanley E. Price*, for appellants.

Tanner & Wallace, for appellees.

Terral, Rawlings, Matthews & Purtle, for appellees and cross-appellant.

CONLEY BYRD, Justice. This is a companion case to *House v. Scott*, 244 Ark. 1075, *infra*. The amounts and the parties are not wholly identical but the issues are identical except for the point raised on cross appeal by Choctaw Plumbing Company, Inc., that the court erred in not awarding it judgment against Modern American Mortgage Corporation and A. F. House, Trustee, for the amount of its lien.

We find Choctaw's contention to be without merit because it had a contract only with Stillman. Its sole remedy under the mechanics' lien statute is for a lien upon the fixtures and the premises to the extent therein allowed.

There is no evidence here that Modern American and A. F. House, Trustee, were in any way connected

with Stillman's business other than in their capacity as mortgagees.

Therefore, so much of the trial court's judgment as required A. F. House, Trustee, to pay into the registry of the court the unexpended funds and that portion which gave the mortgagee priority as to the \$1,700 paid to Modern American for the release of the Olsen mortgage is hereby reversed.

Reversed and remanded.

FOGLEMEN, J., dissents.

JOHN A. FOGLEMAN, Justice, dissenting. I dissent for the reasons stated in my dissenting opinion in *A. F. House, Trustee v. James S. Scott, d/b/a Scott Lumber Company et al*, No. 5-4555, 244 Ark. 1075, 429 S. W. 2d 108. I would reverse on appeal and affirm on cross-appeal.
