

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Bank of America, N.A.

Plaintiff,

v.

Theda B. Vaughan a/k/a Theda L. Vaughan;  
James R. Vaughan; LBB & HHV II, LLC;  
Hometrust Bank, N.A.; Quality Business  
Solutions, Inc.; Creative Builders,  
Incorporated; Matthew J. Bynum; Ann Bynum;  
Mayfield Dairy Farms, LLC; TD Bank, N.A.,  
as successor by merger with Carolina First  
Bank; Butler Improvements, LLC; Discover  
Bank; Suiza Dairy Group, LLC; FIA Card  
Services, N.A.; Wells Fargo Bank, NA., as  
successor by merger to Wachovia Bank,  
National Association; L. Stewart Spinks;  
Dillanos Coffee Roasters)Inc.; Branch Banking  
and Trust Company; Spaulding Farm  
Homeowners Association, Inc.; TCP Leasing,  
Inc.; First South Bank; Brookfield South  
Associates, LLC; Green Tree Servicing, LLC  
formerly known as Green Tree Financial  
Servicing Corporation, a Limited Liability  
Company under the laws of the State of  
Delaware; Bank of Travelers Rest;  
Comprehensive Legal Solutions, Inc.; The  
South Carolina Department of Revenue;

Defendants.

IN THE COURT OF COMMON PLEAS

2015 NOV 6 PM 3 05

DOCKET NO.: 15-CP-23-1389

**RECEIVED**

DEC 14 2015

SC Court of Appeals

**ORDER GRANTING  
PLAINTIFF'S RULE 12 MOTION TO  
DISMISS IN LIEU OF ANSWER**

This matter is before the Court on a motion to dismiss by Plaintiff, Bank of America, N.A. ("BANA") against Defendant LBB & HHV II, LLC ("LBB") concerning LBB's counterclaims of 1) Betterments, 2) Trespass, 3) Tortious Interference with Contractual Relations, and 4) Quiet Title. A hearing was convened on October 14, 2015 at the Greenville

County Courthouse before the Honorable James R. Barber. BANA was represented by Trent M. Grissom and LBB was represented by J. Walt Whitmire.

#### STANDARD OF REVIEW

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a party may move to dismiss a claim based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (S.C. 2006). In considering a motion to dismiss, the trial court must base its ruling solely on allegations set forth in the operative pleading. *Id.* Based on the facts alleged, the “question is whether, in the light most favorable to the [non-moving party], and with every doubt resolved in his behalf, the [pleading] states any valid claim for relief.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (S.C. 2007) (internal citations and quotations omitted).

Additionally, “the well settled rule is that *facts*, and not *legal conclusions*, must be stated in pleadings[.]” *Lowry v. Jackson*, 27 S.C. 318, 323, 3 S.E. 473, 477 (S.C. 1887) (emphasis in original). The Court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (S.C. Ct. App. 2002) (internal citation and quotations omitted). Indeed, such mere “conclusory speculation” cannot form the basis of any cause of action. *See United Educ. Distribs., LLC v. Educ. Testing Serv.*, 350 S.C. 7, 18, 564 S.E.2d 324, 330 (S.C. Ct. App. 2002) (citation omitted).

#### CONCLUSIONS OF LAW

The Court hereby dismisses LBB’s claim for Betterments as it is not ripe for determination. A claim of betterments cannot be made in a foreclosure action and may only be made after a final judgment in an action for recovery of land and tenements. *Leslie v. Bowie*, 27

S.C. 193, 197 (1887). As LBB has not been dispossessed of its property and remains in possession of any improvements it has made, no claim for Betterments may be had at this time.

The Court hereby further dismisses LBB's claim for trespass as BANA, by virtue of its mortgage lien on the property, had the right to enter upon the property to inspect and protect its interest therein. The essence of trespass is the requirement that one party intentionally makes an *unauthorized* entry upon the land of another which results in direct harm to the landowner. *Ravan v. Greenville County*, 315 S.C. 447, 464 (Ct. App. 1993) (emphasis added). Where a right to enter upon the land is stated or implied in a mortgage, the mortgagee retains the right to enter upon the land once a condition of the mortgage is broken. *Willis v. Whittle*, 82 S.C. 500, 501 (1909). Because the mortgage in question was in default, BANA was authorized to enter upon the property and LBB's claim for trespass fails as a matter of law.

Thirdly, the Court dismisses LBB's claim for tortious interference with contractual relations based on LBB's failure to allege or demonstrate all of the elements of the claim. To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *Eldeco, Inc. v. Charleston County Sch. Dist.*, 372 S.C. 470, 480 (2007). Additionally, where a party is acting on an absolute right which is equal or superior to the right invaded, then it interfered with the contract with justification and cannot be held liable for tortious interference with contractual relations as a matter of law. *S. Contr. v. H.C. Brown Constr. Co.*, 317 S.C. 95, 100 (Ct. App. 1994). LBB has not demonstrated or alleged that BANA's entry upon the property procured a breach of the lease agreement between LBB and its tenants. As such, this claim fails as a matter of law.

FORM 4

STATE OF SOUTH CAROLINA FILED-CLERK OF COURT  
 COUNTY OF GREENVILLE GREENVILLE CO. S.C.  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP2301389

Bank Of America NA

Theda B Vaughan  
 James R Vaughan  
 Hometrtrust Bank NA

Theda L Vaughan  
 LBB & HHV II LLC  
 Quality Business  
 Solutions Inc  
 Matthew J Bynum

RECEIVED

2015 NOV 6 PM 3 05

DEC 14 2015

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)	If

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Signature]*

2110

10/30/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 11/6/15, and a copy mailed first class or placed in the appropriate attorney's box on 11/6/15, to attorneys of record or to parties (when appearing pro se) as follows:

**Robert Paul Davis** Rogers Townsend & Thomas, PC P.O. Box 100200 Columbia, SC 29202  
**Robert A. Muckenfuss** 201 North Tryon Street, Suite 3000 Charlotte, NC 28202  
**Thomas Richmond McPherson III** 6201 Fairview Road Suite 200 Charlotte, NC 28210  
**Trent M. Grissom** 201 N. Tryon St. Suite 3000 Charlotte, NC 28202-2146

**James H. Cassidy** Roe Cassidy Coates & Price, P.A. P.O. Box 10529 Greenville, SC 29603  
**Brittany Lauren Kilpatrick** S.C. Department Of Revenue P.O. Box 12265 Columbia, SC 29211  
**Milton Gary Kimpson** S.C. Department Of Revenue P.O. Box 12265 Columbia, SC 29211  
**D. Sean Faulkner** Poinsett Plaza 104 S. Main Street, Suite 900 Greenville, SC 29601  
**Adam Crittenden Bach** Eller Tonnsen Bach, LLC 2201 Augusta Street, Suite 200 Greenville, SC 29605  
**Dana Covington Mitchell III** Mitchell Law Firm, LLC P.O. Box 10285 Greenville, SC 29603  
**Donald Ryan McCabe Jr.** McCabe, Trotter & Beverly, P.C. P.O. Box 212069 Columbia, SC 29221

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

**Paul B. Wickensimer** Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.


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\_\_\_\_\_  
\_\_\_\_\_

Finally, the Court dismisses LBB's claim for quiet title based upon the fact that BANA's mortgage lien interest is superior to the rights of LBB in the property that is the subject of this action.

**IT IS THEREFORE ORDERED:**

1. That BANA's motion to dismiss LBB's counterclaims is GRANTED; and,
2. That LBB's counterclaims are hereby dismissed in their entirety.

IT IS SO ORDERED this 2<sup>nd</sup> day of NOVEMBER, 2015.

  
\_\_\_\_\_  
Honorable James R. Barber, Judge Presiding  
Thirteenth Judicial Circuit

Columbia, South Carolina