THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2015-002187

Sea Island Food Group, LLC d/b/a Squeeze, Appellant,

v.

Yaschik Development Company, Inc. d/b/a Yaschik Enterprises, Hilton Smith, East Bay Company, LTD, Thomas M. Ervin, and Michael J. Quillen Family Limited Partnership, Defendants,

Of Whom Hilton Smith and East Bay Company, LTD are Respondents.

Quillen Enterprises, LLC d/b/a The Brick, Appellant,

v.

Yaschik Development Company, Inc., d/b/a Yaschik Enterprises, Hilton Smith, East Bay Company, LTD and Michael J. Quillen Family Limited Partnership, Defendants,

Of Whom Hilton Smith and East Bay Company, LTD are Respondents.

Michael J. Quillen Family Limited Partnership, Third-Party Plaintiff,

v.

Top of the Bay, Inc., d/b/a Club Light, Third-Party Defendant.

Top of the Bay, Inc., d/b/a Club Light, Fourth-Party Plaintiff,

v.

Yaschik Development Company, Inc., d/b/a Yaschik Enterprises, Fourth-Party Defendant.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

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II. IS THE REAL ESTATE SALES AGREEMENT THE PROXIMATE CAUSE OF THE BREACH OF THE MASTER LEASE WHEN IT WAS ENTERED INTO THREE MONTHS AFTER YASCHIK SENT NOTICE OF THE LEASE'S TERMINATION?

III. CAN SQUEEZE CLAIM THIRD-PARTY BENEFICIARY STATUS UNDER THE MASTER LEASE WHEN THERE IS NO REASONABLE INFERENCE FROM THE FACTS ALLEGED THAT THE ORIGINAL CONTRACTING PARTIES INTENDED TO CREATE A DIRECT BENEFIT TO SUBTENANTS?

STATEMENT OF THE CASE

The Respondents, East Bay Company, Ltd. and Hilton Smith, adopt the Statement of the Case from Appellants' brief with the exception that their motion to dismiss was filed on June 12, 2015, not May 13, 2015, as stated in Appellants' brief. In addition, Respondents state that the case involves one cause of action against Respondents for intentional interference with contract (First Amended Complaint, paras. 62-68).

Counsel for Appellants has informed counsel for Respondents that Appellant Quillen Enterprises, LLC d/b/a The Brick is withdrawing its appeal. Therefore, this brief addresses only the appeal of Appellant Sea Island Food Group, LLC d/b/a Squeeze.

STATEMENT OF FACTS

Viewed in the light most favorable to Appellant, the First Amended Complaint alleges the following facts:

Yaschik Development Company, Inc. ("Yaschik") owns the building located at 213 East Bay Street in Charleston, South Carolina, which it purchased in 2003. (First Amended Complaint, para. 11). At that time, the property was subject to the prior owner's lease with Charleston T&T, Inc., which had rented the entire building in 1997 ("Master Lease"). (First

Amended Complaint, paras. 8-10). In 2006, several years after Yaschik's purchase, Charleston T&T subleased a portion of the building to R&R Entertainment to operate a bar known as Squeeze; in 2011, R&R assigned its sublease to Appellant Sea Island Food Group, LLC ("Squeeze"), which continued doing business as Squeeze. (First Amended Complaint, paras. 13-15). In 2012, Michael J. Quillen Family Limited Partnership ("FLP") assumed the Master Lease for the entire building, and Squeeze became its subtenant. (First Amended Complaint, para. 18).

On April 2, 2013, there was a fire at 213 East Bay Street (First Amended Complaint, para. 21). On September 11, 2013, Yaschik informed FLP by letter that its lease was terminated pursuant to a provision requiring termination in the event that the premises "are totally destroyed by fire." (First Amended Complaint, para. 33; Ex. 1 to First Amended Complaint, para. 20). The landlord, tenant and subtenant - Yaschik, FLP, and Squeeze - disagreed as to whether the fire resulted in a total loss of the premises and, accordingly, whether the lease was terminated. (First Amended Complaint, para. 34). What remains of the building has been stabilized, but the building has not been reconstructed. (First Amended Complaint, para. 35).

Respondent East Bay Company, Ltd. ("EBCO") owns the buildings on either side of 213 East Bay Street. (First Amended Complaint, para. 20). In the aftermath of the fire, EBCO's president, Respondent Hilton Smith ("Smith"), had discussions with Yaschik concerning EBCO's possible purchase of 213 East Bay Street. (First Amended Complaint, para. 28). Several months later, on December 30, 2013, EBCO and Yaschik entered into a Real Estate Sales Agreement under which EBCO would purchase 213 East Bay Street pursuant to certain conditions precedent. (First Amended Complaint, para. 31). One of those conditions was that Yaschik first obtain a cancellation or termination of FLP's Master Lease. Squeeze alleges that

this provision constitutes tortious interference with its sublease. (First Amended Complaint, paras. 32 and 66).

STANDARD OF REVIEW

In reviewing the dismissal of an action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the appellate court applies the same standard used by the lower court. *Flateau v. Harrelson*, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct. App. 2003). The question is whether, when the facts alleged and the reasonable inferences from those facts are viewed in the light most favorable to plaintiff, the complaint fails to state facts sufficient to constitute a cause of action. 355 S.C. at 201-02, 584 S.E.2d at 415. The plaintiff, however, must plead facts which support his right to relief, and mere legal conclusions are not sufficient to withstand a motion to dismiss. *See Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995) (allegation defendant formed a combination for the purpose of harming plaintiff not sufficient to allege civil conspiracy).

ARGUMENTS

I. EBCO's exercise of its legal right to contract with Yaschik for a legitimate business purpose constitutes justification as a matter of law.

The essential elements of a claim for intentional interference with contract are as follows: 1) the existence of a valid contract; 2) the defendant's knowledge of the contract; 3) the intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages. *Vortex Sports & Entertainment, Inc. v. Ware*, 378 S.C. 197, 662 S.E.2d 444 (Ct. App. 2008). As such, it is plaintiff's burden to plead and prove the absence of justification. Exercising a legal right or acting for a legitimate business purpose is not improper and cannot form the basis of a claim for intentional interference with contract. F. P. Hubbard and R. L. Felix, THE SOUTH CAROLINA LAW OF TORTS, Ch. 5, § B.3 (4th ed. 2011).

The law recognizes the freedom to contract. A plaintiff cannot show the absence of justification when a defendant merely exercises the legal right to contract. *Broach v. Carter*, 399 S.C. 434, 443, 732 S.E.2d 185, 189 (Ct. App. 2012). *See also* RESTATEMENT (SECOND) OF TORTS § 766, comment n ("One does not induce another to commit a breach of contract with a third person ... when he merely enters into an agreement with the other with knowledge that the other cannot perform both it and his contract with the third person.").

The facts alleged in the First Amended Complaint are simple and straightforward. EBCO, acting through Smith as its agent, conditioned its purchase of the property on obtaining clear title unencumbered by the Master Lease. In doing so, EBCO merely exercised its legal right to contract to buy the property on such terms as were acceptable to it and to Yaschik. There is no allegation that the Real Estate Sales Agreement specified how Yaschik was to obtain a cancellation of the Master Lease. Indeed, Yaschik could have bought out the lease with FLP's concurrence. Certainly, EBCO had no power to compel Yaschik to terminate the lease by invoking the provision based on the building's total loss or by any other means for that matter. If Yaschik were unable to procure a cancellation of the Master Lease, EBCO could simply walk away from the deal. The fact that Yaschik could not perform both the contract to sell the property and the Master Lease is immaterial and, as a matter of law, does not give rise to a claim for intentional interference with contract against EBCO and Smith.

Squeeze seems to argue that EBCO and Smith somehow prompted Yaschik to wrongfully terminate the Master Lease. (Appellant's Brief, p. 19). The fallacy of this argument is that the only means by which Squeeze alleges they did this was "by, among other things, ultimately conditioning the purchase of 213 East Bay on the termination or cancellation of the Master Lease." (First Amended Complaint, para. 66). Neither there nor anywhere else in the pleading

does Squeeze allege what "other things" EBCO and Smith allegedly did to interfere with the contract.[1] As alleged in paragraph 20 of the First Amended Complaint, EBCO was in the real estate development business and owned buildings on either side of 213 East Bay. As such, it was only natural for the company to have a legitimate business interest in purchasing Yaschik's building, and in contracting to buy the building conditioned on receiving clear title, EBCO was merely exercising its legal right to contract. The fact that Yaschik could not satisfy the condition precedent for the sale and also perform under the Master Lease with FLP does not constitute inducement to breach the Master Lease, and EBCO's acts were justified as a matter of law. *See* RESTATEMENT (SECOND) OF TORTS § 766, comment n.[2]

Further, the cases relied on by Squeeze are distinguishable. In *Camp v. Springs Mortgage Co.*, 310 S.C. 514, 426 S.E.2d 304 (1993), the complaint contained the following allegations: lawyer Camp closed several loans to consumers from lender Springs Mortgage; a dispute arose over Camp's procedures; Camp tried in good faith to resolve the dispute but the president of Springs Mortgage told Camp he would never close another loan for the lender; Johnson hired Camp to close her loan with Springs Mortgage; Springs Mortgage told Johnson's daughter that Camp was not an acceptable lawyer; and Johnson used another lawyer to close the transaction with Springs Mortgage. The court held that these allegations were sufficient to state a cause of action for intentional interference with contract. Squeeze argues it was the mere

[1] Squeeze brought the lawsuit in December 2013 and had well over one year to conduct discovery relating to communications between Yaschik and EBCO before filing the First Amended Complaint in May 2015 adding EBCO and Smith. Therefore, there was no reason additional facts could not have been alleged if they existed.

[2] Squeeze incorrectly states on page 19 of its brief that Yaschik admits it breached the Master Lease by failing to restore the building to the same condition as before the fire. This directly contradicts Yaschik's Answer to the First Amended Complaint, which denies any breach of contract in paragraphs 39, 45-47, and 59. Yaschik took and continues to take the position that the fire caused a total loss of the building and resulted in termination of the Master Lease.

allegation that Springs Mortgage prompted the breach by refusing to let Johnson use Camp which gave rise to an inference the interference was not justified. To the contrary, a careful reading of the case reveals that, in deciding there was a reasonable inference the interference was not justified, the court clearly relied on the allegation that Camp had tried in good faith to resolve the dispute but the president of the company had told him he would never close another loan for the lender. Thus, in *Camp*, there was more alleged than the act of interference - Springs Mortgage's refusal to allow Camp to close the loan; unlike the present case, there were additional allegations that gave rise to an inference of something more than a legitimate business reason on the part of Springs Mortgage for refusing to let Johnson use Camp.

Crowe v. Domestic Loans, Inc., 242 S.C. 310, 130 S.E.2d 845 (1963) does not support Squeeze's position either. The issues in *Crowe* were whether the complaint sufficiently alleged two defendants had acted in concert to interfere with plaintiff's employment contract or had acted in such a way that their conduct combined and concurred to cause the employer to fire plaintiff. The opinion did not address the element of lack of justification and does not assist the analysis of this issue.

II. EBCO's conduct was not the proximate cause of Yaschik's alleged breach of the Master Lease because Yaschik issued its termination letter three months before EBCO contracted to buy 213 East Bay Street.

Proximate cause is also an essential element of a claim for intentional interference with contract. *Smith v. Citizens and Southern National Bank of S.C.*, 241 S.C. 285, 128 S.E.2d 112 (1962). There is no liability where the breach of contract would have occurred anyway. F. P. Hubbard and R. L. Felix, THE SOUTH CAROLINA LAW OF TORTS, Ch. 5, § B.2 (4th ed. 2011).

The clear allegations of the First Amended Complaint show that Yaschik and EBCO entered into the Real Estate Sales Agreement on December 30, 2013, over three months after Yaschik's September 11 letter informing FLP that the lease was terminated because the fire had

rendered the building a total loss. The conclusory allegations of proximate cause in the First Amended Complaint stand the facts on their head. EBCO's contract did not cause Yaschik to invoke the termination provision in paragraph 20 of the Master Lease. Rather, Yaschik's prior decision to invoke that provision, at most, may have factored into EBCO's willingness to contract to buy the property subject, of course, to the termination being ultimately valid and enforceable. The allegations of the First Amended Complaint in themselves demonstrate that EBCO's conduct was not the proximate cause of Yaschik's alleged breach of contract.

Squeeze contends in its brief that EBCO and Smith procured the breach by their alleged intermeddling in the dispute between FLP and Yaschik which prompted Yaschik to send a termination letter and not by entering into a contract conditioned on termination of the Master Lease. In doing so, Squeeze attempts to reinvent the First Amended Complaint, which clearly alleges that EBCO and Smith "intentionally procured the breach of these contracts by, among other things, ultimately conditioning the purchase of 213 East Bay on the termination or cancellation of the Master Lease." (First Amended Complaint, para. 66). The "ultimate" conditioning of the purchase agreement could not happen, however, until that agreement was reached on December 30, 2013, well after Yaschik sent the termination letter on September 11.

Further, nowhere in the First Amended Complaint does Squeeze allege that EBCO and Smith prompted Yaschik to send the termination letter. The only allegations concerning EBCO and Smith which relate to things occurring before the date of the termination letter are that Smith discussed a possible purchase with Yaschik's president, Tom Ervin, who sent him a proposal dated May 31, 2013. Importantly, the allegations of the First Amended Complaint do **not** allege that this proposal required the cancellation of the Master Lease. In fact, the proposal does not mention cancellation or termination of the Master Lease. (Yaschik Enterprises Memorandum

dated May 31, 2013).[3] Squeeze's allegations simply contain no facts which would raise an inference that EBCO and Smith prompted Yaschik to send the termination letter.

III. Squeeze is not third-party beneficiary of the Master Lease and cannot claim any rights under it.

A. The Master Lease primarily benefited the tenant and created, at best, an incidental or consequential benefit to possible future subtenants.

The existence of a valid contract is the first and most important of the elements of a claim for intentional interference with contract. *See Vortex Sports & Entertainment, Inc. v. Ware*, 378 S.C. 197, 662 S.E.2d 444 (Ct. App. 2008) (setting forth essential elements of the cause of action). In this case, Squeeze alleges that EBCO indirectly interfered with its sublease by interfering with the Master Lease between FLP and Yaschik. Therefore, it necessarily follows that Squeeze can claim interference with its contract only if it has rights under the Master Lease. In other words, Squeeze must show that it is a third-party beneficiary of the Master Lease.

The general rule is that a third person not in privity of contract with the contracting parties has no right to enforce the contract. *Bob Hammond Construction Co. v. Banks Construction Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994). However, where a contract is made for the benefit of the third person, he may enforce it "if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person." 312 S.C. at 424, 440 S.E.2d at 891. The benefit must be direct and substantial; an ultimate and indirect benefit is not enough to confer third-party beneficiary status. 312 S.C. at 425, 440 S.E.2d at 892.

The First Amended Complaint incorporates both the Master Lease and the sublease for Squeeze. Under the facts alleged in this case, there is no way that Yaschik's predecessor in

[3] This correspondence containing Yaschik's proposal is referenced and selectively paraphrased in paragraphs 28 and 29 of the First Amended Complaint. Squeeze failed to attach it as an exhibit to the pleading but it should be considered as such given the reliance on its substance as factual allegations. *See* Rule 10(d), South Carolina Rules of Civil Procedure (an exhibit attached to a pleading is a part thereof for all purposes).

interest and FLP's predecessor in interest could be said to have intended to create a direct benefit on Squeeze. First is the element of timing. The Master Lease was formed in 1997, almost six years before Yaschik purchased the property and almost nine years before Squeeze opened under its previous owner. There is no allegation that there had ever been a sublease on the property before 2006 when Squeeze's predecessor became a subtenant.

Second, while it allowed for the right of the original tenant to sublet, the Master Lease nowhere contemplated an actual sublease of the premises. Moreover, the Master Lease stated that the original tenant would renovate the property to accommodate a restaurant and bar, and there was no indication such a business would be operated by a subtenant. The only reasonable inference from the facts alleged is that the right to sublet given to the original tenant in the 1997 Master Lease was intended mainly to benefit the tenant should it deem it advisable to sublet the property sometime later during the term of the lease and conferred, at best, an incidental or consequential benefit on possible future subtenants. There is simply no fact alleged which remotely implies that the original owner and tenant intended in 1997 to confer a direct benefit on Squeeze.

B. The cases cited by Squeeze are distinguishable in that they involve factual scenarios in which the contracts clearly conferred specific contractual rights on third parties and, thus, directly benefited those third parties.

In arguing that the lower court erred, Squeeze cites two cases for the proposition that a party need not be named in a contract, or even aware of the contract, to be deemed a third-party beneficiary of that contract. While this principle is correct on its face, it is irrelevant in this matter because the lower court did not base its decision on whether Squeeze was named in the Master Lease. Further, the cases are easily distinguishable.

The Master Lease, which was incorporated into the First Amended Complaint, provides simply that "[t]enant has the right to sublet." (Commercial Lease and Deposit Receipt dated March 14, 1997, para. 5). The lower court concluded the factual allegations of the First Amended Complaint were not sufficient to show that the original parties to the Master Lease intended by this provision to create a direct benefit to future subtenants. The lower court based this conclusion, not on the fact Squeeze was not named in the Master Lease, but on three different factors: (1) the long time period between the execution of the lease and any actual sublease of the property; (2) the fact that the lease's language simply acknowledged the tenant's right to sublease but did not relate to any actual sublease; and (3) the contracting parties' specific contemplation in the lease that the tenant, not a subtenant, would renovate the property to accommodate a restaurant and bar. (Order Granting Motion to Dismiss First Amended Complaint, pp. 3-4). These factors led the lower court to conclude correctly that the unambiguous terms of the Master Lease resulted in, at most, an incidental or consequential benefit to future subtenants.[4]

The cases relied on by Squeeze, moreover, are easily distinguishable. Unlike in this case, in *Pharr v. Canal Insurance Co.*, 233 S.C. 266, 104 S.E.2d 394 (1958), the express provisions of the contract in question created a direct benefit in the unnamed third party by granting third parties a direct right to enforce the contract. *Pharr* involved the rights of an injured person to recover under an automobile liability insurance policy issued to an at-fault driver. For obvious reasons, the liability policy did not name the injured party. The insurance contract at issue in that case contained a specific provision allowing injured persons who had obtained a judgment

[4] Squeeze also contends that timing of the sublease was the only basis for the lower court's decision. (Appellant's Brief, p. 15). This statement is blatantly incorrect given the lower court's reliance on several factors.

against the insured to recover under the policy. The *Pharr* court reached the obvious conclusion that the benefit to the unnamed third party was direct and not incidental or consequential.

Squeeze cites *Johnson v. American Railway Express Co.*, 163 S.C. 191, 161 S.E. 473 (1931) for the proposition that one need not be aware of the contract's existence to be considered a third party beneficiary. While the opinion offered a general proposition to that effect, it was not the actual holding of the case because, as the court stated, "in the present case . . . it must be assumed that [the contract] was known to the [third party beneficiaries] and was an inducement to them to enter or continue in the service." 163 S.C. at 200, 161 S.E. at 476. Further, the question before the court in *Johnson* was whether a union member could enforce the provisions of an agreement entered into between his employer and the union, "to which he was not a party, but which **plainly was made for his benefit**." *Id.* (emphasis added). It is obvious, as it was to the *Johnson* court, that the only reason for a union to enter into a collective bargaining agreement is to confer a direct benefit on its members. In fact, the main issue in that case was whether the union contract was a legally binding contract and not whether the benefit conferred on the union member was direct as opposed to incidental or consequential. *Id.* As such, the case adds no support to Squeeze's argument.

Squeeze also argues that the original contracting parties' intent is inherently a question of fact and cites several cases to support its argument. None of these cases, however, involve motions to dismiss but relate to appeals from a grant of summary judgment in one instance and from trials in the other cases. Squeeze's argument confuses the standard for sufficiency of evidence with the requirement it plead facts sufficient to reasonably imply that it was a third-party beneficiary of the Master Lease. Further, the cases are distinguishable.

In *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994), plaintiffs claimed to be direct beneficiaries of an insurance contract for a homeowner's association of which they were members. The insurance company moved for and obtained summary judgment based on the wording of the insurance policy. The court affirmed the summary judgment ruling because plaintiffs failed to make the insurance policy part of the appellate record and because their conclusory statement that they were third-party beneficiaries, without more, was insufficient to overcome the motion, just like Squeeze's conclusory allegation is insufficient to allege third-party beneficiary status. The opinion clearly implies that the parties' intent could have been gleaned from the insurance contract if it had been part of the record. In this case, the Master Lease was incorporated into the First Amended Complaint, and its unambiguous terms do not suggest Squeeze was a third-party beneficiary. *Shupe* is instructive on the issue of appellate procedure and does not support Squeeze's argument that extrinsic evidence of intent is always necessary.

Squeeze also cites *Wise v. Picow*, 232 S.C. 237, 101 S.E.2d 651 (1958), a case with very different facts. In *Wise*, the landlords leased a part of their store to National Shoe Company to operate a shoe department; money was to be collected by the landlords' cashiers and a portion withheld as rent with the remainder paid to National Shoe. Two years later National Shoe, with the consent of the landlords, assigned the lease to Isenberg. After some time, a third party, Wise, who was Isenberg's brother-in-law and had actually operated the shoe department, contended that the assignment had been for his benefit and successfully sued the landlords for an accounting of the money due him. While the opinion references some trial testimony regarding Wise's operation of the store after the assignment, there was further evidence the landlords were aware, at the time the assignment was made, that it was for the benefit of Wise and that Isenberg

had no interest in the operation of the shoe department. In reaching the conclusion that Wise was the "real party in interest" under the assigned lease agreement, the Court of Appeals simply found the evidence in general sufficient to support the trial court's decision and did not indicate on which specific evidence it was relying. Contrary to Squeeze's argument, *Wise v. Picow* does not stand for the proposition that post-contract dealings are necessarily relevant and must be discovered before determining whether an unambiguous contract was intended to confer a direct benefit on a third-party.

Squeeze further argues that third party beneficiary status is necessarily a question of fact based on two cases from other jurisdictions, *Concrete Contractors, Inc. v. E.B. Roberts Construction Co.*, 664 P.2d 722 (Colo. App. 1982) and *Julian Johnson Construction Co. v. Parranto*, 352 N.W.2d 808 (Minn. App. 1984). Those cases also involve very different factual and procedural situations than the present case. In *Concrete Contractors*, a general contractor allowed an amendment of a subcontract to substitute a second subcontractor for the first because, as the general contractor knew, the first subcontractor could not obtain the necessary performance bond for the work. The appellate court concluded that there was sufficient evidence at trial to find the general contractor intended by the assignment to confer a direct benefit on the first subcontractor because the sole purpose of the contract was to enable the first subcontractor to meet the bonding requirement and actually do the work. 664 P.2d at 725. Likewise, in *Julian Johnson Construction*, a contractor entered into an agreement with a township to improve land for development by a developer, and the appellate court upheld a finding the developer was a third party beneficiary because there was some evidence that both the contractor and developer knew of each other's separate agreements with the township at the time of contracting.

All of the cases cited by Squeeze involve a different factual scenario in which the contract was nominally made with one party but actually made for the purpose of conferring specific contractual rights on a third person or category of third persons. This case, on the other hand, involves a Master Lease which, even when viewed in the light most favorable to Squeeze, can reasonably be read to confer specific contractual rights only on the original tenant and to create, at most, an incidental or consequential benefit to possible future subtenants.

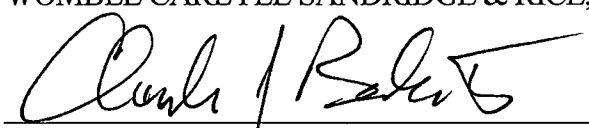
Last, Squeeze contends that it sufficiently pled facts regarding its third party beneficiary status in paragraph 38 of the First Amended Complaint, which reads as follows: "Plaintiffs are Third-Party Beneficiaries of the Master Lease because the Master Lease was made with the intent that the tenants of 213 East Bay would benefit from the performance of the obligations within the contract." This argument fails for two reasons. First, the allegation refers to "tenants" and not "subtenants" such as Squeeze and to "benefit" and not the "direct benefit" necessary to make one a third party beneficiary. Second, even if "tenants" were interpreted as "subtenants," the allegation is nothing more than an incomplete recitation of the legal standard for third party beneficiary status, and mere legal conclusions are not sufficient to withstand a motion to dismiss. *See Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995) (allegation defendant formed a combination for the purpose of harming plaintiff not sufficient to allege civil conspiracy).

CONCLUSION

The First Amended Complaint fails to state facts sufficient to constitute a cause of action for intentional interference with contract for several reasons: the pleading on its face shows legal justification for the alleged act of interference; EBCO's conduct was not the proximate cause of Yaschik's alleged breach of contract; and Squeeze is not a third-party beneficiary of the Master Lease and cannot claim any rights under it. As such, the lower court correctly dismissed the First Amended Complaint as to East Bay Company, Ltd. and Hilton Smith, and this Court should affirm that decision.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



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CHARLESTON, SC
July 26, 2016

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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R. Markley Dennis, Jr., Circuit Court Judge

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PROOF OF SERVICE

I certify that I have served the *Initial Brief of Respondents, Certificate of Compliance* and *Designation of Matter of Respondents* on the Appellants, Sea Island Food Group, LLC d/b/a Squeeze and Quillen Enterprises, LLC d/b/a The Brick, by depositing copies in the United States Mail, postage prepaid, on July 26, 2016, addressed to their attorney of record, M. Brooks Derrick, Post Office Box 967, Simpsonville, South Carolina 29681.

July 26, 2016

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July 26, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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RE: Sea Island Food Group, LLC d/b/a Squeeze v. Yaschik Development Company, Inc. d/b/a Yaschik Enterprises; Hilton Smith; East Bay Company, LTD.; and Michael J. Quillen Family Limited Partnership; AND, Quillen Enterprises, LLC d/b/a The Brick v. Yaschik Development Company, Inc. d/b/a Yaschik Enterprises; Hilton Smith; East Bay Company LTD.; and Michael J. Quillen Family Limited Partnership (Charleston County Case No. 2013-CP-10-7107)
WCSR File No. 67913.0004.3

Appellate Case No. 2015-002187

Dear Ms. Kitchings:

Enclosed for filing are the original and two copies of the *Initial Brief of Respondents, Designation of Matter of Respondents, Certification of Compliance*, and *Proof of Service* in the above action. Please return a file-stamped copy to me via the enclosed self-addressed, stamped envelope.

By copy of this letter with enclosures, we are the serving the same on counsel for the Appellants. Thank you in advance for your attention to this request. Please do not hesitate to call with any questions or concerns.

Very truly yours,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership

Charles J. Baker, III

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Enclosures
cc: M. Brooks Derrick, Esquire w/Enclosures

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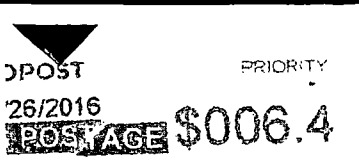

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201