THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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SC Court of Appeals

The Honorable James R. Barber, III

Case No. 2015-CP-23-01389
Court of Appeals No. 2015-002537

Bank of America, N.A. .... Respondent,

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,

Of which LBB & HHV II, LLC is the Appellant.

RESPONDENT BANK OF AMERICA, N.A.'S SECOND AMENDED FINAL BRIEF

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TABLE OF CONTENTS

Page

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 1

STANDARD OF REVIEW 2

ARGUMENT 3

I. The Circuit Judge Did Not Err in Dismissing the Appellant's Betterments Claim Pursuant to Rule 12(b)(6) of the SCRCP 3

- A. LLB's Counterclaim for Betterments May Only Be Raised in an Action for the Recovery of Land and Tenements 3
- B. South Carolina Appellate Courts Have Consistently Applied a Literal Interpretation of Section 27-27-70's Requirement that a Counterclaim for Betterments be Raised in an Action for the Recovery of Land and Tenements 6
- C. LLB Misconstrues The Caselaw on Which it Relies 7
- D. The Circuit Court Did Not Err in Relying on Lessly v. Bowie 9
- E. LLB Could Not Establish its Belief That It Was the Exclusive Owner of the Property at the Time It Made the Improvements 10
- F. The Betterments Act is the Sole Remedy for LLB to Recover for Improvements on the Land of Another 11

II. The Circuit Judge Did Not Err in Dismissing the Appellant's Trespass Claim Pursuant to Rule 12(b)(6) of the SCRCP 12

CONCLUSION 13

TABLE OF AUTHORITIES

Page(s)

Cases

Bethea v. Allen,
101 S.C. 350, 85 S.E. 903 (1915) 11

Builder Mart of Am., Inc. v. First Union Corp.,
349 S.C. 500, 563 S.E.2d 352 (Ct. App. 2002)....................2

Butler v. Lindsey,
293 S.C. 466, 361 S.E.2d 621 (Ct. App. 1987)....................6, 7, 9

Citizens & Southern Nat'l Bank, Atlanta, Ga. v. Modern Homes Constr. Co.,
248 S.C. 130, 149 S.E.2d 326 (1966) 6

DeBerry v. McCain,
275 S.C. 569, 274 S.E.2d 293 (1981) 3

Doe v. Marion,
373 S.C. 390, 645 S.E.2d 245 (2007) 2

Dreher v. S.C. Dep't of Health & Envtl. Control,
412 S.C. 244, 772 S.E.2d 505 (2015) 10

Frederick v. Chapman,
144 S.C. 137, 142 S.E. 247 (1928) 9

Glasscock, Inc. v. U.S. Fid. & Guar. Co.,
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)....................5

Green Tree Servicing, LLC v. Williams,
377 S.C. 179, 659 S.E.2d 193 (Ct. App. 2008)....................13

Griddle v. Taylor,
182 S.C. 349, 189 S.E. 461 (1937) 9

Hillhouse v. Jennings,
60 S.C. 373, 38 S.E. 599 (1901)....................11

Hodges v. Rainey,
341 S.C. 79, 533 S.E.2d 578 (2000) 5

Howard v. Kirton,
144 S.C. 89, 142 S.E. 39 (1928) 5, 7, 11

Lessly v. Bowie,
27 S.C. 193, 3 S.E. 199 (1887) 9

Malloy v. Douglass,
113 S.C. 384, 101 S.E. 825 (1920) 11

McClurg v. Deaton,
395 S.C. 85, 716 S.E.2d 887 (2011) 5

Miller v. Aiken,
364 S.C. 303, 613 S.E.2d 364 (2005) 4

Nat'l Surety Co. v. Carsten,
159 S.C. 222, 156 S.E. 336 (1930) 8

Ravan v. Greenville Cty.,
315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993)....................12, 13

Reaves v. Stone,
231 S.C. 628, 99 S.E.2d 729 (1957) 5

Smith v. Bloome,
No. 2006–UP–096, 2006 WL 7285720, 2006 S.C. App.LEXIS 178 (S.C. Ct. App. Feb. 14, 2006) (unpublished)....................10

Spence v. Spence,
368 S.C. 106, 628 S.E.2d 869 (2006) 2

Warren v. Warren,
268 S.C. 200, 232 S.E.2d 731 (1977) 5, 11

Willis v. Whittle,
82 S.C. 500, 64 S.E. 410 (1909) 12, 13

Statutes

Betterments Act 3, 5, 6, 7, 8, 9, 11

S.C. Code Ann. § 27-27-10 *et seq.* 3

S.C. Code Ann. § 27-27-70....................3, 4, 5, 6, 7, 8, 9, 10, 11

South Carolina Recording Act. 10

Other Authorities

6 S.C. Jur. *Improvements* § 3 4

6 S.C. Jur. *Improvements* § 6 3

6 S.C. Jur. *Improvements* § 12 .... 5, 7

Black's Law Dictionary (10th ed. 2014) 7

Rule 12(b)(6) 1, 2, 3, 9

STATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Judge was correct in dismissing LBB's betterments claim pursuant to Rule 12(b)(6), SCRCP.

II. Whether the Circuit Judge was correct in dismissing LBB's trespass claim pursuant to Rule 12(b)(6), SCRCP.

STATEMENT OF THE CASE

Respondent, Bank of America, N.A. ("BANA") agrees with LBB's State of the Case as set forth in its initial brief.

STATEMENT OF THE FACTS

On April 5, 2002, James and Theda Vaughan ("Vaughans") entered into a mortgage loan agreement with BANA in which they executed a promissory note in the amount of $640,000.00 in favor of BANA. (R. p. 9 ¶ 7.) To secure repayment of the promissory note, the Vaughans executed a mortgage ("Mortgage") in favor of BANA which gave BANA the right to foreclose upon the property located at 305 Buckland Way, Greenville, South Carolina 29615 ("Property") in the event of a default. (R. p. 9 ¶ 8.) BANA recorded the Mortgage in Greenville County on April 10, 2002, in Mortgage Book 3664 at page 737. (R. p. 10 ¶ 9.)

Subsequently, due to the Vaughans non-payment of HOA dues, the Master in Equity for Greenville County conveyed the Property to Spaulding Farms Homeowners Association, Inc. ("Spaulding") by a deed dated June 20, 2012 and recorded on August 6, 2012. (R. p. 10 ¶ 11.) Spaulding then conveyed the Property to LBB & HHV II, LLC ("LLB") in a deed dated October 21, 2014 and recorded on December 5, 2014. (R. p. 10 ¶ 11.) During the time of these events, the mortgage loan was in severe default, which gave BANA the legal right to foreclose upon the Property to secure repayment of at least a portion of the mortgage loan. (R. p. 104 ¶ 22.)

On February 24, 2015, BANA sued to foreclose upon the Property. (R. pp. 8–16.) LBB filed its answer and counterclaims ("Counterclaims") to the foreclosure Complaint, in which it attempted to assert four Counterclaims for 1) Quiet Title, 2) Tresspass, 3) Betterments, and 4) Tortious Interference with Contractual Relations. (R. pp. 22–30.) Upon BANA's Motion to Dismiss, the Court dismissed all of LBB's counterclaims. (R. pp. 87–90.) LBB now appeals the dismissal of its counterclaims for Betterments and Trespass.

LBB alleges that after it took possession of the Property, it made improvements to the Property that increased the value of the Property. (R. p. 25 ¶¶ 19–20.) Thus, LBB attempts to state a claim for betterments to recover the value of the improvements made. (R. p. 25 ¶¶ 19–20.) LBB also claims that BANA's agents have entered upon the Property without authorization several times since LLB took title to the Property and, therefore, LLB alleges, BANA is liable for trespass. (R. p. 25 ¶ 25.)

STANDARD OF REVIEW

Under Rule 12(b)(6), SCRCP, a claim should be dismissed whenever a complaint fails to facts sufficient to state a cause of action. *Spence v. Spence,* 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). In ruling on a motion to dismiss, "the trial court must base its ruling solely on allegations set forth in the complaint." *Id.* Based on the facts alleged, "[t]he question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247–48 (2007).

Importantly, a 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 (Ct. App. 2002) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986))

overruled on other grounds by Farmer v. Monsanto Corp., 353 S.C. 553, 579 S.E.2d 325 (2003); *see also DeBerry v. McCain*, 275 S.C. 569, 575, 274 S.E.2d 293, 296 (1981).

ARGUMENT

I. The Circuit Judge Properly Dismissed the LBB's Betterments Claim.

In a flawed effort to persuade this Court that the Circuit Judge erred in granting BANA's Rule 12(b)(6) Motion to Dismiss, LLB misconstrues the Betterments Act, S.C. Code Ann. § 27-27-10 *et seq.*[1] and related caselaw. The plain language of the Betterments Act makes clear that a counterclaim for betterments may be raised only in an action for the recovery of the possession of real property. Because the underlying foreclosure action is not an action for the possession of real property, LLB failed to state a claim for relief, and the circuit court properly dismissed LLB's counterclaim for betterments.

A. LLB's Counterclaim for Betterments May Only Be Raised in an Action for the Recovery of Lands and Tenements.

In an apparent effort to distract this Court from the substantive issue on appeal regarding its claim for betterments, LLB confines its argument to establishing the right of a defendant to assert a claim for betterments *in an answer*. This point, however, is not in dispute. BANA does not contest that Section 27-27-70 permits a defendant to assert a claim for betterments in its answer. The point that LLB fails to address—and the point that is fatal to its claim—is that section 27-27-70 limits the right of a defendant to assert a claim for betterments in its answer *to actions for the recovery of the possession of real property.*

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[1] The statutes comprising the Betterments Act have been amended and renumbered several times since they were initially codified in 1870. *See* 6 S.C. Jur. *Improvements* § 6 ("The predecessor to section 27-27-10, the Betterment Statute, was first enacted in South Carolina in 1870. It requires that the party claiming betterments [do so] after a final judgment has been rendered in another action . . . . In contrast, the predecessor to section 27-27-70, [was] first enacted in 1885, setting forth the procedure for alleging a betterments claim as a counterclaim . . . ." (footnotes omitted)).

The plain text of Section 27-27-70 provides that a claim for betterments asserted in an answer may be raised only in an action seeking the possession of real property:

> In any *action for the recovery of lands and tenements*, whether such action be denominated legal or equitable, the defendant who may have made improvements or betterments on such land . . . may set up in his answer a claim against the plaintiff for so much money as the land has been increased in value in consequence of the improvements so made . . . .

S.C. Code Ann. § 27-27-70 (emphasis added); *see also* 6 S.C. Jur. *Improvements* § 3 ("An individual may mistakenly construct or erect improvements, also known as betterments, on property which he believes he owns, but which in fact belongs to another. If the improver is then sued by the property owner in ejectment, he or she may counterclaim for betterments or improvements in the ejectment suit . . . ."). The language of this statute is clear, and as the South Carolina Supreme Court has explained, "[w]hen a statute's terms are *clear and unambiguous on their face*, there is no room for statutory construction and a court *must* apply the statute according to its literal meaning." *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005) (emphasis added).

Remarkably, however, LLB fails to address the explicit proscription in Section 27-27-70 that limits a counterclaim for betterments to the context of an "action for the recovery of lands and tenements." S.C. Code Ann. § 27-27-70. Moreover, LLB even fails to argue on appeal that the terms of Section 27-27-70 are ambiguous such that this Court would be required to ignore their literal meaning. *See Miller*, 364 S.C. at 307, 613 S.E.2d at 366 (explaining that a court may ignore the plain and ordinary meaning of the words of a statute *only* when accepting that meaning "would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention"); *Hodges v. Rainey*, 341 S.C. 79, 87–88, 533 S.E.2d 578, 582 (2000) (concluding that when the "ordinary meaning" of a

statute will not lead to absurd results, "the plain language of the statute should not be disregarded").[2]

Similarly, LLB has not argued that the application of the literal meaning of the words of section 27-27-70 would lead to a "plainly absurd" result and defeat the intention of the Legislature. As such, this Court should reject LLB's contention that a there is a means of recovery for betterments in a responsive pleading other than as provided in Section 27-27-70—that is, in an "action for the recovery of lands." *See* S.C. Code Ann. § 27-27-70; *Warren v. Warren*, 268 S.C. 200, 202, 232 S.E.2d 731, 732 (1977) (holding that the Betterments Act "has been construed to be the sole remedy available" to a party disposed of realty for its recovery of the value of improvements constructed on the land of another); *Reaves v. Stone*, 231 S.C. 628, 634–635, 99 S.E.2d 729, 732 (1957) ("[T]he right of one dispossessed of realty to the value of betterments is purely statutory and remedy is available only upon a following of the statutes and upon proof of facts encompassed within the terms of them."); *Howard v. Kirton*, 144 S.C. 89, 94, 142 S.E. 39, 41 (1928) ("The right to recover for betterments being statutory, the remedy or method prescribed by statute for its enforcement must be followed."); *see also* 6 S.C. Jur. *Improvements* § 12 ("Because the remedy [of a claim for improvements] is contrary to the common law and statutory in nature, the method prescribed by the statute is exclusive and must be followed." (citing *Bethea v. Allen*, 101 S.C. 350, 85 S.E. 903 (1915))).

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[2] Having failed to make *any* argument in its Initial Brief regarding possible ambiguity in the terms of Section 27-27-70, LLB is precluded from raising the issue in a reply brief. *See McClurg v. Deaton*, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011) ("It is axiomatic that an issue cannot be raised for the first time in a reply brief."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (holding that even if an argument is raised in an initial brief, if the argument is conclusory and unsupported by authority, the argument is not preserved for review and the appellant is precluded from more fully addressing the issue in a reply brief).

B. South Carolina Appellate Courts Have Consistently Applied a Literal Interpretation of Section 27-27-70's Requirement that a Counterclaim for Betterments Be Raised in an Action for the Recovery of Lands and Tenements.

Indeed, a literal interpretation of the language of Section 27-27-70 requiring a counterclaim for betterments to be brought in an action to recover real property has been consistently applied by the Supreme Court of South Carolina and by this Court. For example, in *Citizens & Southern National Bank, Atlanta, Ga. v. Modern Homes Construction Co.*, 248 S.C. 130, 134, 149 S.E.2d 326, 328 (1966), the South Carolina Supreme Court explicitly stated that a claim under Section 27-27-70 seeking recovery for improvements may only be raised in an action for the recovery of land. *Id.* ("This statute permits one, who was in possession of lands under an honest but mistaken belief of ownership, to recover for improvements made by him *only where an action at law has been brought by the owner to recover possession.*" (emphasis added) (citing S.C. Code Ann. § 57-407 (1962), now codified at S.C. Code Ann. § 27-27-70)). Accordingly, the court in *Modern Homes Construction* held that the Betterments Act was *not* applicable in an action to remove an improvement built on the land of another when *no* action for possession of the land had been brought the by owner of the land. *Id.* ("It does not appear in this case that any action for possession of the land has been brought by the owner and, therefore, the betterment statute affords no remedy.").

Subsequently, this Court cited *Modern Homes Construction* in *Butler v. Lindsey*, 293 S.C. 466, 361 S.E.2d 621 (Ct. App. 1987), to note that in an action for trespass, when the defendant asserted a counterclaim seeking compensation for the improvements made on the plaintiff's land, the plaintiff had neglected to raise the argument that the Betterment Act was *inapplicable* as the plaintiff's action was one for trespass *not* an action for the recovery of the possession of real property. *Id.* at 474 n.1, 361 S.E.2d at 625 n.1 ("[The plaintiff] does not argue

that the Betterment Act is inapplicable to [the defendant's] claim because [the plaintiff's] claim is not one to recover possession of real estate." (citing *Modern Homes Constr.*, 248 S.C. at 130, 149 S.E.2d at 326)); *see also* 6 S.C. Jur. *Improvements* § 12 ("The claim for the improvements must be filed either as a counterclaim in an action brought by the property owner for ejectment or as a separate action for the value of improvements in the event that the owner is successful in the ejectment action."); Black's Law Dictionary (10th ed. 2014) (defining "Ejectment" as "[a] legal action by which a person wrongfully ejected from property seeks to recover possession, damages, and costs").

C. LLB Misconstrues the Caselaw on Which it Relies.

LLB ignores Section 27-27-70's limitation of a claim for betterments to actions for the possession of real property and attempts to bolster its argument that the circuit court erred by misconstruing the caselaw upon which it relies. For example, although LLB has misquoted the supreme court's decision of *Howard v. Kirton* (*see* Appellant's Initial Br. p. 10), LLB appears to rely on a passage in which the court noted that "'a defendant may set up *in his answer* a claim for so much money as the land has been increased in value in consequence of improvements made thereon.'" 144 S.C. 89, 142 S.E. at 42 (emphasis added) (quoting *Harman v. Harman*, 54 S. C. 100, 31 S. E. 881, 882) (1899)). Although this passage from *Howard* does state the a claim for betterments may be set up in a defendant's answer, LLB fails to explain that immediately preceding this passage the court explained that Section 27-27-70 permits the assertion of a counterclaim for betterments *in an action for the possession of real property*. *See id.* ("[T]he act of 1885 provides for a claim for betterments set up in the answer of [a] defendant in ejectment."). The *Howard* court repeated this point in its explanation of the distinctions between Sections 27-27-10 and 27-27-70 of the Betterments Act: "[Section 27-27-10] provides for setting up a claim for betterments, after final judgment *in ejectment*, by *complaint,* while [Section 27-27-70]

provides for a claim for certain betterments to be set up in the *answer* of defendant *in ejectment*." *Id.* (first and fourth emphasis added).

LLB also erroneously contends that a defendant's statutory right to assert a claim for betterments was recognized in *National Surety Co. v. Carsten*, 159 S.C. 222, 156 S.E. 336 (1930). In *Carsten*, the plaintiff sought to hold the defendant personally liable for the wrongful distribution of real property from the estate of a deceased relative. *Id.* at 338. The defendant, in his answer, asserted a claim for betterments for the improvements he had constructed on the land that was subject of the action. *Id.* In ordering the land to be sold by the clerk of court, the circuit court concluded that the defendant could not prevail on his claim for betterments as he failed to allege and prove that at the time he made the improvements that his title to the land was "good in fee" as required under Section 27-27-70. *Id.* at 344. On appeal, the Supreme Court of South Carolina concluded that the circuit court erred in failing to compensate the defendant for the improvements and held that the defendant should be awarded some compensation for the improvements. *Id.* at 346. In reaching this conclusion, however, the *Carsten* court did *not* base its reasoning on the Betterments Act. *Id.* Rather, the court stated that the defendant made the improvements on his *expectation* that he *would* obtain title to the land. *Id.* Thus, the court concluded that the defendant should be allowed compensation for the improvements on the land "[u]nder the rules of equity." *Id.* In deciding the case under general principles of equity, the *Carsten* court did not base its holding on an application of the Betterments Act and—contrary to LLB's contention in its Initial Brief—did not recognize a "statutory right" by which LLB may assert a claim for betterments in its Answer.

Finally, LLB's reliance on *Griddle v. Taylor*, 182 S.C. 349, 189 S.E. 461 (1937), is similarly misplaced, as in that case a claim for betterments was allowed as a counterclaim in an

action for *partition* of real estate, not—as here—in an action for foreclosure of a mortgage. And, although LLB cites *Butler,* 93 S.C. at 466 n.1, 361 S.E.2d at 621 n.1, for support, LLB fails to recognize the court in *Butler* stated that the Betterments Act did *not* apply in that case because the action was not an action to "recover possession of real estate."

D. The Circuit Court Did Not Err in Relying on *Lessly v. Bowie.*

Next, LLB erroneously contends that the circuit court's order must be reversed due its reliance on the decision *Lessly v. Bowie*, 27 S.C. 193, 3 S.E. 199, 200 (1887), in which the supreme court concluded that "a claim for improvements cannot be made in an action for foreclosure of a mortgage." In granting BANA's Rule 12(b)(6) motion, the circuit court cited *Lessly* to support its conclusion that LLB's claim for betterments was not ripe for determination in an action for foreclosure: "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* [sic] *v. Bowie*, 27 SC 193, 197 (1887)." (R. pp. 88-89 (emphasis added).) BANA concedes that, pursuant to Section 27-27-70, a final judgment is not required, as a defendant may assert claim for betterments in an answer. *See* S.C. Code Ann. § 27-27-70. However, the circuit court properly relied on *Lessly*, 27 S.C. at 197, 3 S.E. at 200, to reach the conclusion that a claim for betterments can only be made in an action for the "recovery of lands and tenements" and not in an action for the *foreclosure* of a mortgage. *See* S.C. Code Ann. § 27-27-70 (limiting claims for betterments raised in an answer to "action[s] for the recovery of lands and tenements"). Because the underlying action for foreclosure is not an action for the recovery of real property, *see Frederick v. Chapman*, 144 S.C. 137, 142 S.E. 247, 249 (1928) (stating that actions for foreclosure of a mortgage are not actions for the recovery of real property), the circuit court did not err in dismissing LLB's claim for betterments, and the circuit court's Order should be affirmed, *see Dreher v. S.C. Dep't of Health & Envtl. Control*, 412 S.C. 244, 250, 772 S.E.2d

505, 508 (2015) ("[A]n appellate court may affirm the lower court's decision for any reason appearing in the record, [and] the prevailing party may—but is not required to—raise additional sustaining grounds to support the lower court's decision.").

E. LLB Could Not Establish its Belief That It Was the Exclusive Owner of the Property at the Time It Made the Improvements.

The circuit court did not err in dismissing LLB's claim for betterments as LLB knew or should have known that it was not the exclusive owner of the Property by virtue of the previously recorded Mortgage in favor of BANA. Pursuant to Section 27-27-70, a defendant must demonstrate that at the time it made the claimed improvements it believed it was the exclusive owner of the property at issue and must plead facts to show the value of the repairs made to the property, as well as the increase in the value of the property due to the repairs. *See* S.C. Code Ann. § 27-27-70 (stating that a party is entitled to "set up in his answer a claim against the plaintiff for so much money as the land has been increased in value in consequence of the improvements so made" if he believed "at the time he made such improvements or betterments that his title thereto was good in fee"). In addition, the claimant is charged with inquiry knowledge of the security interest of a senior mortgagee on the property by virtue of a mortgage being previously recorded under the South Carolina Recording Act. *See Smith v. Bloome*, No. 2006–UP–096, 2006 WL 7285720, at *2, 2006 S.C. App. LEXIS 178, at *5–6 (S.C. Ct. App. Feb. 14, 2006) (unpublished) (holding that a party who was not the exclusive owner of a property failed to demonstrate a betterments claim because he should have known he was not the exclusive owner by checking the local land records to determine all of the record owners of the property).

F. The Betterments Act is the Sole Remedy for LLB to Recover for Improvements on the Land of Another.

Lastly, LLB contends that if this Court affirms the circuit court's Order, LLB will be forced to bring it claim for betterments in a separate proceeding, which would "unduly tax the judiciary." (Appellant's Initial Br. p. 11.) LLB's argument that this Court should mandate the award of remedy for betterments other than as the Legislature has prescribed by the Betterments Act for the sake of judicial economy is unavailing. As discussed above, the Betterments Act provides "the sole remedy available" to a party disposed of realty for its recovery of the value of improvements constructed on the land of another. *Warren*, 268 S.C. at 202, 232 S.E.2d at 732. As such, the method prescribed by the statutes must be followed. *See Howard*, 144 S.C. at 94, 142 S.E. at 41. Only the Legislature can provide another remedy. *See Bethea*, 101 S.C. at 357, 85 S.E. at 904–05 ("[B]ut the [Betterments Act] was so written by the lawmakers, and it has been so construed by this court in the decisions above cited. The power to amend or extend a statute rests solely with the Legislature. The general rule is that, where a new right is created by a statute, which also prescribes the remedy or method of enforcing the right, the method prescribed by the statute is exclusive."); *cf. Malloy v. Douglass*, 113 S.C. 384, 101 S.E. 825, 825 (1920) ("The Legislature has made the law, and the courts should enforce it."); *Hillhouse v. Jennings*, 60 S.C. 373, 38 S.E. 599, 601–02 (1901) (explaining that "this court does not make the law, but it does enforce it")).

* * *

Ultimately, LBB's betterments claim for two reasons. First, Section 27-27-70 leaves no doubt that a claim for betterments cannot be brought in a foreclosure action because it is not an "action for the recovery of lands and tenements." And second, LBB knew it was not the

exclusive owner of the Property by virtue of the Mortgage to BANA recorded April 5, 2002. This claim was therefore properly dismissed.

II. The Circuit Judge Did Not Err in Dismissing the Appellant's Trespass Claim.

After it took possession of the Property, LBB alleges that it informed BANA that any entry upon the Property was unauthorized by LBB. (R. p. 25 ¶ 24.) LBB asserts that BANA continued to send its agents to enter upon the Property after LBB informed Plaintiff that it was unauthorized to do so. (R. p. 25 ¶ 23.) Based upon this allegation, LBB attempts to state a claim for trespass. This claim, however, fails as a matter of law because the terms of the Mortgage on the Property authorized BANA to enter upon the land to inspect and maintain it. Therefore, LBB cannot state a claim for trespass.

Trespass is defined as "any interference with one's right to the exclusive, peaceable possession of his property." *Ravan v. Greenville Cty.*, 315 S.C. 447, 463, 434 S.E.2d 296, 306 (Ct. App. 1993). Moreover, 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. *Id.* at 464, 434 S.E.2d at 306. Finally, when 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, 64 S.E. 410, 410 (1909).

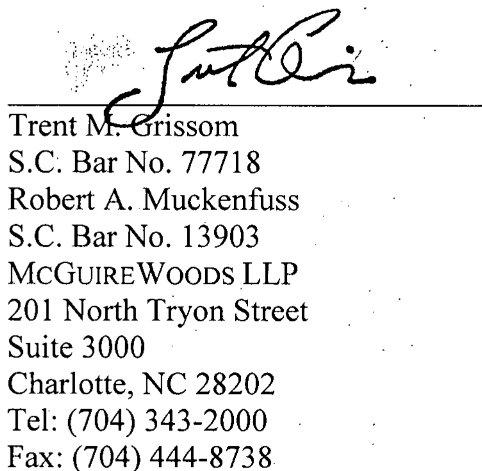
In this case, LBB cannot state a claim for trespass because under no circumstances can LBB demonstrate that the entry upon the land by BANA's agents was unauthorized. Even though LBB allegedly informed BANA not to enter upon the land, BANA's Mortgage, executed by the Vaughans, allowed it to enter upon the land after a default on the loan in order to inspect and maintain the Property. (R. pp. 97–98 ¶¶ 7, 9.) It is not disputed that the Vaughans defaulted

on the Mortgage and that the Mortgage is a matter of public record. Accordingly, LBB took possession of the Property in 2014 with knowledge that the Mortgage was still in effect and is accordingly charged with knowledge of all the contents of the Mortgage, including the clause which allows BANA to enter upon the land. *Green Tree Servicing, LLC v. Williams*, 377 S.C. 179, 184, 659 S.E.2d 193, 195 (Ct. App. 2008) (explaining that the recording of a mortgage is notice to all subsequent purchasers and mortgagees and that notice of the mortgage is also notice of its contents). Finally, LBB fails to state how any of the entries upon the land resulted in direct harm to itself. *See Ravan*, 315 S.C. at 463, 434 S.E.2d at 306 ("At common law, the landowners' showing in this case would be insufficient to demonstrate trespass because of the requirement of an affirmative act resulting in direct harm to the landowners."). Given that the entry upon the land was authorized by the Mortgage (R. pp. 97–98 ¶¶ 7, 9), and no direct harm resulted from the entries, LBB may not maintain a claim for trespass as a matter of law. *Whittle*, 82 S.C. at 501, 64 S.E. at 410.

CONCLUSION

The trial court's dismissal of LBB's claims for betterments and trespass should be affirmed.

September 26, 2016.



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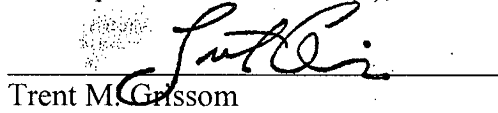
CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with Rule 211(b), SCACR.



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