

STATE OF SOUTH CAROLINA
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable James R. Barber, Circuit Court Judge

Appellate Case No. 2015-002537

RECEIVED

AUG 16 2016

SC Court of Appeals
RECEIVED

AUG 29 2016

SC Court of Appeals

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, N.A., 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, ... Appellant.

RECORD ON APPEAL

John Walter Whitmire
J. Ryan Oates

D. Ryan McCabe
McCabe Trotter & Beverly, PC
Post Office Box 212069
Columbia, SC 29221
(803) 724-5000
Attorney for Appellant

Trent M. Grissom
Robert A. Muckenfuss
McGuireWoods LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 29202
Attorneys for Respondent

Robert P. Davis
Rogers Townsend & Thomas
220 Executive Center Drive
Columbia, SC 29210
Attorney for Respondent

STATE OF SOUTH CAROLINA
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable James R. Barber, Circuit Court Judge

RECEIVED
AUG 16 2016
SC Court of Appeals

Appellate Case No. 2015-002537

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, N.A., 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

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

v.

LBB & HHV II, LLC, ... Appellant.

RECORD ON APPEAL

D. Ryan McCabe
McCabe Trotter & Beverly, PC
Post Office Box 212069
Columbia, South Carolina 29221
(803)-724-5000
Attorney for Appellant

Trent M. Grissom
McGuireWoods LLP
201 North Tryon Street
Suite 3000
Charlotte, North Carolina 29202
Attorney for Respondent

INDEX

Lis Pendens, Summons and Complaint filed February 24, 2015.....	1
Lis Pendens, Answer and Counterclaim filed April 9, 2015	20
Amended Lis Pendens, Amended Answer and Counterclaims filed May 1, 2015.....	31
Plaintiff's Rule 12 Motion to Dismiss in Lieu of Answer	46
Transcript of Record dated October 14, 2015.....	52
Defendant's Memorandum in Opposition to Plaintiff's Motion to Dismiss.....	72
Proposed Order Denying and Dismissing Defendant's Motion to Dismiss Pursuant to Rule 12(b)(6) in Part	81
Order Granting Plaintiff's Rule 12 Motion to Dismiss in Lieu of Answer	87
Mortgage Executed by Defendants James and Theda Vaughan.....	91
Certificate of Counsel	110

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, N.A., 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;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2015-CP-23-01389

LIS PENDENS
Deficiency Judgment Waived

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 FEB 24 PM 12:12

(015262-02017)

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by James R. Vaughan and Theda B. Vaughan to Bank of America, N.A. dated April 5, 2002, and recorded in the Office of the RMC/ROD for Greenville County on April 10, 2002, in Mortgage Book 3664 at Page 737. This loan is subject to a loan modification agreement dated November 10, 2002.

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

ALL that certain piece, parcel or lot of land together with all improvements located thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lot No.

2015LP230

0265

1

RECORD ON APPEAL 000001

246 on a plat prepared by Fant Engineering & Surveying Co., dated May 5, 1994, entitled "Spaulding Farm, Phase 6-A", recorded in the Register of Deeds for Greenville County in Plat Book 28-B at Page 32 and having such metes and bounds as shown thereon, reference to said plat being made for a more complete description.

ALSO: ALL that certain piece, parcel or lot of land together with all improvements located thereon, situate, lying and being the County of Greenville, State of South Carolina, being shown and designated as a portion of Lot No. 248 on a plat entitled "Part Lot 248, Spaulding Farm Phase 6-A for Steven D. Bertling and Lisa E. Bertling", dated March 15, 1997, prepared by Fant Engineering & Surveying Co., Inc., and having the following metes and bounds, to-wit:

BEGINNING at a point at the joint corner of Lots 248, 246, 245 and 244 and running N. 10-37-46 E. 88.73 feet to a point; thence turning and running S. 75-41-02 E. 1.00 feet to a point; thence turning and running S. 11-16-51 W. 88.67 feet to the place and point of beginning.

THE above described property is also shown as Lot No. 246 and part of Lot No. 248, Spaulding Farm, Phase 6-A, on a more recent plat entitled "Survey for James R. Vaughan & Theda B. Vaughan", prepared by Site Design, Inc., dated May 18, 1998, and recorded in the Register of Deeds for Greenville County in Plat Book 37-Z at Page 86 and having such metes and bounds as shown on the more recent plat, reference to which is hereby made for a more complete description.

This being the same property conveyed to James R. Vaughan and Theda B. Vaughan by deed of Pete Alexandris, dated June 5, 1998 and recorded June 22, 1998 in Book 1770 at Page 221, and also by deed of Great Western Bank/Washington Mutual, dated June 10, 1998 and recorded June 22, 1998 in Book 1770 at Page 223. Subsequently, Charles B. Simmons, Jr., Master in Equity for Greenville County, conveyed Lot 246 to Spaulding Farm Homeowners Association, Inc. by deed dated June 20, 2012 and recorded August 6, 2012 in Book 2409 at Page 5326. Subsequently, Spaulding Farm Homeowners' Association, Inc. conveyed Lot 246 to LBB & HHV II, LLC by deed dated October 21, 2014 and recorded December 5, 2014 in Book 2456 at Page 1073.

Property Address: 305 Buckland Way
Greenville, SC 29615

TMS# 0531.07-01-097.00



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)

Andrew A. Powell (SC Bar #100210)

John J. Heam (SC Bar #6635)

Nikole Halliwanger (SC Bar #70491)

Ashley M. Wheeling-Goodson (SC Bar #101423)

Andrew W. Montgomery (SC Bar #79893)

H. Guyton Murrell (SC Bar #064134)

Kevin T. Brown (SC Bar #664236)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
February 20, 2015

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Bank of America, N.A.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

Plaintiff(s)

2015-CP-23-01389

Theda B. Vaughan aka Theda L. Vaughan; Jessica R. Vaughan; LDD & HNV II, LLC; HomeTrust Bank, N.A.; Quilley Business Solutions, Inc.; Creative Builders, Incorporated; Matthew J. Byrnes; Ann Dymars; Mayfield Dairy Farms, LLC; TD Bank, N.A., as successor by merger with Carolina First Bank; Butler Improvements, LLC; Discover Bank; Spiga Dairy Group, LLC; FIA Card Services, N.A.; Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association; L. Steven Spinks; Dilance Coffee Roasters, Inc.; Breck Bank and Trust Company; Spunking 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;

Substantiated By: Robert P. Davis (SC Bar #74910), Andrew W. Montgomery (SC Bar #77873), Andrew A. Powell (SC Bar #100218), H. Gwynn Murray (SC Bar #064134), John J. Hearn (SC Bar #6615), Kevin T. Brown (SC Bar #064230), Audley M. Whiting-Goodson (SC Bar #101472), Nikole Huberwanger (SC Bar #70491) Attorneys for the Plaintiff
01526202017

Defendant(s)

Rogers Townsend & Thomas, PC
120 Executive Center Drive, Suite 109
Post Office Box 100208
Columbia, SC 29208
(803) 766-6664
(803) 343-7013 - Fax
info@rtt-law.com

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 FEB 24 11 12 17

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for filing with the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint. If Action is Judgment/Settlement do not complete

DOCKETING INFORMATION (Check all that apply)

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annulled Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annulled Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exception Attached).

NATURE OF ACTION (Check One Box Below)

- | Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
|---|--|--|--|
| ☐ Construction (100) | ☐ Dental Malpractice (200) | ☐ Assault/Battery/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accidents (320) | ☒ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case #
10 - No - | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Nurse/Nurse Med Mal (230) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Other (299) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| In rem Proceedings | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstatement License (600) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (510) | ☐ Judicial Review (610) | ☐ Foreign Judgment (710) | ☐ Migration-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (620) | ☐ Magistrate's Judgment (720) | ☐ Migration-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (630) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (640) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (650) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (699) | ☐ Transfer of Successor
Settlement Payment Rights
Application (760) | ☐ Worker's Comp (960) |
| | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| | | ☐ Petition for Workers
Compensation Settlement
Approval (780) | ☐ Public Service Commission (990) |
| | | ☐ Other (799) | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
| Special/Complex/Other | ☐ Pharmaceuticals (800) | | |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (840) | | |
| ☐ Automobile Acc. (610) | | | |
| ☐ | ☐ Foreign Subpoenas (850) | | |
| ☐ Medical (620) | | | |
| ☐ | ☐ Motion to Quash Subpoena in
an Out-of-Country Action (660) | | |
| ☐ | ☐ Social Proficiency (10) | | |
| ☐ | | | |
| ☐ Other (699) | | | |

Submitting Party Signature:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to S.C.R.C.P. Rule 11, and the South Carolina Privileges Civil Proceedings Sanctions Act, S.C. Code Ann. §15-16-10 et. seq.

Date: 2/20/15

RECORD ON APPEAL 000003

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

015262-02017

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

RECORD ON APPEAL 000004

STATE OF SOUTH CAROLINA

GREENVILLE COUNTY

Bank of America, N.A.,

Plaintiff

vs.

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, N.A., 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;

Defendant.

IN THE CIRCUIT COURT FOR THE
THIRTEENTH
JUDICIAL CIRCUIT

2015-CP-23-01389
CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO.

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSCHMIDT
2015 FEB 24 PM 12:13

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Plaintiff/Attorney(s) for Plaintiff(s)

Robert P. Davis (SC Bar #74030), Andrew W. Montgomery (SC Bar #79893), Andrew A. Powell (SC Bar #100210), H. Guyton Murrell (SC Bar #054134), John J. Hearn (SC Bar #6635), Kevin T. Brown (SC Bar #054236), Ashley M. Wheeling-Goodson (SC Bar #101421), Nikole Hattiwanger (SC Bar #70491)

Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444

Defendant/Attorney(s) for Defendant(s)

Date: February 20, 2015.

015262-02017

RECORD ON APPEAL 000005

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, N.A., 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;

Defendant(s).

(015262-02017)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2015-CP-23-01389

SUMMONS
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Waived

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL J. WICKENS
2015 FEB 2 PM 12 13

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to

answer after the service hercof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Bank of America, N.A..



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)

Andrew A. Powell (SC Bar #100210)

John J. Hearn (SC Bar # 6635)

Nikole Halliwaenger (SC Bar # 70491)

Ashley M. Wheeling-Goodson (SC Bar # 101423)

Andrew W. Montgomery (SC Bar #79393)

H. Glayton Murrell (SC Bar # 064134)

Kevin T. Brown (SC Bar # 064236)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
February 20, 2015

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, N.A., 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;

Defendant(s).

(015262-02017)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2015-CP-23-01389

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE

MORTGAGE

Deficiency Judgment Waiver

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 FEB 24 PM 12:13

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Greenville County, South Carolina.

2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.

RECORD ON APPEAL 000008

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the borrower did not provide all necessary documents after those documents had been requested.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about April 5, 2002, James R. Vaughan and Theda B. Vaughan made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$640,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, James R. Vaughan and Theda B. Vaughan made, executed and delivered unto Bank of America, N.A. a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

ALL that certain piece, parcel or lot of land together with all improvements located thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lot No. 246 on a plat prepared by Fant Engineering & Surveying Co., dated May 5, 1994, entitled "Spaulding Farm, Phase 6-A", recorded in the Register of Deeds for Greenville County in Plat Book 28-B at Page 32 and having such metes and bounds as shown thereon, reference to said plat being made for a more complete description.

ALSO: ALL that certain piece, parcel or lot of land together with all improvements located thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as a portion of Lot No. 248 on a plat entitled "Part Lot 248, Spaulding Farm Phase 6-A for Steven D. Bertling and Lisa E. Bertling", dated March 15, 1997, prepared by Fant Engineering & Surveying Co., Inc., and having the following metes and bounds, to-wit:

BEGINNING at a point at the joint corner of Lots 248, 246, 245 and 244 and running N. 10-37-46 E. 88.73 feet to a point; thence turning and running S. 75-41-02 E. 1.00 feet to a point; thence turning and running S. 11-16-51 W. 88.67 feet to the place and point of beginning.

THE above described property is also shown as Lot No. 246 and part of Lot No. 248, Spaulding Farm, Phase 6-A, on a more recent plat entitled "Survey for James R. Vaughan & Theda B. Vaughan", prepared by Site Design, Inc., dated May 18, 1998, and recorded in the Register of Deeds for Greenville County in Plat Book 37-Z at Page 86 and having such metes and bounds as shown on the more recent plat, reference to which is hereby made for a more complete description.

This being the same property conveyed to James R. Vaughan and Theda B. Vaughan by deed of Pete Alexandris, dated June 5, 1998 and recorded June 22, 1998 in Book 1770 at Page 221, and also by deed of Great Western Bank/Washington Mutual, dated June 10, 1998 and recorded June 22, 1998 in Book 1770 at Page 223. Subsequently, Charles B. Simmons, Jr., Master in Equity for Greenville County, conveyed Lot 246 to Spaulding Farm Homeowners Association, Inc. by deed dated June 20, 2012 and recorded August 6, 2012 in Book 2409 at Page 5326. Subsequently, Spaulding Farm Homeowners' Association, Inc. conveyed Lot 246 to LBB & HHV II, LLC by deed dated October 21, 2014 and recorded December 5, 2014 in Book 2456 at Page 1073.

Property Address: 305 Buckland Way
Greenville, SC 29615

TMS# 0531.07-01-097.00

9. The Mortgage was signed, witnessed and probated April 5, 2002; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Greenville County on April 10, 2002, in Mortgage Book 3664 at Page 737. This loan is subject to a loan modification agreement dated November 10, 2002.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Subsequently, Charles B. Simmons, Jr., Master in Equity for Greenville County, conveyed Lot 246 to Spaulding Farm Homeowners Association, Inc. by deed dated June 20, 2012 and recorded August 6, 2012 in Book 2409 at Page 5326. Subsequently, Spaulding Farm Homeowners' Association, Inc. conveyed Lot 246 to LBB & HHV II, LLC by deed dated October 21, 2014 and recorded December 5, 2014 in Book 2456 at Page 1073.

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for August 11, 2009, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of August 11, 2009, the principal sum of \$385,354.99, with interest from July 11, 2009, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

13. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find

appropriate.

15. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Hometrust Bank, N.A., by virtue of a mortgage given by James R. Vaughan and Theda L. Vaughan a/k/a Theda B. Vaughan to BankGreenville in the amount of \$250,000.00, dated December 14, 2007, and recorded December 20, 2007 in Book 4898 at Page 434. Also including any other liens they may have. Hometrust Bank, N.A. is successor in interest to BankGreenville. Also by that certain Notice of Pending of Action dated June 10, 2010, filed at Book EE3 at Page 059, and a further Notice of Pending of Action dated May 15, 2013 and filed at Book VV4 at Page 038.

B. Quality Business Solutions, Inc., by virtue of a mortgage given by James R. Vaughan and Theda Vaughan in the amount of \$120,000.00, dated April 22, 2010, and recorded May 7, 2010 in Book 5078 at Page 1719. Also including any other liens they may have.

C. Creative Builders, Incorporated, by virtue of a mortgage given by James R. Vaughan and Theda B. Vaughan a/k/a Theda L. Vaughan in the amount of \$40,731.56, dated March 8, 2011, and recorded March 10, 2011 in Book 5113 at Page 1112. Also including any other liens they may have.

D. Matthew J. Bynum and Ann Bynum, by virtue of a judgment against Liquid America, LLC, Theda L. Vaughan a/k/a Theda B. Vaughan and J. Ricky Vaughan a/k/a James Ricky Vaughan in the amount of \$1,201,410.07, dated February 3, 2011 and recorded on February 7, 2011 in Judgment Roll No. 2010-CP-23-4864. Also including any other liens they may have.

E. Mayfield Dairy Farms, LLC, by virtue of a judgment against Liquid America, LLC, Theda L. Vaughan and J. Ricky Vaughan in the amount of \$23,916.27, dated January 14, 2010 and recorded on January 28, 2010 in Judgment Roll No. 2010-CP-23-6875. Also including any other liens they may have.

F. TD Bank, N.A., as successor by merger with Carolina First Bank, by virtue of a judgment against James R. Vaughan a/k/a James R. Vaughn a/k/a James Ricky Vaughan, Theda L. Vaughan a/k/a Theda L. Vaughn a/k/a Theda B. Vaughan, et al. in the amount of \$559,773.55, dated August 9, 2012 and recorded on August 13, 2012 in Judgment Roll No. 2011-CP-23-7768. Also including any other liens they may have. Also filed in Case No. 2010-CP-23-8694.

U9 G. Butler Improvements, LLC, by virtue of a judgment against James Vaughan and Theda Vaughan in the amount of \$64,811.18, dated February 16, 2012 and recorded on February 17, 2012 in Judgment Roll No. 2011-CP-23-7894. Also including any other liens they may have. Together with interest at the rates set forth and from the dates articulated in the said judgment.

H. TD Bank, N.A., by virtue of a judgment against James R. Vaughan, Theda L. Vaughan and Liquid America, LLC in favor of TD Bank, N.A. as successor to Carolina First Bank in the amount of \$41,035.04, and recorded on June 14, 2011 in Judgment Roll No. 2009-CP-23-9232. Also including any other liens they may have. TD Bank, N.A. is successor by merger to Carolina First Bank

I. Discover Bank, by virtue of a judgment against James R. Vaughan in the amount of \$9,483.89, dated July 29, 2011 and recorded on August 3, 2011 in Judgment Roll No. 2011-CP-23-0163. Also including any other liens they may have.

J. Suiza Dairy Group, LLC, by virtue of a judgment against Liquid America, LLC a/k/a Liquid Highway, Theda L. Vaughan and James R. Vaughan in favor of Land-O-Sun Dairies, LLC a/k/a PET Dairy in the amount of \$11,000.00, dated November 29, 2010 and recorded on January 13, 2011 in Judgment Roll No. 2011-CP-23-00223. Also including any other liens they may have. Suiza Dairy Group, LLC is successor by merger to Land-O-Sun Dairies, LLC a/k/a PET Dairy

K. FIA Card Services, N.A., by virtue of a judgment against James R. Vaughan in the amount of \$19,728.03, dated October 17, 2011 and recorded on October 20, 2011 in Judgment Roll No. 2011-CP-23-4375. Also including any other liens they may have.

L. Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association, by virtue of a judgment against Townes Street Development, LLC, James R. Vaughan and Theda L. Vaughan in the amount of \$135,179.62, dated August 26, 2013 and recorded on September 3, 2013 in Judgment Roll No. 2012-CP-23-0451. Also including any other liens they may have.

M. L. Stewart Spinks, by virtue of a judgment against Theda L. Vaughan and James R. Vaughan in the amount of \$170,573.05, dated June 20, 2013 and recorded on June 21, 2013 in Judgment Roll No. 2012-CP-23-7304. Also including any other liens they may have.

N. Dillanos Coffee Roasters, Inc., by virtue of a judgment against Liquid America, LLC d/b/a Liquid Highway, Theda Vaughan and James Ricky Vaughan in the amount of

\$50,872.36, dated November 2, 2010 and recorded on November 19, 2010 in Judgment Roll No. 2009-CP-23-11040. Also including any other liens they may have.

O. Branch Banking and Trust Company, by virtue of a judgment against Liquid America, LLC, James R. Vaughn and Theda L. Vaughn in the amount of \$249,094.65, dated July 16, 2010 and recorded on September 17, 2010 in Judgment Roll No. 2010-CP-23-766. Also including any other liens they may have.

P. Spaulding Farm Homeowners Association, Inc., by virtue of a judgment against James Vaughn and Theda Vaughn in favor of Spaulding Farm HOA in the amount of \$2,080.00, dated February 15, 2011 and recorded on February 15, 2011 in Judgment Roll No. 2011-CP-23-01574. Also including any other liens they may have. Spaulding Farm Homeowners Association, Inc. is also known as Spaulding Farm HOA.

Q. TCP Leasing, Inc., by virtue of a judgment against Liquid America, LLC, James R. Vaughn and Theda L. Vaughn in the amount of \$183,325.81, dated April 29, 2010 and recorded on September 30, 2010 in Judgment Roll No. 2009-CP-23-7658. Also including any other liens they may have.

R. First South Bank, by virtue of a judgment against Liquid America, LLC, James R. Vaughn and Theda L. Vaughn in the amount of \$1,088,141.61, dated January 14, 2011 and recorded on January 19, 2011 in Judgment Roll No. 2009-CP-23-8187. Also including any other liens they may have.

S. Brookfield South Associates, LLC, by virtue of a judgment against Liquid America, LLC and Theda L. Vaughn as Personal Guarantor in the amount of \$650,121.69, dated November 1, 2010 and recorded on November 10, 2010 in Judgment Roll No. 2010-CP-23-00727. Also including any other liens they may have.

T. Branch Banking and Trust Company, by virtue of a judgment against James Vaughn in the amount of \$6,842.20, dated February 10, 2009 and recorded on April 4, 2009 in Judgment Roll No. 2009-CP-23-3113. Also including any other liens they may have.

U. Green Tree Servicing, LLC formerly known as Green Tree Financial Servicing Corporation, a Limited Liability Company under the laws of the State of Delaware, by virtue of a judgment against James R. Vaughn in the amount of \$23,921.69, dated March 24, 2009 and recorded on March 24, 2009 in Judgment Roll No. 2008-CP-23-7860. Also including any other liens they may have.

V. Bank of Travelers Rest, by virtue of a judgment against James R. Vaughn in the amount of \$160,798.43, dated August 4, 2010 and recorded on October 22, 2010 in Judgment Roll No. 2010-CP-23-1168. Also including any other liens they may have.

W. Comprehensive Legal Solutions, Inc., by virtue of a judgment against James R. Vaughn in the amount of \$11,858.56, dated September 27, 2010 and recorded on September 29, 2010 in Judgment Roll No. 2010-CP-23-5575. Also including any other liens they may have.

X. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51710241-0; Dated: May 16, 2014; Recorded: May 27, 2014; in the amount of \$326.84; in Book MI91 at Page 1187

Y. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481883-9; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,556.31; in Book MI75 at Page 1412

Z. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481884-6; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,642.76; in Book MI75 at Page 1413

AA. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481885-3; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$939.61; in Book MI75 at Page 1414

BB. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481886-0; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,390.60; in Book MI75 at Page 1415

CC. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481887-7; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,137.09; in Book MI75 at Page 1416

DD. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481888-4; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,137.72; in Book MI75 at Page 1417

EE. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481889-1; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,247.81; in Book MI75 at Page 1418

FF. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481890-7; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$503.53; in Book MI75 at Page 1419

GG. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481891-4; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,325.68; in Book MI75 at Page 1420

HH. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481892-1; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,582.31; in Book MI75 at Page 1421

II. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481893-8; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,735.93; in Book MI75 at Page 1422

JJ. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481894-5; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$707.19; in Book MI75 at Page 1423

KK. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51481895-2; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$658.38; in Book MI75 at Page 1424

LL. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51482040-5; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$1,006.48; in Book MI75 at Page 1425

MM. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51482041-2; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$484.77; in Book MI75 at Page 1426

NN. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51482042-9; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$958.54; in Book MI75 at Page 1427

OO. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51482043-6; Dated: October 15, 2012; Recorded: October 24, 2012; in the amount of \$151.12; in Book MI75 at Page 1428

PP. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Theda Vaughan; Tax Lien No.: 3-51509565-3; Dated: December 14, 2012; Recorded: December 26, 2012; in the amount of \$326.25; in Book MI77 at Page 664

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or

insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

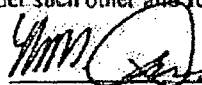
First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Greenville County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7) Order such other and further relief as may be just and proper.


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)

Andrew A. Powell (SC Bar #100210)

John J. Hearn (SC Bar # 6633)

Nikole Hahnwanger (SC Bar # 70491)

Ashley M. Wheeling-Goodson (SC Bar # 101423)

Andrew W. Montgomery (SC Bar #79893)

H. Guyton Murrell (SC Bar # 064134)

Kevin T. Brown (SC Bar # 064236)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
February 20, 2015

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, N.A., 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;

Defendant(s).

(015262-02017)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2015-CP-01389

NOTICE OF FORECLOSURE INTERVENTION
Deficiency Judgment Waived

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2015 FEB 24 PM 12 13

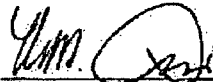
PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, you may have a right to Foreclosure Intervention.

To be considered for any available Foreclosure Intervention, you may communicate with and otherwise deal with the Plaintiff through its law firm, Rogers Townsend & Thomas, PC.

Rogers Townsend & Thomas, PC represents the Plaintiff in this action. Our law firm does not represent you. Under our ethical rules, we are prohibited from giving you any legal advice.

RECORD ON APPEAL 000017

You must submit any requests for Foreclosure Intervention consideration within 30 days from the date you are served with this Notice. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, THE FORECLOSURE ACTION MAY PROCEED.**



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)

Andrew A. Powell (SC Bar #100210)

John J. Hearn (SC Bar # 6635)

Nikole Hallivanger (SC Bar # 70491)

Ashley M. Wheeling-Goodson (SC Bar # 101423)

Andrew W. Montgomery (SC Bar #79893)

H. Guyton Murrell (SC Bar # 664134)

Kevin T. Brown (SC Bar # 064236)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
February 20, 2015

Request for Foreclosure Intervention

RTT No.: 015262-02017

This document is exchanged exclusively for the purpose of foreclosure intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01.

_____ I am the owner but do not occupy the property.

_____ I am the owner of and occupy the following property as my principal residence: 305 Buckland Way, Greenville, SC 29615

Is this street address correct? ☐ Yes ☐ No

If Yes, please include proof of occupancy such as a utility bill, military orders, voter registration card, etc.

If No, what is the correct street address: _____

_____ I am actively working with the mortgage company to resolve my mortgage account's delinquency and last spoke with the mortgage company on _____.

_____ I submitted a complete loss mitigation package to the mortgage company on _____.

I am interested in the following type(s) of loss mitigation (please note that you may not qualify for any or all of these foreclosure intervention options):

_____ Payment Plan

_____ Deed in Lieu

_____ Forbearance Agreement

_____ Short Sale

_____ Loan Modification

Other: _____

_____ I elect not to participate in any Foreclosure Intervention.

Contact #s:

Home: _____

Work: _____

Cellular: _____

Other: _____

May we leave a phone message? At home ☐ Yes ☐ No

On your cellular phone: ☐ Yes ☐ No At work ☐ Yes ☐ No

May we call your cell phone? ☐ Yes ☐ No

May we send you an e-mail message? ☐ Yes ☐ No

Email: _____

PRINT NAME: _____

_____ (Signature) Date: _____

Please note, if you are represented by counsel in the foreclosure action Rogers Townsend & Thomas will only communicate with you through your counsel.

Rogers Townsend and Thomas PC is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose.

RECORD ON APPEAL 000019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CLERK OF COURT

PAUL J. WICKENSIMER

CASE NUMBER: 2015-CP-23-01389

Bank of America, N.A.,

2015 APR 9 AM 8 52

Plaintiff,

LIS PENDENS

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, N.A., as successor by merger to Wachovia Bank, National Association; L. Stewart Spinks; Dillanos Coffee Roasters, Inc.; Branch Food 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.

(20515.1)

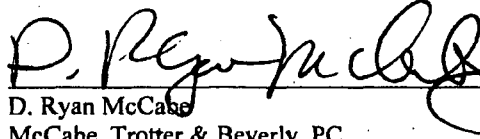
TO: PARTIES LISTED ABOVE:

NOTICE IS HEREBY GIVEN THAT LBB & HHV II, LLC has asserted Counter-Claims relating to the below described real estate:

ALL that certain piece, parcel or lot of land situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lot No. 246, on plat prepared by Fant Engineering & Surveying Co., dated May 5, 1994 entitled "Spaulding Farms, Phase 6-A" and recorded in the RMC Office for Greenville County in Plat Book 28-B at Page 32, reference to which plat is hereby craved for the metes and bounds description thereof.

TMS#: 0531070109700

Grantee's address: 305 Buckland Way, Greenville, SC 29615



D. Ryan McCabe
McCabe, Trotter & Beverly, PC
140 Stoneridge Drive, Suite 650
P.O. Box 212069
Columbia, SC 29221
Phone: 803-724-5000
Fax: 803-724-5001
Email: ryan.mccabe@mccabetrotter.com
ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
April 2, 2015

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015-CP-23-01389

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, N.A., as successor by merger to Wachovia Bank, National Association; L. Stewart Spinks; Dillanos Coffee Roasters, Inc.; Branch Food 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.

(20515.1)

TO: PLAINTIFF AND ITS ATTORNEY OF RECORD:

The Defendant, LLB & HHV II, LLC, by and through its undersigned counsel, hereby responds to Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter explained, qualified, or admitted is denied. To the extent any allegation may not be expressly referred to and Answered, it is hereby denied.

2. Defendant admits the allegations set forth in Paragraphs 1 and 2.

3. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 3 and 4, and therefore denies the allegations set forth in said Paragraphs and demands strict proof thereof.

4. Defendant admits the allegations set forth in Paragraphs 5 through 7.

5. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 8 through 16, and therefore denies the allegations set forth in said Paragraphs and demands strict proof thereof.

6. There are no allegations against Defendant in Paragraph 17, including all subparts. To the extent any allegations may be construed against Defendant, the same are hereby denied.

7. Defendant denies any allegations set forth in the WHEREFORE Paragraph of Plaintiff's Complaint, including all subparts.

FOR A SECOND DEFENSE
(Waiver)

8. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

9. Plaintiff has waived any claims against Defendant by and through its own conduct so as to bar recovery herein.

FOR A THIRD DEFENSE
(Estoppel)

10. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

11. Plaintiff is estopped by its own conduct from asserting a claim for the recovery sought herein.

FOR A FOURTH DEFENSE
(Laches)

12. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

13. Plaintiff is guilty of laches and excessive delay in bringing this action, in that in 2009, Plaintiff abandoned the property described in the Plaintiff's Complaint, allowed Defendant to make significant repairs and spend a considerable sum on said repairs, and did not file this foreclosure action until 2015.

14. Such laches and excessive delay were without good cause and substantially prejudiced the Defendant.

15. Plaintiff's action is and ought in equity to be barred by reason of Plaintiff's laches.

FOR A FIFTH DEFENSE
(Abandonment)

16. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

17. Plaintiff, with intent to abandon and forsake the property described in the Plaintiff's Complaint, relinquished all property rights to said property and is barred from asserting a claim for the recovery sought herein.

FOR A SIXTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM
(Betterment)

17. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

18. Spaulding Farm Homeowners' Association, Inc. conveyed the property located at 305 Buckland Way and bearing TMS # 0531.07-01-097.00 to Defendant by deed dated October 21, 2014 and recorded December 5, 2014 in Book 2456 at Page 1073.

19. Defendant made significant improvements to the property located at 305 Buckland Way and bearing TMS # 0531.07-01-097.00.

20. Said improvements increased the value of the property located at 305 Buckland Way and bearing TMS # 0531.07-01-097.00.

21. Defendant is entitled to a judgment equal to the value of said improvements.

FOR A SECOND COUNTERCLAIM
(Trespass)

22. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

23. Plaintiff's agents have repeatedly entered upon the property of Defendant without authorization and caused damage to said property.

24. Defendant notified Plaintiff that the aforementioned entry was unauthorized through a letter dated December 11, 2014, attached as "Exhibit B."

25. Plaintiff's agents entered upon the property of Defendant without authorization after given notice.

26. Defendant is entitled to a judgment equal to the cost of all damages that resulted from the trespass of Plaintiff's agents.

FOR A THIRD COUNTERCLAIM
(Quiet Title)

27. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

28. The real property involved in this action is located at 305 Buckland Way and bears TMS # 0531.07-01-097.00 .

29. Plaintiff abandoned said property in 2009.

30. Plaintiff did not respond to any of Defendant's letters regarding said property.

31. Said property fell into a state of considerable disrepair and neglect following Plaintiff's abandonment.

32. Relying on Plaintiff's abandonment of said property, Defendant took title to the property and invested significant sums of money in the repair of said property.

33. The Defendant accordingly is entitled to an order quieting title to the real property in itself.

FOR A FOURTH COUNTERCLAIM
(TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS)

34. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

35. Plaintiff knew that Defendant had entered into a contract to lease the property located at 305 Buckland Way and bears TMS # 0531.07-01-097.00.

36. Plaintiff intentionally interfered with Defendant's ability to lease said property by sending its agents to trespass upon said property without justification.

37. The Defendant has been damaged by the conduct as aforesaid of the Plaintiff, and the Defendant seeks judgement against Plaintiff for actual and punitive damages including but not limited to lost income.

RESERVATION AND NON-WAIVER

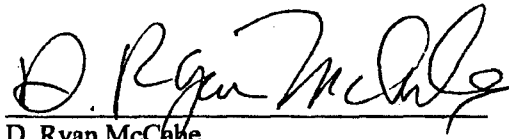
38. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim

39. Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

Wherefore, having fully set forth the basis for the claims for relief set forth herein, Defendant prays that the Court:

- A. Award Judgment to Defendant as to the Counterclaims asserted herein; and
- B. For such other and further relief as the court deems just and proper.

[Signatures on the following page]



D. Ryan McCabe
McCabe, Trotter & Beverly, P.C.
P.O. Box 212069
Columbia, South Carolina 29221
Phone: 803-724-5000
Fax: 803-724-5001
Email: ryan.mccabe@mccabetrotter.com
*Attorney for Defendant LBB & HHV II,
LLC*

April 2, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Bank of America, N.A.,

IN THE COURT OF COMMON PLEAS
C/A NUMBER: 2015-CP-23-01389
PAUL E. TICKENSIMER

2015 APR 9 AM 8 52

Plaintiff,

vs.

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, N.A., as successor by merger to Wachovia Bank, National Association; L. Stewart Spinks; Dillanos Coffee Roasters, Inc.; Branch Food 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.

CERTIFICATE OF SERVICE

(20515.1)

I, Samantha J. Rhoades, an employee with the Law Firm of McCabe, Trotter & Beverly, PC, attorneys for the Plaintiff, hereby certify that I have served or caused to be served a copy of

RECORD ON APPEAL 000029

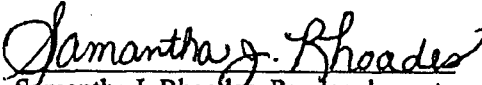
the foregoing document upon the below named individual and/or counsel this the 2nd day of April, 2015, via U.S. Mail, postage prepaid and addressed as follows:

DOCUMENTS SERVED

LBB & HHV II, LLC'S ANSWER AND COUNTERCLAIMS

PARTIES SERVED

Robert P. Davis
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202
Attorney for Plaintiff


Samantha J. Rhoades, Paralegal

Columbia, SC

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, N.A., 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.

(20515.1)

TO: PARTIES LISTED ABOVE:

NOTICE IS HEREBY GIVEN THAT LBB & HHV II, LLC has asserted Counter-Claims relating to the below described real estate:

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015-CP-23-01389

AMENDED LIS PENDENS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2015 MAY 1 PM 8 44

RECORD ON APPEAL 000031

ALL that certain piece, parcel or lot of land situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lot No. 246, on plat prepared by Fant Engineering & Surveying Co., dated May 5, 1994 entitled "Spaulding Farms, Phase 6-A" and recorded in the RMC Office for Greenville County in Plat Book 28-B at Page 32, reference to which plat is hereby craved for the metes and bounds description thereof.

TMS#: 0531070109700

Grantee's address: 305 Buckland Way, Greenville, SC 29615



D. Ryan McCabe
McCabe, Trotter & Beverly, PC
140 Stoneridge Drive, Suite 650
P.O. Box 212069
Columbia, SC 29221
Phone: 803-724-5000
Fax: 803-724-5001
Email: ryan.mccabe@mccabetrotter.com
ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
April 2, 2015

RECORD ON APPEAL 000032

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, N.A., 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.

(20515.1)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015-CP-23-01389

AMENDED LIS PENDENS

TO: PARTIES LISTED ABOVE:

NOTICE IS HEREBY GIVEN THAT LBB & HHV II, LLC has asserted Counter-Claims relating to the below described real estate:

RECORD ON APPEAL 000033

ALL that certain piece, parcel or lot of land situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lot No. 246, on plat prepared by Fant Engineering & Surveying Co., dated May 5, 1994 entitled "Spaulding Farms, Phase 6-A" and recorded in the RMC Office for Greenville County in Plat Book 28-B at Page 32, reference to which plat is hereby craved for the metes and bounds description thereof.

TMS#: 0531070109700

Grantee's address: 305 Buckland Way, Greenville, SC 29615



D. Ryan McCabe
McCabe, Trotter & Beverly, PC
140 Stoneridge Drive, Suite 650
P.O. Box 212069
Columbia, SC 29221
Phone: 803-724-5000
Fax: 803-724-5001
Email: ryan.mccabe@mccabetrotter.com
ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
April 2, 2015

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, N.A., 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.

(20515.1)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015-CP-23-01389

**LBB & HHV II, LLC'S AMENDED ANSWER
AND COUNTERCLAIMS
(Jury Trial Demanded)**

TO: PLAINTIFF AND ITS ATTORNEY OF RECORD:

The Defendant, LBB & HHV II, LLC, by and through its undersigned counsel,
hereby responds to Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter explained, qualified, or admitted is denied. To the extent any allegation may not be expressly referred to and Answered, it is hereby denied.

2. Defendant admits the allegations set forth in Paragraphs 1 and 2.

3. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 3 and 4, and therefore denies the allegations set forth in said Paragraphs and demands strict proof thereof.

4. Defendant admits the allegations set forth in Paragraphs 5 through 7.

5. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 8 through 16, and therefore denies the allegations set forth in said Paragraphs and demands strict proof thereof.

6. There are no allegations against Defendant in Paragraph 17, including all subparts. To the extent any allegations may be construed against Defendant, the same are hereby denied.

7. Defendant denies any allegations set forth in the WHEREFORE Paragraph of Plaintiff's Complaint, including all subparts.

FOR A SECOND DEFENSE
(Waiver)

8. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

9. Plaintiff has waived any claims against Defendant by and through its own conduct so as to bar recovery herein.

FOR A THIRD DEFENSE

(Estoppel)

10. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

11. Plaintiff is estopped by its own conduct from asserting a claim for the recovery sought herein.

FOR A FOURTH DEFENSE

(Laches)

12. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

13. Plaintiff is guilty of laches and excessive delay in bringing this action, in that in 2009, Plaintiff abandoned the property described in the Plaintiff's Complaint, allowed Defendant to make significant repairs and spend a considerable sum on said repairs, and did not file this foreclosure action until 2015.

14. Such laches and excessive delay were without good cause and substantially prejudiced the Defendant.

15. Plaintiff's action is and ought in equity to be barred by reason of Plaintiff's laches.

FOR A FIFTH DEFENSE

(Abandonment)

16. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

17. Plaintiff, with intent to abandon and forsake the property described in the Plaintiff's Complaint, relinquished all property rights to said property and is barred from asserting a claim for the recovery sought herein.

FOR A SIXTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM
(Betterment)

17. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

18. Spaulding Farm Homeowners' Association, Inc. conveyed the property located at 305 Buckland Way and bearing TMS # 0531.07-01-097.00 to Defendant by deed dated October 21, 2014 and recorded December 5, 2014 in Book 2456 at Page 1073.

19. Defendant made significant improvements to the property located at 305 Buckland Way and bearing TMS # 0531.07-01-097.00.

20. Said improvements increased the value of the property located at 305 Buckland Way and bearing TMS # 0531.07-01-097.00.

21. Defendant is entitled to a judgment equal to the value of said improvements.

FOR A SECOND COUNTERCLAIM
(Trespass)

22. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

23. Plaintiff's agents have repeatedly entered upon the property of Defendant without authorization and caused damage to said property.

24. Defendant notified Plaintiff that the aforementioned entry was unauthorized through a letter dated December 11, 2014, attached as "Exhibit A."

25. Plaintiff's agents entered upon the property of Defendant without authorization after given notice.

26. Defendant is entitled to a judgment equal to the cost of all damages that resulted from the trespass of Plaintiff's agents.

FOR A THIRD COUNTERCLAIM
(Quiet Title)

27. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

28. The real property involved in this action is located at 305 Buckland Way and bears TMS # 0531.07-01-097.00 .

29. Plaintiff abandoned said property in 2009.

30. Plaintiff did not respond to any of Defendant's letters regarding said property.

31. Said property fell into a state of considerable disrepair and neglect following Plaintiff's abandonment.

32. Relying on Plaintiff's abandonment of said property, Defendant took title to the property and invested significant sums of money in the repair of said property.

33. The Defendant accordingly is entitled to an order quieting title to the real property in itself.

FOR A FOURTH COUNTERCLAIM
(TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS)

34. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim.

35. Plaintiff knew that Defendant had entered into a contract to lease the property located at 305 Buckland Way and bears TMS # 0531.07-01-097.00.

36. Plaintiff intentionally interfered with Defendant's ability to lease said property by sending its agents to trespass upon said property without justification.

37. The Defendant has been damaged by the conduct as aforesaid of the Plaintiff, and the Defendant seeks judgement against Plaintiff for actual and punitive damages including but not limited to lost income.

RESERVATION AND NON-WAIVER

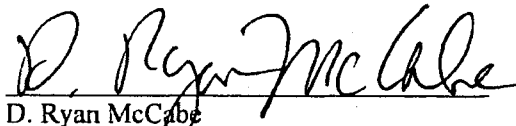
38. Defendant repeats and realleges the allegations set forth in the preceding paragraphs as if set forth herein verbatim

39. Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

Wherefore, having fully set forth the basis for the claims for relief set forth herein, Defendant prays that the Court:

- A. Jury Trial;
- B. Award Judgment to Defendant as to the Counterclaims asserted herein; and
- C. For such other and further relief as the court deems just and proper.

[Signatures on the following page]



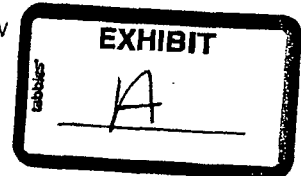
D. Ryan McCabe
McCabe, Trotter & Beverly, P.C.
P.O. Box 212069
Columbia, South Carolina 29221
Phone: 803-724-5000
Fax: 803-724-5001
Email: ryan.mccabe@mccabetrotter.com
*Attorney for Defendant LBB & HHV II,
LLC*

April 22, 2015
Columbia, South Carolina



McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW
www.mccabetrotter.com

December 11, 2014



**VIA REGULAR U.S. MAIL & CERTIFIED
U.S. MAIL**

Bank of America
333 Clay Street, Suite 3600
Houston, Texas 77002

**VIA REGULAR U.S. MAIL & CERTIFIED
U.S. MAIL**

Bank of America
c/o CT Corporation System, Registered Agent
2 Office Park Court, Suite 103
Columbia, South Carolina 29223

Re: 305 Buckland Way, Greenville, SC
MTB File Number: 20515.1

Dear Sir or Madam:

My firm represents LBB & HHV II, LLC who currently holds a quit claim deed from Spaulding Farms Homeowners' Association, Inc. to the above property. Spaulding Farms obtained title to the property through its foreclosure action. You are the first mortgage holder on the property (copy of mortgage enclosed).

LBB & HHV II, LLC is interested in buying out the first mortgage. There are several issues with the property that you may not be aware of:

1. There is a title issue with the lot boundaries;
2. There is a fence encroachment problem;
3. It currently sits in a dilapidated condition;
4. It needs to be brought into compliance with the architectural rules of the Association;
5. The building has synthetic stucco on the exterior; and
6. The building has serious mold problems (see attached estimate for mold which does not include cost to remove and replace synthetic stucco.

Additionally, your agents have broken into my client's property without authorization on several occasions and caused damage. Do not permit your agents to enter without permission from my client. By copy of this letter to Safeguard Properties, I am putting them on trespass notice.

140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210

PO Box 212069 Columbia, South Carolina 29221
Tel: (803) 724-5000 Fax: (803) 724-5001

Other Locations:
Mt. Pleasant, South Carolina
Myrtle Beach, South Carolina

RECORD ON APPEAL 000042

Bank of America
Page Two
December 11, 2014

Please give me a call and let me know if you are interested in negotiating a buy out of your mortgage.

With kind regards, I am

Sincerely,



D. Ryan McCabe

DRM/ash
Enclosure

cc: LBB & HHV II, LLC (w/enclosure, via email)
Safeguard Properties (via regular and certified mail c/o Corporation Service Company,
registered agent – 1703 Laurel Street, Columbia, SC 29201)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Bank of America, N.A.,

Plaintiff,

vs.

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, N.A., 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

C/A NUMBER: 2015-CP-23-01389

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAY 1 PM 8 44

CERTIFICATE OF SERVICE

(2015.1)

I, Angela S. Hook, an employee with the Law Firm of McCabe, Trotter & Beverly, PC, attorneys for LBB & HHV II, LLC, hereby certify that I have served or caused to be served a

RECORD ON APPEAL 000044

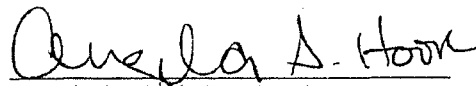
copy of the foregoing document upon the below named individual and/or counsel this the 22nd
day of April, 2015, via U.S. Mail, postage prepaid and addressed as follows:

DOCUMENTS SERVED

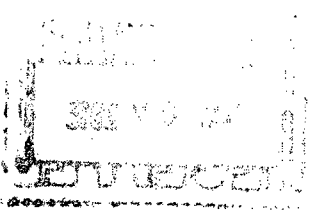
***LBB & HHV II, LLC'S AMENDED LIS PENDENS AND AMENDED ANSWER AND
COUNTERCLAIMS***

PARTIES SERVED

Robert P. Davis
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202
Attorney for Plaintiff


Angela S. Hook, Paralegal

Columbia, SC



RECORD ON APPEAL 000045

McGuireWoods LLP
Fifth Third Center
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel 704.343.2000
Fax 704.343.2300
www.mcguirewoods.com

McGUIREWOODS

Muriel Powell
Direct Telephone: 704-373-8959

MUPowell@McGuireWoods.com
Direct Facsimile: (704) 373-8935

May 27, 2015

VIA FEDERAL EXPRESS
Tracking No.: 780722971615

Paul B. Wickensimer, Clerk of Court
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

Re: *Bank of America, N.A. v. Theda B. Vaughan, et al.*
Case No. 2015-CP-23-01389

Dear Mr. Wickensimer:

Enclosed please find an original and (1) copy of Plaintiff's Rule 12 Motion to Dismiss in lieu of Answer, Motion Cover Sheet, and check in the amount of \$25.00, regarding the above-captioned matter.

Upon receipt, kindly file the original, and return the conformed copies in the postage-paid envelope provided for your convenience.

Thank you for your assistance and cooperation.

Sincerely,

MCGUIRE WOODS LLP


Muriel Powell
Paralegal

/MP

Enclosures

c: D. Ryan McCabe, Esq. (w/encls.)

RECORD ON APPEAL 000046

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.; et al

☐ Defendants,

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-23-01389

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Robert A. Muckenfuss – Bar No.
13903

T. Richmond McPherson - Bar No. 80432

Trent M. Grissom – Bar No. 77718

Address: **McGUIREWOODS LLP**

Fifth Third Center

201 N. Tryon Street (Suite 3000)

Charlotte, NC 28202

Phone: (704) 343-2051

fax: (704) 373-8935

E-mail:

other:

Defendant's Attorney: D. Ryan McCabe,
Esquire

Address: McCabe, Trotter & Beverly, P.C.

P.O. Box 212069

Columbia, SC 29221

Phone: (803) 724-5000

Fax: (803) 724-5001

E-mail:

other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Rule 12 Motion to Dismiss in Lieu of Answer

Estimated Time Needed _____ Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted 5/27/15

RECORD ON APPEAL 000047

SECTION III: Motion Fee	
☒ PAID – AMOUNT: <u> \$25.00 </u>	
☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	
☐ Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	_____ JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE _____	

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	DOCKET NO.: 15-CP-23-1389
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.	PLAINTIFF'S RULE 12 MOTION TO DISMISS IN LIEU OF ANSWER

(515262.02017 RSJ)

The Plaintiff Bank of America, N.A. ("Plaintiff"), by and through the undersigned counsel, responds to the Counterclaims of Defendant LBB & HHV II, LLC ("Defendant "LBB") and shows unto the Court as follows:

FOR A FIRST DEFENSE
(Motion to Dismiss for Failure to State a Claim)

RECORD ON APPEAL 000049

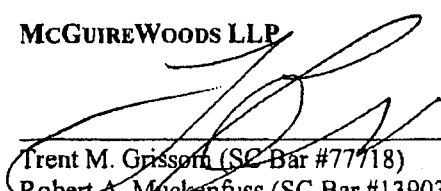
Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Plaintiff moves this Court for a dismissal of all of Defendant LBB's claims for failure to state a claim upon which relief may be granted.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth its Rule 12 Motion to Dismiss in lieu of Answer, Plaintiff prays that this Honorable Court inquire into the matters at issue and:

- A. Dismiss Defendant LBB's counterclaims;
- B. Grant Plaintiff judgment on its Complaint;
- C. Award to Plaintiff reasonable attorney's fees and costs in accordance with the terms of the Note and Mortgage; and
- D. Award to Plaintiff such other and further relief as may be just and proper.

MCGUIREWOODS LLP



Trent M. Grissom (SC Bar #77718)

Robert A. Muckenfuss (SC Bar #13903)

Richmond McPherson, III (SC Bar # 80432)

MCGUIREWOODS LLP

201 North Tryon Street, Suite 3000

Charlotte, North Carolina 28202

Telephone: (704) 343-2000

Facsimile: (704) 343-2300

tgrissom@mcguirewoods.com

rmuckenfuss@mcguirewoods.com

rmcpherson@mcguirewoods.com

ATTORNEYS FOR BANK OF AMERICA, N.A.

Dated: May 27, 2015

CERTIFICATE OF SERVICE BY MAIL
Case # 2015-CP-23-1389

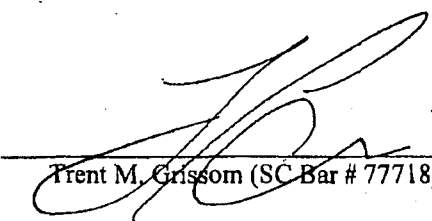
I, the undersigned attorney, for the law firm of McGuireWoods, LLP, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on May 27, 2015 at the following:

Document Served:

Plaintiff's Rule 12 Motion in lieu of Answer

Counsel Served:

D. Ryan McCabe, Esquire
McCabe, Trotter & Beverly, P.C.
PO Box 212069
Columbia, SC 29221



Trent M. Grissom (SC Bar # 77718)

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 2015-CP-23-01389
COUNTY OF GREENVILLE)
)
)
)
)
BANK OF AMERICAN, NA,)
 PLAINTIFF,)
)
vs.) TRANSCRIPT OF RECORD
)
THEDA B. VAUGHAN, ET AL,)
 DEFENDANT.)
)
)

October 14, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE JAMES R. BARBER, III, JUDGE

A P P E A R A N C E S:

TRENT M. GRISSOM
Attorney for the Plaintiff

J. WALT WHITMIRE
Attorney for the Defendant LBB & HHV, II, LLC

CHERYL A. SMITH
Circuit Court Reporter

INDEXPAGE

There were no witnesses called.

EXHIBITSNODESCRIPTIONIDEVD

There were no exhibits introduced.

P R O C E E D I N G S

MR. GRISSOM: My name is Trent Grissom. I'm with the law Firm McGuire, Woods, and I'm here on behalf of Bank of America.

THE COURT: All right. Mr. Grissom, what do you want to tell me?

MR. GRISSOM: All right. This started as a foreclosure action on a property here in Greenville County, but prior to the bank's institution of foreclosure, this property was foreclosed on by the HOA that governs this neighborhood, and then the HOA was the bidder at the foreclosure lien sale. And then the defendant that is here in court, LBB HHV, II, LLC, I'll just refer to them as LBB to be more simple about it, they bought it from the HOA and are now the record owners of the property. And it is my understanding that they have rented the property to a tenant. And then after all of that occurred, the bank has filed foreclosure on the loan that the defendants Vaughans took out on the property originally.

THE COURT: The previous owner?

MR. GRISSOM: Correct. The ones that the HOA foreclosed on.

When we filed the foreclosure action, we got -- as I understand it, all the rest of that litany of defendants are judgment creditors of the Vaughans in some capacity or

1 another.

2 Once we filed it, the response we got back from LBB
3 was a counterclaim, an answer and counterclaim, and
4 included in that is four claims. One is for the claim of
5 betterments, one is for claim of trespass, a claim for
6 quiet title and then a claim for tortious interference with
7 contractual relations. And it's our position that, as a
8 matter of law, none of those claims will be sustained under
9 the set of facts in this case.

10 I'll first address the betterments argument. We have
11 two arguments in that regard, and one is that the LBB took
12 this property with full knowledge that Bank of America had
13 a superior lien interest in the property. The mortgage is
14 recorded. It's my understanding they even tried to
15 negotiate with the bank to try to buy the loan out.

16 I think it's also notable that this is --

17 THE COURT: Have they not made any payments on it?

18 MR. GRISSOM: They haven't.

19 I think it's notable that this is -- that these
20 defendants are a property investment company. They are
21 savvy in mortgage liens and how these laws work, so I think
22 they knew full well they bought the property subject to a
23 superior lien, and therefore there was someone else that
24 held an interest in the property other than them. But I
25 think the stronger arguments against the claim for

1 betterments is, as I outlined in our memorandum we sent in,
2 there's case law that says that a claim for betterments
3 cannot be brought in a foreclosure because, essentially,
4 it's not ripe yet. Until there is some judgment
5 dispossessing LBB of the ownership of this property, they
6 can't maintain a claim for betterments because,
7 essentially, they're asking to be paid for improvements
8 they made to their own property. And that's how the law
9 explains it is that one cannot maintain a claim for
10 betterments in property that they own.

11 So if this foreclosure were to go forward and
12 ultimately result in a sale and dispossessing ownership
13 from LBB, they would, of course, at that time have a claim
14 for betterments for the value of any improvements and
15 increased value that they caused to this property. But in
16 the foreclosure action, our argument is that the law does
17 not support it. It says it's not ripe.

18 As to the claim for trespass, of course, one of the
19 elements for trespass is an unauthorized entry upon the
20 land of another. And we attached the mortgage document to
21 our memorandum, and in paragraph 7 of the mortgage, of
22 course, when the loan is in default, the bank has the right
23 to enter upon the property to inspect it to make sure that
24 it's being protected, maintained, and it's not tore in
25 pieces or abandoned, that they have that right under the

1 mortgage. So because they're authorized by a legal valid
2 contract, the mortgage that's of record, any entry that
3 they made upon this land to do an inspection just simply
4 was -- it's authorized. And then I don't believe there
5 have been any damages alleged as a result of this trespass.

6 As to the quiet title action, I just simply can't find
7 any law or statute that supports a claim for a junior owner
8 or someone that owns subject to a superior lien getting a
9 quiet title. It seems that the basis for that action is
10 that they claim that Bank of America abandoned the property
11 in 2009. I'm assuming that's when the Vaughans went into
12 default.

13 I've assumed also, by "abandoned," they mean that we
14 didn't maintain, we didn't come in, secure the home. And I
15 think it's important to point out that under the mortgage,
16 the bank certainly has the right to come in and do that,
17 but they don't have the obligation to come in and do that.
18 That's their decision as to what they want to do with their
19 collateral.

20 There's no allegations that this is somehow an invalid
21 mortgage or that it's not enforceable, and it is superior
22 to any interest that LBB has of the property. So I just
23 don't find any law that supports a claim that they should
24 own this property free and clear of this mortgage.

25 And then finally, as to the tortious interference with

1 contractual relations, one of the essential elements of
2 that claim is that the interferer has to procure a breach
3 of the contract that it has knowledge of, and there's been
4 no allegation that Bank of America procured any breach
5 between the landowner and the tenant in this matter. It's
6 alleged that we interfered with this contract by sending an
7 inspector onto the property, but there is no allegation
8 that sending that inspector onto the property somehow
9 procured a breach between landlord and tenant, which is the
10 essential relationship under that contract. As far as we
11 know, the tenant is still living there, still paying rent
12 and the contract is still enforceable.

13 And finally, the law says that if the right that you
14 have is equal to or superior to the rights under the
15 contract that you're claiming to have interfered with, then
16 there also cannot be a claim of tortious interference with
17 contractual relations. And BANA's right -- Bank of
18 America's right to inspect the property under the mortgage
19 has to be at least equal to any rights that LBB has
20 vis-a-vis under its lease with its tenant. You know, this
21 home is significantly valuable, it's collateral for a large
22 amount of money that's owed to the bank, and their right to
23 inspect to ensure its condition, we argue, is at least
24 equal to LBB's right as a landlord under that contract.

25 So for all those reasons we stated, based on the

1 pleadings and the law, that those four counterclaims simply
2 fail.

3 THE COURT: All right. Tell me your name, please.

4 MR. WHITMIRE: May it please the Court, Walt Whitmire
5 on behalf of McCabe, Trotter.

6 THE COURT: When did you go work for them?

7 MR. WHITMIRE: Two weeks ago.

8 THE COURT: Where are they located, Walt?

9 MR. WHITMIRE: Columbia on Stoneridge in the Atrium.

10 THE COURT: All right. Let's talk about betterment.

11 MR. WHITMIRE: Well, first, Your Honor, may it please
12 the Court, we're here on plaintiff Bank of America's
13 12(b)(6) motion, and in lieu of answering our
14 counterclaims, and it's our position that our counterclaims
15 complied with the requisite sufficiency and supportive
16 cause of action, which damages are related, I think we're
17 getting a little too far ahead of ourselves here in summary
18 judgment. We haven't even got discovery.

19 THE COURT: Wait a minute, wait a minute. This is not
20 a summary judgment motion.

21 MR. WHITMIRE: No.

22 THE COURT: It's a motion based on the four corners of
23 the pleadings where they allege that you failed to state a
24 cause of action in your counterclaims, right?

25 MR. WHITMIRE: Yes, Your Honor.

1 MR. GRISSOM: That's correct, Your honor.

2 THE COURT: And then, apparently, you've brought
3 counterclaims to betterment, trespass, quiet title and
4 tortious interference with the contract.

5 MR. WHITMIRE: Correct, Your Honor.

6 THE COURT: All right. Well, let's talk about the
7 betterment.

8 MR. WHITMIRE: Your Honor, the Vaughans in this case
9 essentially abandoned the property and defaulted in 2009.
10 This is in a prominent neighborhood in Greenville. For
11 four years, this property has deteriorated, has become
12 mostly a nuisance property. The HOA, in this case,
13 foreclosed in 2012 successfully. My client, LBB, purchased
14 their deed in 2014, informed Bank of America that they
15 wanted to negotiate a potential buyout of what's left of
16 the mortgage. At that time, Your Honor, my clients put
17 \$60,000 in the property just to bring it up to basic code.

18 THE COURT: Well, you heard what he says, that you may
19 have a claim at some point in time in the future, but at
20 this time, you don't have a claim. How do you respond to
21 that?

22 MR. WHITMIRE: Procedurally, Your Honor, it's we're
23 making it also we would -- we have a quiet title right now
24 to the property. They haven't foreclosed on it yet. We're
25 making it in the alternative to --

1 THE COURT: Well, there's a foreclosure action
2 pending, right?

3 MR. WHITMIRE: Correct.

4 THE COURT: Well, they can't do that until they've
5 given the opportunity to have a hearing on the matter.
6 But, you know, quiet title only relates to the mortgage,
7 right?

8 MR. WHITMIRE: No, Your Honor. South Carolina is a
9 lien state. They essentially don't have an easement to
10 enter the property to treat it as their own until this
11 foreclosure proceeding is complete or if my client buys the
12 -- buys what's left of the mortgage. So we -- we pled
13 that --

14 THE COURT: Well, if you buy something that's junior
15 to some senior mortgage, you buy it subject to any senior
16 mortgages, right?

17 MR. WHITMIRE: Yes, Your Honor. And we're attempting
18 to hopefully buy that from the bank. The bank instituted
19 its foreclosure. My client took all the steps -- and he
20 just wants to preserve his betterment claim. He took all
21 these steps because, in this case, Bank of America --

22 THE COURT: Well, Mr. Whitmire, do you have anything
23 that says that he's not correct in his --

24 MR. WHITMIRE: Not at this time, Your Honor. I'd be
25 happy to get you a memoranda within a certain amount of

1 time.

2 THE COURT: Well, let's talk about trespass. How is
3 there a trespass?

4 MR. WHITMIRE: Your Honor, Bank of America sent its
5 agents not only just to inspect, but they changed the locks
6 out and harassed the tenants. And we have pled that. May
7 I approach?

8 I'm showing you what has been titled Affidavit of
9 Jason Brown, who runs --

10 THE COURT: Well, this is not a summary judgment
11 motion.

12 MR. WHITMIRE: No, it isn't, Your Honor. But it's
13 already been filed. It's in addition to the pleadings.

14 THE COURT: Well, I understand. But, I mean, if it's
15 a motion --

16 MR. GRISSOM: We reserve an objection to anything
17 outside of the pleadings.

18 MR. WHITMIRE: Just looking at the scintilla of
19 evidence in my client's favor --

20 THE COURT: That's not the issue in a motion to
21 dismiss.

22 Did you plead what you need to plead, an appropriate
23 cause of action?

24 MR. WHITMIRE: Yes, Your Honor. We plead that we have
25 legal possession. We have the deed to the property. We

1 put Bank of America on notice when my client purchased the
2 property in 2014 please do not -- do-not-trespass trespass
3 notice, and they came and trespassed and changed the locks
4 out.

5 THE COURT: Do you believe you writing them a letter
6 telling them not to trespass is superior to their having a
7 document that's filed that says that in the event of
8 default, or even if there's no default, I'm not sure, that
9 they have the right to inspect the property?

10 MR. WHITMIRE: It's the conduct, Your Honor. It's not
11 the inspection. They changed the locks out. They
12 trespassed. They entered it, and they did something that
13 they were completely unauthorized to do. And in a period
14 of harassment, that's the basis of our claim, and it's the
15 same basis for tortious interference of contract.

16 THE COURT: Harassment wouldn't be a cause of action
17 that you would have. The tenant would have a harassment
18 cause of action and they wouldn't -- because they were
19 bugged, that doesn't mean that you would have the ability
20 to step in their shoes.

21 MR. WHITMIRE: There are bases that they entered the
22 property with notice that my client has the deed to it and
23 changed the locks out. And this is just beyond what is --
24 what would be requisite behavior in this instance.

25 THE COURT: All right. What else? How about on quiet

1 title? I mean --

2 MR. WHITMIRE: Procedurally --

3 THE COURT: You're trying to quiet title as to the
4 first mortgage, right?

5 MR. WHITMIRE: Correct.

6 THE COURT: I don't know who your other lienholders
7 are, where they fit in relation to you or -- you know, I
8 would assume if they're junior to you, you don't have to
9 worry about them anyway. They may not even be involved in
10 any way other than having been named. Are they making any
11 claims in this case? Any other lienholders?

12 MR. GRISSOM: I haven't heard from any of them.

13 THE COURT: Mr. Whitmire, have you heard from any?

14 MR. WHITMIRE: I believe one of the other banks for
15 which the Vaughans took out a mortgage wanted to inspect
16 the property about six, seven months ago and filed a motion
17 to do so.

18 THE COURT: This deals with something your clients
19 took a mortgage out on; is that right?

20 MR. GRISSOM: No, Your Honor. It was a second
21 mortgage holder, and they wanted the right to inspect the
22 property for an appraisal. Ultimately, LBB consented to
23 that, and they've done that.

24 THE COURT: Oh, okay.

25 All right. And tortious interference, are your

1 clients still there?

2 MR. WHITMIRE: The tenants are, Your Honor.

3 THE COURT: The tenants are still there?

4 MR. WHITMIRE: The tenants are still there. The
5 property is being rented out right now on a two-year lease
6 by my client.

7 THE COURT: Do you have any damages on tortious
8 interference? You're still being paid everything you were
9 paid, right?

10 MR. WHITMIRE: Currently, Your Honor.

11 THE COURT: Well, an element of most lawsuits is some
12 damage, and you can't plead that damage when you have no
13 damage.

14 How much is the outstanding mortgage?

15 MR. WHITMIRE: \$364,000, if I'm correct.

16 THE COURT: Poor old Mr. Whitmire. What a way to step
17 into a job.

18 What's the name of this firm?

19 MR. WHITMIRE: McCabe, Trotter and Beverly.

20 THE COURT: You've gone to work for Ryan McCabe's
21 office.

22 MR. WHITMIRE: I'm here on behalf of Ryan McCabe. The
23 third partner in our firm died yesterday, so --

24 THE COURT: Who was that?

25 MR. WHITMIRE: Chip Beverly.

1 THE COURT: How did that happen?

2 MR. WHITMIRE: He had cancer, and it went from
3 manageable to very bad in a matter of two to three weeks.

4 MR. GRISSOM: That sounds about right on the unpaid
5 principal. If you calculate in some of the interest and
6 fees, it's a bit more than that.

7 THE COURT: Poor old Mr. Whitmire. He doesn't have
8 enough experience in this case to really address what needs
9 to be done on it, and that is that -- I guess I don't know
10 whether he can mediate a case like this and come up with
11 any sort of resolution. Most foreclosures are not
12 mediated. I normally don't touch a foreclosure. I refer
13 it.

14 Why isn't this sent to the master?

15 MR. WHITMIRE: Two of our claims are actions at law:
16 tortious interference of contract and trespass.

17 THE COURT: I don't think you've got that claim at
18 this point in time.

19 What else? What else is your other one?

20 MR. WHITMIRE: Quiet title and betterment.

21 THE COURT: Well, you probably don't have that now,
22 either.

23 MR. WHITMIRE: That's it, Your Honor. I'd be happy to
24 provide you a memoranda. The only answer from Bank of
25 America in this case was reciting the rule 12(b)(6) in

1 three lines, so we really are --

2 THE COURT: Well, under the rule, all they have to do
3 is file a motion to dismiss and basically allege -- I mean,
4 12(b)(6) is they failed to state a cause of action.

5 All right. Mr. Whitmire, seeing as they put you in a
6 bad position, how much time do you need?

7 MR. WHITMIRE: Your Honor, seven days, maximum.

8 THE COURT: You kind of want to feel like you're back
9 at the Attorney General's Office operating under write
10 something and do it quick?

11 MR. WHITMIRE: I didn't ask for a month. I know
12 better.

13 THE COURT: I think you might want to ask for more.

14 All right. I'll give you ten days.

15 MR. WHITMIRE: Thank you, Judge.

16 THE COURT: But give plaintiff's counsel -- send a
17 copy.

18 I assume you've seen their memorandum.

19 MR. WHITMIRE: I have not.

20 THE COURT: Did y'all give them a copy of your
21 memorandum?

22 MR. GRISSOM: It was sent to Mr. McCabe. Apparently
23 he didn't pass it along.

24 MR. WHITMIRE: It's not in the file. But it's filed
25 upwards, up and down for some time.

1 THE COURT: All right, Mr. Grissom. Give Mr. Whitmire
2 a copy of . . .

3 All right. Then with your memorandum, submit me a
4 proposed order. If you'll submit me a proposed order.

5 Walt?

6 MR. WHITMIRE: Yes, Your Honor.

7 THE COURT: Go back and look at these things. If
8 clearly you don't have a cause of action, give it up. I
9 mean, I truly have a hard time understanding even under
10 what you've admitted here today, your tenants are living
11 there and what are your damages on a tortious interference?

12 MR. GRISSOM: Just so I'm clear, he's going to --

13 THE COURT: He's going to write me a memorandum --

14 MR. GRISSOM: On all four claims?

15 THE COURT: -- on all four claims unless -- and
16 Mr. Whitmire's a very bright young attorney, and he might
17 want to talk to Mr. McCabe about if they think they really
18 have some meritorious basis on two of them, then let him
19 address those two and we don't have to worry about the
20 other ones.

21 MR. GRISSOM: And that is sort of what the bank's
22 position has been is see what sticks and what doesn't, and
23 they have no problem negotiating with LBB.

24 THE COURT: Well, that, to me, is the thing that y'all
25 need to do. I mean, if they truly have a betterment claim

1 that's going to come up at some point in time or another,
2 y'all need to talk about that, see what it is. If they're
3 prepared to pay something and you're prepared to accept
4 something, then their claim on the betterment ought to be
5 factored into whatever that something is.

6 MR. GRISSOM: Completely agree.

7 THE COURT: I'm very suspicious on the other ones, but
8 your suit to quiet title will go away then. I mean, that
9 will be a good title. If you get this thing resolved, that
10 won't be an issue.

11 MR. WHITMIRE: Yes, Your Honor.

12 THE COURT: So go back and see if you can get it
13 worked out. I guess Ryan's going to handle it, but maybe
14 he'll give you the case. If they give it to Mr. Whitmire,
15 you can all resolve it.

16 MR. WHITMIRE: I'm taking it over at this point. But,
17 of course, any negotiations would run through him.

18 THE COURT: All right. Do y'all understand if you
19 give up some of your claims, just send your letter saying
20 we're not pursuing the tortious interference or the suit to
21 quiet title or whatever, or you may want to go back and say
22 we're not pursuing any of them at this time, but we're not
23 waiving the right to do it when it's right. But y'all need
24 to have a conversation about this sooner rather than later
25 before both of you start spending big money on discovery or

1 whatever. And I'm not going to be here, but after this
2 motion is decided, if I were the chief judge, I'd send it
3 immediately to the master in equity if there are no legal
4 claims. But even then, the foreclosure can go to the
5 master and the legal claims can be handled after the fact.
6 I'm not going to teach you how to instruct these circuit
7 judges up here how to avoid work. All right.

8 MR. GRISSOM: Thank you, Judge.

9 THE COURT: All right. I'll wait to hear from you.

10 *****END OF TRANSCRIPT OF RECORD*****
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

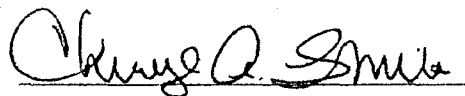
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Greenville County, South Carolina, on the 14th day of
October, 2015.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

December 17, 2015



Cheryl A. Smith, CVR-M

Court Reporter

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, N.A., 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

C.A. No. 2015-CP-23-01389

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION TO DISMISS**

This matter is before the Court on a motion to dismiss by Plaintiff, Bank of America (hereinafter "Bank" or "Plaintiff"). Defendant, LBB & HHV II, LLC (hereinafter "Defendant")

prays the Court for an Order denying Plaintiff's motion to dismiss Defendant's counterclaims filed against Plaintiff. A hearing was convened on October 23, 2015 on Plaintiff's motion. At the conclusion of the hearing, this Court granted Defendant's request to submit a memoranda in support of the denial and dismissal of Plaintiff's motion along with a proposed order on the matter.

Defendant respectfully submits this memorandum in opposition of Plaintiff's motion to dismiss. As set forth below, Defendant did not fail to state facts sufficient to constitute a cause of action, and Defendant's Amended Counterclaim, or certain causes of action, should, therefore, not be dismissed.

Standard of Review

Rule 12(b)(6) provides "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion . . . (6) failure to state facts sufficient to constitute a cause of action . . . If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56, SCRPC."

Rule 12(b)(6), SCRPC. "In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint." Spence vs. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff [or counterclaimant], would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." Brazell v. Windsor, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009).

"In deciding whether the trial court properly granted the motion to dismiss, the appellate

court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The trial court is concerned only with whether the allegations of the complaint state a cause of action. Chestnut v. AVX Corp., 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015). “The complaint should not be dismissed merely because the court doubts the plaintiff [or counterclaimant] will prevail in the action.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007).

I.

In S.C. Code Ann. § 27-27-10, the legislature conferred a claim for betterment. The statute reads as follows:

[S]upposing at the time of such purchase or acquisition such title to be good in fee or such lease to convey and secure the title and interest therein expressed, such defendant shall be entitled to recover of the plaintiff in such action the full value of all improvements made upon such land by such defendant or those under whom he claims, in the manner provided in this chapter.

Id. In order for the defendant to be entitled to recovery, the improvements or betterments must be made by a defendant who believed, at the time he makes such improvements or betterments, that his title is in good fee. Tumbleston v. Rumph, 43 S.C. 275, 21 S.E. 84, 86 (1895). “[T]he statute expressly declares that [defendant] is entitled to recover the value of all improvements made upon the land by the party from whom it has been recovered.” Templeton v. Lowry, 22 S.C. 389, 392 (1885).

A.

The current statutory framework supports Defendant’s counterclaim for betterments. Plaintiff’s argument that S.C. Code Ann. § 27-27-10 bars Defendant’s counterclaim at this stage of the litigation is without merit in light of S.C. Code Ann. § 27-27-70 that states:

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, believing at the time he made such improvements or betterments that his title thereto was good in fee, 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 and the defendant may also set up a claim against the plaintiff for so much money as the land has been increased in value in consequence of improvements or betterments made by any person under or through whom he claims, if it be shown that the defendant actually believed he was taking a good title in fee simple thereto at the time of the alleged taking thereof.

Id. (emphasis added). The defendant is allowed to set up in his answer a claim for so much money as the land has been increased in value in consequence of the improvements. Howard v. Kirton, 144 S.C. 89, 142 S.E. 39, 42 (1928).

Plaintiff argues that Defendant's betterment claim has yet to ripen in reliance of Leslie v. Bowie, 27 S.C. 193, 3 S.E. 199 (1887). While the Bowie Court held "that a claim of improvements cannot be made in an action for foreclosure of a mortgage," the Court in more recent cases has rejected that proposition. National Surety Co. v. Carsten, 159 S.C. 222, 156 S.E. 336 (1930) is instructive to the present case. Although unavailing on the merits, the Court in Carsten recognized the Carsten defendant's statutory right to assert claim of betterment in his answer to the complaint. See Carsten, 158 S.C. 222, 156 S.E.2d at 342-45; see also Griddle v. Taylor, 182 S.C. 349, 189 S.E. 461 (1937) (The Court affirmed the Griddle defendant's statutory right assert a betterment counterclaim in his answer in a partition action from an equitable mortgage); Butler v. Lindsey, 293 S.C. 566, 574, 361 S.C. 621, 625 (1987) ("Section 27-27-70 permits a defendant to request by counterclaim the value of improvements made to the land"). Therefore, Defendant correctly pled its counterclaim for betterment in its responsive pleadings.

B.

Defendant had a reasonable belief that he held title in good fee regardless of any notice of a superior lien held by the Bank. Plaintiff's argument that the recording of a lien negates the element of good faith under § 27-27-10 is without merit for several reasons.

First, the dispositive factual question turns on whether the occupant had a genuine belief in his title. See Templeton, 22 S.C. at 392. The existence of lien is apples and oranges to a defect in title. Thus, Plaintiff's reliance on Smith v. Bloome, Op. No. 2006-UP-096 (Ct. App. filed February 1, 2006) is misplaced where the Smith Defendant had knowledge of the Smith Plaintiff's deed to the property in question. Id.

Second, the determination of good faith is a question of fact immune from a summary dismissal. The Court of Appeals in Lindsey recently held "the question of whether [defendant] believed he had good title to the disputed parcel at the time he made improvements is a question of fact to be decided by the trial judge." Lindsey, 293 S.C. at 475, 361 S.E.2d at 625; see also Templeton v. Lowry, 22 S.C. 389, 392 (1885); Salinas v. C. Aultman & Co., 45 S.C. 283, 22 S.E. 889, 892 (1895). Thus, the dispositive factual question turns on whether the occupant had a genuine belief in his title. See Templeton, 22 S.C. at 392. In view of the fact that color of title is related to good faith and because the statute is designed to work out the equities of a good faith improver, the cases have generally held that there has to be some reasonable claim to title which will set the improver apart from the ordinary trespasser. See generally, Cayce Land Co. v. Guignard, 135 S.C. 446, 134 S.E. 1 (1926).

Defendant's Answer and Counterclaim against Plaintiff asserts a counterclaim for betterment. Plaintiff contends that the Counterclaim fails to state sufficient facts to constitute a cause of action. This is untrue. ¶18 specifically states the date that Defendant acquired the

property, and at which time Defendant began making improvements. See Amended Answer and Counterclaim.

Defendant has reason to believe the following: Defendant purchased the property through quit claim deed at foreclosure sale from the Spaulding Farm Homeowners' Association in October 2014. The conveyance and deed were recorded in December 2014. Defendant held title in good fee regardless of any notice of a superior lien held by the Plaintiff. The status of Plaintiff's senior lien is irrelevant to Defendant's good faith belief in his ownership of title to the property. Defendant has paid property taxes, regime fees, and assessments. The tax records from 2013 to 2015 exhibit the property's increased value since Defendant has held title.

Defendant has reason to believe the following: upon Defendant's purchase, the property was in a state of disrepair that included numerous defects that resulted in a condemnation of one of its structures. Further, the swimming pool on the property became a nuisance. The house suffered from extensive mold damage. Defendant spent considerable amounts of money, time, and resources to repair the property in order to make it habitable. Property records indicate that the mortgage lay dormant since 2009 without any efforts asserted by the Bank to foreclose, while it was still in the possession of the mortgagor's note.

Defendant has reason to believe the following: Defendant believed that any prospective lien holders had abandoned any interest in the property because of its state of disrepair. It was not until some six (6) years after the date of default and after the property had been foreclosed upon to pay Spaulding Farms' assessments and fines that the Bank remembered its senior lien. Because of Plaintiff's conduct, the property fell into serious disrepair. Plaintiff only sought to foreclose on its senior lien upon learning of Defendant's improvements. Clearly, Plaintiff seeks to capitalize off the improvements made by Defendant; now Plaintiff seeks to deprive Defendant

of any reimbursements stemming from Defendant's necessary improvements. If the Bank is truly the property owner, then the Bank should be liable for these expenses, as well as the amount LBB paid for the property at Spaulding Farms' foreclosure sale.

Therefore, this Court should deny and dismiss Plaintiff's motion to dismiss where Defendant's counterclaim for betterment, an action for which relief can be granted, has met sufficiency requirements of Rule 8(a)(1)-(3) & Rule 8(f) SCRPC.

II.

"[I]n an action of trespass to try title, a defendant in actual possession, not obtained by a tortuous eviction, is regarded as the rightful owner until the plaintiff proves perfect title." Cummings v. Varn, 307 S.C. 37, 41, 413 S.E.2d 829, 831 (1992). "The common law has traditionally accorded absolute protection to the right of exclusive possession through trespass's provision of liability and damages for any trespass, no matter how insignificant." Babb v. Lee Cnty. Landfill SC, LLC, 405 S.C. 129, 151, 747 S.E.2d 468, 480 (2013). Importantly, if a plaintiff establishes a willful trespass, the damages from invasion of the plaintiff's legal rights will be presumed sufficient to sustain the action even though such damages may be only nominal and not capable of measurement." Hinson v. A.T. Sistare Construction Co., 236 S.C. 125, 113 S.E.2d 341, 344 (1960) (emphasis added).

Defendant has reason to believe the following: Defendant holds title to property that is ~~encumbered by Plaintiff's lien. By willfully violating S.C. Code Ann. § 27-27-10 and other~~ foreclosure protocols, Plaintiff, through its agents, have repeatedly entered upon the property of Defendant without authorization and causing damage. Defendant was adequately notified of its unauthorized entry. The Bank's agents entered upon the property without authorization after given notice. Plaintiff's agents frightened the tenants, who are not a party to this lawsuit but were

caught in the middle of the dispute, by claiming the tenants had no right to be on the property. The agents again returned and changed the locks on the property without any express authorization or permission. Defendant is entitled to a judgment equal to the cost of all damages that resulted from the trespass of the Plaintiff's agents.

Therefore, this Court should deny and dismiss Plaintiff's motion to dismiss where Defendant's counterclaim for trespass, an action for which relief can be granted, has met sufficiency requirements of Rule 8(a)(1)-(3) & Rule 8(f) SCRPC.

III.

The elements of a cause of action for tortious interference with an existing contract are: (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; (5) damages. DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981).

Defendant has reason to believe the following: that Plaintiff knew that Defendant had entered into a contract to lease the property. Plaintiffs then intentionally interfered with Defendant's ability to lease the property by sending its agents to trespass upon said property without justification. As a result, Defendant has been damaged by the conduct of the Plaintiff and its agents. Therefore, Defendant seeks judgement against the Bank for actual and punitive damages including but not limited to lost income

Therefore, this Court should deny and dismiss Plaintiff's motion to dismiss where Defendant's counterclaim for tortious interference of contract, an action for which relief can be granted, has met sufficiency requirements of Rule 8(a)(1)-(3) & Rule 8(f) SCRPC.

CONCLUSION

Plaintiff, by filing a Rule 12(b)(6) motion, has accepted the claims and averments within Defendant's counterclaim as true. Defendant offers this memorandum of law as proof that Defendant has validly stated claims sufficient to constitute relief. Thus, Defendant prays this Court deny and dismiss Plaintiff's motions to dismiss Plaintiff's Rule 12(b)(6) motion for failure to state a claim for which relief may be granted for the following counterclaims: (1) betterment, (2) trespass, and (3) tortious interference of contract. As a matter of procedure, Defendant abandons its final counterclaim for quit title and prays this Court deny and dismiss it without prejudice.

J. Walt Whitmire
S.C. Bar No. 100793
McCabe, Trotter & Beverly, P.C.
P.O. Box 212069
Columbia, South Carolina 29221
Phone: 803-724-5000
Fax: 803-724-5001
Email: walt.whitmire@mccabetrotter.com
Attorney for Defendant LBB & HHV II, LLC

October ____, 2015
Columbia, South Carolina

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, N.A., 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

C.A. No. 2015-CP-23-01389

**ORDER DENYING AND DISMISSING
DEFENDANT'S MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6) IN PART**

This matter is before the Court on a motion to dismiss by Plaintiff, Bank of America (hereinafter "Bank" or "Plaintiff") against Defendant, LBB & HHV II, LLC (hereinafter "Defendant") concerning the following counterclaims: (1) Betterment (Defendant's Responsive

Pleadings ¶17-21); (2) Trespass (Defendant's Responsive Pleadings ¶22-26); (3) Tortious Interference with Contractual Relations (Defendant's Responsive Pleadings ¶34-37); (4) Quiet Title (Defendant's Responsive Pleadings ¶27-33). A hearing was convened on October 14, 2015 at the Greenville County Courthouse. Plaintiff was represented by Trent M. Grissom, Esq. while Defendant was represented by J. Walt Whitmire, Esq.

LEGAL STANDARD

"A motion to dismiss under Rule 12(b)(6) should not be granted if the facts alleged and inferences reasonably deducible therefrom would entitle the Plaintiff to relief on any theory of the case." Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999). The Complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. See Toussaint v. Hand, 292 S.C. 415, 357 S.E.2d 8 (1987). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the Complaint do not support relief under any theory of law. See Tatum v. Medical University of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001).

CONCLUSIONS OF LAW

With respect to Defendant's counterclaim for betterments, this Court denies and dismisses Plaintiff's motion to dismiss pursuant to Rule 12(b)(6), SCRPC. Defendant has sufficiently pled S.C. Code Ann. § 27-27-10 and S.C. Code Ann. § 27-27-70's elements for a betterment claim. This Court rejects Plaintiff's argument that Defendant's claim of betterment is premature. See Butler v. Lindsey, 293 S.C. 566, 474, 361 S.C. 621, 625 (1987) ("Section 27-27-70 permits a defendant to request by counterclaim the value of improvements made to the land"). Similarly, this Court rejects Plaintiff's argument that its senior lien negates Defendant's good faith belief in title. See Templeton v. Lowry, 22 S.C. 389, 392 (1885). This Court finds that matter constitutes an issue of fact immune from dismissal at this stage of the litigation.

Therefore, Plaintiff's motion on this matter is denied and dismissed.

With respect to Defendant's counterclaim for trespass, this Court denies and dismisses Plaintiff's motion to dismiss pursuant to Rule 12(b)(6), SCRCP. Defendant has sufficiently pled the elements of trespass. See Cummings v. Varn, 307, S.C. 37, 413 S.E.2d 829, 831 (1992). This Court rejects Plaintiff's argument that Defendant's purportedly nominal damages subject the claim to dismissal pursuant to Rule 12(b)(6), SCRCP. See Hinson v. A.T. Sistare Construction Co., 236 S.C. 125, 113 S.E.2d 341, 344 (1960). Furthermore, this Court rejects Plaintiff's contention that Defendant cannot prove Plaintiff's entry onto the property was unauthorized. This Court finds that matters constitute an issue of fact immune from dismissal at this stage of the litigation. Therefore Plaintiff's motion on this matter is denied and dismissed.

With respect to Defendant's counterclaim for tortious interference with an existing contract, this Court denies and dismisses Plaintiff's motion to dismiss pursuant to Rule 12(b)(6). Defendant has sufficiently pled the elements of the claim. See DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981). Therefore, Plaintiff's motion on this matter is denied and dismissed. Last, with respect to Defendant's counterclaim for quiet title, this Court grants Plaintiff's motion to dismiss pursuant to Rule 12(b)(6) where Plaintiff has moved to foreclose its senior lien on the property.

IT IS THEREFORE ORDERED:

1. That the Plaintiff's motion to dismiss Defendant's counterclaims for betterments, trespass, and tortious interference with contract pursuant to Rule 12(b)(6), SCRCP is denied and dismissed; and
2. That Plaintiff's motion to dismiss Defendant's counterclaim for quiet title pursuant to Rule 12(b)(6), SCRCP is granted.

AND IT IS SO ORDERED this ____ day of _____, 2015.

HONORABLE JAMES R. BARBER
Presiding Judge
Thirteenth Judicial Circuit

_____, South Carolina

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

2015 NOV 6 PM 3 05

Theda B Vaughan
 James R Vaughan
 Hometrust Bank NA

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

Creative Builders
 Incorporated
 Ann Bynum

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: _____

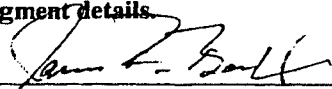
INFORMATION FOR THE JUDGMENT INDEX

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 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.



2110

10/30/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

11/6/15
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , 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

ATTORNEY(S) FOR THE PLAINTIFF(S)

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 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.

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

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2015 NOV 6 PM 3 05

DOCKET NO.: 15-CP-23-1389

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.

**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

RECORD ON APPEAL 000087

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.

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 2nd day of NOVEMBER, 2015.



Honorable James R. Barber, Judge Presiding
Thirteenth Judicial Circuit

Columbia, South Carolina

After Recording Return To:

Cecil H. Nelson, Jr., LLC
Post Office Box 2384
Greenville, SC 29602

WE HEREBY CERTIFY THIS TO
BE A TRUE AND CORRECT COPY
CECIL H. NELSON, JR., LLC

BY *Cecil H. Nelson, Jr.*

[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated July 29, 2004, together with all Riders to this document.

(B) "Borrower" is James R. Vaughan and Theda L. Vaughan. Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is Bank of America, NA. Lender is a corporation organized and existing under the laws of North Carolina. Lender's address is 700 Louisiana, 12th Floor, Houston, TX 77002. Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated July 29, 2004. The Note states that Borrower owes Lender One Million and no/100 Dollars (U.S. \$1,000,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 1, 2005.

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☐ Planned Unit Development Rider | ☐ Other(s) [specify] _____ |
| ☐ 1-4 Family Rider | ☐ Biweekly Payment Rider | |

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers; automated teller machine transactions; transfers initiated by telephone; wire transfers; and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of Greenville, State of South Carolina:

ALL that certain piece, parcel, or tract of land situate, lying, and being in the County of Greenville, State of South Carolina, being shown and designated as 51.53 acres, more or less, as shown on plat prepared by Lindsey & Associates, Inc., dated August 3, 1998, recorded in the Office of the Register of Deeds for Greenville County in Plat Book 38-K at Page 51, reference to which plat is hereby made for the metes and bounds description thereof.

AND, ALL that certain piece, parcel, or lot of land, with all improvements thereon, situate, lying, and being in the State of South Carolina, County of Greenville, containing 7.21 acres, more or less, according to a plat entitled "Survey for James Eric Carter," prepared by Lindsey & Associates, Inc., dated December 28, 1999, and recorded January 21, 2000, in Plat Book 41-K, at Page 96, in the Register of Deeds Office for Greenville County, State of South Carolina, and having, according to said plat, such metes and bounds as shown thereon, which are

incorporated herein by reference.

1

Tax Map Reference: 622.2-1-1

This being the same property conveyed unto James R. Vaughan and Theda L. Vaughan by Deed of Ironhorse Estates, LLC, to be recorded of even date herewith

which currently has the address of 58.7 acres located at the intersection of Highway 11 and Highway 14, in the County of Greenville, South Carolina ("Property Address).

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan

current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to

repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification

and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay

Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal

residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the

premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds

shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest

of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time.

Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental

Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the

charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Erin Culbertson

James R. Vaughan (Seal)
JAMES R. VAUGHAN - Borrower

Theda L. Vaughan

Theda L. Vaughan (Seal)
THEDA L. VAUGHAN - Borrower

[Space Below This Line For Acknowledgment]

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

I, Erin Culbertson, a Notary Public, do hereby certify that James R. Vaughan and Theda L. Vaughan, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Erin Culbertson

SWORN TO AND SUBSCRIBED before me
this 29th day of July, 2004,

Erin Culbertson
Notary Public for South Carolina
My commission expires: 7/21/2008

EXHIBIT A

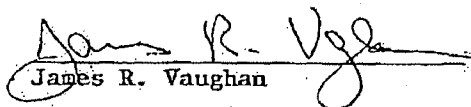
LEGAL DESCRIPTION

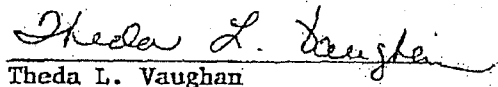
ALL that certain piece, parcel, or tract of land situate, lying, and being in the County of Greenville, State of South Carolina, being shown and designated as 51.53 acres, more or less, as shown on plat prepared by Lindsey & Associates, Inc., dated August 3, 1998, recorded in the Office of the Register of Deeds for Greenville County in Plat Book 38-K at Page 51, reference to which plat is hereby made for the metes and bounds description thereof.

AND, ALL that certain piece, parcel, or lot of land, with all improvements thereon, situate, lying, and being in the State of South Carolina, County of Greenville, containing 7.21 acres, more or less, according to a plat entitled "Survey for James Eric Carter," prepared by Lindsey & Associates, Inc., dated December 28, 1999, and recorded January 21, 2000, in Plat Book 41-K, at Page 96, in the Register of Deeds Office for Greenville County, State of South Carolina, and having, according to said plat, such metes and bounds as shown thereon, which are incorporated herein by reference.

Tax Map Reference: 622.2-1-1

This being the same property conveyed unto James R. Vaughan and Theda L. Vaughan by Deed of Ironhorse Estates, LLC, to be recorded of even date herewith.


James R. Vaughan


Theda L. Vaughan

WE HEREBY CERTIFY THIS TO
BE TRUE AND CORRECT COPY
CECIL H. NELSON, JR., LLC

BY [Signature]

CUSTOM MORTGAGE RIDER
(TO BE RECORDED WITH SECURITY INSTRUMENT)

This Rider ("Rider") is made as of 07/29/04, and is incorporated into and shall be deemed to amend and supplement the Mortgage (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to Bank of America, N.A. ("Lender") dated 07/29/04 and covering the property described in the Security Instrument and known as or located at:

See Attached "Exhibit A"

Defined terms used in this Rider shall have the meaning set forth in the Security Instrument unless otherwise indicated.

ADDITIONAL COVENANTS

In addition to the covenants made in the Security Instrument, Borrower further covenants and agrees as follows:

1. **Hazardous Substances.** Borrower shall indemnify Lender and Trustee against, and reimburse them on demand for, any and all liabilities, costs and expenses (including without limitation reasonable fees and expenses of attorneys and other professional consultants and experts) of every kind which may be incurred by Lender or Trustee as a result of the presence of any Hazardous Substance about the Property, or the migration or release or threatened migration or release of any Hazardous Substance on, to, from or through the Property, at any time during or before Borrower's ownership of the Property, or any act, omission or event existing or occurring in connection with the handling, storage, removal or disposal of any such Hazardous Substance or any violation of any Environmental Law or the filing or imposition of any environmental lien or claim against the Property as a result of any of the above occurrences.

2. **No Other Liens.** Borrower will not, without the prior written consent of Lender, except as otherwise specified by applicable law, grant, suffer or permit any contractual or non-contractual lien on or security interest in the Property, except in favor of Lender, or fail to promptly pay when due all lawful claims, whether for labor, materials or otherwise. To the extent applicable law allows the creation of liens against the Property, Borrower will advise Lender in writing within ten (10) days of the creation of any such liens against the Property.

3. **Financial Statements/Appraisals.** Lender may at its option obtain once in each year (or as otherwise requested by Lender) an appraisal of the Property or any part thereof prepared in accordance with written instructions from Lender by a third party appraiser engaged directly by Lender if any of the following occur as determined by Lender in its sole discretion: (a) a Default has occurred and is continuing; (b) an adverse change has occurred in real estate market conditions in the area where the Property is located; (c) an appraisal is required or recommended by bank examiners and/or auditors or pursuant to banking regulations or bank policy then in effect; or (d) an adverse change has occurred in the financial condition of Borrower. Each such appraisal and appraisal shall be satisfactory to Lender. To the extent not prohibited by applicable law, the cost of each such appraisal shall be payable by Borrower to Lender on demand (which obligation Borrower hereby promises to pay). Without limitation of other or additional requirements in any of the other Loan Documents, Borrower will furnish to Lender, in form and detail satisfactory to Lender, a financial statement of Borrower no later than ninety (90) days after the anniversary date of the immediately preceding financial statement received by Lender. Each financial statement submitted pursuant to this section shall be certified in writing as true and correct by Borrower. Borrower will furnish to Lender at Borrower's expense all evidence which Lender may from time to time reasonably request as to compliance with all provisions of the Note, Security Instrument as supplemented by this Rider, and any other documents provided by Borrower to Lender or executed in connection with the loan evidenced by the Note (collectively the "Loan Documents").

4. **Effective as Financing Statement.** The Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each city or county where the Property (including said fixtures) is situated.

5. **Construction Mortgage.** The Security Instrument constitutes a "Construction Mortgage" as defined in the Uniform Commercial Code adopted by the jurisdiction in which the Property is located to the extent that it secures an obligation incurred for the construction of improvements including the acquisition cost of the land.

6. **No Liability of Trustee.** The Trustee, where applicable, shall not be liable for any error or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. Borrower will reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties. The foregoing indemnity shall not terminate upon discharge of the Secured Indebtedness or foreclosure, or release or other termination of the Security Instrument.

7. **Entire Agreement; Further Assurances.** The Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect to the matters addressed in the Loan Documents. Borrower will, promptly on Lender's request, execute, deliver, procure and/or file such further documents, and take such further action as is necessary, desirable or proper to carry out more effectively the purposes of the Loan Documents, to correct any defect in the Loan Documents, or to more fully identify and subject to the Security Instrument any property intended to be covered by the Security Instrument.

By signing below Borrower accepts and agrees to the terms and covenants contained in this Rider.

EXECUTED this 29th day of July, 2004

[Signature]
James R. Vaughan

[Signature]
Theda L. Vaughan

RECORD ON APPEAL 000108

EXHIBIT A

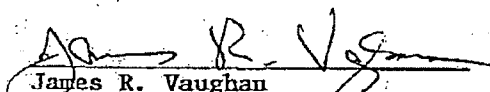
LEGAL DESCRIPTION

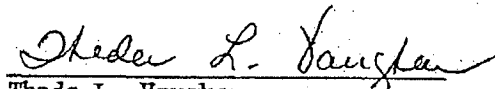
ALL that certain piece, parcel, or tract of land situate, lying, and being in the County of Greenville, State of South Carolina, being shown and designated as 51.53 acres, more or less, as shown on plat prepared by Lindsey & Associates, Inc., dated August 3, 1998, recorded in the Office of the Register of Deeds for Greenville County in Plat Book 38-K at Page 51, reference to which plat is hereby made for the metes and bounds description thereof.

AND, ALL that certain piece, parcel, or lot of land, with all improvements thereon, situate, lying, and being in the State of South Carolina, County of Greenville, containing 7.21 acres, more or less, according to a plat entitled "Survey for James Eric Carter," prepared by Lindsey & Associates, Inc., dated December 28, 1999, and recorded January 21, 2000, in Plat Book 41-K, at Page 96, in the Register of Deeds Office for Greenville County, State of South Carolina, and having, according to said plat, such metes and bounds as shown thereon, which are incorporated herein by reference.

Tax Map Reference: 622.2-1-1

This being the same property conveyed unto James R. Vaughan and Theda L. Vaughan by Deed of Ironhorse Estates, LLC, to be recorded of even date herewith.


James R. Vaughan


Theda L. Vaughan

STATE OF SOUTH CAROLINA
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

AUG 16 2016

The Honorable James R. Barber, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2015-002537

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, N.A., 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

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

v.

LBB & HHV II, LLC, ... Appellant.

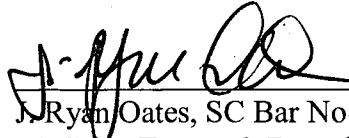
CERIFICATE OF COUNSEL

D. Ryan McCabe
McCabe Trotter & Beverly, PC
Post Office Box 212069
Columbia, South Carolina 29221
(803)-724-5000
Attorney for Appellant

Trent M. Grissom
McGuireWoods LLP
201 North Tryon Street
Suite 3000
Charlotte, North Carolina 29202
Attorney for Respondent

I certify that the Record on Appeal contains all material proposed to be included by any parties and not any other material.

Respectfully Submitted,



J. Ryan Oates, SC Bar No. 80381
McCabe, Trotter & Beverly, PC
Post Office Box 212069
Columbia, SC 29221
Phone: 803-724-5000
Email: ryan.oates@mccabetrotter.com
Attorney for Appellant

August 15, 2016

RECEIVED

AUG 16 2016

SC Court of Appeals

RECORD ON APPEAL 000110