

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 26CV000857-800

SECOND MOUNTAIN, LLC d/b/a Lured
Market & Grill,

Plaintiff,

vs.

TOWN OF LAKE LURE,
a North Carolina municipality,

Defendant.

**PLAINTIFF'S MOTION TO STRIKE THE
TOWN OF LAKE LURE'S
MOTION TO DISMISS**

Plaintiff Second Mountain, LLC d/b/a Lured Market & Grill ("Plaintiff"), by and through its undersigned counsel, and pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure, hereby moves to strike the Motion to Dismiss of Defendant the Town of Lake Lure, a North Carolina municipality ("Defendant" or the "Town"). The motion to dismiss which Plaintiff asks the Court to strike is contained in Defendant's Motion to Dismiss, Answer and Counterclaims ("Answer") filed on 5 August 2026. In support of this Motion to Strike (the "Motion"), Plaintiff shows unto the Court as follows:

1. Plaintiff filed this action seeking damages and other relief for Defendant's breach of its contractual obligations arising under a lease agreement between Plaintiff as the tenant and Defendant as the landlord (together, the "Parties"). The lease agreement involves a premises overlooking Lake Lure and contains an initial five-year term which commenced on 1 May 2024 and ends on 30 April 2029 (the "Lease Agreement" or the "Lease").

2. Plaintiff's Complaint describes the critical aspects of the Lease Agreement. Among its terms is Section 19, which provides that, "[i]n the event that the Landlord discontinues using the existing police department boat house, this boat house and premises would become a part of the concession agreement section of this lease." Complaint, ¶22.

3. Plaintiff further alleges that the "Town and the Lake Lure Police Department vacated and ceased using the existing police department boat house and premises approximately during the summer of 2024." *Id.* at ¶23.

4. The Complaint provides detailed allegations concerning the Town having discontinued the use of the existing police department boat house, which is the event that caused the "boat house and premises" to "become a part of the concession agreement section of this lease." Once that occurred, Plaintiff obtained leasehold rights in the boat house. Plaintiff describes the events that transpired to satisfy the provisions of Section 19 of the Lease Agreement throughout its pleading. *See, e.g.*, Complaint, ¶¶23-24, 29-30, 36-43, 46, 48, 52, 57-61, 65-73, 77-84, and 87-93.

5. In short, Plaintiff's Complaint consistently alleges that the Town had ceased to use the Boat House, that Plaintiff was entitled to use it as part of its premises, that it exercised its rights to do so, and that the Town later violated Plaintiff's rights under the Lease Agreement.

6. For purposes of its Motion to Dismiss, the Town has no latitude to venture beyond the allegations of the Complaint. On a Rule 12(b)(6) motion, the Complaint is treated indulgently:

In reviewing a Rule 12(b)(6) motion to dismiss, the factual allegations in plaintiff's complaint are treated as true. "A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint by presenting 'the question whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief can be granted under some [recognized] legal theory.' " A motion to dismiss pursuant to Rule 12(b)(6) should not be granted " *'unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim.'* "

Governors Club, Inc. v. Governors Club Ltd. P'ship, 152 N.C. App. 240, 246, 567 S.E.2d 781, 786 (2002), *aff'd*, 357 N.C. 46, 577 S.E.2d 620 (2003) (emphasis in the original).

7. Here, all of Plaintiff's allegations support the proposition that the Town ceased using the boat house, and that the boat house had therefore become part of premises Plaintiff is leasing.

8. Rather than taking Plaintiff's allegations as true, as required upon consideration Defendant's Motion to Dismiss, the Town's motion wanders far outside the Complaint. It introduces new alleged "facts," including a fanciful scenario recasting how Plaintiff exercised its rights under the Lease Agreement. The following block quoted phrases (with emphasis added) are found in the Motion to Dismiss itself, rather than being restricted to other portions of the Town's pleading where such rhetorical flourishes might be permitted. Defendant's motion to dismiss includes the following assertions:

- a. Exactly a year after Helene, with Marina Cove a field, populated by bulldozers, and inaccessible by boat, **Second Mountain, presumably by its owner Paul Brock ("Brock"), seized exclusive control of the Police Boathouse** by removing the Town locks and

installing his own. **He never told the Town that he had evicted it from the Police Boathouse.** The Town only learned that it had been locked out of the Police Boathouse months later when it attempted entry in anticipation of the opening of the Lake after over a year of closure.

- b. **The Town was forced to remove Brock's locks and personal items with the lake season imminent to assure public safety** of those using the newly reopened Lake.
- c. **The idea that a grocery store tenant** renting nearby premises **has the legal right to evict a police department landlord from a boathouse crucial to public safety is absurd** and could not have been the intent of the Parties when they executed the Lease."

9. The Town cannot introduce such fanciful statements in a Rule 12(b)(6) motion to dismiss, including one contained within its Answer, especially where the Lease itself sets forth the conditions for Plaintiff to exercise control over the boat house without "evicting" Defendant. That is precisely what occurred here. Defendant's Rule 12(b)(6) motion therefore does the exact opposite of what the rule contemplates: the motion to dismiss inserts fanciful facts that the Complaint does not contain and asks the Court to dismiss the Complaint on that basis.

10. While courts cannot do what the Town asks on a Rule 12(b)(6) motion, they are empowered to strike portions of a pleading which violate the Rules of Civil Procedure:

"Rule 12(f) of the North Carolina Rules of Civil Procedure, allows the court to strike 'from any pleading any insufficient defense or any redundant, irrelevant, immaterial, impertinent, or scandalous matter.' " *Carpenter*, 189 N.C.App. at —, 659 S.E.2d at 765 (2008) (quoting N.C.R. Civ. P. 12(f) (2005)).

Reese v. City of Charlotte, 196 N.C. App. 557, 567, 676 S.E.2d 493, 499 (2009).

11. Striking the motion to dismiss is a proper remedy. The Town's motion to dismiss fails to observe the requirements of Rule 12(b)(6). It adds extraneous facts not pled in the Complaint. It takes the facts actually pled in the light most unfavorable to the Plaintiff. It breathlessly alleges that Plaintiff "seized" the police boat house while the Complaint itself shows that the Town had discontinued using it. The Motion to Dismiss claims that the Town was "required" to take certain actions in connection with a boat house it was no longer using for alleged safety reasons -- which the Town must not have considered to present such a threat to public safety when it agreed to Section 19 of the Lease Agreement in the first place. The Town alleges that Plaintiff as a "grocery store tenant renting nearby premises" somehow "evict[ed] a police department" when, in reality, the Complaint shows that the boat house had become part of the leased premises with no eviction required.

12. There may be a time and a place for the Town to present its fanciful version of events, but a Rule 12(b)(6) motion is neither. The Town's motion to dismiss meets the criteria for the Court to strike "from [the Town's Answer] any insufficient defense or any redundant, irrelevant, immaterial, impertinent, or scandalous matter."

13. The Court should therefore strike the Town's motion to dismiss from its Answer.

WHEREFORE, Plaintiff respectfully prays as follows:

- (1) That the Town's Motion to Dismiss set forth in its Answer filed on 5 August 2026 be stricken; and
- (2) That Plaintiff have and recover such other and further relief as the Court deems just and proper.

This the 13th day of August 2026.

/s/ Edward L. Bleynat, Jr.
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CERTIFICATE OF SERVICE

This is to certify that I have, on this day, filed electronically through the NC eCourts File & Serve system a copy of the foregoing **PLAINTIFF'S MOTION TO STRIKE THE TOWN OF LAKE LURE'S MOTION TO DISMISS**. Parties may access this filing through the Court's system. Notice of this filing will be sent through the Court's Electronic Case Filing System in the manner prescribed under the Rules of Civil Procedure to:

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This the 13th day of August 2026.

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