



HSVPOA v. PCBS Lawsuit- Part 2

Description

Summary of Hot Springs Village POA v. PCBS, LLC

By Karen Daigle Lundberg, April 27, 2020

The following is a summarization of the lawsuit HSVPOA filed against PCBS, LLC on March 25, 2019. For your convenience, all available court documents are linked in red. [Click here to read part 1.](#)

[COMPLAINT FILED – 3/25/2019 \(Filed by Alex Gray\)](#)

HSVPOA filed a lawsuit against PCBS, LLC for breach of contract for nonpayment of past due assessment fees. The original amount being requested from PCBS was \$21,000, which was the amount stated by HSVPOA owed by PCBS as of February 15, 2019. HSVPOA also requested in this Complaint post and pre-judgment interest and attorneys' fees.

(IMPORTANT NOTE: WHEN FILING A LAWSUIT FOR MONIES OWED, YOU MUST ATTACH VERIFICATION OR PROOF OF THE MONIES OWED, ALONG WITH AN AFFIDAVIT STATING THAT THE DOCUMENTS PRODUCED ARE TRUE AND CORRECT. THESE EXHIBITS WERE NOT ATTACHED TO THE COMPLAINT, WHICH WAS A MAJOR MISTAKE.)

[NOTICE OF JUDGE TRIAL – 3/25/19](#)

This is simply a notice stating that the trial would be held by a Judge instead of a jury.

[SUMMONS – 3/25/19](#)

This is simply a summons to serve PCBS in Arizona, which is the address of the company, not the owners.

[ANSWER AND MOTION TO DISMISS – 5/21/19 \(Filed by Ben Honaker\)](#)

PCBS, through their attorney of record, Ben Honaker, filed their Answer on 5/21/19, along with a Motion to Dismiss stating that: 1) they did not owe the money; and 2) that the Complaint was not a proper Complaint because no proof was attached and no Affidavit was attached to the Complaint making it a viable complaint. PCBS requests that the case be dismissed for lack of evidence, which should have been attached to the original Complaint.

[MOTION FOR SUMMARY JUDGMENT – 7/5/19 \(Filed by Alex Gray\)](#)

Totally ignoring the fact that the Complaint that had been filed by HSVPOA, Alex Gray, on behalf of HSVPOA, was not a valid Complaint due to the missing evidence, Alex Gray files a Motion for Summary Judgment. With this Motion for Summary Judgment, HSVPOA does attach an Affidavit, sworn to by Renee Haugen stating that she had prepared the spreadsheet which was also attached. As pointed out later by the PCBS attorney, the spreadsheet was totally illegible.

IMPORTANT NOTE:

In this Motion for Summary Judgment, with no explanation whatsoever, the amount owed by PCBS jumps to \$86,389.30, and requesting \$8,803.93 in attorneys' fees. The \$21,000 sued for originally is not mentioned again in the rest of the lawsuit.

[RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT – 8/7/19 \(Filed by Ben Honaker\)](#)

PCBS, in their Response, argues that HSVPOA is not entitled to a Summary Judgment because: 1) HSVPOA is stating that PCBS owns 169 lots in HSV, when, in fact, PCBS only owns 55 lots in HSV; and 2) PCBS does not owe HSVPOA \$86,389.30. They also file a Brief in Support of their Response.

[BRIEF IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT – 8/7/19 \(Filed by Ben Honaker\)](#)

This document is 102 pages long, and it cites several citations of case law, states why Plaintiff is not entitled to Motion for Summary Judgment, and attached at the end are approximately 60 something documents, some being Limited Warranty Deeds. I will not go into this document because the beginning of it is basically case law, then it talks about how PCBS does not own 169 lots, and it also states that in HSVPOA's Declaration, it states that any past due assessments owed by a Seller of property are owed by the Buyer purchasing the property, if they agree. If it is not agreed, the property is not sold. PCBS also states that in each and every sale of land it sold, there was language in the contract that stated the Buyer would be responsible for the past due assessments.

This was agreed upon by Buyer and Seller before the contract was signed. It is also mentioned in this document that spreadsheet which was produced was illegible.

[MOTION FOR SUBSTITUTION OF COUNSEL – 9/23/19 \(Filed by Christopher McNulty\)](#)

After PCBS filed their Brief in Support of Defendant's Response to Plaintiff's Motion for Summary Judgment, sometime between 8/7/19 and 9/23/19, Alex Gray was terminated from the case because Christopher McNulty filed an appearance in the case and Alex Gray withdrew from the case.

[MOTION TO WITHDRAW JULY 5, 2019 MOTION FOR SUMMARY JUDGMENT –3/18/2020 *NOTE DATE \(Filed by Christopher McNulty\)](#)

While the pleading is not in the court record (this is done this way in Arkansas) on March 3, 2020, Christopher McNulty requested a hearing be scheduled on HSVPOA's Motion for Summary Judgment. That hearing has been scheduled for April 28, 2020. He requested the hearing on HSVPOA's Motion for Summary Judgment, the Judge granted it, and it is scheduled for April 28, 2020 at this time. This document, Motion to Withdraw July 5, 2019 Motion for Summary Judgment, which was filed 10 days after HSVPOA requested the hearing. It was apparent that there was an error and HSVPOA's attorney requested more time from the Court for discovery, so asked for the hearing to be dismissed.

[RESPONSE TO PLAINTIFF'S MOTION TO WITHDRAW JULY 5, 2019 MOTION FOR SUMMARY JUDGMENT – 3/25/2020 \(Filed by Ben Honaker\)](#)

Attorney for PCBS argues to the Judge that it does not want the hearing cancelled. It states that they are aware there was a change of counsel, but in response to HSVPOA stating they needed more time for discovery to see which lands PCBS owned and what they had sold, PCBS' response is that there is no need for discovery, that all of the documents HSVPOA needs can be located in the land records of Saline County and Garland County, and HSVPOA has had sufficient time to go look those documents up. It also states that it has produced hundreds of documents already to HSVPOA. In the meantime, PCBS has sold it's last 55 properties, now owns no land in HSVPOA at all, and owes HSVPOA nothing. PCBS also reminds HSVPOA that with the sale of the properties, the assessment arrearages went into the sale of the land, so at this time PCBS owes nothing, and there is no longer any reason for this lawsuit to exist any longer. PCBS requests the Judge not to cancel the Motion for Summary Judgment hearing scheduled for April 28th, with the exception that if it cannot be heard due to self-containment due to the Coronavirus.

[REPLY IN FURTHER SUPPORT TO PLAINTIFF'S MOTION TO WITHDRAW JULY 5, 2019 MOTION FOR SUMMARY JUDGMENT – 3/30/2020 \(Filed by Christopher McNulty\)](#)

This document is HSVPOA responding to PCBS' objection to HSVPOA's motion to withdraw its Motion for Summary Judgment. The response is quite long and, basically, states that HSVPOA does have a right to discovery and PCBS owes it to them. It also states that HSVPOA is requesting the withdrawal of its Motion for Summary Judgment in order to procure more discovery from PCBS. PCBS' argument is that HSVPOA's attorneys have had the records available to them in the Garland and Saline County records this entire time of this lawsuit.

[MOTION TO BE RELIEVED AS COUNSEL OF RECORD – 3/30/2020 \(Filed by Ben Honaker\)](#)

This document was filed by PCBS' counsel less than one month ago. It is my opinion only that his services were terminated by PCBS due to the fact that they do not owe HSVPOA any money, and PCBS did not wish to continue paying attorneys' fees on a moot case. On April 3, 2020, the Judge signed Mr. Honaker's Motion, and PCBS is no longer represented by counsel. However, both defendants do not live in the United States.

On April 13, 2020, the Honorable Grisham Phillips granted the Withdrawal of HSVPOA's Motion for Summary Judgment scheduled for April 28, 2020, reserving its rights to file another Motion for Summary Judgment at another time. However, at this time in the lawsuit, due to the fact that HSVPOA did not file any liens on any of these properties in order to secure past due assessment fees before the property could be sold, according to the land records in both Saline and Garland County, PCBS owns no land in either county any longer, thereby owes no past due assessment fees, and there is no longer any reason for this lawsuit to be on the books, much less HSVPOA paying attorneys' fees on this case. It has been a boondoggle from Day One.

[4-14-20 Order Granting Motion to Withdraw July 5, 2019, Motion for Summary Judgment](#)

MY NON-LEGAL ADVICE AND OPINION ONLY: This lawsuit has probably cost the POA a significant amount of money already. It would be very interesting to find out how much in legal fees have been paid already for this lawsuit...But for now, we are still active in this lawsuit, accruing attorneys' fees, and, if possible, needs to be shut down immediately by filing a Motion to Dismiss and pray that PCBS doesn't come after us for their attorneys' fees.

[By Karen Daigle Lundberg, April 27, 2020](#)

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