

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS

3 DIVISION

2019 MAR 25 PM 2: 53

HOT SPRINGS VILLAGE
PROPERTY OWNERS' ASSOCIATION

BY: JM
PLAINTIFF

VS.

CASE NO. 63CV-19-292

PCBS, L.L.C.

DEFENDANT

COMPLAINT

Hot Springs Village Property Owners Association, by and through its attorneys, Steel, Wright, Gray, PLLC, for its Complaint against Defendant, states:

PARTIES

1. Hot Springs Village Property Owners Association ("HSVPOA") is an Arkansas nonprofit corporation with its principal office located in Saline County, Arkansas.

2. Upon information and belief, PCBS, L.L.C. ("PCBS") is an Arizona limited liability company with its principal office located at 3370 North Hayden Road, Scottsdale, Arizona 85261. According to the records of the Arizona Corporation Commission, PCBS's registered agent for service of process is Philippe Soares, 7120 E. Wilshire Drive #12, Scottsdale, Arizona 85257. PCBS (i) owns real property in Garland County, Arkansas that is the subject of this action and (ii) has intentionally engaged in additional acts and contacts in the State of Arkansas that are the subject of this action. These acts and contacts include, but are not limited to, entering into contracts in the State of Arkansas to purchase real property located in Garland County, Arkansas, entering into contracts with HSVPOA, the performance of which was to occur in Arkansas, becoming a member of HSVPOA, and enjoying HSVPOA's member benefits and amenities in Hot Springs Village, Arkansas.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over PCBS because it has purposefully availed itself of the privilege of conducting business activities within Arkansas, thus invoking the benefits and protections of Arkansas law.

4. Venue is proper in this Court.

FACTS

5. This action arises out of the ownership interests and associated liabilities of PCBS in certain real property located in Garland County in the planned residential and commercial community known as Hot Springs Village, Arkansas (“Hot Springs Village”).

6. HSVPOA is a property owners association with over 32,000 members who hold ownership interests in the various lots and condominium units that comprise the Hot Springs Village community.

7. HSVPOA was formed for, among other purposes, the efficient construction and maintenance of the common facilities located in Hot Springs Village and the preservation of the values and amenities in the Hot Springs Village community.

8. Hot Springs Village lots are subject to the Hot Springs Village Declaration of Covenants and Restrictions, dated April 20, 1970, as amended from time to time (the “Declaration”), which was originally recorded with the Circuit Clerk and Ex-officio Recorder in and for Garland County, Arkansas on April 20, 1970 and recorded in Book 653, Page 369 and with the Circuit Clerk and Ex-officio Recorder in and for Saline County, Arkansas on April 20, 1970, and recorded on Book 115 Page 118.

9. At all relevant times herein, PCBS has owned, possessed and/or controlled various interests in numerous unimproved Hot Springs Village lots, which are subject to the

contractual obligations contained in the Declaration.

10. Through the date of this Complaint, PCBS continues to own, possess and/or control unimproved Hot Springs Village lots (the "Property").

11. The Declaration encumbers all of the Property and constitutes a contract between HSVPOA and the owner(s) of each lot.

12. HSVPOA joined in the execution of the Declaration for the purpose of indicating its agreement to perform the obligations placed upon it by the Declaration, which include administering and enforcing the covenants and restrictions set forth in the Declaration and collecting and disbursing the assessments and charges created pursuant to the Declaration, and the preservation of the values and amenities in the Hot Springs Village community.

13. Inasmuch and for so long as PCBS constitutes an owner and/or de facto owner of the Property, it is contractually obligated to perform under the Declaration and HSVPOA's Articles of Incorporation, By-Laws and Rules and Regulations, as well as all applicable laws, statutes, ordinances and governmental rules and regulations.

14. Section 1 of Article X of the Declaration entitled "Creation of Lien and Personal Obligation" provides that acceptance of a Hot Springs Village deed or lot located in Hot Springs Village contractually obligates each owner of said lot to pay member assessments to HSVPOA.

15. By accepting deeds or lots located in Hot Springs Village, as encumbered by the provisions of the Declaration, PCBS contracted with HSVPOA to pay member assessments to HSVPOA.

16. Levy of these assessments is authorized by Section 2 of Article X of the Declaration for, among other purposes, promoting the recreation, health, safety and welfare of Hot Springs Village property owners.

17. Section 10 of Article X of the Declaration provides that HSVPOA may “bring action at law against the individual(s) or entity personally obligated to pay the [assessments].” Section 10 of Article X of the Declaration further provides that “in the event a judgment is obtained, such judgment shall include interest on the assessments . . . and a reasonable attorney’s fee to [be] fixed by the court together with the costs of the action.”

18. The Hot Springs Village member assessment account balances for the Property (e.g. lots owned by PCBS) are delinquent.

COUNT I – BREACH OF CONTRACT – THE DECLARATION

19. HSVPOA restates, realleges, and incorporates all allegations contained in paragraphs 1–18 above as if they were repeated here word for word.

20. As record owner of the Property, PCBS is expressly obligated under the Declaration to pay HSVPOA member assessments and is liable for all such assessments accrued during its legal ownership of the Property.

21. Defendant’s failure to pay HSVPOA assessments accrued against the Property when due constitutes a material breach of contract for which it is liable.

22. HSVPOA monthly assessments authorized by the Declaration continue to accrue against all of the Property, and no recent payments have been made by PCBS against its large and fast-growing delinquency.

23. As of February 15, 2019, PCBS owed delinquent assessments and other charges in excess of \$21,000.00. These Property-based accounts are in default and are continuing to accrue additional assessments and charges after the effective date.

24. Pursuant to Section 10 of Article X of the Declaration and Ark. Code Ann. § 16-22-308, HSVPOA is entitled to its reasonable attorney’s fees and costs for prosecuting this

matter.

25. HSVPOA is entitled to pre- and post-judgment interest at the maximum rate allowed by law.

WHEREFORE, Hot Springs Village Property Owners' Association prays for (i) entry of judgment in its favor and against PCBS, L.L.C. in an amount to be proven at trial in excess of \$21,000.00 as of February 15, 2019 plus pre- and post-judgment interest thereon, (ii) for its costs and attorneys' fees, and (iii) for any other proper relief to which it may be entitled.

STEEL, WRIGHT, GRAY, PLLC
400 West Capitol Avenue, Suite 2910
Little Rock, Arkansas 72201
(501) 251-1587

By: Alex T. Gray
Alex T. Gray Ark. Bar No. 2008127

*Attorney for Hot Springs Village
Property Owners Association*