

FILED
SALINE COUNTY
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**IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION — THIRD DIVISION**

BY: KS

**HOT SPRINGS VILLAGE
PROPERTY OWNERS' ASSOCIATION**

PLAINTIFF

vs.

No. 68CV-19-292

PCBS, L.L.C.

DEFENDANT

**RESPONSE TO PLAINTIFF'S MOTION TO WITHDRAW JULY 5, 2019, MOTION FOR
SUMMARY JUDGMENT**

Comes now the Defendant, PCBS, L.L.C. ("PCBS"), by and through its attorney, Ben Honaker, and for its Response to Plaintiff's Motion to Withdraw July 5, 2019, Motion for Summary Judgment ("Motion") states as follows:

1. The Defendant admits that the September 30, 2019, Order of the Court substituted MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, P.L.L.C. as counsel of record for the Plaintiff.

2. The Defendant admits that the Motion for Summary Judgment filed on July 5, 2019, was submitted by Alex T. Gray of Steel, Wright, Gray PLLC.

3. Prior to the filing of the Motion for Summary Judgment documents were produced by the Plaintiff at the request of the Defendant. However, no formal discovery requests were served by either party.

4. In paragraph 4 of its Motion, the Plaintiff alleges that "Discovery is necessary to determine when Defendant purchased lots in Hot Springs Village, how long it owned them, and when it sold them." However, the land records of Garland and Saline counties contain all the information needed by the Plaintiff to make the determinations of when Defendant purchased lots in Hot Springs Village, how long it owned them, and when it sold them. The land records for Garland and Saline counties have been available to the Plaintiff since its

substitution as counsel on September 30, 2019. Moreover, most of the relevant records were already provided by the Defendant as exhibits attached to its Response to the Plaintiff's Motion for Summary Judgment.

5. In its Response to the Plaintiff's Motion for Summary Judgment, the Defendant produced hundreds of pages of documents to the Plaintiff, including an inventory of properties in Hot Springs Village owned by PCBS, an inventory of properties no longer owned by PCBS, and corresponding deeds of conveyance for all of the properties.

6. The contract underlying the Plaintiff's action is the Hot Springs Village Covenants and Restrictions Declaration ("Declaration"). Article X, Section 1 of the Declaration states the following:

Each such assessment, together with such interest, costs and reasonable attorney's fees also shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Article X, Section 10, regarding delinquent assessments, states:

The personal obligation of the Owner to pay such assessment shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

7. PCBS does not own any properties in the Hot Springs Village Property Owner's Association. All properties once owned by PCBS have been transferred to buyers who expressly assumed any delinquent assessments on the properties purchased. Evidence of those assumptions was previously provided as Exhibit A3, attached to the Defendant's Response to the Plaintiff's Motion for Summary Judgment.

8. Pursuant to the contract on which this action is based, PCBS has no obligation on the delinquent assessments for properties it once owned. The Plaintiff can foreclose on the properties if the assessments remain unpaid, or it can pursue actions against the current

record titleholders of those properties. However, PCBS has been released from its obligation by the very terms of the contract alleged by the Plaintiff.

9. The Defendant respectfully requests that the Court rule on the issue of whether the Defendant is obligated on delinquent assessments for properties it sold to buyers who expressly assumed delinquent assessments on the properties.

10. Unless the suspension of in-person proceedings due to the Coronavirus is extended, the Defendant respectfully requests that the hearing of April 28, 2020, remain on the Court's docket so these matters may be argued before the Court.

WHEREFORE Defendant PCBS prays that the Court deny the Plaintiff's Motion to Withdraw July 5, 2019, Motion for Summary Judgment in its entirety.

Respectfully Submitted,

PCBS, L.L.C.

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PROOF OF SERVICE

I hereby certify that on March 25, 2020, pursuant to Rule 5 of the Arkansas rules of civil procedure, a copy of the foregoing was sent to the following via electronic transmission or regular mail:

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