

FILED
SALINE COUNTY
CIRCUIT CLERK

2019 MAY 21 AM 11:10

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

BY: CAR

HOT SPRINGS VILLAGE
PROPERTY OWNERS' ASSOCIATION

PLAINTIFF

vs.

No. 63CV-19-292

PCBS, L.L.C.

DEFENDANT

ANSWER AND MOTION TO DISMISS

Comes now the Defendant, PCBS, L.L.C., by and through his attorney, Ben Honaker, and for its Answer to Plaintiff's Complaint states as follows:

1. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Plaintiff's Complaint, and therefore denies them.

2. The Defendant admits that it has a mailing address of 3370 North Hayden Road, Scottsdale, Arizona, 85261. All other allegations in paragraph 2 of the Plaintiff's Complaint are denied.

3. The Defendant admits that this Court has jurisdiction and that venue is proper.

4. The allegations in paragraph 5 of the Plaintiff's Complaint are denied.

5. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Plaintiff's Complaint, and therefore denies them.

6. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Plaintiff's Complaint, and therefore denies them.

7. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Plaintiff's Complaint, and therefore denies them.

8. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Plaintiff's Complaint, and therefore denies them.

9. The allegations in paragraph 10 of the Complaint are denied.

10. The allegations in paragraph 11 of the Complaint are denied.

11. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Plaintiff's Complaint, and therefore denies them.

12. The allegations in paragraph 13 of the Complaint are denied.

13. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Plaintiff's Complaint, and therefore denies them.

14. The allegations in paragraph 15 of the Complaint are denied.

15. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Plaintiff's Complaint, and therefore denies them.

16. The Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Plaintiff's Complaint, and therefore denies them.

17. The allegations in paragraph 18 of the Complaint are denied.

18. The allegations in paragraph 19 of the Complaint are denied.

19. The allegations in paragraph 20 of the Complaint are denied.

20. The allegations in paragraph 21 of the Complaint are denied.

21. The allegations in paragraph 22 of the Complaint are denied.

22. The allegations in paragraph 23 of the Complaint are denied.

23. The allegations in paragraph 24 of the Complaint are denied.

24. The allegations in paragraph 25 of the Complaint are denied.

25. Pleading affirmatively, the Defendant asserts all defenses contemplated under Rule 12(b) of the Arkansas Rules of Civil Procedure including, but not limited to, lack of jurisdiction over the subject matter, lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state facts upon which relief can be granted, and failure to join a party under Rule 19.

26. As a separate alternative affirmative defense to the Complaint, the Defendant alleges that the claims contained may be barred by any or all of the affirmative defenses contemplated by Rule 8(c) of the Arkansas Rules of Civil Procedure, including, but not limited to, accord and satisfaction, arbitration and award, comparative fault, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, set-off, statute of frauds, statute of limitations, waiver, lack of mutuality of obligation, no meeting of the minds, and any other matter constituting avoidance or affirmative defense. The extent to which the Plaintiff's claims may be barred by one or more of the above-mentioned affirmative defenses, or any affirmative defense not specifically set out herein, cannot be determined until the Defendant has had an opportunity to complete discovery. Therefore, the Defendant incorporates all such affirmative defenses as if fully set forth herein.

27. The Defendant reserves the right to file an amended answer and plead further in this action.

MOTION TO DISMISS FOR FAILURE TO ATTACH A DOCUMENT UPON WHICH A CLAIM IS BASED AND FOR FAILING TO ATTACH AN AFFIDAVIT OF ACCOUNT

28. A copy of any written instrument or document upon which a claim is based shall be attached as an exhibit to the pleading in which such claim or

defense is averred unless good cause is shown for its absence in such pleading.
Ark. R. Civ. P. 10(d).

29. The Plaintiff alleges a contractual relationship with the Defendant based on the Hot Springs Village Declaration of Covenants and Restrictions ("Declaration").

30. No exhibits were attached to the Complaint.

31. No good cause has been shown for the absence of the Declaration in the Plaintiff's Complaint.

32. Because the Plaintiff has not attached the document upon which its claims are based, its Complaint must be dismissed.

33. The Plaintiff alleges that the Defendant has delinquent accounts.

34. In a suit on an account in a court of this state, the affidavit of the plaintiff that the account is just and correct shall be attached to the complaint.
Ark. Code Ann. § 16-45-104.

35. No affidavit of account was attached to the Plaintiff's Complaint.

36. Because the Plaintiff did not attach an affidavit of account, its Complaint must be dismissed.

WHEREFORE the Defendant prays that this Honorable Court enter an order dismissing and denying the Plaintiff's Complaint in its entirety, and that the Defendant be awarded a reasonable attorney's fees, reimbursement for the

cost of litigating this matter, and for all other relief that is just and proper under the law.

Prepared By: /s/ Ben Honaker
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PROOF OF SERVICE

I hereby certify that on May 20, 2019, 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:

Alex T. Gray
STEEL, WRIGHT, GRAY, PLLC
400 West Capitol Avenue, Ste 2910
Little Rock, AR 72201

By: /s/ Ben Honaker
Ben Honaker