

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
THIRD DIVISION

2019 JUL -5 PM 3: 54

HOT SPRINGS VILLAGE
PROPERTY OWNERS' ASSOCIATION

BY:  PLAINTIFF

VS.

CASE NO. 63CV-19-292

PCBS, L.L.C.

DEFENDANT

MOTION FOR SUMMARY JUDGMENT

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

1. On March 25, 2019, Hot Springs Village Property Owners Association ("HSVPOA") filed the present action against Defendant seeking a judgment for breach of contract for failure to pay assessments as required by 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.

2. For the reasons stated herein, HSVPOA is entitled to summary judgment on its claim for breach of contract.

3. In support of its Motion, HSVPOA attaches and incorporates by reference the following exhibits:

Exhibit 1 - Affidavit of Renee Haugen

4. It is undisputed that HSVPOA is an Arkansas nonprofit corporation with its principal office located in Saline County, Arkansas. See Affidavit of Renee Haugen, attached

hereto as Exhibit "1."

5. It is undisputed that Defendant (i) owns real property in Saline County, Arkansas and 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 Saline County, Arkansas and 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. *Id.*

6. It is undisputed that this Court has personal jurisdiction over Defendant because it has purposefully availed itself of the privilege of conducting business activities within Arkansas, thus invoking the benefits and protections of Arkansas law. *Id.*

7. It is undisputed that venue is proper in this Court because a substantial part of the events or omissions giving rise to the claim occurred in Saline County. *Id.*

8. It is undisputed that this action arises out of the ownership interests and associated liabilities of Defendant in certain real property located in Saline County and Garland County in the planned residential and commercial community known as Hot Springs Village, Arkansas ("Hot Springs Village"). *Id.*

9. It is undisputed that 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. *Id.*

10. It is undisputed that 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. *Id.*

11. It is undisputed that 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. *Id.*

12. It is undisputed that, at all relevant times herein, Defendant 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. *Id.*

13. It is undisputed that, through the date of the Complaint in this matter, Defendant continues to own, possess and/or control unimproved Hot Springs Village lots (the "Property").

14. It is undisputed that the Declaration encumbers all of the Property and constitutes a contract between HSVPOA and the owner(s) of each lot. *Id.*

15. It is undisputed that 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. *Id.*

16. It is undisputed that inasmuch and for so long as Defendant 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. *Id.*

17. It is undisputed that 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. *Id.*

18. It is undisputed that, by accepting deeds or lots located in Hot Springs Village, as encumbered by the provisions of the Declaration, Defendant contracted with HSVPOA to pay member assessments to HSVPOA. *Id.*

19. It is undisputed that 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. *Id.*

20. It is undisputed that 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].” It is undisputed that 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.” *Id.*

21. It is undisputed that the Hot Springs Village member assessment account balances for the Property (e.g. lots owned by Defendant) are delinquent. *Id.*

22. It is undisputed that, as record owner of the Property, Defendant is expressly obligated under the Declaration to pay HSVPOA member assessments and is liable for all such assessments accrued during its respective legal ownership of the Property. *Id.*

23. It is undisputed that Defendant’s failure to pay HSVPOA assessments accrued

against the Property when due constitutes a material breach of contract for which it is liable. *Id.*

24. It is undisputed that HSVPOA monthly assessments authorized by the Declaration continue to accrue against all of the Property, and no recent payments have been made by Defendant against its large and fast-growing delinquency. *Id.*

25. It is undisputed that, as of July 1, 2019, Defendant owed delinquent assessments in the amount of \$86,389.30. These Property-based accounts are in default and are continuing to accrue additional assessments and charges after the effective date. *Id.*

26. It is undisputed that 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 in the total amount of \$8,803.93. *Id.*

27. It is undisputed that HSVPOA is entitled to pre- and post-judgment interest at the maximum rate allowed by law. *Id.*

WHEREFORE, Hot Springs Village Property Owners' Association prays for (i) entry of judgment in its favor and against PCBS, L.L.C. in the principal amount of \$86,389.30 as of July 1, 2019 plus pre- and post-judgment interest thereon, (ii) for its costs and attorneys' fees in the amount of \$8,803.93, 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: /s/ Alex T. Gray
Alex T. Gray Ark. Bar No. 2008127

*Attorney for Hot Springs Village
Property Owners Association*

CERTIFICATE OF SERVICE

I, Alex T. Gray, do hereby certify that a true and correct copy of the foregoing was served on the following via email and U.S. Mail on this, 1st day of July, 2019.

Ben Honaker
Attorney at Law
212 Center Street, 10th Floor
Little Rock, Arkansas 72201
ben@benhonakerlaw.com

/s/ Alex T. Gray
Alex T. Gray

Exhibit 1

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
THIRD DIVISION

HOT SPRINGS VILLAGE
PROPERTY OWNERS' ASSOCIATION

PLAINTIFF

VS.

CASE NO. 63CV-19-292

PCBS, L.L.C.

DEFENDANT

STATE OF ARKANSAS)
) ss.
COUNTY OF Garland)

AFFIDAVIT OF RENEE HAUGEN

Comes the undersigned affiant and, having been duly sworn, states and affirms as follows under oath:

1. My name is Renee Haugen. I am over eighteen years of age, of sound mind, and otherwise qualified to make this affidavit.
2. I am currently the Director of Land Acquisitions and Member Services at Hot Springs Village Property Owners' Association ("HSVPOA") and have been at all relevant times.
3. As the Director of Real Estate Acquisition Services at HSVPOA, I have personal knowledge of HSVPOA's contractual dealings with Defendant, PCBS, L.L.C.
4. I have attached as Exhibit "A" to this affidavit a spreadsheet that I prepared evidencing the lots in Hot Springs Village owned by Defendant (the "Property") and the corresponding amount owed by Defendant to HSVPOA.
5. HSVPOA is an Arkansas nonprofit corporation with its principal office located in Saline County, Arkansas.
6. Defendant (i) owns real property in Saline County, Arkansas and 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 Saline County, Arkansas and 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.

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

8. That venue is proper in this Court because a substantial part of the events or omissions giving rise to the claim occurred in Saline County.

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

10. 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.

11. 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.

12. 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.

13. At all relevant times herein, Defendant 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.

14. Through the date of the Complaint in this matter, Defendant continues to own, possess and/or control unimproved Hot Springs Village lots.

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

16. 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.

17. Inasmuch and for so long as Defendant 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.

18. 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.

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

20. 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.

21. 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].” It is undisputed that 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.”

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

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

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

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

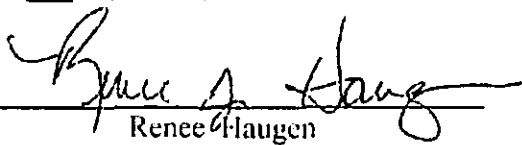
26. As of July 1, 2019, Defendant owed delinquent assessments in the amount of \$86,389.30. These Property-based accounts are in default and are continuing to accrue additional

assessments and charges after the effective date.

27. 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 in the amount of \$8,638.93 and costs in the amount of \$165.00 for prosecuting this matter.

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

In witness whereof, I hereunto set my hand this 1st day of July, 2019.



Renee Haugen

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF Garland) ss.

On this 1st day of July, 2019, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting within the aforesaid State and County, appeared in person the within named Renee Haugen to me personally well known, who stated that she is the Director of Real Estate Acquisition Services at Hot Springs Village Property Owners' Association ("HSVPOA"), and was duly authorized in her capacity to execute the foregoing instrument for and in the name and behalf of HSVPOA, and further stated and acknowledged that she had so signed, executed and delivered the foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

1st IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of July, 2019.

Carol J. Dickson
Notary Public

My Commission Expires: 7/19/2028

