

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

2019 AUG -7 PM 1:49

HOT SPRINGS VILLAGE
PROPERTY OWNERS' ASSOCIATION

BY: JM
PLAINTIFF

vs.

No. 63CV-19-292

PCBS, L.L.C.

DEFENDANT

RESPONSE TO PLAINTIFF'S 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 for Summary Judgment states as follows:

1. There is a genuine issue of material fact as to whether PCBS is personally liable for the delinquent assessments of properties in Hot Springs Village that it does not own.

2. There is a genuine issue of material fact as to how many properties in Hot Springs Village are owned by PCBS.

3. There is a genuine issue of material fact as to the amount of any assessments owed by PCBS.

4. The Plaintiff has failed to establish a prima facie entitlement to summary judgment.

5. The Plaintiff is not entitled to summary judgment on its claim for breach of contract, nor is it entitled to judgment as a matter of law.

6. The Plaintiff has asserted that PCBS is liable for assessments on one hundred and sixty-nine (169) separate properties in Hot Springs Village. In fact, PCBS owns only fifty-five (55) properties in Hot Springs Village. The Plaintiff erroneously seeks to hold PCBS liable for assessments on properties that it does not own. The Plaintiff is not entitled to a judgment against PCBS for assessments on properties that are not owned by PCBS.

7. PCBS does not owe \$86,389.30 in delinquent assessments, and the Plaintiff is not entitled to a reasonable attorney's fee for efforts to collect on assessments that are not owed by the Defendant.

8. PCBS incorporates as if stated herein the BRIEF IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT which has been filed with this Response, and the following Exhibits attached thereto:

Exhibit A - Affidavit of Philipe Soares

Exhibit A1 - A current inventory of properties in Hot Springs Village that are owned by PCBS.

Exhibit A2 - Inventory of properties no longer owned by PCBS, and corresponding deeds of conveyance separated into Exhibits A through Z.

Exhibit A3 - Sample contract that is agreed to by all purchasers of properties from PCBS.

Exhibit B - The Hot Springs Village Covenants and Restrictions Declaration.

7. For the foregoing reasons, the Defendant, PCBS, respectfully requests that this Honorable Court deny the Plaintiff's Motion for Summary Judgment in its entirety.

8. Pursuant to Arkansas Rule of Civil Procedure 78, the Defendant respectfully requests a hearing on Plaintiff's Motion for Summary Judgment and the Defendant's Response thereto.

WHEREFORE Defendant PCBS prays that the Court deny the Plaintiff's Motion for Summary Judgment in its entirety, grant to the Defendant a reasonable attorney's fee and costs related to this motion, and grant to the Defendant all other just and proper relief to which it is entitled under the law.

Respectfully Submitted,

PCBS, L.L.C.

Prepared By: /s/ Ben Honaker
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PROOF OF SERVICE

I hereby certify that on August 7, 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

