

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS
CIVIL DIVISION

WILLIAM A. AND CYNTHIA J. WEDAMAN;
BILLY "BILL" M. ACORD;
KATHY PETERSON;
ARTHUR H. AND HELEN HOLZMAN;
POWELL FAMILY TRUST, LINDA PULSCHER, TRUSTEE;
ANN STADELHOFFER; and
ROBERT L. LOLLAR, RUBY L. LOLLAR, AND BRETT L. LOLLAR

FILED
PLAINTIFFS
2014 JUL 30 PM 1 55
JEANNIE PIKE
GARLAND CO. CIRCUIT CLERK
BY nmw

VS.

CASE NO. CV-2014- 526-III

HOT SPRINGS VILLAGE TOWNHOUSE ASSOCIATION

DEFENDANT

COMPLAINT

COME NOW the Plaintiffs by and through their attorneys, Owen, Farnell & Garner, by Lance B. Garner, and for their complaint against the Defendant, HOT SPRINGS VILLAGE TOWNHOUSE ASSOCIATION, state and allege as follows:

1. That the Plaintiffs are owners of real property located in Hot Springs Village, Arkansas.
2. That the Plaintiffs are owners of one or more units in the Townhouse Development of Hot Springs Village as more particularly set forth hereinafter.
3. That the Defendant, Hot Springs Village Townhouse Association, hereinafter sometimes referred to interchangeably as "Association" and "Corporation", is a non-profit corporation duly licensed and existing under the laws of the State of Arkansas since July 27, 1971, with its principal place of business located in Garland County, Arkansas, and its present agent for service being Tamara Blalock.
4. That said real property, which is subject to Association control and which is the subject matter of this action, is located in Garland County, Arkansas.
5. That this Court has jurisdiction over the parties and subject matter jurisdiction and the venue is

proper.

6. That the Plaintiffs upon purchasing real property in Hot Springs Village, Garland County, Arkansas, purchased said real property and took title thereto subject to covenants, conditions, and restrictions pertaining to said real property as set forth in a Declaration, hereinafter sometimes referred to as "Original Declaration", thereof for Hot Springs Village of which the Hot Springs Village Townhouse Association is a part. Said Declaration for Hot Springs Village is dated April 20, 1970 and is recorded in Vol. 653, Page 369 to 426 of Records of Deeds and Mortgages of Garland County, Arkansas and is entitled "Declaration of Covenants and Conditions" and is sometimes hereinafter referred to as "Declaration".

7. That subsequent to the filing of the Declaration referred to in paragraph 6 hereof, a Supplemental Declaration was filed establishing and creating DeSoto Courts Townhouse Tract 1 and Townhouse Tract 2, hereinafter sometimes referred to as "the properties" including all supplemental declarations of inclusion of townhouse lands and properties. Said First Supplemental Declaration is dated July 28, 1971 and is recorded in Vol. 679, Page 09 to 45 of the Records of Deeds and Mortgages of Garland County, Arkansas.

8. That DeSoto Courts Townhouse Tract 1 and Townhouse Tract 2 were created and conveyed subject to the Original Declaration as referred to in paragraph 6 hereof.

9. That "the properties" included common properties and facilities (improvements) which were designated as limited common properties in accordance with provisions of Article I, §1(b), (c) and (d) of the Original Declaration of which townhouse owners were specifically designated as persons entitled to the use thereof. In particular, one facility located on the DeSoto Courts limited common

property is a swimming pool known as the "DeSoto Courts Pool".

10. That an agency was established in order to preserve the values and amenities within "the properties" which agency was charged with maintenance and administration, inter alia, of the Limited Common Property and in the enforcement of the covenants and restrictions, collecting and disbursing assessments and charges. Such agency was legally created and empowered to accomplish the purposes for which it was created and is Hot Springs Village Townhouse Association, a non-profit corporation.

11. The following named individuals or fiduciary entities own the real property legally described opposite their names which real property is a part of the lands and improvements which are set forth in the Original First Supplemental Declaration for the Creation of DeSoto Courts Townhouse Tract #1 and Townhouse Tract #2, and each supplemental Declaration as follows:

A. The properties as filed for record in the records of Deeds and Mortgages and Plat Books; all of which are filed in the real estate records of Garland County, Arkansas:

DeSoto Courts Townhouse Tracts 1 and 2, Vol. 679, Pg. 9 of the records of Deeds and Mortgages and Plat Book 4, Pg. 60 of the Plat Records.

B. The owners, members and Plaintiffs:

William A and Cynthia J. Wedaman	Lot 151, Tract 2 DeSoto Courts
Billy "Bill" M. Acord	Lot 161, Tract 2 DeSoto Courts
Kathy Peterson	Lot 137, Tract 1 DeSoto Courts
Arthur H. and Helen Holzman	Lot 160, Tract 2 DeSoto Courts
Powell Family Trust, Linda Pulscher, Trustee	Lot 145, Tract 2 DeSoto Courts

Ann Stadelhofer

Lot 136, Tract 1 DeSoto Courts

Robert L. Lollar, Ruby L. Lollar, Brett L. Lollar

Lot 116, Tract 1 DeSoto Courts

C. That the real properties of the Plaintiffs as aforescribed are subject to the provisions of the Original Declaration as well as the easements, restrictions, covenants and conditions of the First Supplemental Declaration and subsequent Supplemental Declarations later filed and by reference included therein, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and conditions run with the real property and are binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof and shall inure to the benefit of each owner thereof.

D. That by virtue of the Plaintiffs' ownership, subject to the Declaration and any Supplemental Declaration, their rights as members of the Association, they, and each of them, have standing to bring this cause of action as hereinafter set forth and to seek remedy and relief as herein requested.

12. That the Plaintiffs upon purchasing real property within the lands and improvements designated "Townhouse Tracts", purchased subject to the administration of Hot Springs Village Townhouse Association and, furthermore, purchased said real property and took title thereto subject to covenants, conditions, and restrictions pertaining to said real property as set forth in a Declaration thereof for Hot Springs Village, as previously alleged, of which the Hot Springs Village Townhouse Association is a part. The Original Declaration and the Supplemental Declaration of Covenants and Restrictions recorded in the Records of Deeds and Mortgages of Garland County, Arkansas, subject the townhouse owners to all Bylaws and Rules and Regulations pertaining to the use, enjoyment and control of the property and administration of the Association.

13. In accordance with the Articles of Incorporation and Bylaws, and as authorized in the following particulars:

A. Original Declaration.

(1) Article II, Section 2, subsection (a) of the Original Declaration of 1970 states that additions to already developed lands in accordance with the general plan of development are permitted to the Developer provided such proposed additions shall be subject to assessment for their "just share" of Association capital investments and expenses.

(a) The Hot Springs Village Townhouse Association members pay an assessment fee to the Hot Springs Village Property Owners Association in addition to the Townhouse Association dues for their properties.

(b) By virtue thereof, regardless of location of their property, accessibility to or remoteness of their units to the use and benefit of recreational facilities, or other improvements or amenities, and without regard to the benefits which accrue to one or more by choice or otherwise, said Property Owners Association dues and assessments are levied to individual owner members based on the right to common use and benefit.

(c) Since 2001, the Hot Springs Village Townhouse Association has used tiered assessments based on the different improvements and amenities as well as the different levels of maintenance requirements of each Court. This tiered assessment structure was upheld by the Garland County Circuit Court in Abbott v. Hot Springs Village Townhouse Association, CV-2001-1321-II, in a ruling entered March 10, 2003.

(2) In addition, the definition of Limited Common Properties, Article I, Section I (d), sets forth that the properties are intended to be devoted to the "common use and enjoyment" of the owners of

specifically designated property and also those areas so designated from time to time by the Developer for the purposes aforesaid. That the Developer has designated for the common use and enjoyment the Common Properties dedicated to the Townhouse Association by virtue of its First Supplement to the Original Declaration (Supplemental Declaration of 1971) and all subsequent declarations thereto.

B. Supplemental Declaration(s).

(1) The Supplemental Declaration, Article X, Section 2, relating to the purposes of assessment sets forth that assessments shall be levied and "used exclusively for purposes of promoting the recreation, health, safety and welfare of the owners of the townhouse properties" and in particular for the improvement and maintenance of properties related to the use and enjoyment of the Limited Common Properties and improvements situated upon the townhouse properties.

(a) On information, the Plaintiffs state that the Defendant has acted arbitrarily and capriciously in failing to observe the rights of owners to the use and enjoyment of Limited Common Properties.

(b) Specifically, the Defendant has taken the following actions with regard to the DeSoto Courts Pool:

i. In 2007, the Defendant's Board raised the issue of closing the DeSoto Courts Pool. Informal surveys were taken. Not one Court reported a survey in favor of closing the pool. The DeSoto Courts owners very much supported keeping the pool, citing the enjoyment factor of the pool and the increased value of their real property with the pool as an amenity.

ii. In 2008, the State Health Department would not allow the pool to open due to the lack of maintenance of the pool by Defendant. Through the objections and efforts of DeSoto Courts owners, the pool was eventually reopened.

iii. In May 2009, the Defendant called for a vote of all of the townhouse owners as to whether to continue to maintain the DeSoto Courts Pool. The vote was 166 (30%) For and 383 (70%) Against. In June 2009, it was proposed at a Board meeting of the Defendant, that the DeSoto Courts Pool be turned over to the DeSoto Courts "if they wanted it".

iv. On March 12, 2010, a notice entitled "An offer to let Desoto Court Owners to retain the pool" was sent to all DeSoto Courts Townhouse owners. A copy of the notice, sample ballot and results are attached hereto as Exhibit "A" and made a part hereof by reference. The vote was 53 (85%) For the pool and 9 (15%) Against. As a result, in May 2010, the Defendant adjusted the tiered assessment for DeSoto Courts owners, collecting an additional \$8.10 per month specifically for the operation and maintenance of the DeSoto Courts Pool.

v. From 2010 through the present, the additional assessment for the operation and maintenance of the pool has been collected from the DeSoto Courts owners. However, the Defendant has failed to properly maintain the pool.

vi. In May 2014, the Defendant announced that it would not open the DeSoto Courts Pool for the Summer of 2014, and that the pool would either be filled in or sold.

(c) The actions of the Hot Springs Village Townhouse Association, through its Board of Directors, violate the scheme of development of the developer, abridge the rights of members for the use and enjoyment of Common Properties and constitute a taking of property without authority as well without compensation.

(d) The Association cannot confer upon itself rights beyond which it has been granted by its organizational documents, even as legally amended.

C. Articles of Incorporation.

(1) Articles of Incorporation of the Hot Springs Village Townhouse Association are replete with references to the purposes, powers and privileges, duties and obligations of the Association in its acts to promote the health, safety and welfare of the residents and in the accommodation thereof to the extent permitted by law, do that which will promote the "common benefit and enjoyment of residents of the townhouse properties" [See Article III (g)].

D. Bylaws of Hot Springs Village Townhouse Association.

(1) In Article II, Definitions section, of the Bylaws of the Townhouse Association, Section 3, Limited Common Properties, the document refers to areas of land intended to be devoted to the "common use and enjoyment" of the owners of townhouse properties.

(2) In Article V, Section 1 thereof relating to the property rights of enjoyment, the document sets forth that each member shall be entitled to the use and enjoyment of the Limited Common Properties and facilities provided in a Supplemental Declaration.

E. Resultant Erroneous and Illegal Acts by the Hot Springs Village Townhouse Association by and through the Acts of its Board of Directors.

(1) That the actions of the Board of Directors in that regard are arbitrary and capricious and without legal efficacy and are contrary to the purposes of the Original Declaration, Supplemental Declaration, Articles of Incorporation and Bylaws refer to the rights to common use, enjoyment and benefit including even the definition of Limited Common Properties. They should be estopped.

(2) The long-term neglect and closing of the DeSoto Courts Pool directly affects the value of the Plaintiffs' real property as well as their enjoyment thereof.

14. That all said sums collected from the DeSoto Courts owners for operation and maintenance of

the pool should be accounted for and segregated from the general funds of the Defendant, being used only for the operation and maintenance of the DeSoto Courts Pool.

15. That the Board acted wilfully and intentionally in derogation of the rights of property owners and did so wrongfully, intentionally, and without regard to the Declaration of Covenants and Restrictions and all Supplemental Declarations thereto under which it operates and to the adverse affect on the rights of property owners and members of the Association.

16. That the Plaintiffs state on information that the Defendant failed to adhere to the known procedures and protections in place, in writing, to which each of the owners were subject at the time of purchase of their real property and to which the Board of Directors is subject by virtue of the administrative language of the Declaration of Covenants and Restrictions and all Supplemental Declarations thereto with regard to powers of the Board to effect changes in amending the Articles, the Bylaws and assessments, etc.

17. That the Board of Directors of the Defendant should be directed to immediately make any necessary repairs and reopen the DeSoto Courts Pool. The cost of any repairs required resulting from the failure of the Defendant to maintain the pool should be born by Defendant.

18. That the Plaintiffs request this Court enter a declaratory judgment finding that the Board's actions have been without legal sanction and the DeSoto Courts Pool be considered and operated as an amenity of the Limited Common Property of DeSoto Courts. That the Defendant be enjoined and estopped from the permanent closure of the pool.

19. That this Court find that the Defendant has breached it covenants, fiduciary duty and contract with the Plaintiffs.

20. The Plaintiffs are entitled to recover their attorney fees and costs pursuant to Arkansas Code

Annotated §16-22-308. Therefore, a reasonable attorney fee as well costs of the case should be awarded and made a part of the judgment entered by this Court.

WHEREFORE, the Plaintiffs request that this Court grant their claims for relief as stated herein, thereby holding Defendant, liable for the causes of action stated above which include breach of covenant, fiduciary duty and contract; for their costs and attorneys fees; and for all other legal, just and proper relief to which Plaintiffs are entitled under Arkansas law and equity.

Respectfully submitted,
WILLIAM A. AND CYNTHIA J. WEDAMAN;
BILLY "BILL" M. ACORD;
KATHY PETERSON;
ARTHUR H. AND HELEN HOLZMAN;
POWELL FAMILY TRUST, LINDA PULSCHER,
TRUSTEE; ANN STADELHOFFER; and
ROBERT L. LOLLAR, RUBY L. LOLLAR, and
BRETT L. LOLLAR,
Plaintiffs

By: 

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STATE OF ARKANSAS }
 }
COUNTY OF GARLAND }

S.S.

VERIFICATION

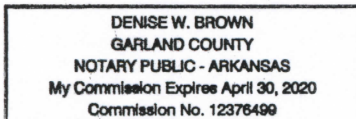
I, WILLIAM A. WEDAMAN, do hereby verify that allegations contained in the foregoing Complaint are true and correct to the best of my knowledge and belief and is being filed at my direction.

By: William A. Wedaman
WILLIAM A. WEDAMAN

SUBSCRIBED and SWORN before me this 30th day of July, 2014.

Denise W. Brown
NOTARY PUBLIC

MY COMMISSION EXPIRES:



STATE OF ARKANSAS }
 }
COUNTY OF GARLAND }

S.S.

VERIFICATION

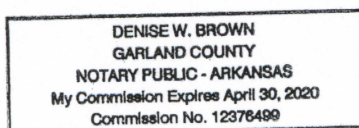
I, LINDA PULSCHER, Trustee, POWELL FAMILY TRUST, do hereby verify that allegations contained in the foregoing Complaint are true and correct to the best of my knowledge and belief and is being filed at my direction.

By: Linda Pulscher
LINDA PULSCHER, Trustee
POWELL FAMILY TRUST

SUBSCRIBED and SWORN before me this 30th day of July, 2014.

Denise W. Brown
NOTARY PUBLIC

MY COMMISSION EXPIRES:





Townhouse Association

1 Perralena Lane Hot Springs Village, AR 71909
Phone (501) 922-1375 Fax (501) 915-9347 Email Address hsv.tha@sbcglobal.net

VERY IMPORTANT – PLEASE READ AND RETURN YOUR BALLOT CONCERNING DESOTO POOL

March 12, 2010

TO: All Desoto Courts Townhouse Owners
FROM: Hot Springs Village Townhouse Association Board of Directors
RE: An offer to let Desoto Court Owners to retain the pool

The Board of Directors of your Townhouse Association has arrived at what we believe to be an equitable solution, which can preserve and maintain the pool without the necessity of a special assessment in 2010. Your ballot is very important in that at least 50% of all ballots have to be returned, and 51% of the returned ballots have to be in the affirmative. Your Board of Directors would like for you to keep the pool.

The increase in your assessments, adopted in 2009, provides that \$4.00 of the \$8.00 increase is to be paid toward your capital account for future capital improvements. The Board is proposing that the other \$4.00 of the \$8.00; is to be allocated towards the maintenance of the pool, and to come from your current operating account.

As you know, the Association has voted to no longer fund the maintenance of the pool. If this passes, the pool will remain open. The members of the court will be responsible for managing the attendance and behavior of those using the pool. Only Desoto Courts owners and their guests will be allowed to use the pool area.

WHAT VOTING "YES" MEANS FOR YOU

A YES vote means that you are agreeing that YOU WANT TO KEEP THE POOL, and that your ASSESSMENTS WILL NOT INCREASE AT THIS POINT. You also agree that approximately \$4.00 of your assessment (noted above) can be used toward the maintenance of the pool, and keeping it open, instead of being used exclusively for grounds maintenance. The Association will still own the pool, and grant the rights of use of the pool to Desoto Courts. The Association will continue to maintain the pool using Desoto Courts funds. The Association will continue the liability insurance for the pool. The Association will also agree to allocate the funds necessary to get the pool to the point that the permit can be issued by the state health department for 2010 only. We are estimating \$1,000.00 - \$4,000.00, with \$4,000.00 to be the maximum they will expend, AND THAT WILL BE THE ONE AND ONLY TIME. You also agree that any and all maintenance concerning the pool and its appurtenances in the future will be the responsibility of the owners in Desoto Courts. In the future, it may be necessary for Desoto Courts to pass a special assessment in the event additional maintenance or improvements are needed for the pool. At this point, the annual cost of maintenance is to be about \$4,000.00. The \$4.00 increase in your courts' operating fund of this year's \$8.00 increase, mentioned above, amounts to about \$4,300 per year. This should cover the estimated cost of maintaining the pool. This will leave untouched the \$4.00 of the \$8.00 increase to continue to go to your capital account for future improvements.

In essence, your Board of Directors have found a way for you to keep the pool, with no additional assessments to you at the present, keep additional monies going to your capital account for future improvements, and maintain approximately the same amount of money going into the operating account for maintenance. We think this is an excellent option.

WHAT VOTING "NO" MEANS FOR YOU

A "NO" vote means that you DO NOT want your assessments to be allocated for the maintenance of the pool, and the pool will close. The Association will not be able to leave the pool in its present form because of the liability it will incur, and will fill in the pool. You will also have the extra \$4.00, mentioned above, that would otherwise go towards the pool, for other projects in your court.

Your Board of Directors understands what the pool means to Desoto Courts. We also understand that it is up to you – the owners – that must decide this issue. We hope that you will take the time necessary to consider these options, and to RETURN YOUR BALLOT.

The Board of Directors has called a special board meeting on April 19th, 2010 at 9:00 a.m. in the HSV Townhouse Community Center for the purpose of counting the ballots. Ballots received after 9:00 a.m. on April 19th, 2010 will not be counted.

We want to thank you for your time and consideration.

Respectfully,

Brent Gray
President

**HOT SPRINGS VILLAGE TOWNHOUSE ASSOCIATION
DESOTO COURTS OFFICIAL BALLOT FOR
ASSOCIATION'S SWIMMING POOL**

I do hereby register my vote regarding the Association's Swimming Pool located in DeSoto Courts.

PLEASE CHECK ONE

YES ☐

I agree to keep the swimming pool located in Desoto Courts open for the exclusive use of Desoto Courts townhouse owners, and for the Association to use and allocate a portion of my assessments that will be necessary to operate and maintain the swimming pool. I further agree that Desoto Courts will be solely responsible for all future cost associated with the swimming pool from this point forward.

NO ☐

I disagree and do not want my assessments to be allotted to operate and maintain the swimming pool located in Desoto Courts. I understand that by voting no, if this vote does not pass that the swimming pool located in Desoto Courts will be closed.

Townhouse Association

TOWNHOUSE OWNER

«CompanyName»

Sample
Ballot

SIGNATURE IN INK (REQUIRED)

TOWNHOUSE INFORMATION

«Townhouse_ID»

«TownhouseAddress»

«Court» COURTS

MAILING ADDRESS:

«ADDRESS»

«CITY», «STATE» «POSTALCODE»

Ballots must be received by 9:00 a.m. on 4/19/2010 to be counted.
Ballots not signed, not signed in ink, or that are not marked will NOT be counted!

Owners over 30 days in arrears will not be eligible to vote.

Please return in the envelope provided.

DO NOT send assessment payments in this envelope!

HSV TOWNHOUSE ASSOCIATION

DATE: 4/19/2010

RESULTS OF BALLOT COUNT FOR: CONTINUE TO SUPPORT THE THA'S SWIMMING POOL

"FOR" SUPPORTING POOL

VOTES

52
9

85%

"AGAINST" SUPPORTING POOL

15%

Ballots Not Signed or in Ink

—

Ballots Not Marked

—

Owners In Arrears

—

Ballots Not Signed & Not Marked

—

TOTALS:

61

TOTAL BALLOTS RETURNED:

61 68%

HOT SPRINGS VILLAGE TOWNHOUSE ASSOCIATION
SPECIAL MEETING OF THE
BOARD OF DIRECTORS
APRIL 19TH 2010

The special meeting of the HSV Townhouse Association Board of Directors was held on Monday, April 19, 2010 at 9:00 a.m. in the Townhouse Association Community Center.

Board Members present: Brent Gray – President, Larry Siler – Treasurer, Doug Butler, Ida Ferree, and Henry Frank who arrived late. Robert Baldwin, Bill Turner, Jim Bigg and Robert Jordan were unable to attend.

Brent Gray called the meeting to order at 9:10 a.m. for the purpose of counting the ballots regarding Desoto Courts taking over the financial responsibility of the Association's swimming pool. Mr. Gray turned the meeting over to the Nominations & Elections Committee.

Dorothy Ashley – Chairman for the Nominations & Elections Committee, instructed the members and the Board of Directors on the procedures to follow for opening, verifying and counting the ballots.

The meeting was recessed for the purpose of counting the ballots at 9:13 a.m.

Brent Gray reconvened the meeting at 9:30 a.m. noting a quorum was present. Mr. Gray asked Ms. Ashley to announce the results of the ballot count.

Dot Ashley announced 61 ballots were returned, 52 votes (85%) FOR supporting the swimming pool and 9 (15%) AGAINST supporting the swimming pool and none of the ballots were ineligible,

<u>COURT</u>	<u>YES</u>	<u>NO</u>
DeSoto	52	9

Mr. Gray asked if anyone contested the ballot results; there were none. Motion was made to accept the ballot results as presented by the Nomination & Elections Committee, motion seconded and approved unanimously.

Meeting was adjourned at 09:35 a.m.

Respectfully submitted,

Barbara Thurman, Assistant Secretary