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WHITE BLUFF PROPERTY OWNERS
ASSOCIATION, INC.

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IN THE SMALL CLAIMS COURT

V.

DALLAS COUNTY, TEXAS

DANIEL L. SATURN

PRECINCT 3, PLACE 1


PLAINTIFF'S SECOND AMENDED STATEMENT OF CLAIM

Plaintiff, White Bluff Property Owners Association, Inc.(the "POA") being duly sworn on oath deposes and says in this Second Amended Statement of Claim, that the above named Defendant, Daniel L. Saturn ("Saturn") is justly indebted to the POA in the sum of one thousand six hundred seventeen dollars and fifty cents (\$ 1,617.50) for past due fees owing to the POA by Saturn.

WHEREFORE, PREMISES CONSIDERED, Plaintiff White Bluff Property Owners Association, Inc prays that upon final hearing, the POA recover \$1,617.50, its costs of court, and such other and further relief, general or special, in law or in equity, to which the POA may show itself justly entitled.

Respectfully submitted,

WINSTEAD PC
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By: 
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**ATTORNEYS FOR PLAINTIFF WHITE
BLUFF PROPERTY OWNERS
ASSOCIATION, INC.**

DOCKET NO: JS-0700284A

White Bluff Property Owners (Plaintiff)	§	In the SMALL CLAIMS COURT
	§	
Vs	§	PRECINCT THREE, PLACE ONE
	§	
Daniel L. Saturn (Defendant)	§	DALLAS COUNTY, TEXAS
	§	

Final Judgment

ON the 31st day of March, 2008, came on to be heard the above-entitled and numbered cause. All parties appeared and all witnesses were sworn in. Based upon all of the evidence presented and the argument of parties, the **Court finds the following:**

1. Plaintiff's claim is for unpaid dues billed as a special "food and beverage assessment" approved by the White Bluff Homeowners' Board. The Plaintiff submitted copies of the Bylaws of White Bluff Property Owners' Association, Inc., and Covenants and Restrictions on and for The White Bluff Twenty Subdivision as the authority for imposing the assessments.
2. The definition of Common Properties from Article II, Paragraph (d) of the Bylaws of White Bluff Property Owners' Association, Inc. (the "Bylaws), reads: "*Common Properties shall mean and refer to any and all areas of land within the Properties which are known described or designated as common green, common areas, recreational easements, green belts open spaces, private streets, jogging and bicycle trails, swimming pools, tennis courts, golf courses, marina facilities, recreational centers or bodies of water on any recorded subdivision plat of the Properties or intended for or devoted to the common use and enjoyment of the Members of the Association* (emphasis added), together with any and all improvements that are now or may hereafter be constructed thereon."
3. Covenant I (1) of the Covenants and Restrictions on and for The White Bluff Twenty Subdivision (the "Covenants") states: "*Each and every owner of a lot within the Subdivision shall become a member of the White Bluff Property Owners' Association, Inc., a Texas non-profit corporation (hereinafter called the Property Owners Association), which association shall manage, maintain and care for the common facilities of the Subdivision. Use of the common facilities shall be limited to the lot owners (and their minor children, adult children actually residing with lot owners, and their accompanied guests) and the Developer (and its guests or invitees)*" (emphasis added).

4. The food and beverage assessments collected are paid annually to private businesses within the confines of the White Bluff subdivision as a supplement to the private businesses' revenues, whether or not any services are provided for, or credits consumed by, dues paying property owners. The property owners have no pecuniary interest in the private businesses.

5. Homeowner association dues and assessments are to be used for common area maintenance and improvements in the subdivision (Common Properties). The private businesses receiving the food and beverage assessments do not fit the definition of "Common Properties" as defined in the Bylaws.

6. Additionally, private, for profit businesses that cater to the public do not fit the use mandate for "common facilities" in the Covenants of being "*limited to the lot owners (and their minor children, adult children actually residing with lot owners, and their accompanied guests) and the Developer (and its guests or invitees)*" (emphasis added).

7. As the Plaintiff has failed to show its right to collect assessments for private, for profit businesses that do not fit the Bylaws definition of "Common Properties" or the Covenant's limitation of the use of the "common facilities", the Plaintiff cannot impose such assessments and the Plaintiff's claims cannot be sustained.

Accordingly, BASED UPON THE PRECEDING FINDINGS, IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff, White Bluff Property Owners, failed to meet the burden necessary to prevail against Defendant, Daniel L. Saturn, and accordingly shall take nothing. All relief not expressly granted herein is denied.

SIGNED this 24th day of APRIL, 2008.



Judge Albert B. Cercone,
Presiding Justice of the Peace