

4. Defendant, SM Center Fort Worth, Ltd. ("Sam Moon") is a limited partnership organized and existing under the laws of the State of Texas. Sam Moon may be cited to appear herein through service of citation and copy of this Original Petition upon its registered agent Daniel S. Moon at 2605 Lyndon B. Johnson Fwy. #A, Dallas, Texas, 75234.

III. **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this case because the amount in controversy exceeds the Court's minimum jurisdictional requirements. This Court has personal jurisdiction over the Defendants because Defendants are Texas partnerships doing business in Texas.

6. Venue of this action is proper in Tarrant County, Texas under Texas Civil Practice and Remedies Code §15.002(a)(1) because Tarrant County is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred.

IV. **FACTUAL BACKGROUND**

7. The Association is an entity formed to govern certain real property commonly known as Alliance Town Center. Property in Alliance Town Center is bound by certain specific covenants, conditions and restrictions set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Alliance Town Center Association ("Declaration"). The Association is charged with enforcing the covenants and restrictions in the Declaration.

8. Defendant Sam Moon is the owner of certain real property located within Alliance Town Center. On or about September 11, 2009, Defendant Sam Moon entered into a Commercial Lease with Defendant, Velvet Box, leasing to Velvet Box the property located at 9100 North Freeway, suite 125, Fort Worth, Texas, 76177 ("Velvet Box Property"). The Velvet

Box Property is subject to and bound by the Declaration. The Declaration provides, in pertinent part:

[T]he following uses are prohibited on the Property: . . . sexually-oriented business...

No use shall be permitted on the Property which is not allowed under applicable public codes and ordinances either already adopted or as may be adopted by the City or other controlling public authority. Each . . . occupant . . . shall comply with any and all laws, ordinances, policies, rules [and] regulations

9. Despite this plain prohibition, Velvet Box operates a sexually oriented business on the Velvet Box Property and operates its business in violation of certain public codes and ordinances.

10. On September 14, 2010, the Association sent written notice to Defendants, informing Defendants that Velvet Box was operating in violation of the Declaration and demanding that Velvet Box conform to the requirements of the Declaration. Despite this notification and demand, Velvet Box continues to operate in violation of the Declaration.

V. CAUSES OF ACTION

A. BREACH OF THE DECLARATION

11. The Association hereby incorporates by reference the foregoing paragraphs as if set forth fully herein.

12. Defendants' failure to conform to the requirements of the Declaration constitutes a material violation of the Declaration. As a direct and proximate result of such breach, the Association has suffered damages in excess of the minimal jurisdictional limits of this Court. The Association seeks to recover, among other things, damages and attorneys' fees incurred in remedying Defendants' past and future violations of the Declaration.

B. DECLARATORY JUDGMENT

13. The Association hereby incorporates by reference the foregoing paragraphs as if set forth fully herein.

14. Velvet Box is operating in violation of the Declaration. Despite notice specifically identifying these violations, Defendants have failed conform to the requirements of the Declaration. Therefore, a justiciable controversy is presented to the court for determination

15. Pursuant to Chapter 37 of the Texas Civil Practice & Remedies Code, the Uniform Declaratory Judgments Act, Plaintiff seeks a declaration that (1) Defendants are in violation of the Declaration; (2) The Association is entitled to enforce and exercise its remedies as outlined in Article V, Section 5.03(k) and Article X, Section 10.05 of the Declaration; and (3) the Association is entitled to recover its expenses and attorneys' fees in exercising its remedies under the Declaration.

C. PERMANENT INJUNCTIVE RELIEF

16. The Association hereby incorporates by reference the foregoing paragraphs as if set forth fully herein.

17. As a result of Defendants' refusal to comply with the Declaration, the Association has been damaged and will continue to be damaged and suffer injury.

18. If Defendants continue to disregard the Declaration and requirements therein, the Association and its members will suffer certain and irreparable injury from loss of good will in the community, lower property values, loss of marketability of their properties and a compromise in confidence of the Association and its members.

19. The probable harm to the Association is imminent based on Defendants' continued refusal to remedy the violations of the Declaration. Because the Association's loss

cannot be adequately compensated by damages, the Association is without an adequate remedy at law.

20. For these reasons, the Association requests that, after trial, the Court enter a permanent injunction which (1) permanently enjoins Defendants from violating or otherwise breaching the Declaration; and (2) requires Defendants to reimburse the Association for its expenses and attorneys' fees in remedying Defendants' past and future violations of the Declaration.

D. ATTORNEYS' FEES

21. The Association is entitled to recover from Defendants all reasonable costs and attorneys' fees, trial and appellate, incurred in obtaining the relief sought herein pursuant to (1) Texas Property Code § 5.006; (2) Texas Civil Practice and Remedies Code §§ 37.009; and (3) Article X, Section 10.05 of the Declaration.

**VI.
CONDITIONS PRECEDENT**

All conditions precedent to the bringing of this suit have been performed and/or have occurred.

**VII.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Association prays that Defendants be cited to appear and answer, and that following a determination on the merits, Plaintiff have judgment against Defendants and recover the following:

- a. A declaratory judgment that:
 - i. Defendants are in violation of the Declaration;
 - ii. The Association is entitled to enforce and exercise its remedies as outlined in Article V, Section 5.03 (k) and Article X, Section 10.05 of the Declaration; and

- iii. Defendants are responsible for reimbursement of the Association's expenses in exercising its remedies under Article X, Section 10.05 including costs of restoring the Velvet Box Property, costs of court, attorneys' fees, an other expenses;
- b. Monetary damages;
- c. Permanent injunctive relief, as set out above;
- d. Reasonable and necessary attorneys' fees;
- e. Prejudgment and post-judgment interest on all amounts awarded; and
- f. All other relief to which it may show itself justly entitled.

Respectfully submitted,



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October 7, 2011

Court Clerk
Tim Curry Criminal Justice Center
401 W. Belknap
Fort Worth, TX 76196

Re: *Alliance Town Center Association v. SM Center Fort Worth, Ltd., and VB Alliance, L.P.*; Tarrant County District Court, Case No. _____.

Dear Clerk:

Enclosed please find "*Plaintiff's Original Petition and Request for Injunctive Relief*" in the above matter along with several copies of same. Please file the original Petition and file-stamp all copies. Also please issue a Citation for each of the two Defendants. Our firm check in the amount of \$265.00 is enclosed for the costs. Please return copies to my waiting courier. If the Citations cannot be issued now, please call my assistant, Pat Miller at 817-810-5409 when they are ready to be picked up.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to call me at the number above.

Regards,

Shauna Wright
Shauna Wright
WRT

SJW:pm
Enclosures

FILED
TARRANT COUNTY
2011 OCT -7 A 11:18
THOMAS A. WILDER
DISTRICT CLERK

10/7/11 (Date)
sent a copy of letter
To Doc prod (initials).