

Pl. # 22150

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EL DORADO CO. SUPERIOR CT.

FILED MAY 14 2003

BY Jesse L. Locklear
Deputy

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF EL DORADO

10 MJB BIXBY CONSTRUCTION, INC.)

11 Plaintiff,)

12 vs.)

13 MARTY DePAOLI; ALLISON DePAOLI;)
14 PLACER SIERRA BANK; and DOES 1)
15 through 100, inclusive,)

16 Defendants.)

CASE NO. **PC 20030272**

**COMPLAINT FOR FORECLOSURE OF
MECHANIC'S LIEN AND STOP NOTICE**

17 COMES NOW Plaintiff, MJB BIXBY CONSTRUCTION, INC. (hereinafter referred to as
18 "BIXBY") and alleges as follows:

19 **FIRST CAUSE OF ACTION**

20 1. Plaintiff at all times herein mentioned is and was a contractor doing business in the State
21 of California and duly licensed to act as a contractor under the laws of the State of California to perform
22 all works of improvement described hereinafter which were performed by Plaintiff.

23 2. Defendants MARTY DePAOLI and ALLISON DePAOLI (hereinafter referred to as "the
24 DePAOLIS") at all times herein mentioned was the owner or reputed owner of that certain property
25 located in the County of El Dorado, State of California, and more particularly described in Exhibit "A"
26 hereto. Said property is hereinafter referred to as the Real Property.

27 3. Plaintiff is unaware of the true names and identities of Defendants DOES 1 through 100,
28 inclusive, and has sued said DOE defendants by such fictitious names. Plaintiff is informed and believes

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1 and thereon alleges that each of said Defendants claims an interest in the Real Property which is the
2 subject of this action. Plaintiff will seek leave to amend this Complaint to assert the true names and
3 identities of said DOE defendants at such time as those identities have been discovered.

4 4. Plaintiff is informed and believes and thereon alleges that each of said DOE defendants
5 is and at all times herein was the agent, servant, master, or principal of each and every other Defendant
6 named herein and is liable to Plaintiff for the damages sustained by Plaintiff either directly or indirectly,
7 vicariously or otherwise.

8 5. On or about April 24, 2002, BIXBY and the DePAOLIS, and DOES 1 through 10, entered
9 into a written contract for the construction of certain works of improvement to be located on the Real
10 Property described herein and to furnish and provide all necessary labor and materials therefor in
11 connection therewith, and to do all things in accordance with the terms and conditions of said contract.
12 Each of said Defendants agreed to pay to Plaintiff the sum of the contract price together with such
13 additional sums as may be subsequently agreed, either orally or in writing, in accordance with the terms
14 of the contract.

15 6. Plaintiff is informed and believes and thereon alleges that Defendant PLACER SIERRA
16 BANK claims an interest in the Real Property and at all times herein mentioned acted as construction
17 lender providing funds for the payment of costs and expenses incurred in connection with the
18 construction of the work of improvement on the Real Property.

19 7. From and after the execution of the contract as described hereinabove, Plaintiff furnished
20 and supplied to the Real Property labor and materials used in the work of improvement constructed
21 thereon in accordance with the terms and conditions of the contract pursuant to the request of the
22 DePAOLIS. There is presently due, owing and unpaid pursuant to the contract, the sum of Two Hundred
23 Thirteen Thousand Five Hundred dollars (\$213,500) which sum represents the fair and reasonable value
24 of the work and materials performed and supplied by Plaintiff to the Real Property after all due credits
25 for payments made, credits, offsets, and adjustments.

26 8. On March 26, 2003, Plaintiff recorded with the County Recorder of the county in which
27 the Real Property is situated Plaintiff's verified Claim of Mechanic's Lien, a copy of which is attached
28 hereto as Exhibit "A". Prior to the recording of said lien, thirty (30) days had not elapsed or expired

1 since the recordation of a valid Notice of Completion nor had ninety (90) days elapsed since the
2 completion of the work of improvement on the Real Property.

3 9. There is now due, owing and unpaid from Defendants, and each of them, the sum of Two
4 Hundred Thirteen Thousand Five Hundred dollars (\$213,500) after all due and just credits for claims
5 of offset, credit and payments made subsequent to the recording of the mechanic's lien together with
6 interest thereon at the legal rate of ten percent (10%) per annum from and after March 11, 2003.

7 10. Plaintiff's contract with the DePAOLIS provides for the recovery of all reasonable
8 attorney's fees incurred in the enforcement of Plaintiff's contract; and therefore, Plaintiff is entitled to
9 recover, in addition to all sums set forth hereinabove, Plaintiff's reasonable attorney's fees incurred
10 herein.

11 **SECOND CAUSE OF ACTION**
12 **(Enforcement of Stop Notice)**

13 11. Plaintiff realleges and incorporates by reference as though fully set forth in this cause of
14 action Paragraphs 1 through 7 of the First Cause of Action.

15 12. On April 11, 2003, and April 16, 2003, Plaintiff caused to be served on Defendants
16 PLACER SIERRA BANK and the DePAOLIS by certified mail, return receipt requested, a verified Stop
17 Notice together with a good and sufficient bond, copies of which are attached hereto as Exhibits "B" and
18 "C, respectively. Said Stop Notice was in the amount of Two Hundred Thirteen Thousand Five Hundred
19 dollars (\$213,500).

20 13. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned,
21 Defendant PLACER SIERRA BANK was the construction lender and holder of certain loan funds or
22 proceeds allocated for the work of improvement on the Real Property.

23 14. Said Stop Notice and stop notice bond were served prior to the expiration of the period
24 within which mechanic's liens must be recorded pursuant to Civil Code, §§ 3115, 3116 or 3117. Ninety
25 (90) days have not elapsed since the expiration of the period within which claims of liens must be
26 recorded as prescribed by Civil Code, §3109, et seq.

27 15. Plaintiff is informed and believes and thereon alleges that at the time of the service of said
28 Stop Notice, there was a sufficient amount of money due from Defendant PLACER SIERRA BANK out

1 of the construction loan fund to answer and pay said claim of Plaintiff and the reasonable cost of
2 litigation thereunder.

3 16. Defendant PLACER SIERRA BANK has failed and refused and continues to fail and
4 refuse to pay to Plaintiff the sum of Two Hundred Thirteen Thousand Five Hundred dollars (\$213,500)
5 out of said construction loan funds, or any portion thereof, and the entire amount of Two Hundred
6 Thirteen Thousand Five Hundred dollars (\$213,500) plus interest to the date of filing and serving said
7 Stop Notice at the rate of ten percent (10%) per annum is now due, owing and unpaid.

8 17. Defendants, and each of them, have or claim to have some estate, lien, right, title, or
9 interest in or to said construction loan funds or some portion thereof, which claims or liens are subject
10 to, subsequent to, and subordinate to the lien of Plaintiff.

11 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

12 1. Against the DePAOLIS in the amount of Two Hundred Thirteen Thousand Five Hundred
13 dollars (\$213,500) together with interest thereon at the rate of ten percent (10%) per annum from and
14 after March 11, 2003;

15 2. For costs of suit incurred herein;

16 3. For judgment as against all Defendants that all of said amounts be adjudged to be a lien
17 on the Real Property described in Exhibit "A" hereto and that said land be adjudged and decreed to be
18 sold by the Sheriff of the County of El Dorado, State of California, in accordance with the laws and
19 practices of this Court, and that the proceeds of sale be applied to satisfy the costs of sale, the costs of
20 these proceedings, and Plaintiff's claim and judgment.

21 4. That the interests and claims and the estates of all Defendants named herein, and each
22 of them, be determined to be of inferior priority to that of Plaintiff and subject to Plaintiff's lien. That
23 the Court further order that the Plaintiff, or any party to this action may become a purchaser at sale.

24 5. As against the DePAOLIS, for reasonable attorney's fees to be awarded pursuant to Code
25 of Civil Procedure, §1717;

26 6. Let it be ordered and decreed that the monies held by Defendant PLACER SIERRA
27 BANK under and pursuant to said Stop Notice be paid to Plaintiff and applied on account of his
28 judgment.

1 7. In the event that said construction funds have been disbursed by PLACER SIERRA
2 BANK after the filing by Plaintiff of the Plaintiff's Stop Notice, that judgment be entered against
3 PLACER SIERRA BANK in favor of Plaintiff for the sum of Two Hundred Thirteen Thousand Five
4 Hundred dollars (\$213,500), together with interest and attorney's fees and costs.

5 8. That the interest of all Defendants in said construction loan funds be adjudged subsequent
6 to, subject to and inferior to the claim and lien of Plaintiff herein.

7 9. For such further relief as the Court may deem just and proper.

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9 DATED: April 30, 2003

MOYER, PARSHALL & TWEEDY, LLP

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11 By: _____

CHARLES A. TWEEDY
Attorneys for Plaintiff, MJB Bixby Construction



