

1 MOYER, PARSHALL & TWEEDY, LLP
Charles A. Tweedy [SBN 096234]
2 Stephan L. Parshall [SBN 059834]
Hayne R. Moyer [SBN 066937]
3 11341 Gold Express Drive, Suite 110
Gold River, California 95670

4 Telephone: (916) 631-8388
5 Facsimile: (916) 631-8188

6 Attorneys for Defendants
7 MJB/BIXBY CONSTRUCTION, INC., and
DPA ASSOCIATES

8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SACRAMENTO

11 DON GLOVER, DBA ACOUSTICAL
ENGINEERS OF CALIFORNIA)

12 Plaintiff,)

13 vs.)

14 MJB/BIXBY CONSTRUCTION, INC.,)
15 DPA ASSOCIATES, an entity of unknown)
origin; and DOES 1 -50, inclusive;)

16 Defendants.)
17

AM
CASE NO.: 04A809339
(Limited Civil) - under \$10,000

ANSWER TO COMPLAINT FOR BREACH OF
CONTRACT; FORECLOSURE OF
MECHANIC'S LIEN; AND QUANTUM
MERUIT

18
19 COMES NOW these answering Defendants, MJB/BIXBY CONSTRUCTION, INC., and
20 DPA ASSOCIATES and deny each and every allegation contained in Plaintiff's complaint.

21 **GENERAL DENIAL**

22 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendants
23 MJB/Bixby Construction, Inc., and DPA Associates, specifically and generally deny each and every
24 allegation contained in the unverified Complaint of Don Glover, dba Acoustical Engineers of
25 California, and further deny that any damages have been sustained by Plaintiff.

26 Further answering the Complaint of Plaintiff, Defendants MJB/Bixby Construction, Inc., and
27 DPA Associates, affirmatively allege as follows:

28 ///

\$ 330.00 - (2)

1 **AFFIRMATIVE DEFENSES**

2 1. **Failure to State Claim.** As a first, separate, distinct and affirmative defense,
3 Defendants allege that said Complaint fails to allege facts sufficient to constitute a cause of action
4 against them.

5 2. **Election of remedies and Waiver.** As a second, separate, distinct and affirmative
6 defense, Defendants allege that Plaintiff has filed a complaint with the Small Claim Division of the
7 Superior Court of California, County of Sacramento, Case Number 04SC08927, seeking recovery for
8 work performed pursuant to the alleged contract and proceeded to trial with respect to said claim;
9 and therefore, Plaintiff has made an election of remedies by proceeding in Small Claims Court and has
10 thereby waived any portion of the claim arising under the alleged contract in excess of the award of
11 the small Claims Court.

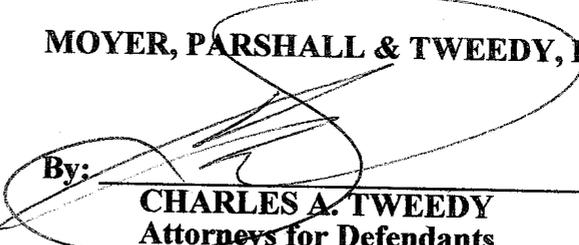
12 3. **Set Off.** As a third separate, distinct and affirmative defense, Defendants allege that
13 Plaintiff failed to perform the work required by the contract in a timely and workmanlike manner
14 thereby damaging Defendant MJB/Bixby Construction, Inc., and DPA Associates, for which
15 Defendant MJB/Bixby Construction, Inc., and DPA Associates, is entitled to a set off against the
16 amount due under the contract, if any.

17 WHEREFORE, these Answering Defendants pray for judgment as follows:

- 18 1. That Plaintiff take nothing by way of its complaint;
19 2. That these Answering Defendants be awarded reasonable attorney's fees in an amount
20 according to proof; and,
21 3. For such other and further relief as the court may deem just and proper.
22

23 DATED: January 21, 2005

MOYER, PARSHALL & TWEEDY, LLP

24
25 By: 

26 **CHARLES A. TWEEDY**
27 **Attorneys for Defendants**
28 **MJB/BIXBY CONSTRUCTION, INC. and**
DPA ASSOCIATES

1 **PROOF OF SERVICE**

2 **RE: Don Glover, dba Acoustical Engineers of California v. Bixby Construction, et al.,**
3 **CASE NO.: 04AM09339**
4 **COURT: Sacramento County Superior Court**

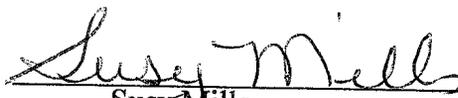
5 I am a citizen of the United States, and employed in the County of Sacramento. I am over the age
6 of eighteen (18) years and not a party to the within above-entitled action. My business address is 11341
7 Gold Express Drive, Suite 110, Gold River, California 95670. I am familiar with the business practices of
8 the Law Office of Moyer, Parshall & Tweedy, LLP for collecting and processing mail and know that the mail
9 in said office is collected and processed so that this piece of mail, if served by mail, was deposited with the
10 United States Postal Services on the same date as indicated below. I served the following document(s):

11 **ANSWER TO COMPLAINT FOR BREACH OF CONTRACT; FORECLOSURE OF**
12 **MECHANIC'S LIEN; AND QUANTUM MERUIT**

- 13 X by placing the document(s) listed above in a sealed envelope with postage prepaid, by
14 depositing for collection and mailing in accordance with the firm's ordinary practices, addressed
15 as set forth below.
- 16 _____ by placing a true copy thereof in a sealed Federal Express Courier-Pak Overnight Envelope and
17 depositing it in a Fed Ex box addressed as set forth below.
- 18 X by sending a true copy thereof by facsimile to the person(s) at the address(es) and fax number(s)
19 set forth below.

20 Franklin T. Watson,
21 WATSON, KHACHADOURIAN & IAMS, LLP
22 1000 G Street
23 Sacramento, CA 95814

24 I declare under penalty of perjury that the foregoing is true and correct. Executed on
25 January, 24, 2005 at Gold River, California.

26 
27 _____
28 Susy Mills