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Dennis M. Wilson, Esq.  
State Bar Number 43877  
Coren D. Wong, Esq.  
State Bar Number 185047  
Wilson Law Firm  
7801 Folsom Boulevard, Suite 105  
Sacramento, CA 95826  
Telephone: (916) 381-8400

Attorneys for Deborah A. Doty and Robert W. Doty

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO**

**DEBORAH A. DOTY, et al.,**  
*Plaintiffs,*  
  
v.  
  
**MARK J. BIXBY, et al.,**  
*Defendants,*

**Case No. 01AS07640**

**DECLARATION OF  
BRIAN CARVER**

1. My name is Brian Carver. I am the partner of G. Gregory Carver ("Greg"), who is a property owner. I have had the misfortune to transact business on behalf of Greg with MJB/Bixby Construction, Inc. ("Bixby Inc.") and Mark J. Bixby.

2. I am prepared to testify competently and consistently with this Declaration.

3. Greg employed Mr. Bixby and Bixby Inc. to perform premium construction work on a rental property owned by Greg in Sacramento, California. I acted for Greg in certain respects with regard to the work, however we had told Mr. Bixby on several

1  
2 occasions that only Greg held authority to make decisions of a financial nature regarding  
3 the property. Only Greg signed the contract between himself and Mr. Bixby/Bixby Inc. I  
4 was present on the site on most days of the construction and remodel, and as such I was  
5 able to look at the work progress and procedures. I received the weekly billings and  
6 delivered prompt payment to Bixby Inc. for same.

7  
8 4. During all stages of the estimate process and prior to and after signing the  
9 contract, both Greg and I made Mr. Bixby aware - in writing as well as verbally - that we  
10 were unwilling to spend more than a certain amount to complete all repairs on the rental  
11 property. Mr. Bixby expressed full understanding of this limitation.

12  
13 5. I found that Mr. Bixby had a duplicitous nature to his personality. In the  
14 beginning, Mr. Bixby was very charming and gracious, even excessively so. For lack of  
15 a better word, he was very "chummy" and behaved - from the very start - in a way that  
16 would have suggested we had been confidants for a number of years. That was especially  
17 true when Mr. Bixby was negotiating and entering into the contract with Greg. Later, as  
18 expressed below, Mr. Bixby became very angry, accusatory, confrontational, threatening,  
19 and verbally abusive. I also witnessed Mr. Bixby in a state of heightened agitation  
20 toward his workers, demonstrating very physically threatening behavior while he was  
21 screaming, yelling, and waving his arms while approaching each of them quickly and  
22 forcefully. After my first threatening encounter with Mr. Bixby, it became increasingly  
23 difficult to reach Mr. Bixby by phone. When I did manage to reach him, he was  
24 belligerent and argumentative, digressing frequently into unreasonable and purely  
fantastic accusations.

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2 6. Mr. Bixby and Bixby Inc. did not complete much of the work in a timely  
3 manner. Despite multiple inquiries into delays and multiple requests that the work be  
4 completed within the time period represented, Mr. Bixby and Bixby Inc. did not complete  
5 the work within that time, which led to further financial losses on the part of Greg by  
6 forcing him to delay the move-in of his tenants.

7  
8 7. Mr. Bixby and Bixby Inc. did not complete any of the work in a satisfactory  
9 manner. From the very first day Greg and I had to review the work since Mr. Bixby and  
10 his "foreman", Carlos Nava, were rarely present. Despite multiple requests and  
11 discussions about the shoddy workmanship being performed at the property, Mr. Bixby  
12 failed to complete the work in a satisfactory manner. After Greg held up one payment,  
13 Mr. Bixby finally agreed to meet in person to review the work done up to that point.  
14 During that visit Mr. Bixby agreed and stated verbally that much of the work performed  
15 was substandard, and he instructed his employees to correct the faulty work. The work  
16 was, however, again performed in a rather substandard fashion.

17 8. Mr. Bixby and Bixby Inc. left many items poorly constructed or poorly  
18 completed, including but not limited to the following: kitchen cabinets, floors, plumbing,  
19 installation of toilets, and window and door molding and trim. Mr. Bixby and Bixby Inc.  
20 further damaged the foundation and frame of the building in their attempts to effect  
21 repairs, as evidenced in severe cracking in Units A and D of the building, as well as  
22 buckling wood siding. I have read and agree with Greg's Declaration about the quality of  
23 the work and the billing problems encountered.  
24

1  
2 9. I looked at the details of all of the billing statements submitted by or on behalf  
3 of Mr. Bixby and Bixby Inc. for the work on Greg's property. Bixby Inc. submitted  
4 various incorrect billings. In my activities in looking at the work progress on the  
5 construction site and in my review of billing statements, I found that Mr. Bixby's and  
6 Bixby Inc.'s workers were not always at the site on days for which time was billed. I also  
7 found that sometimes time would be billed for two workers, when only one was present.  
8 In addition, sometimes a full day would be billed, when work had been performed for  
9 only a partial day.

10  
11 10. In addition to the many errors, inconsistencies, and falsifications regarding the  
12 weekly billings, Exhibit 1 to this Declaration shows that Mr. Bixby made many errors on  
13 his initial estimate in calculating the overall cost of the repairs to Greg's rental property.  
14 It still remains unclear how Mr. Bixby arrived at the total costs that he listed in his  
15 estimates.

16 11. I was witness to Mr. Bixby's dishonesty regarding his business practices on  
17 several occasions. One such occasion involved securing the permit for the foundation  
18 work to be performed on Greg's property. Mr. Bixby was unwilling to have either his  
19 name or the name of his company appear in any place on the application for the permit.  
20 He instructed me to apply for the permit in my name alone, indicating that it would be  
21 easier that way, indicating that we would encounter less resistance from the City of  
22 Sacramento's inspectors. When I could not answer all the questions of the representative  
23 of the City of Sacramento, I asked Mr. Bixby to step forward and answer the questions.  
24 At that time, he opted to write the name of Bixby Inc. on the application for the permit.

2           12. Another incident wherein I discovered Mr. Bixby had actively deceived me  
3 involved the inspection of the foundation of Greg's rental property. I had inquired as to  
4 whether the inspection had been performed and what the results were, since Greg and I  
5 were concerned about the quality of the repair and whether it would pass inspection. Mr.  
6 Bixby ensured me that the inspection had, indeed, been completed and that all was fine. I  
7 pressed him about this point, and he further assured me that all was well. I immediately  
8 called the City of Sacramento to inquire about the inspection, and I was informed that no  
9 inspection had been performed. I scheduled one immediately. The repair work  
10 performed by Mr. Bixby's company did not pass inspection. Corrections were stipulated.  
11 A follow-up inspection was scheduled. At this time Mr. Bixby became even more irate  
12 and uncooperative, accusing me of scheduling the inspections - which should have been  
13 scheduled by him or his employees - as a tactic for delaying the construction.

14           13. I am an experienced mediator, and have worked professionally in that capacity.  
15 Even with my mediation skills, I sometimes found it extremely difficult to hold  
16 productive discussions with Mr. Bixby.

17  
18           14. When I raised questions or complaints to Mr. Bixby about the billing practices  
19 and quality of construction or construction procedures, I again saw a much different side  
20 of Mr. Bixby's personality. Mr. Bixby became very angry, threatening, intimidating and  
21 abusive. Mr. Bixby shouted at me, frequently using obscenities. Mr. Bixby also attempted  
22 to divert the discussion into personal areas, making statements like "I thought we were  
23 buds," but I resisted and sought to keep the discussion as professional as possible.

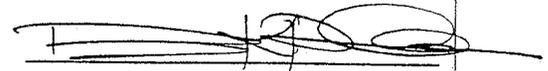
2           15. At one point, Mr. Bixby told me he had become involved in the mold  
3 remediation business. Mr. Bixby described that business as being very profitable and  
4 unregulated. He indicated to me that he had had absolutely no prior experience or  
5 training in remediating mold infestations of any kind. He further expressed his delight at  
6 the fact that he could make lots of money in this area and would be able to purchase  
7 many new gadgets and construction devices specifically for handling mold infestations.  
8 He also stated that although he had had no previous experience or training in this area, he  
9 had never admitted that to any of his clients.

10           16. Mr. Bixby told me that he knew how to get insurance companies to pay for  
11 mold remediation that was not covered by the insurance companies' policies. Mr. Bixby  
12 stated that he would do so by misrepresenting the causes and extent of the mold  
13 infestation.

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct.

Dated: July 2, 2002.



Brian Carver

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