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CAPITAL COMMERCIAL FLOORING, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

Limited Civil Case

\$ 717.50

CAPITAL COMMERCIAL FLOORING, INC., a
California corporation,

No. **05AM00618**

Plaintiff,

**COMPLAINT TO FORECLOSE
MECHANICS' LIEN**

vs.

MJB/BIXBY CONSTRUCTION, INC., a California
corporation; DPA ASSOCIATES, a California
Limited Partnership; HONEYWELL
INTERNATIONAL, INC., a Delaware corporation
doing business as ADI; and DOES 1 through
200, inclusive,

1. Action to Foreclose Mechanics' Lien
2. Breach of Contract
3. Quantum Meruit
4. Action on Open Account

Defendants.

Plaintiff alleges:

FIRST CAUSE OF ACTION
[Action to Foreclose Mechanics' Lien]

1. Plaintiff is now, and at all times in the Complaint mentioned, was a corporation duly organized and existing under and by virtue of the laws of the State of California, and was at all times in this Complaint mentioned, and now is, doing business in the State of California pursuant to and as authorized by the laws of the State of California.

2. Plaintiff is now, and was at all of the times hereinafter stated, a licensed contractor in the State of California, doing business as such in the State of California, and

Greve
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Wengel
& Paras,
LLP

1 duly licensed as such contractor under the laws of the State of California at the time each
2 of the acts hereinafter mentioned were performed.

3 3. Plaintiff is informed and believes, and upon that basis alleges that, at all
4 times mentioned herein, Defendant MJB/BIXBY CONSTRUCTION, INC. was and now
5 is a California corporation, engaged in business as a general contractor in the State of
6 California.

7 4. Plaintiff is informed and believes, and upon that basis alleges that, at all
8 times mentioned herein, Defendant DPA ASSOCIATES was and now is a California
9 limited partnership and Owner or reputed Owner of the real property described more fully
10 hereinbelow.

11 5. Plaintiff is informed and believes, and upon that basis alleges that, at all
12 times mentioned herein, Defendant HONEYWELL INTERNATIONAL, INC., is a Delaware
13 corporation doing business under the name of ADI and is the lessee of the real property
14 described more fully hereinbelow.

15 6. Plaintiff is ignorant of the true names of Defendants named herein as DOES
16 1 through 200, inclusive, and has therefore sued them by the foregoing names, which are
17 fictitious, and is informed and believes and thereon alleges that each of said defendants
18 claims an interest, right, estate and/or title in the property hereinafter described and which
19 is the subject of this action and/or are legally responsible to Plaintiff, and Plaintiff asks
20 that when their true names are discovered, this complaint may be amended by inserting
21 their true names in lieu of said fictitious names, together with apt and proper words to
22 charge them.

23 7. At all times mentioned, each Defendant, including the DOE Defendants,
24 was an agent, servant or employee of the other Defendants herein named; that at all of
25 said times, each said Defendant was acting within the course and scope of said agency,
26 service or employment.

27 8. Defendant DPA ASSOCIATES and DOES 1 through 10, were at all of the
28 times in this complaint mentioned, and now are, the Owners or reputed Owners of all that

1 certain real property situate in the City of Sacramento, State of California, otherwise
2 known as 709 West Del Paso Road, Sacramento, California. Attached hereto as Exhibit
3 A is description of the property in question.

4 9. On a date presently unknown to Plaintiff, Defendant HONEYWELL
5 INTERNATIONAL, INC. doing business as ADI [hereinafter referred to as "ADI"] and/or
6 DOES 11 through 15 entered into a lease or other agreement with Defendant DPA
7 ASSOCIATES, wherein Defendant ADI and DOES 11 through 15 agreed to lease a
8 portion of the real property described above.

9 10. On a date presently unknown to Plaintiff, Defendants DPA ASSOCIATES
10 and/or ADI and DOES 11 through 15 entered into a contract with Defendant MJB/BIXBY
11 CONSTRUCTION, INC. [hereinafter "BIXBY CONSTRUCTION"] wherein Defendant
12 BIXBY CONSTRUCTION agreed to construct improvements for the office space leased
13 by Defendant ADI and/or DOES 11 through 15 located at 709 West Del Paso Road,
14 Sacramento, California.

15 11. On February 10, 2004, Plaintiff entered into an agreement in writing
16 whereby Plaintiff agreed to furnish and install flooring materials as more fully described
17 in the written agreement. In turn, Defendant BIXBY CONSTRUCTION agreed to pay
18 Plaintiff the sum of \$36,000.00. A true and correct copy of said agreement is attached
19 hereto as Exhibit B.

20 12. Plaintiff furnished and installed flooring materials for the tenant
21 improvements as required by said contract. All of the materials and services furnished
22 by Plaintiff as aforesaid were furnished to be used and the same were actually used in
23 said work of improvement.

24 13. The agreed price and reasonable value of the services performed by
25 Plaintiff for said Defendants was and is the sum of \$36,000.00; and there is now due and
26 owing to Plaintiff, for and on account thereof, the sum of \$11,000.00 in lawful money of
27 the United States, after deducting all just credits and offsets, and the same has not been
28 paid.

1 14. The whole of the land hereinbefore particularly described upon which said
2 building is located is necessary and required for the convenient use and occupation of
3 said property.

4 15. On the first day of November, 2004, Plaintiff's verified claim of lien was duly
5 recorded in Book No. 20041101 and Page 0891 of the Official Records of the County of
6 Sacramento, containing a statement of Plaintiff's demand after deducting all just credits
7 and offsets, and the names of the Owners or reputed Owners of said property and the
8 names of the persons to and from whom Plaintiff contracted to furnish such services,
9 together with a general statement of the kind of services furnished by it, the names of the
10 person by whom it was employed, and to and from whom it furnished said services, and
11 a description of the property sought to be charged with said lien sufficient for identification
12 which said notice and claim of lien was filed for record under and by virtue of the
13 provisions of Division III, Title 15 of the Civil Code of the State of California.

14 16. Plaintiff timely served a 20-day Preliminary Notice as required by California
15 law.

16 17. Thirty days has not expired or lapsed since the recordation of notice of the
17 completion of said work of improvement and/or cessation of labor thereon, and ninety
18 days has not elapsed or expired since the completion of said work of improvement, or any
19 cessation of labor thereon and said filing of Plaintiff's notice and claim of lien.

20 18. Defendants DPA ASSOCIATES, HONEYWELL INTERNATIONAL, INC.
21 doing business as ADI, MJB/BIXBY CONSTRUCTION, INC. and DOES 1 through 200,
22 inclusive, have or claim to have some estate, lien, right, title or interest in or upon said
23 premises or upon some part thereof, which said claim and claims and all such claims or
24 liens are subject, subsequent and subordinate to the lien of Plaintiff as aforesaid.

25 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

26 **SECOND CAUSE OF ACTION**
27 **[Breach of Contract]**

28 19. Plaintiff refers to and incorporates herein by reference the allegations of the

1 first cause of action.

2 20. On February, 10, 2004, Plaintiff entered into a written agreement with
3 Defendant BIXBY CONSTRUCTION, wherein Plaintiff agreed to furnish and install
4 flooring materials to the Project. A true and correct copy of the agreement is attached
5 hereto as Exhibit "B". In exchange for Plaintiff's agreement to furnish and install flooring
6 materials, Defendant BIXBY CONSTRUCTION agreed to pay Plaintiff the sum of
7 \$36,000.00.

8 21. Pursuant to said agreement, Plaintiff provided labor, materials and services
9 for the Project in question and did so pursuant to the terms of the contract. The labor,
10 materials and services were actually used in the work of improvement.

11 22. Plaintiff has performed all of the conditions, covenants and promises under
12 the contract on its part to be performed.

13 23. Although demand therefore has been made since the materials and labor
14 were furnished as alleged above, only a portion of the contract price has been paid, and
15 the sum of \$11,000.00 is now due and owing to Plaintiff. Defendant breached said
16 contract by refusing, and continuing to refuse to pay amounts due and owing.

17 24. As a result of Defendant's breach of contract, Plaintiff has sustained
18 damages in the amount of \$11,000.00 plus late charges as provided in the contract.

19 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

20 **THIRD CAUSE OF ACTION**
21 **[Quantum Meruit]**

22 25. Plaintiff refers to and incorporates by reference herein the allegations of the
23 First and Second Causes of Action.

24 26. Between the dates of July, 2004 and October, 2004 at the special instance
25 and request of Defendant BIXBY CONSTRUCTION, and on a promise to pay the
26 reasonable value thereof, Plaintiff herein furnished and installed flooring materials in
27 connection with improvements to the ADI Project.

28 27. Such labor and materials were furnished and actually used in the

1 construction of the above-referenced Project.

2 28. The furnishing of labor and materials for the above work of improvement
3 were of the reasonable worth and value of \$36,000.00.

4 29. Although demand has been made on Defendant BIXBY CONSTRUCTION,
5 only a portion of the above amount has been paid, and the amount of \$11,000.00
6 remains due, owing and unpaid.

7 **WHEREFORE**, Plaintiff prays for judgment as hereinafter set forth.

8 **FOURTH CAUSE OF ACTION**
9 **[Action on Open Account]**

10 30. Plaintiff refers to and incorporates by reference herein the allegations of
11 the First, Second and Third Causes of Action.

12 31. Within the last four years, Defendant BIXBY CONSTRUCTION and DOES
13 50-60 became indebted to pay Plaintiff an Open Book Account for money due, in the
14 principal sum of \$36,000.00 for furnishing labor and materials to Defendant at the special
15 instance and request of the latter, for which Defendant agreed to pay the above sum to
16 Plaintiff.

17 32. In spite of demand for payment, only a portion of the above sum has been
18 paid, and there is still due, owing and unpaid from Defendant BIXBY CONSTRUCTION
19 to Plaintiff the principal sum of \$11,000.00 together with interest as allowed by law to date
20 of entry of judgment herein.

21 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of
22 them, as hereinafter set forth:

23 1. As to the First Cause of Action, Plaintiff prays for judgment against
24 Defendants DPA ASSOCIATES, HONEYWELL INTERNATIONAL, INC. doing business
25 as ADI, MJB/BIXBY CONSTRUCTION, INC. and DOES 1 through 200, jointly and
26 severally for the sum of \$11,000.00, together with interest thereon as allowed by law, and
27 Plaintiff's attorney fees and costs, and that said amounts be adjudged to be a lien against
28 said property and all of the land in this complaint described, and that said land be

