



MJB/Bixby Construction, Inc.

1513 18th St. * Sacramento, CA 95814

Voice: (916) 448-9797 * Fax: (916) 448-9779

E-mail: mjbbixby@msn.com

California State Contractor's License #571321

June 20, 2001

Dave & Lynn Ernce
2811 Third Avenue
Sacramento, CA 95818

Dear Dave & Lynn,

Your decision on Tuesday, June 20th, 2001 to pull my company off of our contractual agreed upon kitchen remodel project is unacceptable to us. Your reason was that it had not been completed by the completion date. This doesn't make any sense, there was no official "completion date", not to mention it would have been completed in one more working day.

What had been mutually agreed to though, and which both parties in a contract dated April 17, 2001 entered into, clearly indicates that the completion date was "to be determined." There were many factors which drove this "to be determined" completion date which were discussed at length by all parties weeks prior to signing the contract.

As I stated to you Tuesday afternoon, and again via this forum, your actions are based on nothing and clearly violate our contract. With more than 97% of our contract and numerous change orders completed, you have refused to pay monies past due and a current balance we estimate at approximately \$15,000.00-\$20,000, we are suspicious of your true motives. Every now and then, a client will authorize numerous change orders, then when it comes time to pay, they are unable to fulfill their financial obligation to the Contractor who performed the work in good faith. In our opinion, this is the situation you are in. You have repeatedly throughout this project commented on the outstanding quality of materials and craftsmanship used. However, now as we near completion and you have a rather large outstanding amount owed, you claim there are problems in completion time.

Therefore, once again, I demand that MJB/Bixby Construction, Inc., be permitted to return to your home and complete the kitchen remodel project for which we were contracted to perform. We are demanding this due to financial, professional, and most importantly, safety issues. We must be permitted to ensure this job site is free of any hazards which may remain and would have normally been dealt with as part of our standard operating procedures. However, per your demand we vacate the property without further delay on Tuesday, in front of law enforcement and in an attempt to deescalate what was obviously an increasing volatile situation on Mrs. Ernce part, kept us from doing our job.

In my opinion, on Tuesday the situation had deteriorated to such an unprofessional and emotional level, the prudent decision at the time was to honor your demand and obey the police officer. Now however, the prudent move here is for you to honor our demand and allow us to complete the project and be paid in full for these services you have already received. So once again, I am demanding that MJB/Bixby Construction, Inc. be permitted to return to your home and complete our contractually agreed to work. Most important above all, is the safety issues which are now your responsibility, such as open electrical that you refused to let us finish or at least make safe.

If nothing is heard from you within 48 hours of the date on this correspondence, we will aggressively proceed by any and all legal and professional options available to us, ensuring that our financial and professional interests are protected. Let me make this perfectly clear, I will spare no money, time, energy or effort to prove we at, MJB Bixby Construction Inc., believe we are one hundred percent correct in this matter. MJB Bixby Construction Inc. intends to immediately lien, sue, and collect on all current monies owed including additional costs such as change orders not yet billed, legal fees, hourly rate per contract to perform these items. Additionally, I will charge for the items per my contract that we graciously did not charge for originally in our last bill. I have also suggested to any and all unpaid sub-contractors to immediately pre-lien and lien your house, advising you and them all checks are to be made out to MJB Bixby Construction and the individual sub-contractors. This will guarantee proper payment between our personnel and sub-contractors eliminating future losses by you overpaying a sub-contractor. I also spoke to the head of CLP who denies, as we do, that any one of his employees or Doug at MJB Bixby Construction attempted in any way, shape or form to force you to make a payment as suggested in one of your letters. We would also like to state, excluding the written change orders that you have provided to us and the written change orders that we have provided to you, we are in disagreement with most of what you state in your letters. In our opinion, you have a very



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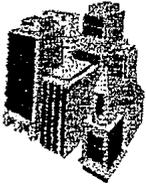
biased and unrealistic perception of your job and what took place. There were numerous delays on your end, such as ordering and receiving the wrong tile, incorrect design of your structural wall which MJB Bixby Construction had to redesign, adding changes such as adding can lights on one 3-way switch, requesting them to be segregated on two switches (without my permission), relocating washer and dryer drains, relocating a vent pipe in a wall that was removed (that was unforeseen), relocating and adding new gas lines, verbally agreeing to allow all cabinets to be built at once then a week later asking for one cabinet to be built prior to the other cabinets, wanting additional granite tiles polished, having the crown molding changed to a different design after we already installed your original choice, forcing the tile company to be delayed for approximately three days due to the additional granite polishing per your request because the tile you ordered was wrong, removing the entire plaster on the outside kitchen wall, then insulation sheet rock and tape, top, and texturing it, waiting for your engineer as per your letter dated May 23, 2001 to approve the drawing I had to draw because he was too busy, changing ceiling and wall texture from semi-smooth (which was completed) as per the contract to smooth, changing out your exterior stucco molding with new stucco molding (which more time and cost to the stucco patch and requiring us to remove your existing protection door and reinstall it, relocating your dryer vent, adding a new cabinet above your range hood, reframing your entire ceiling area per a new drawing that your engineer approved to eliminate a ceiling drop-down, re-sheet rocking your entire stove wall, relocating your vent plumbing all the way to your roof, adding a vent through your roof for your gas stove, removing your old light fixtures in your ceiling, adding an esthetic cover above your kitchen sink, scheduling for SMUD to unhook and hook back up your electrical panel, and many other items not mentioned.

As per my letter dated approximately, April 2, 2001, we projected we could start and finish your project in a timely manner. We also stated that this would soon change around the last week of April when our seasonal work begins. We told you if this job did not start prior to our busy season, approx. the end of April, the job could take much longer. In reference to your letter dated May 23, 2001, over twenty-three days passed when we originally were supposed to start the job. We could not even cover up the walls without inspection from the City pertaining to your new structural wall that we had to design and have your engineer approve. If there was any delay, it was you and yours or possibly rests on CLP's shoulders in our opinion. Furthermore, CLP had no right to put a \$10,000 pre-lien on your property. We believe if MJB Bixby Construction Inc. owes any amount to CLP it is closer to \$1,000.

As per #2 in my contract, you violated the agreement to not hire any of MJB Bixby Construction's employees. We believe you offered a job to one of our personnel. As per #12 in my contract, we will be submitting a bill for the engineering work I performed, etc. Per #16 in my contract, 90% of your job is completed, and therefore we should have collected 90% of the monies due including change orders. Per #17 in my contract, Contractor is to determine draws and working days, it clearly states, "to be determined", no specific time frame is outlined. As per #23, we will immediately start charging 2% on top of the money you owe. If we do not receive full payment within 40 days, we will be charging 5%. We will also be utilizing the right to charge for any extra charges accrued by these non-payments. Per #25 in my contract, if a job is postponed for any reason on the part of the owner, David and Lynn Ernce, it may effect commencement date, more importantly finish date and prices of the contract. I reserve the right to charge all personnel affected, including sub-contractors on this job by the delay of work for each job affected. You have clearly postponed this job more than once and we now have the right to come back at our convenience, agreeable with you, to complete this job. We will not allow you to hire any other personnel to do so. We will check our schedule to see when we can come back. When you agree, we will finish the job. However, the amount of outstanding monies owed will be paid by a cashier's check prior to us returning to your job. We will allow the cashier's check or checks to be written to both sub-contractor and contractor. Per #33 in my contract, any damages, injuries, or death as a result of owner's responsibility is excluded from this agreement, which allows us full rights to all extra charges we are incurring. Per #36 in the contract, Contractor has the right to film, videotape, and take pictures, etc. of the progress on the job. Mrs. Ernce clearly did not allow MJB Bixby Construction Inc. to do that and called the police department to have Mr. Bixby thrown off the property, another violation of the contract.

In our opinion, your and yours have been extremely uncooperative and have attempted in every way, shape, and form to clearly breach this contract. You have 48 hours after receiving this letter to either comply with our contract or provide a mutually agreeable resolution between MJB Bixby Construction Inc. and you and yours.

We will be immediately posting a notice of non-responsibility on your property as per our "notice of non-responsibility clause" as well as a lien.



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We are pulling a credit report on you immediately, as per our contract. We plan to contact all credit agencies and services to make them aware of your non-payment. I realize that Lynn is very busy working and struggling with her diet; this has most likely caused her irritability. I don't believe there is any excuse for you, Dave, to act so unprofessionally. I look forward to seeing you personally to resolve this matter. You can come to my office or any place that is convenient for you. I will end by saying this, in twenty years of being in this business, in my opinion, you are one of the most unappreciative, disrespectful, unprofessional, and dishonest customers I have ever had the misfortune of working with. Again, I will spare no expense, time, energy, or effort, to make sure people like you do not ever do this to anyone else again. Lynn, you made a lot of rude, unintelligent threats in my opinion, you told me you were not going to pay us under any circumstances, be assured you will pay us everything you owe us.

This correspondence has been transmitted via several medias to include but not limited to; Electronic mail, fax, Capital Courier Service, and certified overnight priority mail, to both you and your wife with the delivery information on file.

We advise you to seek legal counsel immediately. Although, our opinion is that if you can't afford to pay us you probably can't afford to pay an attorney. We have legal right(s) on this issue and are aggressively pursuing them. Our attorney is William Warne from Downey, Brand, Seymour & Rohwer. He can be reached at (916)441-0131, ext. 6217. There is a possibility we could go to arbitrate this case, but with the amounts owed in damages and attorney's fees you may be over arbitration limits. Ask your attorney.

Sincerely,

Mark J. Bixby
President/CEO

This letter was dictated by, but not read by Mark J. Bixby