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

10 DEBORAH DOTY AND ROBERT DOTY,
11 Plaintiffs,

12 vs.

Case No. 01AS07640

DECLARATION OF THOMAS M. LYSAGHT

13 MARK J. BIXBY, individually and dba
14 BIXBY CONSTRUCTION, MJB/BIXBY
15 CONSTRUCTION, INC., a corporation,
16 STEVE FLYN, individually and dba CAM-AM
17 ROOFING and DOES 1 to 100,
18 inclusive,

19 Defendants.

20 I, THOMAS M. LYSAGHT, do hereby declare that:

- 21 1. In making the following declaration, I have reviewed tentative language and made the
22 necessary changes to that language. I have not been asked to make any statements other than true
23 statements, nor have I been asked to omit any facts from my declaration. Furthermore, I am
24 making the following declaration based upon my own personal knowledge and if called as a
25 witness in the above-entitled matter, I could and would competently testify to the following.
- 26 2. I have been engaged by the Plaintiffs, Deborah and Robert Doty, to inspect and render
27 opinions as to the condition of their roof and to testify in this case as an expert in roofing and
28 roofing construction. I am being compensated at the rate of \$150 per hour for my work and my
29 time spent in court.
- 30 3. If called upon, I am prepared to testify consistently with the statements, analyses and

1 conclusions expressed in this Declaration, which includes my Reports and my First Declaration
2 attached hereto, and on ancillary matters and conflicting aspects of expert reports and testimony
3 of Defendants' experts, if any.

4 4. Mr. Doty's written instructions to me are attached hereto as Exhibit A. Mr. Doty
5 asked me to review and report on the construction and condition of the entire roof of the house at
6 3510 Buena Vista Drive, hereinafter referred to as "Plaintiffs' Home".

7
8 5. At the request of Mr. Doty, I inspected the roof of Plaintiffs' Home as set forth in my
9 Report dated October 5, 2000 attached hereto as Exhibit B, hereinafter referred to as "First
10 Expert Report", and my Report dated May 14, 2001, attached hereto as Exhibit C, hereinafter
11 referred to as "Second Expert Report". I refer in this Declaration to those two Reports as my
12 "Reports."

13 6. In addition, I rendered my Declaration dated July 6, 2001, attached hereto as Exhibit
14 D, hereinafter referred to as "First Declaration".

15
16 7. I have worked as a roofer since 1980 (all of it in Sacramento, California). I have
17 worked on or supervised and managed thousands of roofing jobs. I am Vice President of Alex
18 Engardt Roofing and Siding Company of Sacramento, California. My company has Contractor's
19 License No. 241602.

20 8. I am familiar with applicable building codes and general roofing practices in and
21 around Sacramento, California.

22
23 9. I am fully qualified as an expert in roofing and roofing practices to inspect roofs and
24 render opinions as to the quality of construction thereof and the condition thereof, and to make
25 the analyses and to render the opinions I have expressed herein, including in my Reports and my
26 First Declaration. I took the photographs accompanying my Second Expert Report. I have not
27 altered in any respect the analyses and opinions I expressed in my Reports and my First
28 Declaration, and I stand behind them fully.

1 10. In particular, without limiting the analyses or opinions I express in my Reports and
2 my First Declaration as to the roof at Plaintiffs' Home:
3

4 (A). As I stated in my First Expert Report: The area under the air conditioning unit on
5 the south east slope was found to be improperly installed. There was one short row of
6 shakes left out under the bottom side of the main duct drop through the roof. The metal
7 stand when reset then blocked the water flow and directed the water to run right on this
8 section and back up against the area with no shakes, which eventually rotted out the felt
9 and caused leakage. As I stated in my Second Expert Report, the only leak we noted was
10 from under the air conditioning unit due to improper installation of the shakes. By the
11 time of my Second Expert Report, we had repaired this defect. We did not inspect the
12 attic or interior of Plaintiffs' Home.

13 (B) As I stated in my First Expert Report, the rear slope extension of medium shakes was
14 found to be poorly installed. There are shakes sliding out of place at random and it was
15 found that they were not stapled at all. Others seemed to have only one staple in them. As
16 stated in the Second Expert Report, I photographed these conditions. There are 16 such
17 photographs. I delivered the 16 original photographs to Mr. Doty.
18

19 (C) As I stated in my First Expert Report, the small sloped portion of composition roof
20 which I assume is from a room addition in this area is supposed to have two layers of felt
21 under it, and it has only one. The only way to correct this problem is to re-roof it. The
22 foregoing conditions are not in compliance with applicable building codes or roofing
23 practices in the Sacramento area, as in effect in 1991, 1993 or today. The fact that a
24 building inspector may have reviewed particular work (if that occurred) would not mean
25 that the work is in compliance with applicable building codes or roofing practices. In
26 particular, a building inspector does not function as a judge and does not guarantee that
27 the roofing work is performed correctly.
28

11. I prepared the Second Expert Report to respond to allegations made and questions

1 asked by Mark Bixby, who I understand is a Defendant in this case. Mr. Bixby has had several
2 conversations with me, and I have not denied him the opportunity to ask me any questions. In
3 those conversations, I responded to Mr. Bixby's questions.

4
5 12. A hearing in a Small Claims Court action brought by Mr. & Mrs. Doty against Mr.
6 Mark Bixby and MJB/Bixby Construction Company, Inc., was scheduled for July 13, 2001. I
7 was unable to attend that hearing due to the necessity of accompanying my son out of the City to
8 his college orientation in connection with his entry into college. I was, and still am, nevertheless,
9 fully willing and able at all times to testify consistent with this Declaration, including my Reports
10 and my First Declaration.

11 13. Mr. Doty asked me to perform a careful and thorough analysis of the roof, section by
12 section, which I did. In doing so, Mr. Doty refrained from telling me which roofer had worked
13 on which sections of the roof. I did not know on which sections of the roof Mr. Bixby and Mr.
14 Steve Flynn worked, if any, and still have no direct knowledge of that.

15
16 14. Mr. Doty instructed me to report on all my significant findings, which I did. Mr.
17 Doty instructed me to state in my Reports only the truth and the whole truth.

18 15. Mr. Doty never asked me to omit information, and I did not do so. Mr. Doty never
19 asked me to be untruthful or incomplete in my analysis of the roof or in making my Reports, and
20 I was not.

21
22 16. In my investigation to form a basis for my Reports, both I and my employee, Mr. Jeff
23 Galli, specifically viewed the hole in the roof under the air conditioner. A row of shakes was
24 missing, and as my Reports state, that left the felting exposed, and it eventually rotted through.

25 17. My first conversation with Mr. Bixby was outside the Small Claims Court building.
26 Mr. Steve Flynn was present at the time of that conversation. Mr. Bixby was initially extremely
27 upset and hostile toward me, and threatened me in very strong terms that he was going to sue me
28 for slander, even though my Reports never mention his name or the name of his company.

1 18. I did not know then, and do not know now, how my Reports, which I prepared
2 carefully and professionally, could possibly slander Mr. Bixby or his company if he did not do
3 the work on the roof.

4
5 19. Mr. Bixby later calmed down somewhat after evidencing this aggressive behavior
6 toward me, but maintained a threatening point of view.

7
8 20. Mr. Bixby sent me and my company threatening letters that are attached to my
9 Second Report, again threatening in strong terms to sue me and my company, even though my
10 Reports never mention his name or the name of his company. Mr. Bixby and his letters caused
11 me and others at my company substantial concern and discomfort.

12 21. I interpreted Mr. Bixby's letters as an attempt to convince me not to testify consistent
13 with my expert findings. Nevertheless, I do not believe I have anything to fear from telling the
14 truth.

15 22. In my second conversation with Mr. Bixby, which was at my office, Mr. Bixby was
16 calm and tried to be friendly but insisted that I give him a copy of the second report to Mr. Doty.
17 I told him that I could not do that without authorization from Mr. Doty to which he replied that
18 he would subpoena it anyway. He indicated that I should not get involved and that Mr. Doty did
19 not have a case against him since he did not install the roof and did not contract with Mr. Doty
20 directly for the work. I again told Mr. Bixby that I did not do anything improper or underhanded
21 on my inspection and that I hoped that he and Mr. Doty would work it out. Mr. Bixby indicated
22 that he had a confrontation with Mr. Doty at the gym and that there was no way to work it out. I
23 told him that I could not believe how vigorously they argued in the small claims court
24 proceeding. After Mr. Bixby realized that I would not give him a copy of the report, he said that
25 he would drag me and anyone else that got involved into court. That is when I told him that I did
26 not like taking time out of my extremely busy schedule to go to court but I would have no
27 problem illustrating the defects in the roof and the code sections which apply as contained in the
28 second report to Mr. Doty.

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59. Mr. Bixby's statements and implications of those statements in this quotation are again incorrect. My Reports do not mention Mr. Bixby or his companies, or even Mr. Flynn. I do not understand how my Reports could possibly slander Mr. Bixby or his companies, even if my Reports were wrong, which they are not, unless Mr. Bixby or his companies actually performed and were responsible for the work at issue.

60. Once again, I never stated that I did not want to be part of this case. I was then, and at all times thereafter, to and including the present, have been willing and able to testify as to the matters covered herein, in my Reports and in my First Declaration. I did not make the statements Mr. Bixby stated that I made. In every conversation I had with Mr. Bixby, I told him that I could back up everything in my report and had no problem going to court. I told him that I did not personally know Mr. Doty, Mr. Fields, or Mr. Bixby. I said that my first inspection was based on visual examination only, and that the only information given to me by Mr. Doty was that he was having a leak under the A.C. unit and was having a problem with the contractor that did the work.

61. In January 2002, new leaking occurred in the rear slope of the Plaintiffs' Home. The leaking was the result of the second row of missing shakes that I identified above in the medium shake portion of the roof. We are attempting to repair the problem at this time.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of April, 2002, in Sacramento, California.


THOMAS M. LYSAGHT