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SECURITY

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 MARTY DePAOLI AND ALLISON DePAOLI

SUPERIOR COURT OF CALIFORNIA - COUNTY OF EL DORADO

Gordon & Rees LLP
Embarcadero Center West
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San Francisco, CA 94111

11	MJB BIXBY CONSTRUCTION, INC.)	CASE NO. PC 20030272
12	Plaintiff,)	
13	vs.)	
14	MARTY DePAOLI, ALLISON DePAOLI,)	MARTY AND ALLISON DePAOLI'S
15	PLACER SIERRA BANK and DOES 1 through)	ANSWER TO PLAINTIFF MJB BIXBY
16	100, inclusive)	CONSTRUCTION, INC.'S
17	Defendants.)	COMPLAINT FOR FORECLOSURE
)	OF MECHANIC'S LIEN AND STOP
)	NOTICE

Filed By FAX

18 Come now defendants MARTY AND ALLISON DePAOLI (hereinafter collectively
 19 "defendants"), in answer to the Complaint of MJB BIXBY CONSTRUCTION, INC.
 20 ("plaintiff"), and pursuant to California Code of Civil Procedure section 431.30(d), defendants
 21 generally deny each and every allegation of the Complaint, and further deny that plaintiff has
 22 been damaged or injured in any amount or sum, or at all, by reason of any act or omission on the
 23 part of these answering defendants. Defendants deny every allegation of the Complaint.
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1 Defendants state the following affirmative defenses to the complaint.

2 **FIRST AFFIRMATIVE DEFENSE**

3 Defendants allege that the Complaint fails to state facts sufficient to constitute a cause of
4 action against these answering defendants.

5 **SECOND AFFIRMATIVE DEFENSE**

6 The relief sought in the Complaint is barred by the applicable statutes of limitation
7 including but not limited to California Code of Civil Procedure sections 337, 337.1, 337.15, 338,
8 339, 340 and 343, Civil Code section 2079.4, and Commercial Code sections 2607 and 2725.

9 **THIRD AFFIRMATIVE DEFENSE**

10 Defendants allege that any losses or damages alleged in the Complaint were the
11 proximate result of the negligence or breach of contract by Complainant.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 Defendants allege that any losses or damages alleged therein were the proximate result of
14 the fraud of Plaintiff.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 The claims against these answering defendants are barred by the equitable doctrine of
17 estoppel.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 Plaintiff is barred from recovery against these answering defendants based on the
20 equitable doctrine of unclean hands.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 The claims against these answering defendants are barred by the doctrines of waiver.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 Defendants allege that the Complaint is uncertain.

25 **NINTH AFFIRMATIVE DEFENSE**

26 Defendants are informed and believe that plaintiff has materially breached the terms and
27 conditions of its contract, such that these defendants' obligations under the contract are excused.
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TENTH AFFIRMATIVE DEFENSE

Defendants allege that if they did not perform the terms and conditions of any part of any contract with plaintiff, it was because such performance was prevented by plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege there are offsets and credits due to defendants in amounts far in excess of any amounts, if any are owing, due to plaintiff.

TWELFTH AFFIRMATIVE DEFENSE

Defendants allege that plaintiff breached the implied covenant of good faith and fair dealing, and failed to cooperate with defendants in the course of the project, excusing defendants from further performance of their obligations, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants allege that prior to commencement of this action, these answering defendants duly performed, satisfied, and discharged all duties and obligations they may have owed arising out of any and all agreements, representations or contracts that may have been made by them or on their behalf and this action is therefore barred by the provisions of California Civil Code section 1473.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's cause of action for foreclosure of mechanic's lien is barred because plaintiff's preliminary notice was defective, untimely and void under Civil Code sections 3114 and 3097.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants allege that plaintiff's purported notices and claims for mechanic's liens are void pursuant to Civil Code section 3118.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants allege that plaintiff's claim of lien as described in the Complaint is too broad and is defective and unenforceable in that there is no allegation that the whole or part of the properties identified are required for the convenient use of or occupation of the work or improvement on which plaintiff basis its purported lien.

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SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants allege that plaintiff's cause of action for foreclosure of mechanic's lien is defective, unenforceable and void by reason of plaintiff's failure to comply with the requirements of Civil Code sections 3114, 3109, *et seq.*, including but not limited to sections 3114, 3116, 3117, 3118, 3123, 3128, 3129 and 3130.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants allege that plaintiff's purported mechanic's lien(s) are defective and unenforceable and void by reason of their failure to properly notarize and record the claim of mechanic's lien.

NINETEENTH AFFIRMATIVE DEFENSE

Defendants allege that they were not served with notice within 20 days after the work for which recovery sought was done; that the preliminary notice was late; plaintiff was fully paid for all work performed after preliminary notices were provided and were more than paid for the reasonable value of their work when reasonable and lawful offsets are considered for the work and, therefore, the mechanic's liens are unenforceable, ineffective and void.

TWENTIETH AFFIRMATIVE DEFENSE

Defendants allege that the claim for mechanic's lien is willfully overstated and that defendants have performed all obligations owing on their part to be performed, including payment for work.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendants allege that there are valid offsets, counter-claims and back charges against plaintiff substantially in excess of the amount sought by Plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendants allege that plaintiff materially breached the contract referred to in the Complaint by failing to perform diligently and in a workmanlike manner the terms and conditions of the Contract and its obligations thereunder thereby excusing any purported breaches of the Contract by defendants, and each of them.

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WHEREFORE, Defendants MARTY and ALLISON DePAOLI pray that plaintiff take nothing by way of its Complaint, that defendants have judgment for costs of suit, attorneys' fees herein incurred together with such other and further relief as the court may deem just and proper.

Dated: June 27, 2003

GORDON & REES, LLP

By: 

John L. Conarey, Esq.
Attorneys For Defendants
MARTY DePAOLI and ALLISON
DePAOLI

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