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EL DORADO CO. SUPERIOR CT.

FILED JUL 09 2003

BY Darius Spring
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF EL DORADO, STATE OF CALIFORNIA

PC L20030376

10 CALIFORNIA WHOLESALE MATERIAL)
11 SUPPLY, INC. DBA CALPLY, A)
12 CORPORATION,)

13 Plaintiff,)

14 vs.)

15 MARK J. BIXBY, INDIVIDUALLY DBA)
16 MJB/BIXBY CONSTRUCTION; MARTY)
17 DEPAOLI, INDIVIDUALLY; AND DOES)
18 1 THROUGH 50, INCLUSIVE)

Defendants)

CASE NO. ?

COMPLAINT FOR:

\$3,635.02

- 1. GOODS SOLD AND DELIVERED - AGREED PRICE
- 2. OPEN BOOK ACCOUNT
- 3. ACCOUNT STATED
- 4. STATUTORY CAUSE OF ACTION (B.P.C. Section 7071.5)
- 5. BREACH OF CONTRACT
- 6. FORECLOSURE OF MECHANICS LIEN

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19 FIRST CAUSE OF ACTION

20 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY
21 CONSTRUCTION;

22 1. Plaintiff was at all times mentioned, and now is a
23 corporation authorized to do business and doing business in
24 the State of California, County of El Dorado.

25 2. Plaintiff was at all times mentioned a material
26 supplier primarily engaged in the furnishing of construction



1 materials including, but not limited to, the furnishing of
2 acoustical ceiling materials, roofing materials, drywall and
3 related materials.

4 3. Plaintiff is informed and believes and thereon
5 alleges that all times herein mentioned, Defendants, and
6 each of them, were residents and/or doing business within
7 the County of El Dorado, State of California, and within
8 this judicial district; and further, that the activities
9 complained of and/or obligations sued upon herein, arose
10 within this judicial district, and that Defendants, and each
11 of them, are indebted to Plaintiff on the obligation sued
12 herein.

13 4. Plaintiff is ignorant of the true names and
14 capacities of Defendants sued herein as DOES 1 through 50,
15 inclusive, and therefore sues these Defendants by such
16 fictitious names. Plaintiff will amend this complaint to
17 allege their true names and capacities when ascertained.
18 Plaintiff is informed and believes, and thereon alleges,
19 that each of the fictitiously named Defendants is indebted
20 to Plaintiff as hereinafter alleged, and that the
21 Plaintiff's rights against such fictitiously named
22 Defendants arises from such indebtedness.

23 5. At all times herein mentioned, each of the
24 Defendants was the agent and employee of each of their
25 co-Defendants, and, in doing the things herein mentioned,
26 were acting in the scope of their authority as such agents

1 and employees and with the permission and consent of their
2 co-Defendants.

3 6. Plaintiff is informed and believes and on such
4 information and belief alleges that at all times herein
5 mentioned, DOES 6 through 10, and each of them, were and are
6 corporations duly organized and existing under and by virtue
7 of the laws of the State of California and/or authorized to
8 engage and engaged in the surety and insurance business in
9 the State of California.

10 7. Within the last two years, Defendants, and each of
11 them, became indebted to Plaintiff in the agreed sum of for
12 \$3,635.02 for the furnishing of acoustical ceiling
13 materials, roofing materials, drywall and related materials
14 delivered to the Defendants, and each of them, by Plaintiff;
15 and Defendants, and each of them, then and there agreed to
16 pay the amount.

17 8. A copy of the document evidencing the indebtedness
18 of Defendants, and each of them, to Plaintiff is attached
19 hereto, marked Exhibit "A" and incorporated herein by
20 reference.

21 9. Neither the whole nor any part of the above sum has
22 been paid, although demand therefor has been made, and there
23 is now due, owing and unpaid the sum of \$3,635.02 together
24 with interest thereon at the legal rate from March 6, 2003,
25 until paid.

1 SECOND CAUSE OF ACTION

2 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY
3 CONSTRUCTION;

4 10. Plaintiff refers to and incorporates herein by
5 reference as though fully set forth below, its allegations
6 contained in paragraphs 1 through 9 inclusive, of the First
7 Cause of Action.

8 11. Within the last two years at El Dorado Hills
9 California, Defendants, and each of them, became indebted to
10 Plaintiff on an open book account for money due in the sum
11 of \$3,635.02 for the furnishing of acoustical ceiling
12 materials, roofing materials, drywall and related materials
13 delivered by Plaintiff to Defendants, and each of them, at
14 Defendants', and each of their, special instance and request
15 and for which Defendants and each of them, agreed to pay the
16 above sum.

17 12. Neither the whole nor any part of the above sum
18 has been paid, although demand therefore has been made, and
19 there is now due, owing and unpaid the sum of \$3,635.02,
20 together with interest thereon at the legal rate from March
21 6, 2003 until paid including reasonable attorney fees.

22 THIRD CAUSE OF ACTION

23 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY
24 CONSTRUCTION;

25 13. Plaintiff refers to and incorporates herein by
26 reference as though fully set forth below, its allegations

1 contained in paragraphs 1 through 9, inclusive, of its First
2 Cause of Action.

3 14. Within the last four years in the County of El
4 Dorado, State of California, an account was stated in
5 writing by and between Plaintiff and Defendants, wherein it
6 was agreed that Defendants, and each of them, were indebted
7 to Plaintiff in the sum of \$3,635.02.

8 15. Neither the whole nor any part of the above sum
9 has been paid, although demand therefore has been made, and
10 there is now due, owing and unpaid the sum of \$3,635.02,
11 together with interest thereon at the legal rate from March
12 6, 2003, until paid.

13
14 FOURTH CAUSE OF ACTION

15 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY
16 CONSTRUCTION;

17 16. Plaintiff refers and incorporates by reference as
18 though fully set forth below, its allegations contained in
19 paragraphs 1 through 9, inclusive, of its First Cause of
20 Action herein.

21 17. Plaintiff is informed and believes and thereon
22 alleges that Defendant, MARK J. BIXBY, INDIVIDUALLY DBA
23 MJB/BIXBY CONSTRUCTION, (hereinafter referred to as BIXBY
24 CONSTRUCTION) and DOES 16 through 20, inclusive, and each of
25 them, as principal, and DOES 11 through 15, surety, made,
26 executed and delivered to the State of California, their

1 bond and obligation in writing pursuant to Section 7071.5 of
2 the California Business and Professions Code. As per
3 Section 7071.5 said bond is for the benefit of any person
4 damaged as a result of any violation of Chapter 9 of
5 Division 3 of the Business and Professions Code.

6 18. That the materials alleged to have been delivered
7 in the foregoing causes of action of this complaint have
8 been used and consumed at various sites of construction by
9 the Defendants, and each of them, in the County of El
10 Dorado. The failure of the Defendants, MJB/BIXBY
11 CONSTRUCTION and DOES 16 through 20, inclusive, and each of
12 them, to perform as more particularly alleged in this
13 complaint, constitute violations of Chapter 9 of Division 3
14 of the Business and Professions Code.

15 19. By reason of the foregoing, Defendants, DOES 11
16 through 15, inclusive, and each of them, are, and each of
17 them is, indebted to Plaintiff in the amount of \$7,500.00,
18 plus reasonable attorney's fees and costs.

19
20 FIFTH CAUSE OF ACTION

21 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY
22 CONSTRUCTION;

23 20. Plaintiff sets forth and incorporates by reference
24 as though fully set forth below, its allegations contained
25 in paragraphs 1 through 9, of its First Cause of Action.

26 21. Plaintiff has performed all the conditions and
27

1 obligations to be performed on its part.

2 22. On or about October 25, 2002 Plaintiff and
3 Defendant MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY
4 CONSTRUCTION, (hereinafter referred to as MJB/BIXBY
5 CONSTRUCTION) entered into a written credit agreement, under
6 which Plaintiff agreed to sell, and Defendant, MJB/BIXBY
7 CONSTRUCTION agreed to buy certain goods from Plaintiff. A
8 true and correct copy of said agreement is attached hereto,
9 marked Exhibit "B" and incorporated herein by reference.

10 23. The Exhibit "B" agreement, provides, in part, that
11 in the event that credit is extended to Defendant MJB/BIXBY,
12 payment will be made on all invoices, by the 25th of the
13 month following the receipt of the Plaintiff's goods.

14 24. Pursuant to said agreement, Exhibit "B," Plaintiff
15 extended credit to Defendant MJB/BIXBY CONSTRUCTION, and
16 accordingly sold and delivered to Defendant MJB/BIXBY
17 CONSTRUCTION, numerous quantities of goods, from July 10,
18 1996, through and including March 6, 2003.

19 25. Subsequent to such sale and delivery of goods,
20 Plaintiff sent Defendant MJB/BIXBY CONSTRUCTION, a statement
21 which specifically listed the amount due and owing from
22 Defendant, MJB/BIXBY CONSTRUCTION, to Plaintiff for such
23 goods.

24 26. Defendant, MJB/BIXBY CONSTRUCTION, has defaulted
25 in the performance of the aforementioned agreement, in that
26 Defendant MJB/BIXBY CONSTRUCTION has failed and refused,

1 despite repeated demands, to pay any part of the \$3,635.02
2 balance due and owing on said agreement, Exhibit "B."

3 27. By reason of the default of Defendant, MJB/BIXBY
4 CONSTRUCTION, as hereinabove alleged, is indebted to
5 Plaintiff in the sum of \$3,635.02, plus interest thereon at
6 the legal rate from March 6, 2003.

7 28. The aforesaid agreement, Exhibit "B," also
8 provides that Defendant MJB/BIXBY CONSTRUCTION, shall pay
9 reasonable attorney's fees incurred in the enforcement of
10 any rights under the agreement, Exhibit "B." Plaintiff has
11 necessarily engaged attorneys to prosecute this action.

12
13 SIXTH CAUSE OF ACTION

14 AS TO DEFENDANT MARTY DEPAOLI, INDIVIDUALLY

15 29. Plaintiff sets forth and incorporates by reference
16 as though fully set forth below, its allegations contained
17 in paragraphs 1 through 9, of its First Cause of Action.

18 30. Plaintiff alleges that on or about March 13, 2003
19 MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY CONSTRUCTION as
20 sub-contractor, and MARTY DEPAOLI, INDIVIDUALLY, as
21 owner/developer, (hereinafter referred to as OWNER) entered
22 into a written contract, whereby MJB/BIXBY CONSTRUCTION
23 agreed to furnish labor, services, equipment and materials
24 for a certain work of improvement located at "31 Guadalupe
25 Drive, El Dorado Hills, California.

26 31. Between March 1, 2003 and March 6, 2003 at the

1 special instance and request of MJB/BIXBY CONSTRUCTION,
2 Plaintiff furnished various materials, including but not
3 limited to acoustical ceiling materials, including but not
4 limited to roofing materials, drywall and related materials
5 which were used and intended to be used on the work of
6 improvement referred to hereinabove. The reasonable value of
7 the materials delivered by Plaintiff and subsequently used
8 on the above referenced project were in the sum of
9 \$3,635.02.

10 32. Neither the whole nor any part of the above sum
11 has been paid, although demand therefore has been made, and
12 there is now due, owing and unpaid the sum of \$3,635.02
13 together with interest thereon at the legal rate from March
14 6, 2003.

15 33. Within the time prescribed by law on or about March
16 13, 2003, Plaintiff served Defendant, OWNER in the manner
17 prescribed by law, with a Preliminary 20 Day Notice, a copy
18 of which is attached as Exhibit "C" and is incorporated
19 herein by this reference.

20 34. Plaintiff is informed and believes and thereon
21 alleges that at all times mentioned herein Defendant, OWNER
22 was and now is the reputed owner of the real property
23 referred to in Paragraph #30 herein. Plaintiff is further
24 informed and believes and thereon alleges that Defendants
25 Does 6 through 10, inclusive, and each of them, claimed to
26 have some right, title or interest in the above real

1 property, the exact nature of which claim or claims is
2 unknown to Plaintiff, which claim or claims are subject and
3 subordinate to the claim of lien of Plaintiff.

4 35. Within the time prescribed by law, Plaintiff
5 recorded a verified claim of lien in the office of the
6 County Recorder of the county where the property is located.
7 A copy of said lien is attached as Exhibit "D" and
8 incorporated herein by reference. At the time of recording
9 the claim of liens, the amount of \$3,635.02 remained due,
10 owing and unpaid for acoustical ceiling materials, including
11 but not limited to roofing materials, drywall and related
12 materials delivered by Plaintiff and intended to be used on
13 and used on the real property referred to in this Cause of
14 Action.

15 36. On or about March 6, 2003, the amount remaining due,
16 owing and unpaid by Defendant OWNER to Plaintiff herein for
17 the use and delivery of its materials on the above
18 referenced project was in the sum of \$3,635.02 no part of
19 which has been paid.

20 WHEREFORE, Plaintiff prays judgment against
21 Defendants, and each of them, as follows:

22 AS TO THE FIRST CAUSE OF ACTION:

23 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY
24 CONSTRUCTION;

- 25 1. For the principal sum of \$3,635.02;
- 26 2. For interest thereon at the legal rate from March

1 6, 2003 until paid;

2 AS TO THE SECOND CAUSE OF ACTION:

3 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY

4 CONSTRUCTION;

5 3. For the principal sum of \$3,635.02;

6 4. For interest thereon at the legal rate from March
7 6, 2003 until paid;

8 5. For reasonable attorney fees.

9 AS TO THE THIRD CAUSE OF ACTION:

10 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY

11 CONSTRUCTION;

12 6. For the principal sum of \$3,635.02;

13 7. For interest thereon at the legal rate from March
14 6, 2003 until paid;

15 AS TO THE FOURTH CAUSE OF ACTION:

16 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY

17 CONSTRUCTION;

18 8. For the principal sum of \$7,500.00;

19 9. For reasonable attorneys fees.

20 AS TO THE FIFTH CAUSE OF ACTION:

21 AS TO DEFENDANT MARK J. BIXBY, INDIVIDUALLY DBA MJB/BIXBY

22 CONSTRUCTION;

23 10. For the principal sum of \$3,635.02;

24 11. For interest thereon at the legal rate from March
25 6, 2003 until paid;

26 12. For reasonable attorneys fees.

1 AS TO THE SIXTH CAUSE OF ACTION:

2 AS TO DEFENDANT MARTY DEPAOLI, INDIVIDUALLY;

3 13. For the sum of \$3,635.02 to be declared a lien
4 against the real property referred to in this Complaint,
5 superior to the claim, title, lien, or interest of any other
6 Defendant, and that said real property be decreed sold by
7 the Sheriff of El Dorado County, California according to
8 law, and all proceeds of such sale to be applied to
9 Plaintiff's claim and to the costs of these proceedings, and
10 the sale of said property.

11 AS TO ALL CAUSES OF ACTION:

12 14. For costs of suit incurred herein;

13 15. For such other and further relief as the Court
14 deems just and proper.

15 DATED: July 8, 2003



16 ELI D. KARPELES
17 ATTORNEY FOR PLAINTIFF
18 BAR NO.: 105838