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6  
7 **SUPERIOR COURT OF CALIFORNIA**

8 **UNLIMITED JURISDICTION**

9 **COUNTY OF MARIN**

10 TERRY R. WHITE, dba,  
11 T.R. WHITE & CO.

12 Plaintiff,

13 vs.

14 DAVID SHAW, KATHRYN SHAW,  
EXCHANGE BANK, and DOES 1-25,  
15 Inclusive.

16 Defendants.  
17  
18

) Case No.:

)  
) COMPLAINT FOR DAMAGES AND TO  
) FORECLOSE MECHANICS' LIEN;  
) APPLICATION TO STAY ACTION  
) PENDING ARBITRATION

1 **GENERAL ALLEGATIONS**

2 1. Plaintiff TERRY R. WHITE is now, and at all times mentioned in this  
3 complaint was, a licensed contractor, License Number 365515, doing business as T.R.  
4 WHITE & CO.

5 2. Plaintiff is informed and believes and on that basis alleges that, at all times  
6 mentioned in this complaint, defendants DAVID SHAW and KATHRYN SHAW (the  
7 “Shaws”) were individuals and residents of Petaluma, California.

8 3. Plaintiff is informed and believes and on that basis alleges that, at all times  
9 mentioned in this complaint, defendant EXCHANGE BANK was a banking institution  
10 engaged in banking in the State of California and that said Defendant claims some right,  
11 title and interest in the real property described herein, and the improvements constructed  
12 thereon, pursuant to a construction loan extended to the Shaws.

13 4. Plaintiff does not know the true names of defendants DOES 1 through 25,  
14 inclusive, and therefore sues them by those fictitious names. When their true names and  
15 capacities are ascertained, Plaintiff will amend this complaint to insert their true  
16 identities.

17 5. Plaintiff is informed and believes and thereon alleges that the fictitiously  
18 designated Defendants were and are the principals, agents, employees, transferees,  
19 successors or assigns of the other named Defendants in this action and/or that said  
20 Defendants claim some right, title or interest in the real property and improvements,  
21 which are the subject of this complaint, which claims are subordinate to the Claim of  
22 Lien and rights of Plaintiff, as alleged herein. Plaintiff is further informed and believes

1 and thereon alleges that said fictitiously named Defendants are liable, responsible and  
2 obligated to Plaintiff on account of the transactions, performances, work and construction  
3 of improvements.

4 6. The real property as improved (the “building parcel”) referred to in this  
5 complaint is located in the City of Dillon Beach, County of Marin, State of California,  
6 and is commonly known as 563 Oceana Drive, Dillon Beach, California 94927, AP #  
7 100-311-04.

8 7. On or about April 15, 2002, Plaintiff and the Shaws entered into a written  
9 agreement (the “Agreement”), by which Plaintiff agreed to furnish certain labor, services,  
10 equipment and materials for a work of improvement on the building parcel (the “work of  
11 improvement”), for an agreed contract price of \$ 519,628, plus additional sums for extra  
12 work as may be requested by Defendants, which amounted to \$4,516, all of which the  
13 Shaws agreed to pay. A true and correct copy of the Agreement is attached to this  
14 complaint as Exhibit A, and incorporated by reference.

15 8. Between the date of the Agreement and November 12, 2002, pursuant to  
16 the Agreement and at the Defendants’ special request, Plaintiff furnished labor, services,  
17 equipment, and materials used and intended to be used in the work of improvement on  
18 the building parcel, including the extra work requested by Defendants.

19 9. On or about November 12, 2002, the Shaws purported to terminate the  
20 Agreement, and demanded that Plaintiff cease all work on the building parcel.

21 10. The Agreement provides that “[a]ny controversy or claim arising out of or  
22 relating to this contract, or the breach thereof, shall be settled by arbitration in accordance

1 with the Construction Industry Arbitration Rules of the American Arbitration  
2 Association.” Exhibit A, ¶ 17.

3 11. On or about January 29, 2003, Plaintiff served a Demand for Arbitration  
4 upon the Shaws and with the office of the American Arbitration Association, in San  
5 Francisco, California. A true and correct copy of the Demand for Arbitration is attached  
6 to this complaint as Exhibit B, and incorporated by reference.

7 **FIRST CAUSE OF ACTION**  
8 **(Against the Shaws and Does 1 through 10, for Breach of Contract)**

9 12. Plaintiff repeats and realleges paragraphs 1 through 11 above as  
10 though fully set forth in this claim.

11 13. At all times mentioned herein, Plaintiff performed and completed all  
12 conditions, covenants, and promises to be performed under the Agreement, except as  
13 excused, hindered, or prevented by Defendants.

14 14. Defendants breached the Agreement on or about November 12, 2002 when  
15 they purported to terminate the Agreement and demanded that Plaintiff cease all work on  
16 the building parcel.

17 15. As of November 12, 2002, the Defendants have paid Plaintiff only  
18 \$243,348 of the amount that they had agreed to pay.

19 16. As a direct and proximate result of the Defendants’ breaches, Plaintiff has  
20 suffered damages, including lost profits, and has and will incur attorneys’ fees and costs  
21 in connection with the commencement and prosecution of this action. Pursuant to the  
22

1 Agreement, Plaintiff is entitled to recover attorneys' fees and costs incurred in connection  
2 with the commencement and prosecution of this action.

3 **SECOND CAUSE OF ACTION**  
4 **(Against the Shaws and Does 1 through 10, for**  
5 **Breach of the Covenant of Good Faith and Fair Dealing)**

6 17. Plaintiff repeats and realleges paragraphs 1 through 16 above as  
7 though fully set forth in this claim.

8 18. The Agreement contained an implied covenant of good faith and fair  
9 dealing.

10 19. By their conduct, alleged herein, the Defendants violated the implied  
11 covenant of good faith and fair dealing.

12 20. As a direct and proximate result of the Defendants' breach of the covenant  
13 of good faith and fair dealing, Plaintiff has suffered damages, including lost profits, and  
14 has and will incur attorneys' fees and costs in connection with the commencement and  
15 prosecution of this action.

16 **THIRD CAUSE OF ACTION**  
17 **(Against the Shaws and Does 1 through 10,**  
18 **for Quantum Meruit and Quantum Valebant)**

19 21. Plaintiff repeats and realleges paragraphs 1 through 20 above as  
20 though fully set forth in this claim.

21 22. Within the past two years, Plaintiff has provided work, labor, services and  
22 materials to Defendants, and each of them, at the special instance and request of said  
Defendants, for which Defendants promised to pay Plaintiff the reasonable value.

1           23. Defendants have failed and refused to pay Plaintiff the reasonable value of  
2 the work, labor, services and materials rendered.

3                                   **FOURTH CAUSE OF ACTION**  
4                                   **(Against all Defendants, for Foreclosure of Mechanics' Lien)**

5           24. Plaintiff repeats and realleges paragraphs 1 through 23 above as  
6 though fully set forth in this claim.

7           25. On November 20, 2002, Plaintiff duly recorded a verified Mechanics' Lien  
8 Claim, describing the building parcel and the labor, services, equipment and materials  
9 furnished on the work of improvement, in the official records of Marin County,  
10 California, in accordance with the provisions of Civil Code Section 3084. A true and  
11 correct copy of the Mechanics' Lien Claim is attached to this complaint as Exhibit C, and  
12 incorporated by reference.

13           26. Each Defendant claims some right, title, or interest in or to the building  
14 parcel, each of which claim is junior or inferior to Plaintiff's claim.

15           27. The whole of the building parcel is required for the convenient use and  
16 occupation of the work of improvement.

1 WHEREFORE, Plaintiff demands judgment against Defendants for the following:

2 1. That the Court stay the present proceeding pending completion of  
3 arbitration and that the award of the arbitrator be reported to this Court;

4 2. For damages incurred as a result of Defendants' breach of the Agreement,  
5 according to proof;

6 3. That \$ 208,348 of the aforementioned damages, together with the attorney  
7 fees, costs and interest awarded by the Court, be adjudged to be a lien against the  
8 building parcel, senior and superior to any claim of right, title or interest of any  
9 Defendant in or to the building parcel, and that the building parcel be ordered sold by the  
10 Sheriff of Marin County, California, according to law, and that all proceeds of the sale be  
11 applied to Plaintiff's claim and to the cost of these proceedings and the sale of the  
12 building parcel;

13 4. That Plaintiff be awarded his reasonable attorney fees and costs as allowed  
14 by law;

15 5. That Plaintiff be awarded pre-judgment interest as allowed by law; and

16 6. For such other and further relief as the Court may deem just and proper.

17 Dated: February 13, 2003

18 CHILVERS & TAYLOR PC

19 By:

Aviva Cuyler

20 Attorneys for Plaintiff  
21 Terry R. White dba  
22 T.R. White & Co.

1                    **APPLICATION TO STAY ACTION PENDING ARBITRATION**

2                    Pursuant to California Code of Civil Procedure § 1281.5(a), Plaintiff hereby  
3 applies to the court for a stay of this action pending completion of the arbitration initiated  
4 by Plaintiff (Exhibit B, hereto) and a report of the arbitrator’s award to the Court.

5  
6 Dated: February 13, 2003

CHILVERS & TAYLOR PC

7                    By:

8                    \_\_\_\_\_  
Aviva Cuyler

9                    Attorneys for Plaintiff  
10                    Terry R. White dba  
11                    T.R. White & Co.