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4

5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

6 Bryan Canary

Case No.: 24CV001179

7 Holly Bowers

8 Plaintiffs/Petitioners,

Plaintiff Response to Defendants Settlement

9 V.

Conference Filing

10 David Woodbury

11 Defendants/Respondents
12

13 Unlimited Civil Case - Amount demanded exceeds \$35,000

14 Canary and Bowers (Home Buyers) / David Woodbury (Painting Contractor)

15
16
17 This is a response from Plaintiffs to the Defendant's filing for the Mandatory Settlement
18 Conference.

19 **Parties**

20 Statements by Defendant are accurate. Plaintiffs Bryan Canary and Holly Bowers in Pro Per.
21 Defendant is represented by B. James Fitzpatrick of Fitzpatrick Swanston
22

23 **Relevant Background**

24 Statements by Defendant about "relevant background" are partially accurate , partially
25 inaccurate, inclusive of false suggestion of fact and inclusive of a lot of irrelevant background.
26
27
28

1 The Defendant was hired by Micah Forstein, a property seller, for three painting jobs after
2 Forstein had already vacated the home and moved out of state.

3
4 All communication between the Defendant and Forstein transpired via email, text and possibly
5 phone. They never physically met. The home was empty when the defendant walked the
6 property to assess the job for quote generation. The real estate agent for the seller was
7 providing home access , work coordination and work supervision. .
8

9 The three quotes for work included 1) Interior Painting for \$7200 2) Exterior Painting for \$7500
10 and 3) Interior Garage for \$1250. The Defendants representations for pay per job of \$2500,
11 \$4700 and \$8700 were grossly inaccurate and mismatched for reasons unknown. .
12

13 From early September 2020 through mid October 2020 the work was quoted and performed
14 with oversight of the Realtor.
15

16 On March 24 and 26, 2021, 6 months after the Defendant produced his quotes and the work
17 was completed, the plaintiffs viewed the home. They only had the ability to see the surface
18 finishes left by the painter, which appeared newly painted and proper.
19

20 On March 27, 2021, the plaintiffs made an offer on the home based on 1) observations they
21 were able to make during two casual walk throughs of the home and 2) written representations
22 for the seller via two presale inspection reports, which omitted representations about painting
23 work to prepare the home for sale.
24

25 On March 30, 2021 the plaintiffs accepted a counter off and purchased the home for 895,000
26 pending escrow inspections and final payment.
27
28

1 During escrow inspections, it became apparent the Painter and other vendors
2 supervised by the Seller's Agent had done physical concealment work and reporting
3 concealment work, to hide defects for the seller.
4

5 During escrow, the plaintiffs demanded documents which revealed the contractors
6 names and some quotes. If the quotes had accurately represented the nature of the
7 repair / concealment work, the liability for failure to disclose material defects that had
8 been partially or fully concealed could have been placed fully on the seller.
9

10 A review of the Defendant's Quotes obtained during and after close of escrow via
11 various means shows the Defendant did NOT accurately represent the conditions of the
12 property when he created the quotes nor did he accurately represent the work he was
13 going to engage in for the seller to conceal facts and defects, which he then performed.
14

15 Thus even if the Defendants quotes had been provided by the seller for proper
16 representation prior to forming a contract, prospective buyers would NOT have known
17 what the defects were that the painter found when he quoted the work and what he had
18 done with caulk putty, stain blocker and paint to conceal defects in a deceitful and/or
19 sub-standard manner.
20

21 In addition to the concealment of fact on his quotes and the physical concealment of
22 defects, the Defendant created other defects during his work due to gross carelessness
23 that the seller may or may not have known about given he was not there to supervise or
24 inspect the work.
25

26 **Relevant Facts about Concealment of Facts on Quotes and Physical Concealment Work**

27 **6 months prior to buyer's offer and acceptance process**

28 Interior Painting - \$7200

1 Concealment of 2nd floor ceiling defects - The interior 2nd floor ceiling had hundreds
2 of moisture stains in it that transpired during the sellers occupancy. The Painter used
3 stain blocker to make those disappear and he did NOT note the pre-existing stains or his
4 use of stain blocker on his quote. Thus, the defendant physically concealed material
5 defects and he left no paper trail to enable anyone who needed to rely on his documents
6 with facts about what he found when he assessed the home for work nor the work he did
7 to assist the seller in concealing defects.
8

9 Exterior Painting - \$7,500

10 Concealment of Fascia Defects - The Defendant used what was likely drywall compound
11 to skim coat about 150 linear feet of damaged fascia to improperly cover up minor and
12 major defects in order make the fascia look pristine, but not in a manner that would last. .
13 The Defendant also used drywall compound to fill very large holes and defects that
14 needed to be filled with different compounds for proper repair (or the fascia needed to
15 be replaced) On the Defendants quote, he totally omitted the fact he had done any work
16 at all on the fascia. Thus, the defendant physically concealed material defects with
17 improper material, and he left no paper trail to enable anyone who needed to rely on his
18 documents with facts about what he found when he assessed the home for work nor the
19 work he did to assist the seller in concealing defects.
20

21 Concealment of Exterior Siding Defects on South Wall - The exterior redwood siding on
22 the south facing wall was weathered and contorted to a far greater degree than the rest
23 of the home due to southern exposure. The Defendant did an excessive amount of
24 nailing, scraping, puttying, caulking and painting to make the south wall appear like the
25 rest of the home. This concealment work was very "well done" in that it was only initially
26 noticed by the buyer's experienced home inspector who was also a contractor. Then it
27 was documented with photos that made it easier to see due to shadows. That south
28 facing wall work started falling within a year while the work the defendant did on the rest

1 of the home did not. Thus, the defendant physically concealed material defects with
2 excessive work, and he left no paper trail to enable anyone who needed to rely on his
3 documents with facts about what he found when he assessed the home for work nor the
4 work he did to assist the seller in concealing defects.

5
6 Use of Interior Paint for Exterior work - the defendant used a high quality, expensive
7 INTERIOR paint for the exterior siding. A five gallon paint bucket with his company
8 label, order date, and color was left behind. This fact was discovered by plaintiffs months
9 after the close of escrow when they pulled the paint can out to do touch up work. Either
10 the Defendant ordered the wrong product or he ordered the right product and the wrong
11 product was picked up at Kelly Moore, his vendor. . Given the size of the job, and the
12 extent to which he and others had to work with the bucket, and the SIZE of the word
13 INTERIOR on the outside of the bucket, it's impossible to imagine the product error was
14 not realized at some point in the pickup or painting process. The Defendant's quote did
15 not say he'd use interior paint for exterior work and that type of defect is not discernable
16 when looking at the paint job.

17
18 Overspray - On his Quote the Defendant represented to the seller he would use
19 coverings to protect items not intended to get paint. The Defendant and/or his two man
20 crew failed to use coverings on the roof when spraying the fascia and 2nd floor
21 siding. They over sprayed onto a newly shingled roof. Those defects were not visible
22 until discovered during escrow inspections.

23 24 Garage Paint

25 Concealment of Facts and Defect s about garage water intrusion from south facing wall -
26 On his quote for the garage, the defendant DID state there were water stains and that
27 he was going to use stain blocker. In that regard there was a partial paper trail to starting
28 conditions that the plaintiffs could have questioned had the quote been presented prior

1 to ratifying a contract. However, the nondescribed stains were on the walls and ceiling
2 adjacent to the south wall and the result of water intrusion from failing siding and that
3 should have been fully noted on his quote for transparency. Thus, the Defendant
4 concealed the siding defects on the exterior of the south side wall with no notice of that
5 in any documents, and he then concealed the water stains in the interior related to the
6 siding defects, with no clear way for anyone who obtained his documents to understand
7 the defects he found when he quoted the work and those that he made disappear.
8

9 **Response to Defendant's Legal Arguments**

10
11 The defendant's defense is "There is no evidence to support this claim"

12
13 1) 80% of the physical concealment work and defects is still inspectable and
14 identifiable at the property today. The Defendant and his attorney have refused to
15 do an inspection themselves or hire an expert witness. We can not bring the
16 home to court, but they are welcome to inspect it.
17

18 2) The interior 2nd floor drywall ceiling stains are still discernable to some degree
19 from below because the defendant did not use enough stain blocker. An
20 inspection in the attic reveals the size and quantity of the stains concealed.
21

22 3) The fascia concealment of defects is still available for inspection. It looks today
23 as it did in photos dated years ago with some looking worse as the drywall mud
24 failed further.
25

26 4) The exterior siding on the bottom half of the south facing wall is in poor
27 condition and inspectable. The difference between it and the rest of the home is
28 significant. The siding on the Upper half of the south facing wall had to be

1 replaced due to leaks.

2
3 5) The paint bucket with exterior paint by color in an INTERIOR paint bucket is
4 available for inspection (we'll bring that to court)

5
6 6) The roof overspray is still visible and inspectable.

7
8 NOTE: The only defects that were concealed that can not be evaluated are the
9 water stains in the garage. The defendant used enough stain blocker to conceal
10 those , and the point there is that he was hiding the water damage done by the
11 defective siding that he hid another way.

12
13 The defendant's defense is "[the work] was inspected by the realtor that listed the
14 property for sale before handing defendant a check."

15
16 1) The realtor knew about the property defects. It was the realtors desire, and
17 that of the seller, to pay the painter to conceal them. The Realtor was working
18 with the seller to supervise various vendors to conceal defects.

19
20 2) The realtor did not hand the defendant a check for work. The work was paid
21 for by the seller via electronic bank transfers. It's unclear why they are
22 misrepresenting the payment process.

23
24 The defendant's defense is "plaintiffs purchased the property with the benefit of multiple
25 inspection reports"

1 1) the misrepresentations of work on the quotes transpired 6 months before
2 plaintiffs contracted to purchase the property

3
4 2) the fraudulent work to conceal defects without representing the work on quotes
5 transpired 6 months before plaintiffs contracted to purchase the property

6
7 3) the work looked physically proper when plaintiffs contracted on the property.

8
9 4) the faulty work and concealment of facts and defects was discovered by
10 plaintiffs via their "due diligence inspections" during escrow, which is why they
11 are done. "Trust but Verify".

12
13 5) the fact that defects were discovered via inspections during escrow does not
14 relieve the defendant of misrepresentation and/or concealment of fact on his
15 quotes, and the physical acts of concealment of defects not properly
16 documented, and done many months prior.

17
18 The defendant's defense is "the reports did not suggest anything wrong with defendant's
19 work"

20 1) The defendant's attorney has not acquired any of the plaintiff's escrow reports
21 yet

22
23 2) the defendant's attorney has not acquired any of the plaintiff's "composite
24 documents" yet.

25
26 3) The defendant's attorney blew off discovery.

1 4) The escrow reports and composite documents identify all facts described in
2 this document

3
4 5) its unclear why the defense attorney is misrepresenting his current report and
5 document understanding. This is a false representation to the court of the
6 Attorneys knowledge and facts.
7

8 The defendant's defense is "had anyone ever voiced any concern with the work, the
9 defendant would have returned to the job and addressed the concerns".
10

11 1) The concealment of stains and material defects was intentional and done with
12 the desire and approval of the Relator and Seller. They weren't going to call him
13 back to undo what they wanted him to do.
14

15 2) When the defendant was notified via email from the plaintiffs of the concerns,
16 he failed to respond. Then the Defendant lied about not getting those emails to
17 this court while admitting he got them to the bond company.
18

19 **Argument for Damages**

20
21 The Defendant engaged in fully fraudulent work with full knowledge and interest of the
22 seller and Realtor and the Defendant omitted the details of his work from his written
23 documents.
24

25 The defendant engaged in excessively careless work with regards to overspray and
26 exterior paint in a manner that no professional painter should have engaged in.
27

28 The defendant knew his work was intended to fool and harm a future buyer. .

1
2 The value for damages put on the defects concealed and/or the defects created were
3 quoted by 2 Licensed Contractors in California and the total for the defects came to
4 approximately \$55,000.
5

6 The defendant sought to make money doing work to help a seller make money while
7 damaging a future buyer.
8

9 The plaintiffs will have to disclose all these facts and defects when they sell the home.
10

11 The plaintiffs have had to repair some of the defects and they will still have to repair
12 some of the others.
13

14 The painter was a licensed professional and this was grossly predatory and deceit filled.
15

16 While plaintiffs only have this experience to expose, the chances of this being his first
17 rodeo with this type of concealment work for property sellers with realtor involvement are
18 slim to nil.
19

20 **Settlement Discussions**

21 Plaintiffs demand for \$50,000 in compensatory damages and \$25,000 for punitive
22 damages seems extremely reasonable when true facts are shared with the court.
23

24 \$50,000 plus a 3x multiplier of \$150,000 is \$200,000
25

26 \$50,000 plus a 5x multiplier of \$250,000. Is \$300,000
27

28 \$50,000 in theft is a felony and a 2-3 year prison sentence.

1
2 Why has this been treated with so little regard for the financial interest of the future
3 buyers he knew he would damage ?
4

5 Why should plaintiffs recover compensatory damages only, or less, as if the work was
6 all simply "by accident" ?
7

8 **Respectfully Submitted,**

9 
10

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16 Pro-Se Representation by Requirement
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19 
20

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24 Pro-Se Representation by Requirement
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