



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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Nov-19-2010 9:01 am

Case Number: CGC-09-492478

Filing Date: Nov-18-2010 9:00

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STIPULATED JUDGMENT - GENERAL

TCC UNION SQUARE, L.P. VS. SAN FRANCISCO ELKS LODGE NO.3, B.P.O.E. et al

001C03037643

**Instructions:**

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**FILED**  
San Francisco County Superior Court

NOV 18 2010

CLERK OF THE COURT

BY: *[Signature]*  
Deputy Clerk

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5 TCC UNION SQUARE, L.P.

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO  
10

11 TCC UNION SQUARE, L.P.

12 Plaintiff,

13 vs.  
14

15 SAN FRANCISCO ELKS LODGE NO. 3,  
16 B.P.O.E.; SAN FRANCISCO ELKS NO. 3  
17 BUILDING ASSOCIATION; FRANK E.  
18 LEMBI; and DOE 1 through DOE 100, inclusive,

19 Defendants.  
20  
21

) Case No.: CGC-09-492478

**AMENDED DECLARATORY JUDGMENT  
PURSUANT TO STIPULATION**

Trial Date: September 1, 2010  
Dept: 624

22  
23 This Court entered a Declaratory Judgment Pursuant to Stipulation on First and Second Causes  
24 of Action on August 16, 2010. ("Judgment") (A true and correct copy of the Judgment is attached  
25 hereto as Exhibit A). The Judgment entered on August 16, 2010 is amended, and incorporated by this  
26 reference.

27 Pursuant to the Stipulation for Entry of Amended Declaratory Judgment on Plaintiff TCC Union  
28 Square, L.P.'s Third Cause of Action for Declaratory Relief against Defendant Frank E. Lembi, as set

- 1 -

1 forth in the complaint filed in the within action on September 11, 2009, and filed in the above-entitled  
2 matter, and other good cause appearing,

3 IT IS HEREBY ADJUDGED, ORDERED AND DECREED THAT:

4 1. The Judgment entered on August 16, 2010 is amended, incorporated by this reference, and this  
5 Amended Declaratory Judgment is hereby entered as follows:

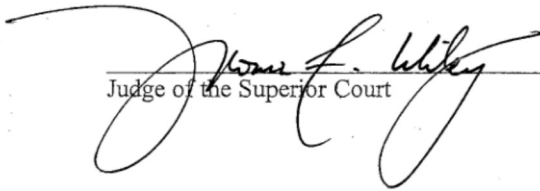
6 2. The Judgment entered on August 16, 2010 remains in full force and effect.

7 3. Pursuant to that certain Sublease of Space in the Building, dated June 28, 1983, between 450  
8 Post Investment Company, and later assigned to TCC Union Square, L.P., that Frank E. Lembi,  
9 pursuant to sections 5.1, 9.1. and 9.2, is responsible for the repair and maintenance of all portions of the  
10 Building, including without limitation the third floor balcony as a portion of the Building.

11 4. Plaintiff and Defendant Lembi are to bear own attorneys fees and costs.

12 5. Plaintiff and Defendant Lembi are not releasing any other rights each of them may have as a  
13 result of prior or future defaults under the Sublease between Lembi and TCC Union Square, L.P.

14 *November 17*  
15 Dated: October 17, 2010

  
Judge of the Superior Court

AUG 16 2010

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

THE ANNEXED INSTRUMENT IS A  
CORRECT COPY OF THE ORIGINAL  
ON FILE IN MY OFFICE.  
ATTEST: CERTIFIED

AUG 16 2010

CLERK OF THE COURT  
Superior Court of California, County of San Francisco  
BY: [Signature] DEPUTY CLERK  
**Daniel Lemme**

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San Francisco Lodge No. 3, B.P.O.E. and  
San Francisco Elks No. 3 Building Association

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

TCC UNION SQUARE, L.P.,  
Plaintiff,

vs.

SAN FRANCISCO ELKS LODGE NO. 3,  
B.P.O.E.; SAN FRANCISCO ELKS NO.  
3 BUILDING ASSOCIATION; FRANK  
E. LEMBI; and DOE 1 through DOE 100,  
inclusive,

Defendants.

AND RELATED CROSS-ACTION

No. CGC-09-492478

**DECLARATORY JUDGMENT  
PURSUANT TO STIPULATION ON  
FIRST AND SECOND CAUSES OF  
ACTION OF COMPLAINT**

UNLIMITED CIVIL CASE

Trial Date: August 16, 2010



Pursuant to the Stipulation for Entry of Judgment on Plaintiff TCC Union Square, L.P.'s First Cause of Action for Declaratory Relief Against Defendant San Francisco Lodge No. 3, B.P.O.E. and Second Cause of Action for Declaratory Relief Against Defendant San Francisco Elks No. 3 Building Association (the "Stipulation"), filed in the above-entitled matter, and other good cause appearing,

IT IS HEREBY ADJUDGED, ORDERED AND DECREED with respect to the

1 First and Second Causes of Action of the Complaint filed in the within action that:

2 1. Tenant, as defined in the hereinafter described Master Lease, of the building  
3 commonly known as the Elks Building located at 450 Post Street, San Francisco, California  
4 (the "Building"), under the Lease dated October 1, 1981, entered into between the San  
5 Francisco Elks No. 3 Building Association and 450 Post Investment Company ("450  
6 Post"), a California general partnership, as amended (the "Master Lease"), is obligated  
7 under paragraph 5(a) of the Master Lease, in addition to all other obligations not  
8 specifically described in this judgment, to maintain and repair all exterior and structural  
9 elements of the portion of the Building facing Post Street commonly referred to as the third  
10 floor balcony, including: the structural portions of the third floor balcony; the third floor  
11 balcony deck; the third floor balcony railing and balustrade; the terra cotta façade attached  
12 to the third floor balcony; all drains, waterproofing membranes, and surfaces required to  
13 protect and preserve the third floor balcony and the rest of the Building; the exterior wall of  
14 the Building to which the third floor balcony is attached and of which the third floor  
15 balcony is below adjudged to be a part; and the terra cotta façade on the vertical portions of  
16 the exterior wall adjacent to the third balcony. The portions of the Building described  
17 above are hereinafter referred to as the "Balcony Areas."

18 2. The Balcony Areas, as defined in the preceding paragraph, are part of the  
19 exterior walls of the Building.

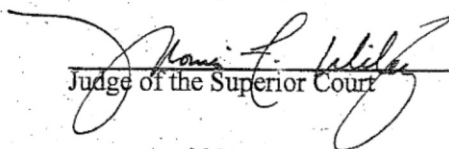
20 3. Landlord under the written agreement entitled "Sublease of Space in  
21 Building," dated October 1, 1981, entered into between 450 Post and San Francisco Lodge  
22 No. 3, B.P.O.E., as amended ("the Lodge Sublease"), is obligated under Section 9.1 of the  
23 Lodge Sublease to maintain and repair the exterior walls of the Building, including the  
24 Balcony Areas.

25 4. Tenant, as defined in the Lodge Sublease, has no duty under the Lodge  
Sublease to maintain and repair the Balcony Areas.



1           5.     The costs of maintaining and repairing the Balcony Areas constitute  
2 "Operating Expenses" as provided in Section 5 of the Lodge Sublease entitled "Operating  
3 Expenses."

4  
5 Dated: August 16, 2010

6   
Judge of the Superior Court

7 MONICA F. WILEY

