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FILED
San Francisco County Superior Court
DEC 22 2000
GORDON PARK-LI, Clerk
BY: Maria Maria
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1 JOHN ROBIN ORME, ESQ. # 64452
RICHARD M. GRABSTEIN, ESQ., State Bar #61323
2 Law Offices of ORME & GRABSTEIN
685 Market Street, Suite 370
3 San Francisco, California 94105

4 Telephone: (415) 495-5500
Facsimile: (415) 495-3202

5 Attorney for Plaintiffs

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 CITY AND COUNTY OF SAN FRANCISCO

9 YUNG DAE KANG AND MYLA Y. KANG

10 Plaintiffs

13 vs.

14 GRANITE EXCAVATION & DEMOLITION,
15 INC.; STANYAN/GEARY ASSOCIATES,
16 LLC; JOE CASSIDY CONSTRUCTION,
17 INC.; AND
DOES 1 TO 100,

17 Defendant(s).

) Case No:

317658

) COMPLAINT FOR
) BREACH OF CONTRACT,
) NEGLIGENCE,
) REMOVAL OF LATERAL AND
) SUBADJACENT SUPPORT,
) AND NUISANCE

MAY 25 2001

9:00 A.M.

18 Plaintiffs allege on information and belief as follows:

19 INTRODUCTION AND FACTS

20 1. Plaintiffs are the owners and in possession and control of
21 that real property situated in the City and County of San Francisco,
22 State of California, commonly known as 3419, 3421 and 3425 Geary
23 Boulevard.(hereinafter Plaintiffs' property).

24 2. Defendants STANYAN/GEARY ASSOCIATES, LLC, (hereinafter
25 SGA) a business or association of form unknown, were, at all times
26 mentioned herein, the owners and in possession and control of that

1 real property located in the City and County of San Francisco, State
2 of California, commonly known as 3455 Geary Boulevard (hereinafter
3 SGA's property).

4 3. Plaintiffs are informed and believe and thereon allege
5 that Defendant GRANITE EXCAVATION & DEMOLITION INC.(GRANITE), a
6 business or association of form unknown, and JOE CASSIDY
7 CONSTRUCTION, INC.(CASSIDY), form of business unknown, were
8 contractors employed by Defendants STANYAN/GEARY ASSOCIATES, LLC
9 (SGA) for the purpose of performing design, supervision,
10 construction, demolition and other services in the demolition and
11 construction of improvements to SGA's property in the course of
12 which said Defendants demolished improvements and constructed on and
13 under Plaintiffs' property.

14 4. Defendant GRANITE entered into an agreement with
15 Plaintiffs. GRANITE agreed to indemnify and hold Plaintiffs harmless
16 from any and all claims, damages, expenses, losses and liabilities
17 relating to property damage to Plaintiffs' building, and bodily
18 injury or death to any occupant thereof (including attorneys' fees)
19 arising from or in any way connected with the excavation of the
20 property at 3455 Geary Boulevard and the construction thereon of a
21 new condominium building. GRANITE further agreed to pay for any and
22 all expenses and legal fees incurred by Plaintiffs in connection
23 with any suit against GRANITE in which Plaintiffs were the
24 prevailing party. A copy of this indemnity agreement is attached
25 hereto as Exhibit 1 and is incorporated herein by this reference.

26 5. The engineer for SGA instructed the contractors, GRANITE
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1 and CASSIDY, in part as follows, "The Contractor shall take
2 extraordinary precautions concerning the preservation of the
3 adjacent properties.". Plaintiffs' property was an adjacent
4 property. The engineer for SGA also instructed the contractors in
5 part as follows, "The Engineer has made assumptions concerning the
6 soundness of the buildings on the properties adjacent to and on the
7 site. These assumptions are that these buildings and structures
8 were designed in conformity with good design practices. The
9 Contractor should take extraordinary precautions concerning the
10 preservation of the adjacent properties. The stability of all the
11 elements of the building should be carefully checked before doing
12 any work on existing structures. All portions of structure that may
13 be weakened by removal of existing construction should be braced or
14 strengthened until new construction is in place...The Contractor
15 shall be responsible and liable for minor cracking or settlement of
16 the existing street sidewalk, curbs, gutter, utilities, pavement,
17 building, or any other structures that may occur during installation
18 of the work, or that are caused by vibration of machinery or
19 equipment...The Contractor shall employ a licensed Land Surveyor to
20 establish control points to monitor adjacent buildings, line and
21 grade for all soldier beam movement. Initial readings shall be taken
22 prior to any excavation and weekly readings shall be taken as
23 excavation progresses and throughout the construction period until
24 the permanent retaining structures is in place. Additional readings
25 shall be obtained as requested by the Engineer. The Contractor,
26 Engineers and Soils Engineer shall be promptly notified if changes

1 in readings occur." The contractors failed to have weekly readings
2 taken or to take reasonable precautions, much less extraordinary
3 precautions, with respect to Plaintiffs' building.

4 6. Plaintiffs' property and SGA's property adjoin each other
5 and Plaintiffs are coterminous owners in relation to the adjoining
6 land of SGA.

7 7. Plaintiffs are ignorant of the true names and capacities
8 of Defendants sued herein as does 1 to 100 and therefore sue these
9 Defendants by such fictitious names. Plaintiffs will amend this
10 complaint to allege their true names and capacities when the same
11 are ascertained. Plaintiffs are informed and believe and thereon
12 allege that each of the fictitiously named Defendants is responsible
13 in some manner for the damages complained of herein.

14 8. At all times mentioned herein, each of the Defendants were
15 the agents and employees of each of the remaining Defendants and in
16 doing the things herein alleged were acting within the course and
17 scope of such agency and employment and with the knowledge and
18 consent of each of the other Defendants.

19 FIRST CAUSE OF ACTION

20 (BREACH OF CONTRACT-Indemnity Agreement)

21 9. Plaintiffs reallege and incorporate herein by this
22 reference all of the allegations set forth in paragraphs 1 through
23 8 inclusive, hereinabove.

24 10. Defendant GRANITE breached the indemnity agreement,
25 entitled UNDERPINNING AGREEMENT AND AMENDMENT OF UNDERPINNING
26 AGREEMENT (hereinafter Agreement) in that GRANITE has refused and
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1 continues to refuse to indemnify and or compensate Plaintiffs for
2 all their damages resulting from Defendants' construction. GRANITE
3 first breached the Agreement on or about 1/26/99 by refusing to jack
4 up Plaintiffs' building, which had tilted due to defendants'
5 construction, unless defendants were indemnified for further cracks
6 in Plaintiffs' building and by asserting at that time and thereafter
7 that their construction did not cause damage to Plaintiffs'
8 property.

9 11. Plaintiffs have been unable to locate a fully executed
10 copy of the Agreement. However the Agreement has been fully
11 performed by Plaintiffs in that Plaintiffs granted permission to
12 Defendant GRANITE to underpin the foundation of the building
13 constructed on 3455 Geary Boulevard which included and includes use
14 of, and entry on, Plaintiffs' property. Defendant GRANITE did
15 construct a building on SGA's property using Plaintiffs' property
16 for support and did enter Plaintiffs' property in the course of
17 their construction and demolition. GRANITE did pay for part but not
18 all of Plaintiffs' cost as agreed and did pay Plaintiffs \$24,800 in
19 consideration for Plaintiffs' obligation under the Agreement. All
20 parties proceeded with the understanding that there was a valid and
21 enforceable agreement as set forth in Exhibit 1. In the
22 alternative, there was an oral agreement the terms of which were
23 memorialized in the writing set forth in Exhibit 1.

24 12. As result of the breach by Defendant GRANITE, Plaintiffs
25 have been damaged in an amount of more than \$300,000.00 and said
26 damages are continuing to increase according to proof including, but
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1 not exclusive of, cost of jacking up the building to its pre-
2 construction condition, making repairs as a result of the jacking up,
3 reimbursing Plaintiffs for repair of the stairs in their alley way,
4 pouring concrete removed as a result the construction, expense of
5 relocating tenants, loss of income from Plaintiffs' business and
6 costs of relocating, expenses incurred and owed to Degenkolb
7 engineering services, and attorney fees pursuant to the underpinning
8 agreement, loss of use and enjoyment of the Property, diminution of
9 the value of the Property, and other consequential damages.

10 SECOND CAUSE OF ACTION

11 (Removal of Lateral and Subadjacent Support)

12 13. Plaintiffs reallege and incorporate herein by this
13 reference all of the allegations set forth in paragraphs 1 through
14 8 inclusive, hereinabove.

15 14. At all times mentioned herein prior to excavation and
16 demolition by Defendants, Plaintiffs' land was receiving lateral and
17 subadjacent support from Defendant SGA's adjoining land, although
18 such support was later removed, changed, and damaged by the
19 excavations and construction described hereinafter by defendants and
20 support from the land under Plaintiffs' building was changed all of
21 which caused damage to Plaintiffs' land, improvements, business and
22 tenants.

23 15. During the period beginning on or after January 1, 1998 and
24 in no event earlier than within the relevant statue of limitations
25 and continuing thereafter until in or about August 1998 excavations
26 and other construction were conducted by and on behalf of Defendants,
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1 and each of them, on the property of both the Plaintiffs and SGA
2 which caused damage to Plaintiffs' property. Such excavations and
3 construction were conducted with the knowledge, consent and under the
4 direction of each of the Defendants.

5 16. Plaintiffs first became aware of damage to their property
6 caused by Defendants' construction by its manifestation in doors
7 sticking when opening and closing. This first occurred in late April
8 1998 and Defendants were so advised by letter dated April 28, 1998.

9 17. Defendants and each of them, failed to exercise ordinary
10 and care and skill in the conduct and making of excavations and
11 construction and failed to take reasonable precautions to sustain the
12 adjoining and overlying land of the Plaintiffs in its then existing
13 and natural state.

14 18. Defendants, and each of them, failed to exercise ordinary
15 care and skill in designing, preparing for, supervising, and
16 conducting excavations, demolition, and construction as alleged
17 herein above and failed to properly construct underpinning,
18 retention, and other structures in such a manner as to sustain the
19 adjoining and overlying land of Plaintiffs.

20 19. Defendants, and each of them had a duty to Plaintiffs to
21 exercise reasonable and ordinary care and skill in doing the things
22 alleged hereinabove, including, but not limited to the design,
23 supervision, and performance of excavation, demolition, underpinning,
24 retention, construction of other structures, backfill and compaction.
25 Said Defendants also are strictly liable for damage caused by their
26 acts in removing lateral and subadjacent support.

1 that, when Defendants, and each of them, committed the above
2 described negligence they had, or reasonably should of had, knowledge
3 that it would likely result in serious financial harm, property
4 damage, other economic damage and emotional distress to Plaintiffs.

5 28. As a proximate result of the above negligent conduct of
6 Defendants, Plaintiffs have been damaged in an amount which is not
7 yet ascertained for serious financial harm, property damage, other
8 economic damage and emotional distress.

9 29. Plaintiffs' damages as described hereinabove in all of the
10 Causes of Action in the Complaint are within the jurisdiction of this
11 Court.

12 WHEREFORE, Plaintiffs pray for judgment against Defendants, and
13 each of them, as follows:

14 On the First Cause of Action (Breach of Contract and Indemnity
15 Agreement) as to Defendant Granite only:

- 16 1. For general, special, compensatory and consequential
17 damages according to proof;
- 18 2. For general damages for personal injuries according to
19 proof;
- 20 3. For pre-judgment interest as allowed by law on all sums
21 awarded to Plaintiffs according to proof;
- 22 4. For attorney's fees;
- 23 5. For costs of suit incurred herein;
- 24 6. For such other and further relief as the court deems just
25 and proper;

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1 On the Second Cause of Action (Removal of Lateral and
2 Subadjacent Support):

- 3 1. For general, special, compensatory and consequential
4 damages according to proof;
- 5 2. For pre-judgment interest as allowed by law on all sums
6 awarded to Plaintiffs according to proof;
- 7 3. For costs of suit incurred herein;
- 8 5. For such other and further relief as the court deems just
9 and proper;

10 On the Third Cause of Action (Private Nuisance):

- 11 1. For general, special, compensatory and consequential
12 damages according to proof;
- 13 2. For pre-judgment interest as allowed by law on all sums
14 awarded to Plaintiffs according to proof;
- 15 3. For costs of suit incurred herein;
- 16 5. For such other and further relief as the court deems just
17 and proper.

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On the Fourth Cause of Action (Negligence):

1. For general, special, compensatory and consequential damages according to proof;
2. For pre-judgment interest as allowed by law on all sums awarded to Plaintiffs according to proof;
3. For costs of suit incurred herein;
5. For such other and further relief as the court deems just and proper.

DATED: December 22, 2000

ORME & GRABSTEIN



JOHN ROBIN ORME
Attorneys for Plaintiffs