

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - May 17, 2007

A. GAIL PRUDENTI, P.J.
FRED T. SANTUCCI
JOSEPH COVELLO
EDWARD D. CARNI, JJ.

2006-03767

DECISION & ORDER

Jahid Roni, etc., et al., plaintiffs, v Abdur Rahim,
defendant, United Bank of Kuwait, PLC, appellant,
Baitul Jannah Zame Masjid and Muslim Community
Center, Inc., respondent (and a third-party action).

(Index No. 20515/04)

Dailey & Selznick, New York, N.Y. (Joseph P. Dailey and Loren F. Selznick of
counsel), for appellant.

Andrew Moulinos, Astoria, N.Y., for respondent.

In an action, inter alia, to recover damages for personal injuries, etc., the defendant
United Bank of Kuwait, PLC, appeals from so much of an order of the Supreme Court, Kings County
(F. Rivera, J.), dated March 13, 2006, as denied that branch of its motion which was for summary
judgment on its cross claim for contractual indemnification against the defendant Baitul Jannah Zame
Masjid and Muslim Community Center, Inc.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The infant plaintiff, by his father, commenced this action after he allegedly was injured
by the ingestion of lead paint in an apartment located in a building “owned” by the defendant United
Bank of Kuwait, PLC (hereinafter the Bank), and leased to the defendant Baitul Jannah Zame Masjid
and Muslim Community Center, Inc. (hereinafter the Baitul Center) (*see Roni v Rahim*, _____
_AD3d_____ [Appellate Division Docket No. 2006-07143, decided herewith]). The Bank, inter
alia, moved for summary judgment on its cross claim for contractual indemnification against the

March 25, 2008

Page 1.

RONI v RAHIM

Baitul Center based upon the contractual indemnification clause of the lease. However, the Bank failed to demonstrate its prima facie entitlement to judgment as a matter of law by establishing that the indemnification provisions shifted all responsibility for third-party claims to the Baitul Center regardless of the Bank's own negligence. In such an instance, the indemnification provision would be unenforceable (*see* General Obligations Law § 5-321; *Wolfe v Long Is. Power Auth.*, 34 AD3d 575; *Breakaway Farm, Ltd. v Ward*, 15 AD3d 517; *see also* Multiple Dwelling Law § 78).

Accordingly, the Supreme Court properly denied that branch of the Bank's motion which was for summary judgment on its cross claim for contractual indemnification against the Baitul Center (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320).

PRUDENTI, P.J., SANTUCCI, COVELLO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court