

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

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_____AD3d_____

Argued - June 18, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
LEONARD B. AUSTIN, JJ.

2008-04616

DECISION & ORDER

Valerie Pierson, plaintiff, v Empire State Land Associates, LLC, et al., defendants third-party plaintiffs-appellants; Au Bon Pain Co., Inc., et al., third-party defendants-respondents (and a second third-party action).

(Index No. 37340/04)

Edward Garfinkel (Fiedelman & McGaw, Jericho, N.Y. [Dawn C. DeSimone] of counsel), for defendants third-party plaintiffs-appellants.

Gordon & Silber, P.C., New York, N.Y. (Jon D. Lichtenstein of counsel), for third-party defendants-respondents ABP Holdings, Inc., and ABP Corporation.

In an action to recover damages for personal injuries, the defendants third-party plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Solomon, J.), dated February 29, 2008, as granted that branch of the third-party defendants' motion which was for summary judgment dismissing the third-party cause of action for contractual indemnification insofar as asserted against ABP Holdings, Inc., and ABP Corporation, and denied that branch of their cross motion which was for summary judgment on that third-party cause of action.

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

The interpretation of an unambiguous contract is the function of the court and the intent of the parties must be gleaned from the four corners of the agreement (*see Jackson & Wheeler, Inc. v Village of Pleasantville*, 56 AD3d 723, 724-725 [citations omitted]). When construing the

language of a contract, the court's goal is to arrive at a construction that will give fair meaning to all of the language used by the parties, "and to reach a practical interpretation of the expressions of the parties to the end that there is a realization of their reasonable expectations" (*Partrick v Guarniere*, 204 AD2d 702, 704 [internal quotation marks and citations omitted]).

Applying those principles to the instant case, the Supreme Court properly found that the subject lease cancellation agreement extinguished the respondents' obligation under the lease to indemnify the appellants, as the parties agreed to have certain specific obligations survive the termination, without including the obligation to indemnify of which they were aware. Accordingly, the Supreme Court properly granted that branch of the respondents' motion which was for summary judgment dismissing the third-party cause of action for contractual indemnification insofar as asserted against them, and properly denied that branch of the appellants' cross motion which was for summary judgment on that third-party cause of action.

RIVERA, J.P., FLORIO, DICKERSON and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court