

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

D24190
Y/hu

_____AD3d_____

Argued - June 19, 2009

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2008-03476

DECISION & ORDER

Kimso Apartments, LLC, etc., et al., plaintiffs/
counterclaim defendants-appellants, et al., plaintiff, v
Mahesh Gandhi, defendant/counterclaim plaintiff-
respondent; Arlington Filler, et al., additional
counterclaim defendants-appellants, et al., defendants.

(Index No. 13489/03)

Hall & Hall, LLP, Staten Island, N.Y. (Allyn J. Crawford of counsel), for plaintiffs/counterclaim defendants-appellants and additional counterclaim defendant-appellant Amity Park Associates.

Cordova & Schwartzman, LLP, Garden City, N.Y. (Jonathan B. Schwartzman of counsel), for additional counterclaim defendants-appellants Arlington Filler and Darshan Shah.

Heller, Horowitz & Feit, P.C., New York, N.Y. (Eli Feit, Stuart A. Blander, and Allen M. Eisenberg of counsel), for defendant/counterclaim plaintiff-respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs/counterclaim defendants Kimso Apartments, LLC, and Poonam Apartments, LLC, and the additional counterclaim defendant Amity Park Associates appeal, and the additional counterclaim defendants Arlington Filler and Darshan Shah separately appeal, as limited by their respective briefs, from so much of an order of the Supreme Court, Richmond County (Fusco, J.), dated March 20, 2008, as, in effect, denied those branches of their respective motions which were for partial summary judgment dismissing the defendant Mahesh Gandhi's counterclaims on the ground that they are barred by certain releases.

September 22, 2009

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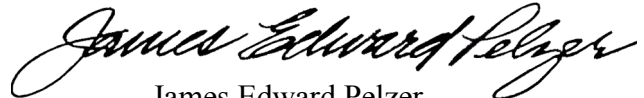
KIMSO APARTMENTS, LLC v GANDHI

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs to the defendant Mahesh Gandhi payable by the appellants appearing separately and filing separate briefs.

The appellants failed to establish their prima facie entitlement to judgment as a matter of law that the defendant Mahesh Gandhi's counterclaims are barred by a document entitled "Release of Shares in Escrow" and another document entitled "Affidavit and Release" (hereinafter together the releases), both executed by Gandhi on August 15, 2002. The record demonstrates that the releases were part of a larger settlement agreement entered into between the parties in a federal action on the same date. Accordingly, the releases should be construed in the context of the whole agreement, and their words considered not in isolation but in light of the obligation as a whole and the intention of the parties as manifested thereby (*see Tankers Intl. Nav. Corp. v National Shipping & Trading Corp.*, 116 AD2d 40, 46). As the Supreme Court found numerous issues of fact surrounding the prior settlement between the parties, it properly declined to grant summary judgment to the appellants dismissing Gandhi's counterclaims on the basis of the releases.

MASTRO, J.P., SANTUCCI, ENG and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court