

MORRIS DUFFY ALONSO & FALEY
Case Law Update (March 2008)

SECOND DEPARTMENT HOLDS CONTRACT ASSUMING OBLIGATION TO INDEMNIFY
MUST BE STRICTLY CONSTRUED WHEN PARTY IS UNDER NO LEGAL DUTY TO DO
SO

The general rule governing indemnification agreements is that "[w]hen a party is under no legal duty to indemnify ... [a] promise [to indemnify] should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding facts and circumstances."¹ Considering an appeal from summary judgement by the Supreme Court, the Appellate Division Second Department in the case of *Sumba v. Clermont Park Associates*, 45 A.D.3d 671 (2d Dept. 2007), narrowly read a lease provision where plaintiff, a lessor, sought indemnification from the lessee under the terms of the lease agreement for the claims of an injured sheetrocker. The lessor had retained the sheetrocking company to perform work in the lessee's space. The court found that the indemnification clause did not specifically include the claims by the sheetrocker's employees. Since indemnification was not "the unmistakable intent of the parties,"² summary denial of the claim by the trial court was proper.

¹*Hooper Associates, Ltd. v. AGS Computers, Inc.*, 74 N.Y.2d 487 (1989)

²*Solomon v. City of New York*, 111 A.D.2d 383 (2' Dept 1985)