

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

D54878
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_____AD3d_____

Argued - December 19, 2017

L. PRISCILLA HALL, J.P.
LEONARD B. AUSTIN
SANDRA L. SGROI
LINDA CHRISTOPHER, JJ.

2016-03454

DECISION & ORDER

Graphic Arts Mutual Insurance Company,
respondent-appellant, v Pine Bush Central
School District, et al., appellants-respondents.

(Index No. 6304/15)

Hogan Lovells US, LLP, New York, NY (Ira M. Feinberg of counsel), for appellants-respondents.

Lester Schwab Katz & Dwyer, LLP (Simpson Thacher & Bartlett, LLP, New York, NY [Jonathan K. Youngwood, Janet A. Gochman, and Robert Arnay], of counsel), for respondent-appellant.

Appeal and cross appeal from an order of the Supreme Court, Orange County (Elaine Slobod, J.), dated February 3, 2016. The order, insofar as appealed from, granted that branch of the defendants' motion for summary judgment which was to dismiss the fifth cause of action only to the extent of directing entry of a judgment declaring that the amount of the settlement in an underlying action entitled *T.E. v Pine Bush Central School Dist.*, commenced in the United States District Court for the Southern District of New York under case number 12-CV-2203, was reasonable up to the sum of \$1,846,000, and otherwise referred for trial the question of the reasonableness of the amount of the settlement that exceeds the sum of \$1,846,000 in that action. The order, insofar as cross-appealed from, granted that branch of the defendants' motion for summary judgment which was to dismiss the fifth cause of action to the extent of directing the entry of a judgment declaring that the amount of the settlement in the underlying action was reasonable up to the sum of \$1,846,000.

March 9, 2018

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ORDERED that the order is reversed, on the facts, without costs or disbursements, and that branch of the defendants' motion for summary judgment which was to dismiss the fifth cause of action is denied as premature.

In light of our determination on the companion appeal (*see Graphic Arts Mutual Insurance Company v Pine Bush Central School District*, _____ AD3d _____ [Appellate Division Docket No. 2015-11565; decided herewith]), it is premature to render a determination on the reasonableness of the settlement amount tendered by the defendants in the underlying action entitled *T.E. v Pine Bush Central School Dist.*, commenced in the United States District Court for the Southern District of New York under case number 12-CV-2203, until the issue of indemnification has been decided.

HALL, J.P., AUSTIN, SGROI and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court