

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**1286**

**CA 17-00175**

PRESENT: WHALEN, P.J., SMITH, LINDLEY, NEMOYER, AND CURRAN, JJ.

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CITY OF BUFFALO CITY SCHOOL DISTRICT,  
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

LPCIMINELLI, INC., DEFENDANT-RESPONDENT.  
(ACTION NO. 1.)

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LPCIMINELLI, INC.,  
PETITIONER-PLAINTIFF-RESPONDENT,

V

CITY OF BUFFALO JOINT SCHOOLS CONSTRUCTION  
BOARD AND CITY OF BUFFALO CITY SCHOOL DISTRICT,  
RESPONDENTS-DEFENDANTS-APPELLANTS.  
(ACTION NO. 2.)  
(APPEAL NO. 1.)

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HARTER SECREST & EMERY LLP, BUFFALO (JOHN G. HORN OF COUNSEL), FOR  
PLAINTIFF-APPELLANT AND RESPONDENTS-DEFENDANTS-APPELLANTS.

HODGSON RUSS LLP, BUFFALO (BENJAMIN M. ZUFFRANIERI, JR., OF COUNSEL),  
FOR DEFENDANT-RESPONDENT AND PETITIONER-PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered September 9, 2016. The order, among other things, granted in part the motion of defendant-petitioner-plaintiff to dismiss the complaint in action No. 1.

It is hereby ORDERED that the order so appealed from is modified on the law by vacating the third ordering paragraph and as modified the order is affirmed without costs and the matter is remitted to Supreme Court, Erie County, for further proceedings in accordance with the same memorandum as in *City of Buffalo City School District v LPCiminelli, Inc.* ([appeal No. 2] – AD3d – [Mar. 16, 2018] [4th Dept 2018]).

Entered: March 16, 2018

Mark W. Bennett  
Clerk of the Court