

[Dynamic Event Group, Inc. v. Penske Truck Leasing Co., L.P.](#)

Supreme Court of New York, Appellate Division, First Department

October 26, 2023, Decided; October 26, 2023, Entered

Index No. 652160/21, Appeal No. 906, Case No. 2022-03916

Reporter

220 A.D.3d 592 *; 196 N.Y.S.3d 723 **; 2023 N.Y. App. Div. LEXIS 5395 ***; 2023 NY Slip Op 05444 ****; 2023 WL 7028912

[****1] Dynamic Event Group, Inc., Appellant, v Penske Truck Leasing Co., L.P., et al., Respondents.

Subsequent History: As corrected through Wednesday, December 6, 2023.

Prior History: [***1] Judgment, Supreme Court, New York County (Arlene R. Bluth, J.), entered August 17, 2022, dismissing the amended complaint, and bringing up for review an order, same court and Justice, entered August 4, 2022, which granted defendants' cross-motions for summary judgment dismissing the amended complaint and denied plaintiff's motion for summary judgment, unanimously affirmed, without costs.

[Dynamic Event Group, Inc. v. Penske Truck Leasing Co., L.P., 2022 N.Y. Misc. LEXIS 8896 \(N.Y. Sup. Ct., Aug. 3, 2022\)](#)

Headnotes/Summary

Headnotes

Appeal — Academic and Moot Questions — Full Payment of Expenses and Defense Costs Rendered Controversy Moot

Counsel: Vogrin & Frimet LLP, New York (Walter D. Santiago, Jr. of counsel), for appellant.

Duane Morris LLP, New York (Thomas R. Newman and Robert M. Palumbos of the bar of the Commonwealth of Pennsylvania, admitted pro hac vice, of counsel), for Penske Truck Leasing Co., L.P., and another, respondents.

Lewis Brisbois Bisgaard Smith LLP, New York (Nicholas P. Hurzeler of counsel), for Old Republic Insurance Company, respondent.

Judges: Concur—Webber, J.P., Moulton, González, Kennedy, JJ.

Opinion

[**723] [**592] The court properly concluded that defendant Penske's tender of full payment of plaintiff's expenses and defense costs rendered the controversy moot (*see Amherst & Clarence Ins. Co. v Cazenovia Tavern*, 59 NY2d 983, 984, 453 N.E.2d 1077, 466 N.Y.S.2d 660 [1983]). [**724] The declarations plaintiff seeks to obtain no longer apply to the instant action and are relevant only to future actions involving the parties, which may or [***2] may not be filed, and which are beyond their control at this juncture. Plaintiff is seeking an advisory opinion concerning Penske's liability in the future and would gain nothing in the present action if the court granted the declarations it seeks (*see Technology Ins. Co. v First Mercury Ins. Co.*, 194 AD3d 530, 531, 143 N.Y.S.3d 869 [1st Dept 2021], *lv denied* 38 NY3d 902 [2022]).

Exceptions to the mootness doctrine do not apply here because it is not certain that the issue will recur in future actions between these parties since recurrence depends on the happening of another accident caused by plaintiff's negligence and, in that event, Penske may again elect to fully compensate plaintiff for its expenses and defense costs.

[**593] We have considered the parties' remaining arguments and find them unavailing. Concur—Webber,

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****1

J.P., Moulton, González, Kennedy, JJ.

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