

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

1001

CA 12-02121

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, AND LINDLEY, JJ.

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SYSKO SYRACUSE, LLC, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

STUART EGAN, III, AND MAINES PAPER & FOOD  
SERVICE, INC., DEFENDANTS-APPELLANTS.

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LAW FIRM OF FRANK W. MILLER, EAST SYRACUSE (JOHN A. SICKINGER OF  
COUNSEL), FOR DEFENDANTS-APPELLANTS.

CONNORS & VILARDO, LLP, BUFFALO (VINCENT E. DOYLE, III, OF COUNSEL),  
FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Deborah H. Karalunas, J.), entered November 8, 2012. The order  
granted plaintiff a preliminary injunction, which was effective until  
March 29, 2013, prohibiting defendant Stuart Egan, III from soliciting  
or assisting anyone else to solicit certain customers of plaintiff  
that Egan serviced during his last year of employment with plaintiff.

It is hereby ORDERED that said appeal is unanimously dismissed  
without costs.

Memorandum: Plaintiff commenced this action seeking to enforce  
certain provisions of an employment agreement and thereafter moved for  
injunctive relief. Supreme Court granted a preliminary injunction,  
which was effective until March 29, 2013, prohibiting defendant Stuart  
Egan, III from soliciting or assisting anyone else to solicit certain  
customers of plaintiff that Egan had serviced during the last year of  
his employment with plaintiff. Inasmuch as the challenged injunction  
has expired, we dismiss defendants' appeal as moot (*see H. Meer Dental  
Supply Co. v Commisso*, 269 AD2d 662, 663; *see also Confidential  
Brokerage Servs., Inc. v Confidential Planning Corp.*, 85 AD3d 1268,  
1270 n 2; *Interface Solutions, Inc. v Donoghue*, 37 AD3d 1127, 1128).  
Contrary to defendants' contention, this case does not fall within an  
exception to the mootness doctrine (*see generally Matter of Hearst  
Corp. v Clyne*, 50 NY2d 707, 714-715). Defendants contend that the  
appeal is not moot because the issuance of the injunction "directly  
bears upon the matters at issue in the plenary action." We reject  
that contention inasmuch as "[t]he granting or refusal of a  
temporary injunction does not constitute the law of the case or an  
adjudication on the merits" (*Digitronics Inventioning Corp. v*

*Jameson*, 11 AD3d 783, 784).

Entered: September 27, 2013

Frances E. Cafarell  
Clerk of the Court