

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

**46**

**CA 14-01098**

PRESENT: SMITH, J.P., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

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IN THE MATTER OF SMALL SMILES LITIGATION

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KELLY VARANO, AS PARENT AND NATURAL GUARDIAN OF  
INFANT JEREMY BOHN, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

FORBA HOLDINGS, LLC, NOW KNOWN AS CHURCH  
STREET HEALTH MANAGEMENT, LLC, FORBA, NY, LLC,  
FORBA, LLC, NOW KNOWN AS LICCSAC, LLC,  
FORBA NY, LLC, NOW KNOWN AS LICCSAC NY, LLC,  
DD MARKETING, INC., DEROSE MANAGEMENT, LLC,  
SMALL SMILES DENTISTRY OF SYRACUSE, LLC,  
DANIEL E. DEROSE, MICHAEL A. DEROSE, D.D.S.,  
EDWARD J. DEROSE, D.D.S., ADOLPH R.  
PADULA, D.D.S., WILLIAM A. MUELLER, D.D.S.,  
MICHAEL W. ROUMPH, NAVEED AMAN, D.D.S., KOURY  
BONDS, D.D.S., YAQOOB KHAN, D.D.S.,  
DEFENDANTS-APPELLANTS,  
ET AL., DEFENDANTS.

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GOLDBERG SEGALLA LLP, ALBANY (MATTHEW S. LERNER OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS FORBA HOLDINGS, LLC, NOW KNOWN AS CHURCH  
STREET HEALTH MANAGEMENT, LLC, FORBA, NY, LLC AND SMALL SMILES  
DENTISTRY OF SYRACUSE, LLC.

O'CONNOR, O'CONNOR, BRESEE & FIRST, P.C., ALBANY (LIA B. MITCHELL OF  
COUNSEL), FOR DEFENDANTS-APPELLANTS FORBA, LLC, NOW KNOWN AS LICCSAC,  
LLC, FORBA NY, LLC, NOW KNOWN AS LICCSAC NY, LLC, DD MARKETING, INC.,  
DEROSE MANAGEMENT, LLC, DANIEL E. DEROSE, MICHAEL A. DEROSE, D.D.S.,  
EDWARD J. DEROSE, D.D.S., ADOLPH R. PADULA, D.D.S., WILLIAM A.  
MUELLER, D.D.S. AND MICHAEL W. ROUMPH.

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP, ALBANY (MELISSA A.  
MURPHY-PETROS OF COUNSEL), FOR DEFENDANTS-APPELLANTS NAVEED AMAN,  
D.D.S., KOURY BONDS, D.D.S. AND YAQOOB KHAN, D.D.S.

POWERS & SANTOLA, LLP, ALBANY (MICHAEL J. HUTTER OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeals from an order of the Supreme Court, Onondaga County  
(Deborah H. Karalunas, J.), entered September 17, 2013. The order,  
insofar as appealed from, denied in part the summary judgment motions  
of defendants-appellants.

It is hereby ORDERED that the case is held and the decision is reserved in accordance with the following Memorandum: Defendants-appellants (defendants) appeal from an order denying in part their pretrial motions for summary judgment. We note that, in *Varano v FORBA Holdings, LLC* ([appeal No. 2] \_\_\_ AD3d \_\_\_ [Feb. 6, 2015]), decided herewith, we are reversing the order that granted plaintiff's motion pursuant to CPLR 4404 (a) to set aside the verdict, and we are remitting the matter to Supreme Court to decide the motion following an evidentiary hearing. In the interest of judicial economy, we hold this case and reserve decision, pending resolution of that motion (see generally *Buffalo United Charter Sch. v New York State Pub. Empl. Relations Bd.*, 107 AD3d 1437, 1438). In the event that the court denies plaintiff's motion upon remittal, these appeals by defendants will be moot (see generally *Douglas v Kingston Income Partners '87*, 2 AD3d 1079, 1082, *lv denied* 2 NY3d 701).

Entered: February 6, 2015

Frances E. Cafarell  
Clerk of the Court