

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

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**CA 18-01657**

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND TROUTMAN, JJ.

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JOSE M. BERMUDEZ, JR., PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

AARON J. PEUSER AND MARIE T. ENTWISTLE,  
DEFENDANTS-APPELLANTS.

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LAW OFFICES OF JOHN TROP, DEWITT (THERESA M. ZEHE OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS.

LAW OFFICES OF MARC JONAS, UTICA (MARC JONAS OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Oneida County (David A. Murad, J.), entered January 10, 2018. The order, inter alia, directed defendants to produce the written statement of a nonparty witness.

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

Memorandum: Defendants appeal from an order that, in effect, directed disclosure of a nonparty's written statement. An appeal from a discovery order is rendered moot, however, when the disputed material is disclosed before the appeal is decided (*see Vandashield Ltd v Isaacson*, 146 AD3d 552, 555 [1st Dept 2017]; *Khoury v Chouchani*, 27 AD3d 1071, 1073 [4th Dept 2006]; *Matter of Franklin [International Bus. Machs. Corp.]*, 215 AD2d 759, 759 [2d Dept 1995]; *cf. Matter of Camara v Skanska, Inc.*, 150 AD3d 548, 549 [1st Dept 2017]; *but see Matter of New York City Asbestos Litig.*, 109 AD3d 7, 12 n 2 [1st Dept 2013], *lv dismissed* 22 NY3d 1016 [2013]). Here, defendants disclosed the disputed statement during the pendency of this appeal. We therefore dismiss the appeal as moot (*see Vandashield Ltd*, 146 AD3d at 553; *Khoury*, 27 AD3d at 1072; *Franklin*, 215 AD2d at 759).

Entered: February 8, 2019

Mark W. Bennett  
Clerk of the Court