

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

**94**

**CA 10-01145**

PRESENT: SMITH, J.P., FAHEY, SCONIERS, AND MARTOCHE, JJ.

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ASD SPECIALTY HEALTHCARE, INC., DOING BUSINESS  
AS ONCOLOGY SUPPLY COMPANY, DERIVATIVELY ON  
BEHALF OF SYRACUSE HEMATOLOGY/ONCOLOGY, P.C.,  
PLAINTIFF-RESPONDENT,

V

ORDER

J. ROBERT SMITH, DEFENDANT,  
BENJAMIN S. HIMPLER AND ANGELIE ROMAN,  
DEFENDANTS-APPELLANTS.

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WALTER D. KOGUT, P.C., SYRACUSE (WALTER D. KOGUT OF COUNSEL), AND  
FRANKLIN A. JOSEF, FAYETTEVILLE, FOR DEFENDANTS-APPELLANTS.

PORTER NORDBY HOWE, LLP, SYRACUSE (ERIC C. NORDBY OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County (Brian F. DeJoseph, J.), entered February 22, 2010. The order granted plaintiff's motion for leave to reargue and upon reargument reinstated plaintiff's complaint.

Now, upon reading and filing the stipulation withdrawing appeal signed by the attorneys for the parties on January 11, 2011,

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

Entered: February 10, 2011

Patricia L. Morgan  
Clerk of the Court