

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

1455

CA 09-00803

PRESENT: SMITH, J.P., PERADOTTO, GREEN, PINE, AND GORSKI, JJ.

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GARY M. DISCHIAVI AND LINDA DISCHIAVI,  
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

WILLIAM S. CALLI, ET AL., DEFENDANTS,  
ANDREW S. KOWALCZYK, JOSEPH STEPHEN DEERY, JR.,  
AND CALLI, KOWALCZYK, TOLLES, DEERY AND SOJA,  
DEFENDANTS-RESPONDENTS.  
(APPEAL NO. 4.)

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LUIBRAND LAW FIRM, PLLC, LATHAM (KEVIN A. LUIBRAND OF COUNSEL), FOR  
PLAINTIFFS-APPELLANTS.

SMITH, SOVIK, KENDRICK & SUGNET, P.C., SYRACUSE (MICHELLE M. WESTERMAN  
OF COUNSEL), FOR DEFENDANTS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Oneida County  
(Michael E. Daley, J.), entered December 26, 2008. The judgment  
dismissed the complaint against defendants Andrew S. Kowalczyk, Joseph  
Stephen Deery, Jr., and Calli, Kowalczyk, Tolles, Deery and Soja.

It is hereby ORDERED that the judgment so appealed from is  
unanimously modified on the law by denying the cross motion in part  
and reinstating the second and third causes of action against  
defendants Andrew S. Kowalczyk, Joseph Stephen Deery, Jr., and Calli,  
Kowalczyk, Tolles, Deery and Soja and as modified the judgment is  
affirmed without costs.

Same Memorandum as in *Dischiavi v Calli* ([appeal No. 2] \_\_\_ AD3d  
\_\_\_ [Dec. 30, 2009]).

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court