

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

**716**

**CA 13-01526**

PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND WHALEN, JJ.

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STEVEN HERBERT, PLAINTIFF-RESPONDENT,

V

ORDER

EASTERN WAREHOUSE, INC. AND JOHN CARROLL,  
INDIVIDUALLY AND AS PRESIDENT OF EASTERN  
WAREHOUSE, INC., DEFENDANTS-APPELLANTS.

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GOLDBERG SEGALLA LLP, BUFFALO (KATHLEEN J. MARTIN OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS.

MICHAEL D. CALARCO, NEWARK (JESSICA L. BRYANT OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Wayne County (John B. Nesbitt, A.J.), entered November 28, 2012. The order, among other things, denied the motion of defendants to dismiss the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs for reasons stated in the decision at Supreme Court.

Entered: June 13, 2014

Frances E. Cafarell  
Clerk of the Court