

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

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CA 14-01772

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, VALENTINO, AND WHALEN, JJ.

HELEN F. DRISCOLL AND THOMAS DRISCOLL,
PLAINTIFFS-RESPONDENTS-APPELLANTS,

V

ORDER

BJ'S WHOLESALE CLUB, INC.,
DEFENDANT-APPELLANT-RESPONDENT,
AND PAUL F. VITALE, INC., DEFENDANT-APPELLANT.

MACKENZIE HUGHES LLP, SYRACUSE (LORRAINE R. MERTELL OF COUNSEL), FOR
DEFENDANT-APPELLANT-RESPONDENT.

COSTELLO COONEY & FEARON, PLLC, SYRACUSE (ELIZABETH A. HOFFMAN OF
COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAELS & SMOLAK, P.C., AUBURN (MICHAEL G. BERSANI OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS-APPELLANTS.

Appeals and cross appeal from an order of the Supreme Court, Cayuga County (Thomas G. Leone, A.J.), entered December 19, 2013. The order, inter alia, denied the motion of plaintiffs for sanctions against defendant BJ's Wholesale Club, Inc., for spoliation of evidence, and denied the motions of defendants for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Entered: May 1, 2015

Frances E. Cafarell
Clerk of the Court