

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

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**CA 10-01720**

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GORSKI, JJ.

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MARLENE WHITMORE AND JOHN R. WHITMORE,  
PLAINTIFFS-APPELLANTS,

V

ORDER

FEDERATED RETAIL HOLDING, INC., THE MAY  
DEPARTMENT STORES COMPANY, DOING BUSINESS  
AS KAUFMANS, DEFENDANTS-RESPONDENTS.

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TREVETT CRISTO SALZER & ANDOLINA P.C., ROCHESTER (ERIC M. DOLAN OF  
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

BOUVIER PARTNERSHIP, LLP, BUFFALO (KENNETH A. PATRICIA OF COUNSEL),  
FOR DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Monroe County (Evelyn Frazee, J.), entered October 21, 2009. The order granted the motion of defendants for summary judgment dismissing 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: February 10, 2011

Patricia L. Morgan  
Clerk of the Court