

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D31237  
C/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - April 27, 2011

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
JEFFREY A. COHEN, JJ.

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2009-10891

DECISION & ORDER

Farouk Hegazi, et al., respondents, v Paul Palmieri,  
appellant, et al., defendants.

(Index No. 7796/89)

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Judith N. Berger, Babylon, N.Y., for appellant.

In a mortgage foreclosure action, the defendant Paul Palmieri appeals from so much of an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated October 6, 2009, as denied his application for an attorney's fee and costs pursuant to 22 NYCRR 130-1.1.

ORDERED that on the Court's own motion, the defendant's notice of appeal is deemed to be an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The Supreme Court providently exercised its discretion in denying the defendant's application for an award of an attorney's fee and costs pursuant to 22 NYCRR 130-1.1(a). Contrary to the defendant's contention, an attorney's fee and costs were not warranted, as the conduct of the plaintiffs' counsel was not frivolous within the meaning of 22 NYCRR 130-1.1(c) (*see Fontilus v*

May 10, 2011

HEGAZI v PALMIERI

Page 1.

*Pereira*, 82 AD3d 1040; *Carrasquillo v City of New York*, 78 AD3d 635, 639; *Joan 2000, Ltd. v Deco Constr. Corp.*, 66 AD3d 841, 842).

MASTRO, J.P., FLORIO, LEVENTHAL, BELEN and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court