

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

D80967
O/

_____AD3d_____

Argued - November 25, 2025

ANGELA G. IANNACCI, J.P.
LINDA CHRISTOPHER
CARL J. LANDICINO
PHILLIP HOM, JJ.

2024-03815
2024-03817

DECISION & ORDER

Apex Bank, etc., appellant, v Theresa D.
Fasulo-Brancalone, et al., respondents,
et al., defendants.

(Index No. 614157/18)

Margolin, Weinreb, and Nierer, LLP, Syosset, NY (Seth D. Weinberg of counsel),
for appellant.

Forchelli Deegan Terrana LLP, Uniondale, NY (Adam L. Browser of counsel), for
respondents.

In an action to foreclose a mortgage, the plaintiff appeals from (1) an order of the Supreme Court, Nassau County (David P. Sullivan, J.), entered March 27, 2024, and (2) a judgment of the same court dated April 3, 2024. The order, insofar as appealed from, denied that branch of the plaintiff's motion which was for leave to renew its opposition to that branch of the cross-motion of the defendants Theresa D. Fasulo-Brancalone and Peter Brancalone, Jr., which was for an award of attorneys' fees, which had been granted in an order of the same court entered September 29, 2021, and granted that branch of those defendants' separate cross-motion which was for an additional award of attorneys' fees. The judgment, upon the order entered March 27, 2024, is in favor of the defendants Theresa D. Fasulo-Brancalone and Peter Brancalone, Jr., and against the plaintiff in the sum of \$2,000.

ORDERED that the appeal from the order entered March 27, 2024, is dismissed; and it is further,

ORDERED that the judgment is reversed, on the law, that branch of the cross-motion of the defendants Theresa D. Fasulo-Brancalone and Peter Brancalone, Jr., which was for an additional award of attorneys' fees is denied, and the order entered March 27, 2024, is modified

July 1, 2026

APEX BANK v FASULO-BRANCALONE

Page 1.

accordingly; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The appeal from so much of the order entered March 27, 2024, as granted that branch of the cross-motion of the defendants Theresa D. Fasulo-Brancalone and Peter Brancalone, Jr. (hereinafter together the defendants), which was for an additional award of attorneys' fees must be dismissed, because that portion of the order was superseded by the judgment. The issues raised on the appeal from that portion of the order entered March 27, 2024, are brought up for review on the appeal from the judgment.

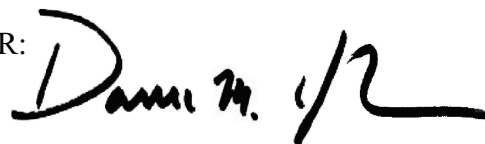
The appeal from so much of the order entered March 27, 2024, as denied that branch of the plaintiff's motion which was for leave to renew its opposition to that branch of the defendants' separate cross-motion which was for an award of attorneys' fees must be dismissed, as that branch of the plaintiff's motion has been rendered academic by our determination in a related appeal (*see Apex Bank v Fasulo-Brancalone*, ____ AD3d ____ [Appellate Division Docket No. 2023-02870; decided herewith]).

Furthermore, for the reasons stated in the related appeal, the defendants are not entitled to an award of attorneys' fees for a "successful defense" of this foreclosure action (Real Property Law § 282[1]; *see Apex Bank v Fasulo-Brancalone*, ____ AD3d ____ [Appellate Division Docket No. 2023-02870; decided herewith]).

Accordingly, we deny that branch of the defendants' cross-motion which was for an additional award of attorneys' fees (*see U.S. Bank Trust, N.A. v Stracci*, 216 AD3d 1048, 1049; *Bank of Am., N.A. v Destino*, 138 AD3d 654, 655).

IANNACCI, J.P., CHRISTOPHER, LANDICINO and HOM, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a stylized flourish.

Darrell M. Joseph
Clerk of the Court