

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

People's United Bank v. Patio Gardens III, LLC

2020 NY Slip Op 08091 (N.Y. Ct. App. 2020) · No. 2019-10589 · Decided December 30, 2020

SUMMARY

In this mortgage foreclosure action, the Appellate Division, Second Department reversed an order and amended judgment awarding the plaintiff \$75,000 in unapportioned attorney's fees. The court held that the Supreme Court violated the law-of-the-case doctrine by failing to determine which fees were attributable to each property and that the plaintiff failed to establish the reasonableness of the fees requested.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Cheryl E. Chambers, J.; Angela G. Iannacci, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	December 30, 2020
DOCKET	2019-10589
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an order and amended judgment of foreclosure and sale awarding the plaintiff \$75,000 in unapportioned attorney's fees after a prior appellate remittitur for a new determination of the fee issue.
STANDARD OF REVIEW	Review was on the law and in the exercise of discretion; the court also applied the law of the case doctrine and reviewed whether the plaintiff met its burden of proving the reasonableness of the requested attorney's fees.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Patio Gardens III, LLC v. People's United Bank

TOPICS

foreclosure

mortgages

attorney fees

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Supreme Court violated the law of the case doctrine by awarding attorney's fees without determining which fees related to each property.
2. Whether the plaintiff met its burden of proving the reasonableness of the requested attorney's fees.

HOLDINGS

1. The Supreme Court violated the law of the case doctrine by awarding attorney's fees without determining which fees were attributable to work performed to foreclose the mortgage related to each property.
2. The plaintiff failed to meet its burden of proving the reasonableness of the requested attorney's fees because it did not provide evidence showing which fees were attributable to each parcel.

KEY QUOTATIONS

*“'[A]n appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court'” ([*2])*

FACTUAL BACKGROUND

People's United Bank brought an action to foreclose two mortgages involving two parcels of property owned by or associated with Patio Gardens III, LLC. The plaintiff sought attorney's fees, but its submission did not establish which fees were attributable to foreclosure work concerning each parcel. After a prior remittitur and a hearing, the Supreme Court awarded \$75,000 in fees without apportioning them between the properties.

PROCEDURAL HISTORY

In a foreclosure action involving two mortgages and two parcels, the Supreme Court, Suffolk County, awarded People's United Bank \$75,000 in attorney's fees without allocating the fees between the properties. On a prior appeal, the Appellate Division remitted for a more detailed fee submission and a determination of which fees were attributable to each parcel, with a hearing if necessary. After the Supreme Court again awarded unapportioned fees following a hearing, Patio Gardens appealed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None. The court directed that the branch of the plaintiff's motion seeking attorney's fees be denied.

CASES CITED

- Matter of 24 Franklin Ave. R.E. Corp. v. Heaship, 101 AD3d 1034, 1036
- J-Mar Serv. Ctr., Inc. v. Mahoney, Connor & Hussey, 45 AD3d 809, 809
- People's United Bank v. Patio Gardens III, LLC, 143 AD3d 689
- SO/Bluestar, LLC v. Canarsie Hotel Corp., 33 AD3d 986, 988
- Kamco Supply Corp. v. Annex Contr., 261 AD2d 363, 365

OPINION

PER CURIAM.

People's United Bank v Patio Gardens III, LLC (2020 NY Slip Op 08091) People's United Bank v Patio Gardens III, LLC 2020 NY Slip Op 08091 Decided on December 30, 2020 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on December 30, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P. CHERYL E. CHAMBERS ANGELA G. IANNACCI LINDA CHRISTOPHER, JJ. 2019-10589 (Index No. 8058/12) [*1]People's United Bank, etc., respondent, vPatio Gardens III, LLC, appellant, et al., defendants.

The Law Firm of Elias C. Schwartz, PLLC, Great Neck, NY (Jennifer J. Block of counsel), for appellant. Frenkel Lambert Weiss Weisman & Gordon, LLP, Bay Shore, NY (Keith L. Abramson of counsel), for respondent. DECISION & ORDER In an action to foreclose two mortgages, the defendant Patio Gardens III, LLC, appeals from an order and amended judgment of foreclosure and sale (one paper) of the Supreme Court, Suffolk County (Elizabeth H. Emerson, J.), dated December 10, 2018.

The order and amended judgment, insofar as appealed from, upon remittitur from this Court by decision and order dated October 5, 2016 (People's United Bank v Patio Gardens III, LLC, 143 AD3d 689), and after a hearing, in effect, granted that branch of the plaintiff's motion which was for an award of attorney's fees without apportioning the award between the two subject properties and awarded the plaintiff the sum of \$75,000 in unapportioned attorney's fees.

ORDERED that the order and amended judgment of foreclosure and sale is reversed insofar as appealed from, on the law and in the exercise of discretion, with costs, and that branch of the plaintiff's motion which was for an award of attorney's fees is denied.

The underlying facts of this foreclosure action are summarized in our decision and order on a prior related appeal (People's United Bank v Patio Gardens III, LLC, 143 AD3d 689). On the prior appeal, we remitted the matter to the Supreme Court, Suffolk County, for a new determination of that branch of the plaintiff's motion which was for an award of attorney's fees, including a

determination of which fees are attributable to which of the two parcels being foreclosed upon, following the submission of a more detailed affidavit of services rendered and, if necessary, for a hearing on that issue, and for the entry of an appropriate amended judgment.

Following the submission of a supplemental affirmation for legal fees by the plaintiff, and after a hearing, the Supreme Court, in effect, granted that branch of the plaintiff's motion which was for an award of attorney's fees and awarded the plaintiff \$75,000 in attorney's fees without apportioning the fees between the two properties.

The defendant Patio Gardens III, LLC (hereinafter Patio Gardens), appeals. We reverse. "[A]n appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court" (Matter of 24 Franklin Ave. R.E. Corp. v Heaship, 101 AD3d 1034, 1036, quoting J-Mar Serv. Ctr., Inc. v [*2]Mahoney, Connor & Hussey, 45 AD3d 809, 809).

Here, we agree with Patio Gardens's contention that the Supreme Court violated the law of the case doctrine by awarding the plaintiff attorney's fees without determining which fees pertained to work performed by the plaintiff's counsel to foreclose the mortgage related to each property. Further, by failing to set forth evidence of which fees are attributable to each of the two parcels being foreclosed upon, the plaintiff failed to meet its burden of proving the reasonableness of the attorney's fees requested (see People's United Bank v Patio Gardens III, LLC, 143 AD3d 689; SO/Bluestar, LLC v Canarsie Hotel Corp., 33 AD3d 986, 988; Kamco Supply Corp. v Annex Contr., 261 AD2d 363, 365).

Accordingly, upon remittitur, the Supreme Court should have denied that branch of the plaintiff's motion which was for an award of attorney's fees. MASTRO, J.P., CHAMBERS, IANNACCI and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court