

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

**1014**

**CA 18-02142**

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, AND CURRAN, JJ.

---

WILLIAM HOWARD, SUING IN THE RIGHT OF ARCHER RD.  
VISTA LLC, WILLIAM HOWARD, INDIVIDUALLY, AND  
WESTSIDE DEVELOPMENT OF ROCHESTER, INC.,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

GARY L. POOLER, DEFENDANT-APPELLANT,  
ARCHER RD. VISTA LLC, AND GARY L. POOLER, AS  
MANAGER OF ARCHER RD. VISTA LLC,  
INTERVENORS-APPELLANTS.  
(APPEAL NO. 3.)

---

ERNSTROM & DRESTE, LLP, ROCHESTER (MARTHA A. CONNOLLY OF COUNSEL), AND  
MORGENSTERN DEVOESICK PLLC, PITTSFORD, FOR DEFENDANT-APPELLANT.

UNDERBERG & KESSLER LLP, ROCHESTER (DAVID M. TANG OF COUNSEL), FOR  
INTERVENORS-APPELLANTS.

BOND, SCHOENECK & KING, PLLC, ROCHESTER (JOSEPH S. NACCA OF COUNSEL),  
FOR PLAINITFFS-RESPONDENTS.

---

Appeals from an order and judgment (one paper) of the Supreme Court, Monroe County (Matthew A. Rosenbaum, J.), entered October 18, 2018. The order and judgment, among other things, granted plaintiff William Howard, attorneys' fees and disbursements as against defendant Gary L. Pooler.

It is hereby ORDERED that the order and judgment so appealed from is unanimously reversed on the law without costs, and the award of attorneys' fees and disbursements is vacated.

Same memorandum as in *Howard v Pooler* ([appeal No. 1] – AD3d – [June 12, 2020] [4th Dept 2020]).

Entered: June 12, 2020

Mark W. Bennett  
Clerk of the Court