

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

D15022  
Y/cb

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Argued - March 29, 2007

ROBERT W. SCHMIDT, J.P.  
GLORIA GOLDSTEIN  
STEVEN W. FISHER  
ROBERT A. LIFSON, JJ.

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2006-04310

DECISION & ORDER

Susan Smulczeski, plaintiff-appellant, v Richard  
Smulczeski, defendant-appellant.

(Index No. 00-26989)

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Arnold B. Firestone, P.C., Hauppauge, N.Y. (Robert Montefusco of counsel), for  
plaintiff-appellant.

Howard Benjamin, New York, N.Y., for defendant-appellant.

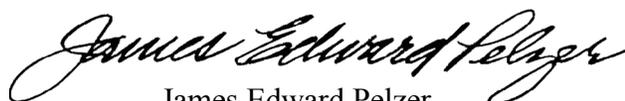
In a matrimonial action in which the parties were divorced by judgment dated October 22, 2003, the plaintiff appeals from so much of an order of the Supreme Court, Suffolk County (McNulty, J.), dated March 31, 2006, as denied her motion, made upon consent, for leave to her attorney to file a mortgage in the amount of \$111,030.76 against her interest in the parties' marital residence, and the defendant separately appeals from so much of the same order as denied his cross motion, made upon consent, for leave to his attorney to file a mortgage in the amount of \$99,585.43 against his interest in the marital residence.

ORDERED that the order is reversed insofar as appealed and cross-appealed from, without costs or disbursements, and the motion and cross motion are granted.

Under the particular facts of this case, including that the relief in question has been requested by the parties themselves, the motion and cross motion should have been granted.

SCHMIDT, J.P., GOLDSTEIN, FISHER and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

May 8, 2007

SMULCZESKI v SMULCZESKI