

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

D16399
X/kmg

_____AD3d_____

Submitted - September 14, 2007

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
FRED T. SANTUCCI
MARK C. DILLON, JJ.

2006-01305

DECISION & ORDER

Marton Klepp, appellant, v
Anita Klepp, respondent.

(Index No. 6050/69)

Medina, O'Brien, Mamo & Garcia, Ossining, N.Y. (Luis A. Medina of counsel), for appellant.

McCarthy Fingar, LLP, White Plains, N.Y. (Joel Martin Arnou of counsel), for respondent.

In a matrimonial action in which the parties were divorced by judgment dated March 29, 1972, the plaintiff former husband appeals from an order of the Supreme Court, Westchester County (Donovan, J.), entered January 4, 2006, which, in effect, granted that branch of the defendant former wife's motion which was for an award of counsel fees.

ORDERED that the order is affirmed, with costs.

Under the circumstances of this case, counsel fees were properly awardable not under Domestic Relations Law § 237(c), as argued by the parties, but under Domestic Relations Law § 238 (*see D'Anna v D'Anna*, 17 AD3d 400, 402). The amount of the award is a matter within the sound discretion of the trial court (*see DeCabrera v DeCabrera-Rosete*, 70 NY2d 879). Here, the court providently exercised its discretion given the great disparity in the parties' financial condition, the plaintiff's dilatory tactics, the relative merits of the parties' positions on the defendant's post-judgment motion (*see Sevdinoglou v Sevdinoglou*, 40 AD3d 959), and the documented time, effort,

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and skill of the defendant's counsel (*see Benzaken v Benzaken*, 21 AD3d 391, 392).

SCHMIDT, J.P., RIVERA, SANTUCCI and DILLON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court