

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

D17658
W/kmg

_____AD3d_____

Argued - December 6, 2007

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2007-02747

DECISION & ORDER

Richard Rose, appellant, v Laurie Lynn Rose,
f/k/a Laurie Lyn Ludwig, respondent.

(Index No. 2745/01)

Larkin, Axelrod, Ingrassia & Tetenbaum, LLP, Newburgh, N.Y. (Michael Rabiet of counsel), for appellant.

Robert Dapelo, Patchogue, N.Y., for respondent.

In a matrimonial action in which the parties were divorced by judgment dated June 20, 2006, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Orange County (Alessandro, J.), dated February 2, 2007, as granted that branch of the defendant's motion which was to enforce a provision of the parties' separation agreement, which was incorporated but not merged into the judgment of divorce, requiring him to pay the defendant the sum of \$40,000, plus interest accruing from the date of sale of the marital residence, and denied that branch of his cross motion which was for an award of an attorney's fee.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the plaintiff's contention that the Supreme Court should have punished the defendant for contempt, his cross motion neither asked for such relief (*see Matter of Nozzleman 60, LLC v Village Bd. of Vil. of Cold Spring*, 34 AD3d 680; *Lyon v Lyon*, 259 AD2d 525), nor complied with the substantive and procedural requirements of Judiciary Law § 756 (*see Xand Corp. v Reliable Sys. Alternatives Corp.*, 35 AD3d 849; *Matter of P&N Tiffany Props. v Williams*, 302 AD2d 466).

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The plaintiff failed to submit proof in support of that branch of his cross motion which was for an award of an attorney's fee. Accordingly, the Supreme Court correctly denied his request for such an award (*see Mazzone v Mazzone*, 290 AD2d 495; *Beece v Beece*, 289 AD2d 352).

The plaintiff's remaining contentions are without merit.

MASTRO, J.P., FISHER, CARNI and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court