

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

D25385
Y/hu

_____AD3d_____

Argued - September 21, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2007-11298

DECISION & ORDER

Debra Weissman, appellant, v Ronald Weissman,
respondent.

(Index No. 7453/01)

Annette G. Hasapidis, South Salem, N.Y., for appellant.

Miano & Colangelo, Harrison, N.Y. (Joseph R. Miano of counsel), for respondent.

In a matrimonial action in which the parties were divorced by judgment dated November 28, 2005, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Scarpino, J.), entered November 30, 2007, as denied her motion to vacate a stipulation of settlement which was incorporated but not merged into the judgment of divorce, denied those branches of her separate motion which were, inter alia, to direct the defendant to transfer title to the marital residence to her and for permission to sell the marital residence, and denied her application to appoint a guardian ad litem.

ORDERED that on the Court's own motion, the plaintiff's notice of appeal from so much of the order as denied her application to appoint a guardian ad litem is treated as an application for leave to appeal from that portion of the order, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is modified, on the facts and in the exercise of discretion, by deleting the provision thereof denying those branches of the motion which were to direct the defendant to transfer title to the marital residence to the plaintiff and for permission to sell the marital residence and substituting therefor a provision denying those branches of the motion as unnecessary;

December 15, 2009

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as so modified, the order is affirmed insofar as appealed from, with costs to the defendant.

The parties' stipulation of settlement was incorporated but not merged into the judgment of divorce; as such, it is an independent contract which may be challenged only by way of a plenary action (*see Reiter v Reiter*, 39 AD3d 616; *Spataro v Spataro*, 268 AD2d 467; *Dombrowski v Dombrowski*, 239 AD2d 460). Accordingly, the Supreme Court properly denied the plaintiff's motion to vacate the stipulation on that basis alone.

Those branches of the plaintiff's motion which were to direct the defendant to transfer the title to the marital residence to her and for permission to sell the residence, were unnecessary. The deed had already been provided to the plaintiff, and permission to sell is not required pursuant to the terms of the parties' stipulation of settlement.

The plaintiff's remaining contentions are without merit.

SKELOS, J.P., SANTUCCI, BELEN and HALL, 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