

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

D25426
G/kmg

_____AD3d_____

Submitted - November 13, 2009

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2008-10059

DECISION & ORDER

Emilda Lima, appellant, v Anibal Lima, respondent.

(Index No. 9539/07)

Eric Ole Thorsen, New City, N.Y., for appellant.

Abel & Brustein-Kampel, P.C., New City, N.Y. (Steven L. Abel of counsel), for respondent.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Rockland County (Alfieri, J.), dated October 3, 2008, as denied her motion for an award of an attorney's fee.

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

An award of counsel fees is entrusted to the sound discretion of the court (*see DeCabrera v Cabrera-Rosete*, 70 NY2d 879). In awarding counsel fees "a court should review the financial circumstances of both parties together with all the other circumstances of the case, which may include the relative merit of the parties' positions" (*id.* at 881). Here, in denying the plaintiff's motion for an award of an attorney's fee, the court considered the parties' financial positions as well as the fact that the plaintiff commenced an action for divorce upon grounds that she knew were without merit. Under these circumstances, the order of the Supreme Court should not be disturbed on appeal.

COVELLO, J.P., SANTUCCI, CHAMBERS and HALL, JJ., concur.

ENTER:


James Edward Pelzer

December 15, 2009

LIMA v LIMA

Clerk of the Court

December 15, 2009

LIMA v LIMA