

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

D25840
Y/prt

_____AD3d_____

Submitted - December 18, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2008-05881

DECISION & ORDER

Merav Kroll, a/k/a Merav Kroll-Fruchter, respondent,
v Joshua Fruchter, appellant.

(Index No. 12001/07)

Mazur & Bocketti, New York, N.Y. (Lisa Solomon and Wayne Mazur of counsel),
for appellant.

Joseph & Smargiassi, LLC, New York, N.Y. (John Smargiassi of counsel), for
respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by his notice of appeal and brief, from so much of an order of the Supreme Court, Queens County (Strauss, J.), dated May 12, 2008, as denied those branches of his motion which were for summary judgment on his counterclaim for a conversion divorce pursuant to Domestic Relations Law § 170(6) and for a declaration that he was entitled to claim the parties' two youngest children as dependents on his income tax return.

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

The Supreme Court properly denied that branch of the defendant's motion which was for summary judgment on his counterclaim for a conversion divorce pursuant to Domestic Relations Law § 170(6). A stipulation entered into by the parties in April 2004 is not a separation agreement within the meaning of Domestic Relations Law § 170(6) for the purpose of awarding the defendant a conversion divorce, as it contains affirmative language that its purpose was to settle certain issues pendente lite (*see Sint v Sint*, 225 AD2d 606, 607; *Frasca v Frasca*, 213 AD2d 589, 590; *Stone v*

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KROLL, a/k/a KROLL-FRUCHTER v FRUCHTER

Stone, 45 AD2d 967, 968).

The defendant's remaining contention is without merit (*cf. O'Halloran v O'Halloran*, 58 AD3d 704, 706).

RIVERA, J.P., DILLON, BELEN and ROMAN, 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