

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

D29142
Y/prt

_____AD3d_____

Submitted - November 4, 2010

MARK C. DILLON, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2009-10202

DECISION & ORDER

Maria Arteaga, plaintiff, v Sandro Martinez,
respondent; Shmuel Agami, nonparty-appellant.

(Index No. 37126/07)

Shmuel Agami, New York, N.Y., nonparty-appellant pro se.

Herbert M. Edelman, Mineola, N.Y., for respondent.

In an action for a divorce and ancillary relief, nonparty Shmuel Agami, the plaintiff's attorney, appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Bivona, J.), dated October 5, 2009, as granted that branch of the defendant's motion which was to impose a sanction upon him, to the extent of directing him to pay a sanction in the sum of \$2,500 pursuant to 22 NYCRR 130-1.1.

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

The appellant, attorney for the plaintiff, filed a notice of pendency against property owned solely by the defendant based upon the plaintiff's claim to equitable distribution. The filing of a notice of pendency against the defendant's property based upon a claim of equitable distribution is completely without merit, since title, possession, use, or enjoyment of the subject property will not necessarily be affected (*see Gross v Gross*, 114 AD2d 1002, 1003; *Sehgal v Sehgal*, 220 AD2d 201; *Fakiris v Fakiris*, 177 AD2d 540, 543). After the action was dismissed for lack of jurisdiction, the appellant unreasonably delayed in canceling the notice of pendency, generating unnecessary motion

December 21, 2010

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practice. Under the circumstances, the award of a sanction in the sum of \$2,500 pursuant to 22 NYCRR 130-1.1 was a provident exercise of discretion.

DILLON, J.P., SANTUCCI, DICKERSON and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court