

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

D30349
G/kmb

_____AD3d_____

Submitted - February 8, 2011

JOSEPH COVELLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2009-09528

DECISION & ORDER

Stephanie Le, respondent, v Kevin Le, appellant.

(Index No. 2369/07)

Kevin Le, Pearl River, N.Y., appellant pro se.

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

In a matrimonial action in which the parties were divorced by judgment dated February 18, 2009, the defendant former husband appeals from an order of the Supreme Court, Rockland County (Christopher, J.), dated September 17, 2009, which granted that branch of the motion of the plaintiff former wife which was, in effect, pursuant to Domestic Relations Law § 238 for an award of counsel fees and, inter alia, directed the defendant former husband to pay counsel fees in the sum of \$9,390.50.

ORDERED that the order is modified, on the facts and in the exercise of discretion, by deleting the provision thereof directing the defendant former husband to pay counsel fees in the sum of \$9,390.50, and substituting therefor a provision directing the defendant former husband to pay counsel fees in the sum of \$5,000; as so modified, the order is affirmed, without costs or disbursements.

The Supreme Court providently exercised its discretion in granting that branch of the motion of the plaintiff former wife which was for an award of counsel fees incurred in enforcing a judgment of divorce after the defendant former husband unjustifiably refused to consent to the release of monies held in escrow after the marital home was sold pursuant to the judgment (*see* Domestic Relations Law § 238; *Schiffer v Schiffer*, 55 AD3d 714, 715). However, since the plaintiff requested

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counsel fees only in the sum of \$5,000 in her motion, and in light of the parties' financial circumstances, the Supreme Court improvidently exercised its discretion in awarding the plaintiff the sum of \$9,390.50 (*see* Domestic Relations Law § 238; *Lee v Lee*, 57 AD3d 487). Thus, we reduce the award to \$5,000.

The defendant's remaining contentions are without merit.

COVELLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court