

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

D35607  
H/hu

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Argued - March 23, 2012

WILLIAM F. MASTRO, A.P.J.  
RUTH C. BALKIN  
SANDRA L. SGROI  
JEFFREY A. COHEN, JJ.

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2010-12082  
2011-09645  
2011-10712

DECISION & ORDER

Marie Claire Franco, respondent-appellant, v Sauveur  
Franco, appellant-respondent.

(Index No. 18864/06)

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Joseph J. Mainiero (Mauro Lilling Naparty LLP, Great Neck, N.Y. [Matthew W. Naparty and Anthony F. DeStefano], of counsel), for appellant-respondent.

Coffinas & Lusthaus, P.C., Brooklyn, N.Y. (Maria Coffinas of counsel), for  
respondent-appellant.

In an action for a divorce and ancillary relief, the defendant appeals (1), as limited by his brief, from so much of a judgment of the Supreme Court, Kings County (Adams, J.), entered November 1, 2010, as, upon a decision of the same court dated June 25, 2010, made after a nonjury trial, equitably distributed the parties' marital property and awarded the plaintiff the sum of \$15,000 in counsel fees, (2), as limited by his brief, from so much of an order of the same court dated September 27, 2011, as granted those branches of the plaintiff's motion which were to enforce certain provisions of the judgment by directing him to execute a bargain and sale deed transferring his interest in the former marital residence to the plaintiff, directing the entry of a money judgment in favor of the plaintiff in the principal sums of \$702,333 and \$9,093, and directing him to transfer his shares of stock in JTS Management of Hallandale, Inc., to the plaintiff, and for an award of appellate counsel fees in the sum of \$12,000 and counsel fees for the enforcement application in the sum of \$7,000, and (3) from a money judgment of the same court entered October 25, 2011, which, upon so much of the order dated September 27, 2011, as granted that branch of the plaintiff's motion which was to enforce certain provisions of the divorce judgment by directing the entry of a money

July 25, 2012

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judgment in favor of the plaintiff in the principal sums of \$702,333 and \$9,093, is in favor of the plaintiff and against him in the principal sums of \$702,333 and \$9,093, and the plaintiff cross-appeals from the judgment entered November 1, 2010.

ORDERED that the appeal from so much of the order dated September 27, 2011, as granted that branch of the plaintiff's motion which was to enforce certain provisions of the judgment entered November 1, 2010, by directing the entry of a money judgment in favor of the plaintiff in the principal sums of \$702,333 and \$9,093, is dismissed, as that portion of the order was superseded by the money judgment entered October 25, 2011; and it is further,

ORDERED that the cross appeal from the judgment entered November 1, 2010, is dismissed as abandoned; and it is further,

ORDERED that the judgment entered November 1, 2010, is affirmed insofar as appealed from; and it is further,

ORDERED that the order dated September 27, 2011, is affirmed insofar as reviewed; and it is further,

ORDERED that the money judgment entered October 25, 2011, is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

This action for a divorce and ancillary relief arises from the termination of a 41-year marriage. During the course of the marriage, the defendant was the sole source of financial support for the plaintiff and their three children (now emancipated), while the plaintiff, who never worked outside of the home, took care of the marital home and the parties' children. Also during the course of the marriage, the parties acquired a number of commercial properties and business interests, as well as significant liquid assets, which were equitably distributed between the parties by the Supreme Court following a nonjury trial. The plaintiff's distributive award was valued at \$3,032,226 and consisted largely of the liquid assets, and the defendant's award was valued at \$2,700,000, consisting largely of rental income-producing property, prior to various adjustments.

“While the distribution of marital property must be equitable, there is no requirement that the assets be split evenly” (*Giokas v Giokas*, 73 AD3d 688, 689; *see DeSouza-Brown v Brown*, 71 AD3d 946; *Arrigo v Arrigo*, 38 AD3d 807). “A trial court is vested with broad discretion in making an equitable distribution of marital property, and ‘unless it can be shown that the court improvidently exercised that discretion, its determination should not be disturbed’” (*Schwartz v Schwartz*, 67 AD3d 989, 990, quoting *Saleh v Saleh*, 40 AD3d 617, 617-618; *see Sebag v Sebag*, 294 AD2d 560). Moreover, where, as here, the determination as to equitable distribution has been made after a nonjury trial, the trial court's assessment of the credibility of witnesses is afforded weight on appeal (*see Schwartz v Schwartz*, 67 AD3d at 990; *Jones-Bertrand v Bertrand*, 59 AD3d 391; *Grasso v Grasso*, 47 AD3d 762, 764; *Antes v Antes*, 304 AD2d 597, 597-598). Here, there is no basis to disturb the Supreme Court's determinations regarding the equitable distribution of the

parties' property.

In exercising its discretionary power to award 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, as well as the tactics of a party in unnecessarily prolonging the litigation (*see DeCabrera v Cabrera-Rosete*, 70 NY2d 879, 881; *Powers v Wilson*, 56 AD3d 639, 641; *Prichep v Prichep*, 52 AD3d 61, 64). Under the circumstances of this case, the Supreme Court's award of counsel fees to the plaintiff, including appellate counsel fees to defend against the defendant's appeal and counsel fees to enforce the defendant's obligations under the divorce judgment, were a provident exercise of discretion (*see Domestic Relations Law* §§ 237, 238; *Fields v Fields*, 82 AD3d 542, 542-543, *D'Anna v D'Anna*, 17 AD3d 400, 402; *Levy v Levy*, 4 AD3d 398).

The defendant's remaining contentions are without merit.

MASTRO, A.P.J., BALKIN, SGROI and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court