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

D35682
C/kmb

_____AD3d_____ Submitted - June 12, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2011-05800 DECISION & ORDER

Daniela Cassano, respondent, v Domenico Cassano, defendant; Jones, LLP, nonparty-appellant.

(Index No. 13834/08)

Jones, LLP, Scarsdale, N.Y. (Stephen J. Jones of counsel), nonparty-appellant pro se.

Howard L. Sherman, Ossining, N.Y., for respondent.

In an action for a divorce and ancillary relief, the nonparty, Jones, LLP, appeals, as limited by its brief, from so much of an order of the Supreme Court, Westchester County (Connolly, J.), entered May 6, 2011, as, sua sponte, reduced by 25% the amount of the attorney's fee payable to it by the plaintiff.

ORDERED that on the Court's own motion, the notice of appeal is deemed to be an application for leave to appeal from the portion of the order appealed from, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is reversed insofar as appealed from, on the law, with costs.

After this action was settled by a stipulation of settlement, the parties agreed to have the Supreme Court determine the issues of entitlement to an attorney's fee and expenses based on written submissions. The parties each submitted papers in support of their respective requests to have the other party pay for their respective attorney's fees and expenses. In the order appealed from, the Supreme Court determined that the plaintiff and the defendant should each be responsible for paying the attorney's fees and expenses incurred by their respective counsel. In addition, the Supreme Court, sua sponte, reduced by 25% the amount of the attorney's fee payable by the plaintiff to the nonparty-appellant law firm, Jones, LLP (hereinafter the appellant), on the ground that the fee

was excessive. However, since the issue of whether the attorney's fees earned by the appellant were excessive had not been raised, the Supreme Court improperly granted such relief sua sponte (*see Cass & Sons v Stag's Fuel Oil Co.*, 194 AD2d 707, 708; *see also Celauro v Celauro*, 257 AD2d 588, 589; *Bisca v Bisca*, 108 AD2d 773, 775).

The appellant's remaining contention need not be addressed in light of our determination.

ANGIOLILLO, J.P., DICKERSON, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court