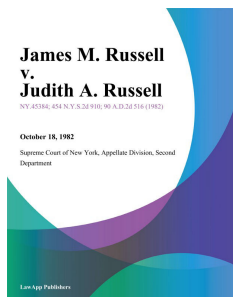


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JAMES M RUSSELL V JUDITH A RUSSELL EBOOKS 2019



Author: Supreme Court of New York

Realese Date: Expected @@expectedReleaseDate@@

In an action for a conversion divorce pursuant to subdivision (6) of section 170 of the Domestic Relations Law, the defendant wife appeals from so much of an order of the Supreme Court, Westchester County (Daronco, J.), dated February 18, 1982, as (1) granted plaintiffs motion for summary judgment, (2) denied her cross motion to "consolidate plaintiffs action with her counterclaims," and (3) severed plaintiffs cause of action for divorce from her counterclaims. Order affirmed insofar as appealed from, without costs or disbursements. The parties executed a written separation agreement on December 31, 1979. In February, 1981, plaintiff commenced this action for a conversion divorce, alleging that he and defendant had lived separate and apart pursuant to the agreement for a period exceeding one year. Only when the plaintiff commenced this action did defendant, for the first time, allege that the separation agreement was of no force and effect by reason of the fact that she had been compelled to execute it by fraud, duress and misrepresentation without the benefit of counsel. Defendant also denied that plaintiff "has at all times performed any and all terms and conditions of the separation agreement." We concur with Special Term that plaintiffs motion for summary judgment for a conversion divorce pursuant to subdivision (6) of section 170 of the Domestic Relations Law should be granted. Said subdivision permits a party to commence an action for divorce when the parties have lived separate and apart for one or more years pursuant to a separation agreement with which the party suing has substantially complied (see *Christian v Christian*, 42 N.Y.2d 63). We do not find substantiation [90 A.D.2d 516 Page 517]

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