

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

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_____AD3d_____

Submitted - October 11, 2006

ANITA R. FLORIO, J.P.
STEPHEN G. CRANE
ROBERT A. SPOLZINO
JOSEPH COVELLO, JJ.

2006-00786

DECISION & ORDER

J. Tortorella Swimming Pools, Inc., appellant, v Incredible Coatings Corp., respondent.

(Index No. 2596/03)

Michael G. Walsh, Water Mill, N.Y., for appellant.

Canfield, Madden & Ruggiero, LLP, Garden City, N.Y. (David J. Canfield of counsel), for respondent.

In an action to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Emerson, J.), dated January 6, 2006, which granted the defendant's motion to dismiss the action and denied its cross motion to compel the defendant to accept service of its complaint.

ORDERED that the order is affirmed, with costs.

To avoid dismissal for failure to timely serve a complaint after a demand therefor has been served pursuant to CPLR 3012(b), a plaintiff must demonstrate a reasonable excuse for the delay in serving the complaint and a meritorious cause of action (*see Maldonado v Suffolk County*, 23 AD3d 353, 353-354; *Gagnon v J.S. Intl. Shipping Corp.*, 8 AD3d 336, 337). The Supreme Court providently exercised its discretion in granting the defendant's motion to dismiss the action because

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the plaintiff's unspecified law office failure excuse did not constitute a reasonable excuse (*see Quinn v Wenco Food Sys.*, 269 AD2d 437; *Bravo v New York City Hous. Auth.*, 253 AD2d 510).

FLORIO, J.P., CRANE, SPOLZINO and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court