

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

D19166  
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Argued - April 3, 2008

HOWARD MILLER, J.P.  
MARK C. DILLON  
WILLIAM E. McCARTHY  
CHERYL E. CHAMBERS, JJ.

2007-00426  
2007-00428

DECISION & ORDER

Arthur T. Botsas, etc., appellant, v Abraham C.  
Grossman, et al., respondents.

(Index No. 15645/97)

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Arthur T. Botsas, Bellerose, N.Y., appellant pro se.

Steven K. Mantione, Malverne, N.Y., for respondents.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals from (1) an order of the Supreme Court, Queens County (Dorsa, J.), dated November 22, 2006, which, among other things, granted the defendants' motion to dismiss the action as abandoned pursuant to CPLR 3404, and (2) a judgment of the same court entered December 7, 2006, which, upon the order, is in favor of the defendants and against him, dismissing the complaint.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

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

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see CPLR 5501[a][1]*).

May 6, 2008

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This action was removed from the trial calendar, at the plaintiff's request, pending completion of discovery. By order dated August 14, 2002, the Supreme Court denied the plaintiff's motion to restore the action to the trial calendar, without prejudice to renew, upon the completion of discovery. That order was affirmed by this Court (*see Botsas v Grossman*, 7 AD3d 654). Since that date, the plaintiff has not conducted additional discovery nor taken any steps to prosecute the action. Thus, the defendants moved to dismiss the action as abandoned pursuant to CPLR 3404.

In opposition to the defendants' motion, the plaintiff failed to demonstrate a meritorious cause of action, a reasonable excuse for the delay, and a lack of intent to abandon the action, and that the defendants would not be prejudiced by the delay. Accordingly, the court properly granted the defendants' motion (*see* CPLR 3404; *M. Parisi & Son Constr. Co., Inc. v Long Is. Obs/Gyn, P.C.*, 39 AD3d 819; *Moldovan v Miller*, 280 AD2d 362; *cf. LeBlanc v Budman*, 18 AD3d 718).

The plaintiff's remaining contentions are without merit.

MILLER, J.P., DILLON, McCARTHY and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court