

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

D19522  
O/kmg

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Submitted - April 29, 2008

PETER B. SKELOS, J.P.  
DAVID S. RITTER  
ANITA R. FLORIO  
THOMAS A. DICKERSON, JJ.

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2007-06087

DECISION & ORDER

Oleg Levinsky, appellant, v  
Leonid Mugermin, respondent.

(Index No. 12183/06)

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Oleg Levinsky, Brooklyn, N.Y., appellant pro se.

McMahon, Martine & Gallagher, New York, N.Y. (Patrick W. Brophy of counsel),  
for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Kramer, J.), dated January 9, 2007, which granted the defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(5) as time-barred.

ORDERED that the order is affirmed, with costs.

On January 21, 1999, the plaintiff allegedly was injured when a vehicle he was driving collided with a vehicle driven by the defendant. On January 17, 2002, he commenced an action against the defendant by filing a summons and complaint and purchasing an index number. However, the summons and complaint were never served. On April 15, 2006, the plaintiff commenced the instant action seeking identical relief. The defendant moved to dismiss the action as time-barred on the ground that it was commenced more than three years after the underlying accident. The Supreme Court granted the motion. We affirm.

The instant action was commenced after the expiration of the statute of limitations and was properly dismissed as time-barred (*see Gem Flooring v Kings Park Indus.*, 5 AD3d 542; CPLR

June 3, 2008

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214[5]). Further, CPLR 205(a) is inapplicable (*see Gem Flooring v Kings Park Indus.*, 5 AD3d 542).

The plaintiff's contention that he is entitled to leave to effect late service of the first summons and complaint upon the defendant pursuant to CPLR 306-b is not properly before this court as it was raised for the first time in his reply brief (*see Gorman v Town of Huntington*, 47 AD3d 30).

SKELOS, J.P., RITTER, FLORIO and DICKERSON, JJ., concur.

ENTER:

James Edward Pelzer  
