

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

D23165  
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Submitted - April 1, 2009

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
JOSEPH COVELLO  
RANDALL T. ENG  
L. PRISCILLA HALL, JJ.

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2008-07893

DECISION & ORDER

Joseph Moray, appellant, v Koven & Krause, Esqs.,  
respondent.

(Index No. 26164/07)

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Kathy M. Lynch, New York, N.Y. (Ronald Cohen of counsel), for appellant.

Steinberg & Cavaliere, LLP, White Plains, N.Y. (Ronald W. Weiner of counsel), for  
respondent.

In an action, inter alia, to recover damages for legal malpractice, the plaintiff appeals from an order of the Supreme Court, Westchester County (Smith, J.), dated June 19, 2008, which granted the defendant's motion pursuant to CPLR 3012(b) to dismiss the action for failure to timely serve a complaint.

ORDERED that the order is affirmed, with costs.

To avoid dismissal for failure to serve a complaint after a demand therefor has been served pursuant to CPLR 3012(b), a plaintiff must demonstrate both a reasonable excuse for the delay in serving the complaint and the existence of a meritorious cause of action (*see Leibowitz v Glickman*, 50 AD3d 643; *Tutora v Schirripa*, 1 AD3d 349, 350; *Balgley v Cammarata*, 299 AD2d 432). Here, the plaintiff failed to show the existence of a meritorious cause of action. Accordingly, the Supreme Court did not improvidently exercise its discretion in granting the defendant's motion to dismiss the action.

May 12, 2009

MORAY v KOVEN & KRAUSE, ESQS.

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The plaintiff's contention that the action was stayed pursuant to CPLR 321(c) is raised for the first time on appeal and, thus, is not properly before this Court (*see Telmark, Inc. v Mills*, 199 AD2d 579, 580; *see also KPSD Mineola, Inc. v Jahn*, 57 AD3d 853; *Triantafillopoulos v Sala Corp.*, 39 AD3d 740).

RIVERA, J.P., DILLON, COVELLO, ENG and HALL, 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