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

D25622
C/prt

_____AD3d_____ Submitted - December 1, 2009

REINALDO E. RIVERA, J.P.
HOWARD MILLER
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2009-03170 DECISION & ORDER

Louis Loria, appellant, v
Nat Cerniglia, respondent.

(Index No. 15183/08)

Jeffrey Levitt, Amityville, N.Y., for appellant.

Henry Stanziale, Mineola, N.Y. (Thomas Stanziale 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, Nassau County (Brandveen, J.), entered March 13, 2009, which granted that branch of the defendant's motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint as time-barred.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting that branch of the defendant's motion which was to dismiss the second cause of action as time-barred, and substituting therefor a provision denying that branch of the motion; as so modified, the order is affirmed, without costs or disbursements.

The Supreme Court properly granted that branch of the defendant's motion which was to dismiss the first cause of action, alleging legal malpractice, as time-barred. The action was commenced on August 14, 2008, and the three-year statute of limitations (*see* CPLR 214[6]) began to run on August 12, 2005, when the plaintiff signed a consent to change attorney form, relieving the defendant as counsel in the underlying action (*see Frost Line Refrig., Inc. v Gastwirth, Mirsky & Stein, LLP,* 25 AD3d 532, 532-533; *Sommers v Cohen,* 14 AD3d 691, 692; *Marro v Handwerker, Marchelos & Gayner,* 1 AD3d 488, 488; *Daniels v Lebit,* 299 AD2d 310, 310).

However, the second cause of action, alleging that the defendant charged an excessive fee, was not duplicative of the first cause of action, and should not have been dismissed (*see Boglia v Greenberg,* 63 AD3d 973, 976).

The plaintiff's remaining contentions are without merit.

RIVERA, J.P., MILLER, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court