

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

D31344
Y/prt

_____AD3d_____

Argued - April 26, 2011

JOSEPH COVELLO, J.P.
RANDALL T. ENG
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2010-02655

DECISION & ORDER

Brooklyn Electrical Supply Co., Inc., appellant, v
Jasne & Florio, LLP, etc., respondent.

(Index No. 4859/08)

Neil H. Greenberg, Westbury, N.Y. (Justin M. Reilly of counsel), for appellant.

Walsh Markus McDougal, Garden City, N.Y. (Paul R. McDougal of counsel), for respondent.

In an action to recover damages for legal malpractice, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Phelan, J.), dated January 29, 2010, as granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendant established, prima facie, that the plaintiff, a dissolved corporation, lacked the capacity to sue because the plaintiff had been dissolved before the defendant was retained, and this legal malpractice action does not relate to the plaintiff's winding up of its corporate affairs (*see* Business Corporation Law §§ 1005[a][1], 1006[a][4]; [b]; *Matter of 172 E. 122 St. Tenants Assn. v Schwarz*, 73 NY2d 340, 348-349; *Moran Enters., Inc. v Hurst*, 66 AD3d 972, 975-976; 2 *N. Broadway Food, Inc. v Anduze*, 33 AD3d 992; *Szygy Sys. Corp. v Bader*, 243 AD2d 336). The plaintiff failed to raise a triable issue of fact to rebut the defendant's prima facie showing of entitlement to judgment as a matter of law (*see Lorisa Capital Corp. v Gallo*, 119 AD2d 99, 110).

Accordingly, the Supreme Court correctly granted the defendant's motion for

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summary judgment dismissing the complaint.

COVELLO, J.P., ENG, CHAMBERS and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan
Clerk of the Court