NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 24

Case Disposed ❑
Settle Order ❑
Schedule Appearance ❑

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

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GJONAJ,PREC

Index Nº. **0026122/2002**

-against-

Hon..**PATRICIA ANNE WILLIAMS** ,

OTIS ELEVATOR COMPANY

Justice.

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The following papers numbered 1 to _____ Read on this motion, **REARGUE/RENEW/RESETTLE/RECONSI**
Noticed on **January 09 2006** and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this motion is decided in accordance with the annexed decision and order of same date.

Respectfully Referred to: _____

Dated: _____

Dated: 1/30/2006

Hon. Patricia Anne Williams

PATRICIA ANNE WILLIAMS, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX: PART IA 24

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PREC GJONAJ and DILA GJONAJ,

Plaintiffs,

- against -

OTIS ELEVATOR COMPANY, 101 PARK AVENUE ASSOCIATES, H.J. KALIKOW & CO., LLC, HJK, LLC, KALIKOW G.P. CORPORATION, 101 PARK AVENUE REALTY CORP., PETER S. KALIKOW, AND UNITED STATES TECHNOLOGIES CORPORATION,

Defendants.

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H.J. KALIKOW & CO., LLC, HJK, LLC, KALIKOW G.P. COPROPRATION and PETER S. KALIKOW,

Third-Party Plaintiffs,

- against -

ONESOURCE,

Third-Party Defendant.

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DECISION & ORDER

Index No. 26122/02

WILLIAMS, PATRICIA ANNE, J.

The plaintiff has moved pursuant to Rule 2221 of the Civil Practice Law and Rules for an order granting him leave to renew and reargue this Court's decision and order dated December 5, 2005 and filed with the Bronx County Clerk's Office on December 7, 2005. The defendants as well as third-party defendant OneSource has responded in opposition to the instant motion. The Court has reviewed the plaintiff's moving papers and is compelled to deny their application for leave to renew and reargue.

A motion for reargument of an original order is addressed to the discretion of the

court. It is intended to afford a party an opportunity to establish that the court overlooked or misapprehended relevant facts, or misapplied a controlling principle of law; it is not intended as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided. **Foley v. Roche**, 68 A.D.2d 558, 567, 418 N.Y.S.2d 588, 593 (1st Dept. 1979). CPLR Rule 2221(d) states in relevant part as follows:

> (d) A motion for leave to reargue:
> 1. shall be identified specifically as such;
> 2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and
> 3. shall be made within *thirty days* after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals.

The plaintiff's current argument amounts to an accusation that this court essentially ignored all of his arguments in opposition to the defendants' motion for summary judgment. That accusation is false.

In order to set forth a *prima facie* case of negligence, the plaintiff must demonstrate: (1) a duty owed by defendant to the plaintiff; (2) a breach of that duty ; and (3) an injury suffered by the plaintiff that was proximately caused by the breach (**Murray v. New York City Housing Authority**, 269 A.D.2d 288 [1st Dept. 2000] citing **Boltax v. Joy Day Camp**, 67 NY2d 617; **Solomon v. City of New York**, 66 NY2d 1026; **Akins v. Glens Falls City School Dist.**, 53 NY2d 325; Prosser and Keeton, Torts section 30, at 164-5 [5th ed.]). The plaintiff did not do so in this case. Rather than establish that the defendants either created a defect or condition or had actual or

constructive notice of a condition or defect in the elevator door that led to its closing on plaintiff, **Placquadio v. Recine Realty**, 84 NY2d 967, 622 NYS2d 493 (1994), the plaintiff submits a portion of the transcript of an unrelated lawsuit in which someone was injured in freight elevator 24. However, that prior accident occurred seven or eight years before the plaintiff's accident in the instant action. The plaintiff has submitted no evidence which would even tend to suggest that the elevator was in the same condition at the time of his accident – September 23, 1999 – as it was seven to eight years earlier. Nothing in the plaintiff's current papers compels this court to alter its prior findings. Accordingly, the plaintiff's motion to reargue is denied in its entirety and this court adheres to its prior decision dated December 5, 2005.

CONCLUSION

The foregoing constitutes the decision and order of this Court.

DATED: JANUARY 30, 2006

PATRICIA ANNE WILLIAMS
ACTING JUSTICE OF THE
SUPREME COURT