

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

M88889
E/cb

ANITA R. FLORIO, J.P.
HOWARD MILLER
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-05559

DECISION & ORDER ON MOTION

Tyrone Whitfield, et al., respondents,
v 26 Court Street Associates, LLC, et al.,
defendants, Schindler Elevator Corporation,
appellant.

(Index No. 24539/05)

Motion by Schindler Elevator Corporation pursuant to CPLR 5704(a) to stay the trial in the above-entitled action, and for leave to appeal to this court from an order of the Supreme Court, Kings County, dated June 12, 2009, to stay the trial in the above-entitled action pending hearing and determination of the appeal, and for a preference in the calendaring of the appeal.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the branch of the motion which is pursuant to CPLR 5704(a) to stay the trial in the above-entitled action is denied; and it is further,


ORDERED that the branch of the motion which is for leave to appeal is denied; and it is further,

ORDERED that on the court's own motion, the appeal purportedly taken as of right is dismissed, without costs or disbursements (*see* CPLR 5701[a][2]); and it is further,

ORDERED that the motion is otherwise denied as academic.

FLORIO, J.P., MILLER, LEVENTHAL and LOTT, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

July 2, 2009

WHITFIELD v 26 COURT STREET ASSOCIATES, LLC