

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

D13776  
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Submitted - January 10, 2007

WILLIAM F. MASTRO, J.P.  
DAVID S. RITTER  
PETER B. SKELOS  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

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2006-09878

DECISION & ORDER

David Ramondi, respondent, v Paramount Leasehold,  
L.P., defendant, Otis Elevator Company, appellant.

(Index No. 3858/05)

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Geringer & Dolan, LLP, New York, N.Y. (John A. McCarthy of counsel), for  
appellant.

Huttner, Berson & Budashewitz, P.C., New York, N.Y. (Jeffrey A. Berson of  
counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Otis Elevator  
Company appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings  
County (Harkavy, J.), dated September 13, 2006, as denied its motion to change venue from Kings  
County to Westchester County.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,  
and the matter is remitted to the Supreme Court, Kings County, for a hearing in accordance herewith,  
and thereafter for a new determination of the motion.

The plaintiff selected Kings County as the venue of this action based upon his  
purported residence (*see* CPLR 503[a]). The appellant moved to change venue (*see* CPLR 511),  
presenting evidence that the plaintiff resided in Nassau County when he commenced the action. The  
plaintiff's opposition papers raised an issue of fact as to whether he resided in Kings County or  
Nassau County at the time of commencement of this action. Since the issue of fact could not properly

February 6, 2007

Page 1.

RAMONDI v PARAMOUNT LEASEHOLD, L.P.

have been resolved on the papers alone, the Supreme Court should have held a hearing on the issue of residency.

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, 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