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

D25436
O/kmg

_____AD3d_____ Submitted - November 18, 2009

MARK C. DILLON, J.P.
HOWARD MILLER
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2009-00800 DECISION & ORDER

James Cronin, appellant, v Hudson Chelsea Associates, LLC, et al., respondents, et al., defendants (and a third-party action).

(Index No. 4831/04)

Aron F. Rattner, Brooklyn, N.Y., for appellant.

Goldberg Segalla, LLP, White Plains, N.Y. (William T. O'Connell of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Brandveen, J.), dated December 11, 2008, which denied his motion, denominated as one pursuant to CPLR 2221 to vacate, but which, in actuality, was for leave to reargue his prior motion, in effect, to vacate an order of the same court dated December 17, 2007, granting the motion of the defendants Hudson Chelsea Associates, LLC, Mandelbaum 23rd Street, LLC, the Kimmel Family 23rd Street, LLC, and Mondanock Construction, Inc., for summary judgment dismissing the complaint insofar as asserted against them on the ground that the plaintiff had failed to serve and file a timely response to the summary judgment motion.

ORDERED that the appeal is dismissed, with costs.

The Supreme Court denied the plaintiff's first motion, in effect, to vacate a prior order of the same court dated December 17, 2007, which had granted the motion of the defendants Hudson Chelsea Associates, LLC, Mandelbaum 23rd Street, LLC, the Kimmel Family 23rd Street, LLC, and Mondanock Construction, Inc., for summary judgment dismissing the complaint insofar as asserted

against them on the ground that the plaintiff had failed to serve and file a timely response to the summary judgment motion, as previously directed by the court. The plaintiff's second motion, which was denominated as one pursuant to CPLR 2221 to vacate, was identical to the first motion to vacate, and, thus, in actuality, was a motion for leave to reargue (*see Cunningham v Diers*, 14 AD3d 528, 529; *Agayeva v KJ Shuttle Serv.*, 284 AD2d 488; *Cangro v Cangro*, 272 AD2d 286; *Mucciola v City of New York*, 177 AD2d 553, 554). Accordingly, the appeal must be dismissed, as no appeal lies from an order denying leave to reargue (*see Cunningham v Diers*, 14 AD3d at 529; *Syed v Fedor*, 302 AD2d 451; *Lopez v Lincoln Appliances, Bedding & Furniture*, 300 AD2d 451, 452).

DILLON, J.P., MILLER, ENG, HALL and SGROI, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court