

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

IGOR TEMPERINO and ROSALINDA TEMPERINO,

Plaintiff(s),

-against-

TURNER CONSTRUCTION COMPANY and
BOSTON PROPERTIES, INC. and FIRST NATIONAL
CITY BANK,

Defendant(s).

TURNER CONSTRUCTION COMPANY and
BOSTON PROPERTIES, INC.,

Third-Party Plaintiffs,

-against-

PRIME LIGHT ELECTRICAL,

Third-Party Defendant.

The following papers numbered 1 to 3 were fully submitted on the 8th day of September, 2011.

	Papers Numbered
Defendant/Third-Party Plaintiff's Order to Show Cause, dated July 29, 2011, with _____	1
Plaintiff's Affirmation in Opposition, dated August 22, 2011 _____	2
Defendant/Third-Party Plaintiff's Reply Affirmation, dated September 6, 2011 _____	3

Plaintiff IGOR TEMPERINO alleges that he suffered personal injuries when he fell from a

ladder while he was employed by third-party defendant PRIME LIGHT ELECTRICAL. Defendant /third-party plaintiff TURNER CONSTRUCTION COMPANY (TURNER) was the general contractor of the project and defendant/third-party plaintiff BOSTON PROPERTIES, INC. was the owner of the property at the time of the accident.

In the underlying claim, plaintiff IGOR TEMPERINO has alleged he has been unable to return to work and that he is incapable of engaging in his normal activities since the accident. Plaintiff ROSALINDA TEMPERINO has asserted a claim for loss of services.

TURNER moves by Order to Show Cause for an Order, pursuant to CPLR 3101(a), (f), 3102, and 3111, for the issuance of open commissions to permit TURNER to issue *subpoenas duces tecum* to two out-of-state entities, FACEBOOK and Brotherhood of Electrical Workers, in order to obtain information and records concerning plaintiffs IGOR TEMPERINO and ROSALINDA TEMPERINO. For the reasons set forth below, TURNER's application is denied with respect to its request for a commission for plaintiffs' FACEBOOK records and granted with respect to its request for a commission for plaintiff IGOR TEMPERINO's records with Brotherhood of Electrical Records.

CPLR 3101(a) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof”. “[T]he words material and necessary are . . . to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity . . . The test is one on usefulness and reason” (*Krystal G. V. Roman Catholic Diocese of Brooklyn*, 2011 WL 4975647 quoting *Allen v. Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]). The party seeking discovery must demonstrate that “the method of

discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*Foster v. Herbert Slepoy Corp.*, 74 AD3d 1139, 1140 [2010]).

TURNER has failed to demonstrate that the issuance of a commission to obtain plaintiffs’ FACEBOOK records will result in either the disclosure of relevant evidence or that it is reasonably calculated to lead to the discovery of information related to the allegations that have been asserted by plaintiffs in this matter. The mere claim that plaintiffs were members of FACEBOOK, in and of itself, is not a sufficient basis to require the issuance of a commission.

TURNER had access to the public portion of plaintiffs’ Facebook accounts prior to plaintiffs’ depositions after which the plaintiffs’ accounts were either terminated or became private from the general public. “Plaintiff IGOR TEMPERINO was shown a picture from his FACEBOOK pages for identification purposes” during his deposition (Reply Affirmation, dated September 6, 2011, para. 9). However, TURNER fails to describe what was depicted in the photograph or whether there was any other information on either of the plaintiffs’ FACEBOOK accounts which were relevant to the issues in this case.

TURNER’s reliance on *Romanno v. Steelcase, Inc.*, 907 NYS2d 650 [Sup Ct, Suffolk County 2010] for the disclosure of plaintiff’s FACEBOOK records is misguided. In that case, the defendant had previously reviewed the public portions of the plaintiff’s MySpace and FACEBOOK pages which revealed that plaintiff had “an active lifestyle and ha[d] traveled to Florida and Pennsylvania during the time period she claim[ed] that her injuries prohibited such activity” (*Romanno, supra*, at 653). TURNER has not provided this Court with any information which would allow the Court to conclude that there is any information in plaintiffs’ FACEBOOK accounts which

“will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims “(*Foster, supra., 1140*).

Plaintiffs have not opposed TURNER’s request for the issuance for a commission for a *subpoena duces tecum* to the Brotherhood of Electrical Workers.

Accordingly, it is

ORDERED that defendant/third party TURNER CONSTRUCTION COMPANY’s request for the issuance of a commission for a *subpoena duces tecum* to FACEBOOK is denied; and it is further

ORDERED that defendant/third party TURNER CONSTRUCTION COMPANY’s request for the issuance of a commission for a *subpoena duces tecum* to Brotherhood of Electrical Workers is granted.

This shall constitute the decision and order of the court.

.Dated: November 30, 2011

E N T E R,

/s/ Philip G. Minardo
HON. PHILIP G. MINARDO