

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

D25390
Y/prt

_____AD3d_____

Submitted - November 4, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-06894

DECISION & ORDER

Tower Insurance Company of New York, as subrogee of Natalie Soleymanzadeh, respondent, et al., plaintiffs, v Robert Murello, d/b/a Robert Murello Electrical Contracting Co., et al., appellants.

(Index No. 4883/07)

Andrea G. Sawyers, Melville, N.Y. (David R. Holland of counsel), for appellants.

Law Office of Steven G. Fauth, LLC, New York, N.Y. (Francis P. Manfredi of counsel), for respondent.

In a subrogation action to recover amounts paid by the plaintiff to its insured for injury to property, the defendants appeal from an order of the Supreme Court, Nassau County (Mahon, J.), entered April 9, 2009, which denied their motion to compel the plaintiff Tower Insurance Company of New York to comply with a demand for discovery and inspection.

ORDERED that the order is affirmed, with costs.

CPLR 3101(a) provides that “there shall be full disclosure of all matter material and necessary in the prosecution . . . of an action.” “The phrase ‘material and necessary’ should 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 of usefulness and reason” (*Auerbach v Klein*, 30 AD3d 451, 452, quoting *Allen v*

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TOWER INSURANCE COMPANY OF NEW YORK, as subrogee of SOLEYMANZADEH v
MURELLO, d/b/a ROBERT MURELLO ELECTRICAL CONTRACTING CO.

Crowell-Collier Publ. Co., 21 NY2d 403, 406). Nevertheless, “unlimited disclosure is not permitted” (*Silcox v City of New York*, 233 AD2d 494). Thus, as a matter of discretion (*see Young v Tierney*, 271 AD2d 603), the court may issue a protective order where a discovery demand seeks privileged or irrelevant material (*see Holness v Chrysler Corp.*, 220 AD2d 721, 722). In this case, the plaintiff met its burden of demonstrating that the demanded documents were privileged “by virtue of being material prepared in anticipation of litigation” (*Marten v Eden Park Health Servs.*, 250 AD2d 44, 46-47; *Landmark Ins. Co. v Beau Rivage Rest.*, 121 AD2d 98).

SKELOS, J.P., FLORIO, BALKIN, BELEN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court