

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

D27163  
H/prt

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Submitted - December 4, 2009

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

2008-11100

DECISION & ORDER

Paula Foster, plaintiff, v Herbert Slepoy Corp., et al.,  
appellants, Kerry Clancy, respondent.

(Index No. 11768/07)

Fumuso, Kelly, DeVerna, Snyder, Swart & Farrell, LLP, Hauppauge, N.Y. (Scott G. Christesen of counsel), for appellants.

In an action to recover damages for personal injuries, the defendants Herbert Slepoy Corp. and North and South Lewis Place Owners Corp. appeal from an order of the Supreme Court, Nassau County (Diamond, J.), dated November 7, 2008, which denied their motion pursuant to CPLR 3124 and 3126 to compel the defendant Kerry Clancy to produce documents requested in their notice of discovery and inspection dated June 10, 2008, and to appear for another deposition.

ORDERED that the order is affirmed, without costs or disbursements.

CPLR 3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense 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’” (*Friel v Papa*, 56 AD3d 607, 608, quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406). A party, however, does not have the right to “uncontrolled and unfettered disclosure” (*Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531, 531; see *Barouh Eaton Allen Corp. v International Bus. Machs. Corp.*, 76 AD2d 873). “It is incumbent on the party seeking disclosure to 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” (*Vyas v*

*Campbell*, 4 AD3d 417, 418, quoting *Crazytown Furniture v Brooklyn Union Gas Co.*, 150 AD2d 420, 421).

“The Supreme Court has broad discretion in the supervision of discovery, and its determinations should not be disturbed on appeal unless improvidently made” (*Casabona v Huntington Union Free School Dist.*, 29 AD3d 723, 723; see *Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 746; *Milbrandt & Co., Inc. v Griffin*, 19 AD3d 663; *Provident Life & Cas. Ins. Co. v Brittenham*, 284 AD2d 518). Here, the Supreme Court providently exercised its discretion in concluding, inter alia, that the additional discovery sought by the appellants was neither material nor necessary to the prosecution or defense of any claim (see CPLR 3101[a]; *Casabona v Huntington Union Free School Dist.*, 29 AD3d 723; *Vyas v Campbell*, 4 AD3d 417; *Palermo Mason Constr. v Aark Holding Corp.*, 300 AD2d 460).

MASTRO, J.P., FISHER, BELEN and AUSTIN, 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