

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

DECEASED: JANE S. SOLOMON

PART 55

Index Number : 108434/2009

HABIB, MYRON

vs

116 CENTRAL PARK SOUTH

Sequence Number : ~~001~~ 002

COMPEL DISCLOSURE

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. 2128/11

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*is decided by the attached memorandum decision and order.*

**FILED**

MAR 01 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: 2/28/11

JANE S. SOLOMON

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 55

-----X  
HABIB, MYRON,

Index No. 108434/2009

Plaintiff,

DECISION AND ORDER

-against-

116 CENTRAL PARK SOUTH CONDOMINIUM,  
GUMLEY HAFT and PARK HOUSE  
ASSOCIATES, LTD., 120 OWNERS CORP.,  
and COOPER SQUARE REALTY, INC.

**FILED**

MAR 01 2011

Defendant.

NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
SOLOMON, J.:

This law suit is for damages arising from a slip and fall. Defendants 120 Owners Corp and Cooper Square Realty, Inc., move for an order compelling plaintiff Myron Habib, an eighty year old man, to provide authorizations for Facebook, MySpace and/or Twitter. Plaintiff admits he has a Facebook and MySpace account, though not Twitter. Defendants do not articulate why they believe that plaintiff has commented about his claim or related injury on those social networks.

Plaintiffs who place their physical condition in controversy may not shield from disclosure material necessary to the defense of the action. Discovery is generally permitted with respect to material that may be relevant to the issue of damages.

Defendants cite to *Romano v. Steelcase, Inc.*, 30 Misc3d 426 (Suffolk County, 2010) for the proposition that authorizations for Facebook and MySpace should be freely given because those internet sites carry no expectation of privacy. In

Romano, the plaintiff alleged that she sustained permanent injuries and could no longer participate in "certain activities" and that the injuries effected her enjoyment of life. She testified at her deposition that she was largely confined to her house and bed. Defendants sought authorizations for her Myspace and Facebook pages, because the public portions of these pages disclosed an "active lifestyle" and travel during the time she claims that she could not do so. The Court reviewed the public portion of her accounts and found that Romano's public profile contained a picture showing her smiling happily outside the confines of her house. The Court stated: "In light of the fact that the public portions of Plaintiff's social networking sites contain material that is contrary to her claims and deposition testimony, there is a *reasonable likelihood* that the private portions of her sites may contain further . . . information with regards to her activities and enjoyment of life . . ." (Id. [emphasis added]). Accordingly, the Court concluded that, once such a reasonable likelihood exists, granting access to the private portions of the sites would not violate a plaintiff's right to privacy, which is outweighed by the defendant's need for information.

Defendants here do not offer a reasonable explanation as to why they believe that material information would appear on plaintiff's social network pages. Without the explanation, the requested authorization is a fishing expedition (see, *McCann v.*

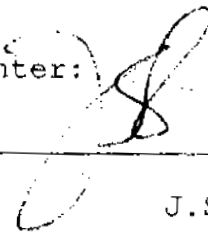
Harleystville Ins. Co. of New York, 78 AD3d 1524 [4<sup>th</sup> Dept., 2010][upheld denial of disclosure demand seeking "an authorization for plaintiff's Facebook account" on the ground that it was an over-broad fishing expedition]).

Accordingly, it hereby is

ORDERED that the motion is denied.

Dated: February 28, 2010

Enter:



J.S.C.

JANE S. SOLOMON

**FILED**

MAR 01 2011

NEW YORK  
COUNTY CLERK'S OFFICE