ARK 315 v Diocese of Brooklyn
2020 NY Slip Op 33331(U)
October 9, 2020
Supreme Court, Kings County
Docket Number: 512989/2020
Judge: George J. Silver
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----------X
ARK 315,

Index №. 512989/2020

Plaintiff,

-against-

DIOCESE OF BROOKLYN, *et al.*

Defendants
----------X
HON. GEORGE J. SILVER:

With the instant application plaintiff moves, by Order to Show Cause, for permission from this court to proceed in anonymity during this action.

ARGUMENT

Plaintiff argues that allowing plaintiff to proceed under a pseudonym would spare plaintiff from the stigmatization and potential embarrassment that may arise as the result of the adjudication of this matter in a public forum. Plaintiff, like other similarly situated plaintiffs, is especially concerned about renewed scrutiny that may ensue due to New York State's enactment of the Child Victims Act (L. 2019 c.11) ("CVA") which, *inter alia*, (1) extends the statute of limitations on criminal cases involving certain sex offenses against children under 18 (*see* CPL §30.10 [f]); (2) extends the time which civil actions based upon such criminal conduct may be brought until the child victim reaches 55 years old (*see* CPLR §208 [b]); and (3) opens a one-year window reviving civil actions for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing six months after the effective date of the measure, i.e. August 14, 2019 (*see* CPLR §214-g). Indeed, plaintiff maintains that this case is likely to draw attention from the media, and if plaintiff is not allowed to proceed under a pseudonym, increased media attention may lead to a chilling effect that may inhibit plaintiff and other alleged victims of abuse from coming forward.

In support of the instant application, plaintiff annexes the affidavit of Susan Phipps-Yonas, P.h.D., L.P. ("Dr. Phipps-Yonas"), a licensed clinical psychologist with an expertise in the evaluation of alleged victims of childhood sexual abuse. Dr. Phipps-Yonas states that publication of plaintiff's name would take a heavy psychological toll on plaintiff, and potentially inhibit plaintiff's ability to continue with this lawsuit. Dr. Phipps-Yonas further argues that revelation of plaintiff's name would be tantamount to re-victimization as it would "likely exacerbate any preexisting psychiatric problems."

Plaintiff separately argues that there is precedent for the relief sought herein, and that statutory authority within New York, including the CVA itself, supports plaintiff's request to proceed pseudonymously during the course of this lawsuit.

Defendants DIOCESE OF BROOKLYN and OUR LADY OF ANGELS reached an agreement with plaintiff regarding the instant Order to Show Cause. That agreement is reflected in the attached stipulation, which has been so-ordered by this court.

Nevertheless, in opposition defendants FRANCISCAN BROTHERS OF BROOKLYN argue that the presumption in favor of open judicial proceedings should outweigh the use of a pseudonym, as this is not an "exceptional" circumstance wherein plaintiff should be afforded the protection of proceeding pseudonymously. In addition, defendants FRANCISCAN BROTHERS OF BROOKLYN state that there is no statutory basis for the relief sought by plaintiff, and no basis upon which to conclude that plaintiff's allegations are credible at this juncture in the litigation. Defendants FRANCISCAN BROTHERS OF BROOKLYN also attack the probative value of Dr. Phipps-Yonas' affidavit, and state that this court granting plaintiff's instant application would deprive defendants FRANCISCAN BROTHERS OF BROOKLYN of their entitlement to a fair trial. In particular, defendants contend that if defendants are unable to ascertain plaintiff's true identity, defendants FRANCISCAN BROTHERS OF BROOKLYN will be unable to defend themselves against plaintiff's claims because defendants will be incapable of connecting their alleged acts of impropriety to any specific person or potential witnesses associated with that person. This, defendants FRANCISCAN BROTHERS OF BROOKLYN aver, would violate defendants' basic due process rights of notice and an opportunity to be heard. As such, defendants FRANCISCAN BROTHERS OF BROOKLYN submit that plaintiff's application must be denied in its entirety.

DISCUSSION

In general, "[t]he determination of whether to allow a plaintiff to proceed anonymously requires the court to use its discretion in balancing plaintiff's privacy interest against the presumption in favor of open trials and against any prejudice to defendant" (*Anonymous v. Lerner*, 124 AD3d 487, 487 [1st Dept 2015] [internal quotation marks and citations omitted]; *see J. Doe No. 1 v. CBS Broadcasting, Inc*., 24 AD3d 215 [1st Dept 2005]; *see also Doe v. Szul Jewelry, Inc*., 2008 NY Slip Op 31382 [U] [Sup Ct, NY County 2008]). Among the recognized values of open access to civil proceedings is that "the bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud" (*Danco Labs. v. Chemical Works of Gedeon Richter*, 274 AD2d 1, 7, [1st Dept 2000]). Likewise, the very openness of the process should provide the public "with a more complete understanding of the judicial system and a better perception of its fairness" and serves to "ensure that the proceedings are conducted efficiently, honestly and fairly" (*Danco*, 274 AD2d at 7, *supra*).

However, the right of the public, and the press, to access judicial proceedings is not absolute or unfettered, and involves judicial discretion (*Lerner*, 124 AD3d at 487, *supra*). Moreover, access may still be respected in keeping with constitutional requirements while

sensitive information is restricted in keeping with "the State's legitimate concern for the well-being" of an individual (*Globe Newspaper Co. v. Superior Ct*., 457 U.S. 596, 606 [1982]).

A plaintiff's privacy interests, although not recognized under New York State's common law, are found in the Civil Rights Law ("CRL") (*see Stephano v. News Group Publications, Inc*., 64 NY2d 174, 182 [1984]; *Arrington v. New York Times Co*., 55 NY2d 433, 440 [1982]). Indeed, pursuant to CRL §50-b "The identity of any victim of a sex offense, as defined in article one hundred thirty or section 255.25, 255.26, or 255.27 of the penal law, or of an offense involving the alleged transmission of the Human Immunodeficiency Virus, shall be confidential...." However, this statute does not apply to everyone claiming to have been the victim of a sexual assault. Rather, the statute was enacted to spare victims of sexual assault the embarrassment of being publicly identified in the news media and to encourage such victims to cooperate in the prosecution of sexual offenses (*see* New York Bill Jacket, 1999 S.B. 5539, Ch. 643). Courts have afforded victims of sexual offenses protection under CRL §50-b where there has either been an arrest and prosecution, or there is an investigation (*see People v. McDaniel*, 81 NY2d 10 [1993]).

In addition, while "[i]t is elementary that the primary function of a pleading is to apprise an adverse party of the pleader's **claim**" the same does not necessarily apply to a pleader's name (*Cole v. Mandell Food Stores, Inc*., 93 NY2d 34, 40 [1999][emphasis added]).

The instant case involves alleged acts that will no doubt center on information about plaintiff of a sensitive and highly personal nature. The court recognizes that plaintiff, as the alleged victim of sexual abuse, has arguably suffered great emotional distress. Indeed, plaintiff's counsel argues in support of the instant application that plaintiff suffers from the lingering effects of emotional distress, embarrassment, and sexual dysfunction as a result of the alleged abuse at issue here. Moreover, plaintiff avers that denial of plaintiff's present application would chill plaintiff, and other alleged victims of child sexual abuse, from coming forward with their claims. Dr. Phipps-Yonas agrees, and submits that plaintiff is likely to endure re-victimization if plaintiff's identify is disclosed.

Decidedly, this case has not been brought against a government entity, a factor this court believes would militate in favor of the public's right to know. Instead, defendants are private entities, and therefore are not prejudiced at this time. In contrast, as previously alluded to, revelation of plaintiff's name could unsettle plaintiff and perhaps deter plaintiff from litigating this matter. Such an outcome would undoubtedly undermine the very purpose for which the CVA was enacted. To be sure, revelation of plaintiff's identity would undermine the litigation by denying a portion of the relief ultimately requested in the action.

Defendants FRANCISCAN BROTHERS OF BROOKLYN have failed to advance any legitimate reason why plaintiff should not be afforded the protection of anonymity in this case. Instead, defendants FRANCISCAN BROTHERS OF BROOKLYN emphasize that they would endure prejudice while investigating this case if plaintiff is afforded the protection of anonymity. However, contrary to defendants FRANCISCAN BROTHERS OF BROOKLYN's argument, no prejudice can be alleged where, as here, defendants FRANCISCAN BROTHERS OF BROOKLYN will be provided with plaintiff's personal identifying information for the purpose of

advancing discovery in this matter. Moreover, as recognized by plaintiff, this case differs from cases such as *Doe v. Good Samaritan Hosp*., 2019 N.Y. Misc. LEXIS 5383, *2-*3 (Sup. Ct. Nassau Cty. 2019), where an application to proceed under a pseudonym was denied because the record consisted of a "bare bones" affirmation of counsel. In contrast, here plaintiff has provided a detailed affidavit of a licensed clinical psychologist with an expertise in the evaluation of alleged victims of childhood sexual abuse, Dr. Phipps-Yonas. As such, there is firm foundation supporting the grant of anonymity in this case.

The CVA was enacted with the protections codified under CRL §50-b in mind. To be sure, the legislature wanted to avoid exposing alleged victims to the lasting scars of broadcasted exposure while "help[ing] the public identify hidden child predators through civil litigation discovery, and shift the significant and lasting costs of child sexual abuse to the responsible parties." Considering the foregoing, it is axiomatic that plaintiff should be afforded the protection of anonymity. Defendants FRANCISCAN BROTHERS OF BROOKLYN's attacks on the viability of CRL §50-b to this proceeding are unavailing. While it is argued that no criminal prosecution has ever been initiated based on the alleged sexual misconduct at issue in this civil suit, the mere existence of the CVA, a claim revival statute, presupposes that a criminal investigation could still be initiated against individuals currently or formerly employed by defendants FRANCISCAN BROTHERS OF BROOKLYN. To be sure, numerous criminal and civil prosecutions predicated upon otherwise time-barred claims have been advanced since the enactment of the CVA.

In addition, defendants FRANCISCAN BROTHERS OF BROOKLYN falsely analogize plaintiff's request for anonymity here to a scenario in which they sought the same protection. The parties' relative positions in this litigation are poles apart . Defendants are private institutions, and while revelation of their identity may be perceived as impinging upon an expectation of privacy, courts have long recognized that the anonymity protection afforded to a unique subset of plaintiffs oftentimes does not extend to defendants. Indeed, among the factors considered in permitting the use of a pseudonym are: " whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature" (*James v. Jacobson*, id. at 238; *see also Doe v. Provident Life & Acc. Ins. Co*., 176 F.R.D. 464, 467-8 [E.D.Pa.1997]). Defendants FRANCISCAN BROTHERS OF BROOKLYN's identify, were defendants FRANCISCAN BROTHERS OF BROOKLYN seeking the same anonymity protections sought by plaintiff, would fall within the ambit of the former justification. To be sure, any embarrassment that stems from the publication of defendants' institutional names is indistinguishable from the embarrassment that is likely to befall any defendant accused of wrongdoing in a civil action. Defendants' FRANCISCAN BROTHERS OF BROOKLYN's assumption is that plaintiff and defendants stand on an even plain as far as anonymity is concerned. This assumption is a false one under existing precedent. Moreover, as private institutions with scores of employees, defendants FRANCISCAN BROTHERS OF BROOKLYN by definition and sheer size, are already receiving anonymity protections that do not inure to a private citizen accused of wrongdoing.

Finally, defendants FRANCISCAN BROTHERS OF BROOKLYN's argument concerning prejudice occasioned by a lack of due process is unpersuasive. Plaintiff has agreed to share details about plaintiff's identity with defendants so that defendants' due process rights are not violated. In return, plaintiff is simply asking defendants not to reveal those details publicly – an arrangement that has notably been accepted in the lion share of CVA cases litigated before this court. Notably, defendants DIOCESE OF BROOKLYN and OUR LADY OF ANGELS reached an agreement with plaintiff regarding plaintiff's instant request. Honoring that stipulation as well as defendants' FRANCISCAN BROTHERS OF BROOKLYN's request for plaintiff to proceed in plaintiff's legal name would be unfeasible, and would run athwart of the court's interest in judicial economy, particularly amidst present circumstances.

At the end of the day, a grant of anonymity by this court impacts far less on the public's right to open proceedings than does the actual closing of a courtroom or the sealing of records. Ultimately, in this court's view, the public has an interest in seeing this case determined on its merits, after the parties have had an opportunity to fully and properly litigate the issues presented. Anonymity, at this juncture, will preserve the integrity of that stated objective. Accordingly, plaintiff's application seeking anonymity is granted.

Accordingly, for the reasons stated above, it is hereby

ORDERED that plaintiff's motion to file a complaint and proceed herein under a pseudonym, rather than in plaintiff's legal name, and to proceed throughout this action under such pseudonym, rather than in plaintiff's own name, is granted; and it is further

ORDERED that plaintiff serve a copy of this decision, with notice of entry, upon defendants within 20 days of this court's decision and order; and it is further

ORDERED that the court shall issue a separate notice to the parties regarding a future appearance in this matter.

The foregoing constitutes the decision and order of the court.

Dated: October 9, 2020

GEORGE J. SILVER, J.S.C.