

Doe v Szul Jewelry, Inc.
2011 NY Slip Op 32195(U)
August 4, 2011
Sup Ct, NY County
Docket Number: 604277/2007
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH PART 54

Justice

Index Number : 604277/2007

"DOE, JANE"

VS.

SZUL JEWELRY, INC.

SEQUENCE NUMBER : 004

SEAL ORDER

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

motion to/for _____

_____ No(s). _____

_____ No(s). _____

_____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

FILED

AUG 05 2011

NEW YORK
COUNTY CLERK'S OFFICE

JUSTICE SHIRLEY WERNER KORNREICH

Dated: 8/4/11

J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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

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

FILED

AUG 05 2011

-----X
AN INDIVIDUAL DESCRIBED HEREIN BY THE
PSEUDONYM, "JANE DOE,"

NEW YORK
COUNTY CLERK'S OFFICE
Index No.: 604277/2007

Plaintiff,

-against-

DECISION and ORDER

SZUL JEWELRY, INC. and Q2 ENTERTAINMENT,

Defendants.

-----X
HON. SHIRLEY WERNER KORNREICH, J.:

Upon the foregoing papers, plaintiff's motion for an order sealing the entire court file in this action is granted, on default. This action arises out of an agreement between plaintiff and defendants pursuant to which plaintiff provided acting services to defendant Szul Jewelry, Inc. (Szul) and its advertisement production company Q2 Entertainment (Q2). In November of 2007, plaintiff participated in a film shoot as part of the production of an advertisement for Szul's jewelry products. Verified Complaint, p. 2-3. She alleges that she was told that the advertisement was to be of a comedic nature. *Id.*, at 3. She was asked to express excitement and pleasure in response to being given one of Szul's products. *Id.*, at 3-4. She alleges that the following month, Szul used the footage in an internet advertisement and used it out of context in such a way as to suggest that she derived sexual pleasure from receiving the necklace. Plaintiff claims that she never consented to the use of her image in such manner. *Id.*, at 4. She thus brought causes of action against defendants for violation of the New York Civil Rights Law Sections 50 and 51, violation of the General Business Law Section 349, unfair competition, unjust enrichment, fraud, and breach of fiduciary duty.

Given the prurient nature of the advertisement and plaintiff's justifiable fear that

information made public in this lawsuit might damage her reputation and career, plaintiff filed the complaint under the pseudonym “JANE DOE.” She also avoided stating her name or otherwise identifying herself anywhere in the papers she submitted to the court. By a decision and order dated May 8, 2008, the court denied defendants’ motion to compel plaintiff to amend the caption to reflect her legal name. In that decision, the court noted that neither defendants nor the public at large would be prejudiced if plaintiff continued the action anonymously. Instead, the court found that the plaintiff might suffer serious harm to her reputation if her involvement in this matter were made public. Equally as important, the court noted that forcing plaintiff to reveal her identity would largely defeat the purpose of the action—to prevent the content in the advertisement and her association with it from being made public.

In October of 2008, the parties reached a settlement in this action. Plaintiff’s counsel avers that the “settlement agreement did not permit Defendants to reveal Plaintiff’s name to any third party or in any way jeopardize her court-mandated anonymity.” *Mulhearn Affirm.*, P. 2. However, Mr. Mulhearn avers that plaintiff “has received notice that third parties have received court papers in connection with this case—and despite the diligent efforts of the Court and the parties’ agreement, have attempted to associate her with the case.” *Id.* P. 3. It appears that plaintiff has held several employment positions that involved working with children and hopes to continue such work in the future. She thus fears that any public association between her and the kind of sexually-charged content that appeared in the advertisement will have “potentially catastrophic implications for her future professional endeavors, not to mention her personal reputation, and peace of mind. *Id.* Plaintiff thus now moves the court to issue an order sealing the entire court file in this case. Defendant has not submitted any opposition.

22 NYCRR 216.1(a) states that:

Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

Despite this presumption against ordering the sealing of court records, the public's right to access to judicial records is not absolute. *Matter of Crain Communications v Hughes*, 135 AD2d 351 (1st Dept 1987) *aff'd* 74 NY2d 626 (1989). Whether such "good cause" for sealing exists is a matter of discretion for the trial court and is to be made by balancing the interest of the public and the parties in light of the facts of the particular case at bar. *Id.*, *See also Doe v Bellmore-Merrick Cent. High School Dist.*, 1 Misc3d 697 (NYSup 2003), *Matter of Twentieth Century Fox Film Corp.*, 190 AD2d 483 (1st Dept 1993). Also counterbalancing the public's right to access is the strong public interest in encouraging the settlement of private litigation, which may at times be contingent on the parties' agreement not to make certain information public. *Matter of Crain Communications, supra* (upholding the lower court's decision to seal court records in order to facilitate a settlement the parties made contingent on the nondisclosure of trade secrets).

Here, the public has no significant interest in having access to the records submitted in this case. This is not, for instance, a tort action involving allegations of defective products where the sealing of records would prevent members of the public from receiving notice of the potential harm of products they had purchased. *See Matter of Twentieth Century Fox Film Corp.* Nor is it an action involving the conduct of a government agency or any matter of general public concern. It is, instead, a private matter between the parties and involves material of a salacious nature, the continued public availability of which could cause significant harm to plaintiff's career and reputation. Further, public access to this information, especially if it can be connected to the

plaintiff, would defeat the purpose of the settlement agreement—ensuring that the content of the advertisement and the facts surrounding its creation would not be available to the general public.

Accordingly, it is hereby

ORDERED that, upon good cause shown, plaintiff's motion for an order to seal the entire court file in this action is granted, on default, and it is further

ORDERED that the County Clerk is directed to seal the file in this action in its entirety upon service on him of a copy of this order; and it is further

ORDERED that thereafter, or until further order of the court, the County Clerk shall deny access to the file to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party, and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from said counsel.

Dated: _____

8/4/11

Enter: _____

J.S.C.

FILED

AUG 05 2011

**NEW YORK
COUNTY CLERK'S OFFICE**