

Jane Doe #10 v New York & Presbyt. Hosp.
2013 NY Slip Op 34225(U)
December 10, 2013
Supreme Court, New York County
Docket Number: 805293/13
Judge: Manuel J. Mendez
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PRESENT: MANUEL J. MENDEZ PART 13
Justice

“JANE DOE #10”,

Plaintiff

INDEX NO. 805293/13

MOTION DATE 11-27-2013

-Against-

THE NEW YORK AND PRESBYTERIAN HOSPITAL;
COLUMBIA PRESBYTERIAN MEDICAL CENTER;
COLUMBIA UNIVERSITY MEDICAL CENTER;
EAST SIDE ASSOCIATES; EAST SIDE ASSOCIATES;
ROBERT HADDEN, M.D.; THE TRUSTEES OF
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK;
THE TRUSTEES OF COLUMBIA UNIVERSITY
COLLEGE OF PHYSICIANS AND SURGEONS;
PRESBYTERIAN HOSPITAL PHYSICIANS SERVICES
ORGANIZATION, INC.; COLUMBIA-CORNELL CARE,
LLC; COLUMBIA CORNELL NETWORK PHYSICIANS,
INC.; SLOANE HOSPITAL FOR WOMEN,

MOTION SEQ. NO. 001
MOTION CAL. NO.

Defendant.

The following papers, numbered 1 to 12 were read on this motion to proceed anonymously and cross motions to dismiss or compel amendment of summons and complaint to include plaintiff's legal name and/or reciprocal anonymity .

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits _____	<u>3-4, 5-6</u>
Replying Affidavits _____	<u>7-8,9-10,11-12</u>

Cross-Motion: X Yes No

Upon a reading of the foregoing cited papers, it is ordered that the motion to proceed anonymously is denied, the cross motions to dismiss or compel amendment of the summons and complaint to include plaintiff's legal name and/or for reciprocal anonymity is granted as stated herein.

Plaintiff files this motion for an order permitting plaintiff to proceed with this action using the pseudonym “Jane Doe #10” claiming the privacy protections afforded victims of sex crimes under New York Civil Rights Law § 50-b. Defendants oppose the motion and cross move to dismiss for lack of personal jurisdiction or for an order compelling amendment of the summons and complaint to include plaintiff's legal name and/or granting anonymity to all the parties.

This matter arises from the alleged sexual assault of plaintiff by the defendant Robert Hadden, M.D., while she was a patient treating in defendant's Gynecologic

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

practice. It is alleged that as a result of the sexual assault plaintiff has experienced shame, embarrassment, humiliation and psychologic trauma. She seeks to proceed anonymously due to the highly sensitive and private nature of the assault and to avoid the trauma, shame and embarrassment that public disclosure will cause her, her husband and her family.

Defendants deny that the alleged acts of sexual assault ever took place. They oppose the motion on the ground that plaintiff has not proven that she is the "victim of a crime" entitled to the protections of Civil Rights Law § 50-b. Defendants also claim that the papers were defectively filed, that plaintiff has not obtained personal jurisdiction over them because the Summons and Complaint do not contain the names of all parties, and that if the court were to grant plaintiff to proceed anonymously it should grant the same relief to defendants.

Pursuant to Civil Rights Law § 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. The statute was created to spare the victim of a 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). "The legislative history reveals that the 'victim of a sex offense' contemplated by the statute is one whose cooperation is necessary toward the prosecution of a sex crime" (Doe v. Kidd, 19 Misc. 3d 782, 860 N.Y.S.2d 866 [Sup. Ct. N.Y. Co., 2008, Edmead J.])

Courts have afforded victims of sexual offenses protection under Civil Rights Law §50-b where there has either been an arrest and prosecution, or there is an investigation (see People v. McDaniel, 81 N.Y.2d 10, 611 N.E.2d 265, 595 N.Y.S.2d 364 [1993] defendant charged and prosecuted for rape; Matter of Fischetti, 44 A.D.3d 89, 840 N.Y.S.2d 575 [1st. Dept. 2007] defendant charged and prosecuted for sex abuse; Deborah S., v. Diorio, 153 Misc.2d 709, 583 N.Y.S.2d 872 [Civ. Ct. N.Y. 1992] Defendant charged for rape, sodomy and sexual assault). The First Department has held that Civil Rights Law § 50-b was inapplicable where a sex offense charge against a defendant in an underlying criminal case was dismissed (Brown v. New York City Police Department, 264 A.D.2d 558, 694 N.Y.S.2d 385 [1st. Dept. 1999]).

There has been no proof of an arrest, prosecution or of a pending investigation submitted in support of this motion. The use of fictitious names has been noted to run afoul of the public's common law right of access to judicial proceedings. When balancing the plaintiff's claimed right to privacy against the presumption of openness in judicial proceedings, the scale tips in favor of disclosure; anonymity is warranted where there is a substantial privacy right which outweighs the customary and constitutionally embedded presumption of openness in judicial proceedings (see J. Doe No. 1 v. CBS Broadcasting, Inc., 24 A.D.3d 215, 806 N.Y.S.2d 38 [1st. Dept. 2005]). Plaintiff's allegations are insufficient to support anonymity. She has not made a showing of how she would be harmed by disclosure of her identity beyond vague allegations of embarrassment, as such her motion to proceed anonymously is denied. (Matter of Doe v. New York City Police Department, 39 Misc.3d 1229(A), 972 N.Y.S.2d 143 [N.Y. Sup. 2013]).

Pursuant to CPLR § 2101[c] "... in a summons, a complaint or a judgment the title shall include the names of all parties...." Plaintiff filed a summons and complaint together with an order to show cause, with a Temporary Restraining Order (TRO), seeking leave to proceed anonymously. The Temporary Restraining Order granted plaintiff the interim relief of proceeding under the Pseudonym "Jane Doe #10" pending resolution of the motion. Since this motion has been decided against plaintiff, she shall now proceed in her legal name.

Accordingly, it is ORDERED that plaintiff's motion to proceed anonymously under the pseudonym "JANE DOE #10" is denied, and it is further

ORDERED, that defendants cross motions to dismiss is denied, and it is further

ORDERED, that defendants motion compelling plaintiff to amend her summons and complaint to reflect her legal name is granted, and it is further

ORDERED, that within 30 days from the date of this order plaintiff shall amend the summons and complaint to reflect her legal name, and it is further

ORDERED that the caption of this action shall be amended to substitute plaintiff's legal name in place of the pseudonym "Jane Doe # 10", removing the pseudonym from the caption, and it is further

ORDERED that the amended complaint containing the plaintiff's legal name shall be deemed to have been served upon service on defendants' attorneys of a copy of the amended complaint together with a copy of this order with notice of entry, and it is further

ORDERED that defendants shall serve and file an answer to the amended complaint or otherwise respond thereto within 30 days of said service, and it is further

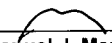
ORDERED that the balance of the cross motions is denied, and it is further

ORDERED that within 60 days from the date of this order, counsel for plaintiff shall serve a copy of this order with notice of entry, together with a copy of the amended summons and complaint, upon the county clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158) who are directed to mark the court's records to reflect the amendment.

Enter:

MANUEL J. MENDEZ
J.S.C.

Dated: December 10, 2013


Manuel J. Mendez
J.S.C.

Check one: **FINAL DISPOSITION** **X NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**