

ARK88 DOE v Archdiocese of N.Y.

2019 NY Slip Op 33352(U)

November 4, 2019

Supreme Court, New York County

Docket Number: 950065/2019

Judge: George J. Silver

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

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ARK88 DOE

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Plaintiff,

-against-

ARCHDIOCESE OF NEW YORK, et al.

Defendants

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

With the instant application plaintiff ARK88 DOE (“plaintiff”) moves, by Order to Show Cause, for permission from this court to proceed in anonymity during this action. Defendant Archdiocese of New York has submitted an agreed-upon stipulation waiving all objections to plaintiff’s requested relief to proceed using a pseudonym. To date, defendant Fordham Preparatory School has not filed any opposition or otherwise noted an objection to the instant application. However, defendant USA Northeast Province of Society of Jesus (hereinafter referred to as “defendant”) opposes the application, arguing that the anonymity protection sought by plaintiff would run athwart of defendant’s basic due process rights.

ARGUMENT

In support of the instant application to proceed anonymously, 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. Plaintiff further highlights that the protection of anonymity is uniquely afforded to victims of sexual assault rather than to their alleged perpetrators. Moreover, plaintiff argues that revelation of defendant’s name serves the public interest insofar as it alerts the public to potential institutional wrongdoing in the hopes that such wrongdoing is never repeated.

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In opposition, defendant argues that “[p]laintiff’s request for this court to permit them [sic] to proceed anonymously should be denied because it is not justified in this case and would violate the defendant’s due process rights.” In particular, defendant contends that if defendant is unable to ascertain plaintiff’s identity, defendant will be unable to defend itself against plaintiff’s claims because defendant will be incapable of connecting its alleged acts to any specific person. This, defendant avers, would violate “defendant’s basic due process rights of notice and an opportunity to be heard.” Citing *Doe v. Roman Catholic Archdiocese*, 64 Misc.3d 1220(A)(N.Y. Sup. Ct. West. County July 31, 2019), defendant submits that at least one trial court has concluded that potential embarrassment to a plaintiff does not outweigh a defendant’s ability to defend itself against claims of alleged sexual abuse.

In reply, plaintiff highlights that a number of defendants in this and other actions have already consented to allowing plaintiffs to proceed anonymously. Plaintiff argues that this case should be treated no differently.

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

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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]).

Moreover, as highlighted by plaintiff in the present proceeding, 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. To be sure, 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 undoubtably suffered great emotional distress. Moreover, 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, defendant is a private institution, and while revelation of its 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]). Defendant's request falls within the ambit of the former justification. To be sure, any embarrassment that stems from the publication of defendant's name is indistinguishable from the embarrassment that is likely to befall any defendant accused of wrongdoing in a civil action. Defendant's assumption is that a plaintiff and a defendant stand on an even plain as far as anonymity is concerned. This assumption is a false one under existing precedent. Moreover, as a private institution with scores of employees, defendant is by its nature and size already receives anonymity protection that would not inure to a private citizen accused of wrongdoing.

Aesop, the Greek fabulist and storyteller, is credited with having said the oft-repeated aphorism that “the injuries we do and those we suffer are seldom weighed in the same scales.” That principle applies here, where the legislature has codified specific protections for alleged victims of sexual assault that do not apply to alleged perpetrators of that abuse. While that principle may be viewed by defendant as unfair, it nonetheless is the state of the law by which this court is bound. Defendant overlooks the logic that underlies the present state of the law. To be sure, it has long been held that the victims of sexual assault stand in an inimitable position. The fortification sought by plaintiff here represents but one, carefully curated, protection that alleged victims of sexual assault can avail themselves of.

Finally, defendant's reliance on *Doe v. Roman Catholic Archdiocese*, 64 Misc.3d 1220(A)(N.Y. Sup. Ct. West. County July 31, 2019) is misplaced. That case involved a plaintiff who

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was seeking to proceed under a pseudonym while simultaneously refusing to disclose his true identity to both defendants and the court. Unlike *Doe*, here plaintiff has agreed to share details about plaintiff's identity with defendant so that defendant's due process rights are not violated. In return, plaintiff is simply asking defendant not to reveal those details publicly – an arrangement that has notably been accepted in the lion share of CVA cases before this court.

Notably, 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, it is, for the reasons stated above, 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 a pseudonym, rather than in plaintiff's own name, is granted; and it is further

ORDERED that plaintiff is directed to serve a copy of this decision, with notice of entry, upon defendants within 10 days of this court's decision and order; and it is further

ORDERED that plaintiff personally serve defendants with the complaint within 20 days thereafter; and it is further

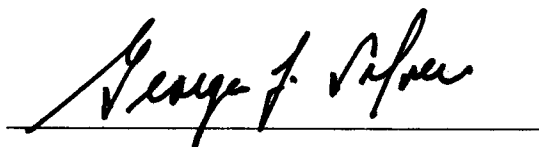
ORDERED that plaintiff provide defendants with the abovenamed plaintiff's name (including maiden names, if any), date of birth, social security number, parents and/or guardians' names, current address, and address at the time of the alleged abuse; and it is further

ORDERED that the time for defendants to appear and to answer, amend, or supplement their answers or to make any motion with relation to the summons or to the complaint in this action, be and the same hereby is extended to November 30, 2019; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on December 10, 2019 at the courthouse located at 111 Centre Street, New York, NY, Room 1227 at 2:00 P.M.

The foregoing constitutes the decision and order of this court.

Dated: *November 4, 2019*



HON. GEORGE J. SILVER