

<b>Twersky v Yeshiva Univ.</b>
2020 NY Slip Op 34012(U)
December 2, 2020
Supreme Court, New York County
Docket Number: 950111/2019
Judge: George J. Silver
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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**MORDECHAI TWERSKY, BARRY SINGER, JAY  
 GOLDBERG, DAVID BRESSLER, ZACHARY BELIL,  
 JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4,  
 JOHN DOE 5, JOHN DOE 6, JOHN DOE 7, JOHN DOE 8,  
 JOHN DOE 9, JOHN DOE 10, JOHN DOE 11, JOHN DOE  
 12, JOHN DOE 13, JOHN DOE 14, JOHN DOE 15, JOHN  
 DOE 16, JOHN DOE 17, JOHN DOE 18, JOHN DOE 19,  
 JOHN DOE 20, JOHN DOE 21, JOHN DOE 22, JOHN  
 DOE 23, JOHN DOE 24, JOHN DOE 25, JOHN DOE 26,  
 JOHN DOE 27, JOHN DOE 28, JOHN DOE 29, JOHN  
 DOE 30, JOHN DOE 31, JOHN DOE 32, and JOHN  
 DOE 33,**

**Index №. 950111/2019  
 Motion Seq №. 003**

**Plaintiffs,**

**-against-**

**YESHIVA UNIVERSITY, MARSHA STERN  
 TALMUDICAL ACADEMY—YESHIVA UNIVERSITY  
 HIGH SCHOOL FOR BOYS, PAT DOE 1-30,  
 MEMBERS OF THE BOARD OF TRUSTEES OF  
 YESHIVA UNIVERSITY, in their official and individual  
 Capacities, whose identities are presently unknown to  
 Plaintiffs, JAMES DOE 1-30, MEMBERS OF THE  
 BOARD OF TRUSTEES OF MARSHA STERN  
 TALMUDICAL ACADEMY—YESHIVA UNIVERSITY  
 HIGH SCHOOL FOR BOYS, in their official and individual  
 Capacities, whose identities are presently unknown to  
 Plaintiffs, NORMAN LAMM, in his official and individual  
 Capacity, and ROBERT HIRT, in his official and individual  
 Capacity,**

**Defendants**

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

With the instant application plaintiffs JOHN DOE 33-41 (“plaintiffs”) move, by Order to Show Cause, for permission from this court to proceed in anonymity during this action.<sup>1</sup>

**ARGUMENT**

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<sup>1</sup> By decision and order dated July 6, 2020, this court previously granted the application of plaintiffs JOHN DOE 1-32 to maintain anonymity throughout this litigation.

Plaintiffs argue that allowing plaintiffs to proceed under a pseudonym would spare plaintiffs from the stigmatization and potential embarrassment that may arise as the result of the adjudication of this matter in a public forum. Plaintiffs, like other similarly situated plaintiffs, are 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, plaintiffs maintain that this case is likely to draw attention from the media, and if plaintiffs are not allowed to proceed under pseudonyms, increased media attention may lead to a chilling effect that may inhibit plaintiffs and other alleged victims of abuse from coming forward.

In support of the instant application, plaintiffs annex detailed personal affidavits attesting to the mental anguish, trauma, and re-victimization that they will endure if their identities are publicly revealed. Many of the plaintiffs suffer from post-traumatic stress disorder ("PTSD") and have been prescribed anti-depressants to treat their health conditions. Others have contemplated suicide. In addition, some acknowledge that they may face retribution within their religious community if their names are publicly disclosed. Furthermore, several plaintiffs confess that their families, friends, and co-workers are unaware of the details of their alleged abuse. Cumulatively, plaintiffs' affidavits underscore that publication of plaintiffs' names would take a heavy psychological toll, and potentially inhibit plaintiffs' ability to continue with this lawsuit.

Considering the foregoing, defendants elected not to oppose the instant application.

### 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 plaintiffs of a sensitive and highly personal nature. The court recognizes that plaintiffs, as the alleged victims of sexual abuse, have arguably suffered great emotional distress. Indeed, plaintiffs' affidavits submitted in connection with the instant application state that plaintiffs suffer from the lingering effects of emotional distress, embarrassment, and sexual dysfunction as a result of the alleged abuse at issue here. Moreover, plaintiffs aver that denial of plaintiffs' present application would chill plaintiffs, and other alleged victims of childhood sexual abuse, from coming forward with their claims.

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 plaintiffs' names could unsettle plaintiffs and perhaps deter plaintiffs from litigating this matter. Such an outcome would undoubtedly undermine the very purpose for which the CVA was enacted. To be sure, revelation of plaintiffs' identities would undermine the litigation by denying a portion of the relief ultimately requested in the action. In addition, it would thwart of this court's July 6, 2020 decision that has already granted the right to proceed in anonymity to plaintiffs JOHN DOE 1-32.

Based on the affidavits annexed to their moving papers, plaintiffs submit that their health and well-being while litigating this action outweighs the public's interest in knowing plaintiffs' identities. Moreover, plaintiffs underscore that defendants have failed to advance any legitimate reason why plaintiffs should not be afforded the protection of anonymity in this case. Notably, 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 plaintiffs have provided detailed affidavits attesting to the harms that they are likely to endure if their names are publicly revealed. As such, the court has a firm foundation here to support the grant of anonymity in this case.

Finally, 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 – issues that are presently not before this court. In this court's view the public ultimately 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, for the reasons stated above, it is hereby

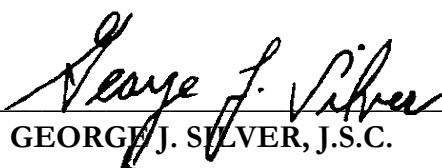
ORDERED that plaintiffs' motion to proceed herein under pseudonyms, rather than in plaintiffs' legal names, and to proceed throughout this action under such pseudonyms, rather than in plaintiffs' own names, is granted; and it is further

ORDERED that plaintiffs 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 in accordance with this court's decision and order, plaintiffs are directed to confidentially provide defendants with plaintiffs' names (including maiden names, if any), dates of birth, social security numbers, parents and/or guardian's names, current addresses, and addresses at the time of the alleged abuse to aid in the defense of this action.

The foregoing constitutes the decision and order of the court.

**Dated:** December 2, 2020

  
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GEORGE J. SILVER, J.S.C.