

Joan Doe v Bloomberg, LP

2020 NY Slip Op 34235(U)

December 21, 2020

Supreme Court, New York County

Docket Number: 451470/2020

Judge: Barbara Jaffe

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

PRESENT: HON. BARBARA JAFFE **PART** **IAS MOTION 12**

Justice

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AN INDIVIDUAL DESCRIBED HEREIN
PSEUDONYM JOAN DOE,

Plaintiff,

INDEX NO. 451470/2020

MOTION DATE _____

MOTION SEQ. NO. 002

- v -

BLOOMBERG, LP, LLOYD PREECE, JOHN DOES
1-10,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 16-22, 24, 27, 28, 29, 30, 32-36

were read on this motion to compel amendment of caption.

Defendants Bloomberg, LP and Lloyd Preece move for leave to amend the complaint to add plaintiff's name, given her failure in the first instance to obtain permission to file anonymously. Plaintiff opposes by asserting her entitlement to file anonymously.

I. CONTENTIONS

Movants argue that plaintiff has unfairly sought to use anonymity as a sword and as a shield, on one hand, keeping her name out of court documents based on her own alleged privacy concerns, and, on the other hand, publicly identifying Preece against whom she levels serious allegations. They also observe, that "she appears to have notified the media" of her complaint in order to "garner publicity for her unproven allegations" Movants also cite other means of protecting plaintiff from any risks resulting from the disclosure of certain matters regarding her emotional condition, such as a stipulation of confidentiality or a nondisclosure agreement of materials, and they note that sensitive or explicit information may be redacted from filed

documentation. (NYSCEF 17).

Plaintiff maintains that movants seek to punish her and alert others of her “temerity” in not signing a nondisclosure agreement with them and releasing them from liability on their terms and that as a result of her experience at defendant LP, she suffers from post-traumatic stress disorder, depression, anxiety, panic disorder, gastroesophageal reflux disease, and irritable bowel syndrome, and “feel[s] [she has] lost all sense of [her]self,” and “fear[s] that stripping [her] of [her] ‘Joan Doe’ pseudonym status and privacy would greatly damage [her] mental and physical well-being at this time and [her] overall ability to heal.” (*Id.*). In the opinion of her psychiatrist, disclosing plaintiff’s name “is critical given her fragile mental state” and could “seriously and adversely impact her current fragile mental state, in the short term, and seriously compromise her recovery in the longer term and recovery.” (NYSCEF 27).

In reply, movants observe, among other things, that plaintiff does not deny having contacted the media about this case. (NYSCEF 32).

II. DISCUSSION

Pursuant to 22 NYCRR § 216.1(a):

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.

In determining whether a plaintiff has good cause to proceed anonymously, the burden of proof is lesser than that required for sealing the record. (*Doe v Szul*, 2008 NY Slip Op 31382[U] [Sup Ct, NY County 2008]). Nonetheless, the court must balance the movant’s privacy interest against the presumption of open trials and against any potential prejudice to the defendant. (*Anonymous v Lerner*, 124 AD3d 487, 487 [1st Dept 2015] [internal quotations omitted]). Moreover, the court “should . . . exercise its discretion to limit the public nature of judicial proceedings ‘sparingly’

and ‘then, only when unusual circumstances necessitate it.’” (*Id.*, citing *Anonymous v Anonymous*, 27 AD3d 356, 361 [1st Dept 2006]). “[C]laims of public humiliation and embarrassment ... are not sufficient grounds for allowing a plaintiff ... to proceed anonymously” (*Lerner*, 124 AD3d at 487-488, and cases cited therein), even if the matter is of no public interest (3 NY Prac Com Litig in NY State Courts, § 25.7 [4th ed], and authority cited therein).

The following factors should inform the court’s discretion (*see Szul*, 2008 NY Slip Op 31382[U], * at 16-17):

(1) Whether the justification asserted . . . 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

Here, movants offer no evidence that in seeking to proceed anonymously, plaintiff is merely seeking to avoid annoyance and criticism.

(2) whether the party seeking anonymity has an illegitimate ulterior motive

To the extent that plaintiff failed to obtain court permission before filing her complaint anonymously and then alerted the media of her case, she has an illegitimate ulterior motive.

(3) the extent to which the identity of the litigant has been kept confidential

Plaintiff’s identity has been kept confidential solely because she failed to seek the court’s permission before filing her complaint anonymously.

(4) whether identification poses a risk of mental or physical harm, harassment, ridicule, or personal embarrassment

As litigation is stressful for most litigants, the risk of mental or physical harm to plaintiff from a disclosure of her name does not constitute a valid reason for proceeding anonymously, especially where she does not demonstrate a substantial privacy interest and there are means of protecting personal information by agreement between the parties.

(5) whether the case involves information of the utmost intimacy

Generally, where allegations relate to sexually transmitted diseases or sexual assault, the plaintiff's privacy rights are held to outweigh the public's right to know. (*See e.g. Doe v Spencer Cox Clinic, et al.*, 59 Misc 3d 1210[A], 2018 NY Slip Op 50461[U], *1 [Sup Ct, NY County 2018] [granting use of pseudonym where movants accused of improperly disclosing plaintiff's health information including HIV status, history of sexually transmitted diseases, history of sexual abuse and/or assault, and use of prescription drugs to treat those diseases]; *see also Anonymous v Duane Reade Inc.*, 10 Misc 3d 1056[A] [Sup Ct, Kings County 2005] [granting use of pseudonym in matter involving disclosure of HIV status]).

Here, although plaintiff alleges sexual harassment, it is in the context of her workplace. No sexual battery is alleged, nor is there a claim that plaintiff's action would reveal a history of sexually transmitted disease, sexual abuse or assault or the use of drugs to treat such conditions. Consequently, this factor is not weighed in plaintiff's favor.

(6) whether the action is against a governmental or private entity

Defendant LP is a private entity and defendant Preece is a private individual.

(7) the magnitude of the public interest in maintaining confidentiality or knowing the party's identity

LP is concededly in the public eye, about which much has been reported in the media. Consequently, there is little public interest in maintaining confidentiality.

(8) whether revealing the identity of the party will dissuade the party from bringing the lawsuit

Plaintiff does not claim that revealing her identity will dissuade her from prosecuting this action.

(9) whether the opposition to anonymity has an illegitimate basis

Plaintiff offers no support for her accusation that movants oppose confidentiality solely to

punish her. Moreover, having failed to obtain permission to file this action anonymously, she has no basis for claiming that movants' opposition to anonymity has an illegitimate basis.

(10) whether the other side will be prejudiced by use of the pseudonym

No.

Based on a weighing of all of these factors, plaintiff fails to demonstrate that her need for anonymity outweighs the presumption of open proceedings. In addition to the other remedies referenced above, this disposition does not preclude plaintiff from seeking to redact any item of evidence. (*See Mor v Ding's Beauty Salon, Inc.*, 2015 WL 3922133 [Sup Ct, New York County 2015]).

Accordingly, it is hereby

ORDERED, that the motion of defendants Bloomberg, L.P. and Lloyd Preece to compel plaintiff to amend the caption to reflect her action name is granted; it is further

ORDERED, that plaintiff amend the caption to reflect her actual name within 30 days of the date of this decision; it is further

ORDERED, that upon such amendment, the motion to dismiss of defendants Bloomberg, L.P. and Lloyd Preece (seq. one) will be decided; and it is further

ORDERED, that plaintiff's failure to amend the caption as ordered will result in the dismissal of this action.

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BARBARA JAFFE, J.S.C.

12/21/2020
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: