

<b>Ark675 DOE v Diocese of Brooklyn</b>
2021 NY Slip Op 32858(U)
December 23, 2021
Supreme Court, Kings County
Docket Number: Index No. 520706/2021
Judge: Deborah A. Kaplan
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

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**ARK675 DOE,**

**Index No. 520706/2021**

- v -

**DIOCESE OF BROOKLYN et al,**

**Hon. DEBORAH A. KAPLAN**  
Justice Supreme Court

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**Hon. DEBORAH A. KAPLAN:**

With the instant application plaintiff moves, by Order to Show Cause, for permission from this court to proceed in anonymity during this action.

**ARGUMENT**

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.

In support of the instant application, plaintiff annexes the affidavit of Susan Phipps-Yonas, Ph.D (“Dr. Phipps-Yonas”), a psychologist. Dr. Phipps-Yonas submits that publication of plaintiff’s name would take a heavy psychological toll on plaintiff, and potentially inhibit plaintiff’s ability to continue with this lawsuit. Indeed Dr. Phipps-Yonas submits that revelation of plaintiff’s name would be tantamount to a re-victimization.

Nevertheless, in opposition defendants FRANCISCAN BROTHERS OF BROOKLYN argue that the presumption in favor of open judicial proceedings should outweigh the use of a pseudonym, as this is not an “exceptional” circumstance wherein plaintiff should be afforded the protection of proceeding pseudonymously. In addition, defendants FRANCISCAN BROTHERS OF BROOKLYN state that there is no statutory basis for the relief sought by plaintiff, and no basis upon which to conclude that plaintiff’s allegations are credible at this juncture in the litigation. As

such, defendants FRANCISCAN BROTHERS OF BROOKLYN submit that plaintiff's application must be denied in its entirety.

Notably, the remaining defendants reached an agreement with plaintiff regarding the instant Order to Show Cause. That agreement is reflected in a stipulation that has been filed with this court. While the relief herein has been agreed to via stipulation by all defendants except defendants FRANCISCAN BROTHERS OF BROOKLYN, the court finds that a decision reflecting its deliberation on the application herein is warranted. Accordingly, the decision and order that follows reflects the court's determination notwithstanding any agreement reached by stipulation.

### 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 plaintiff of a sensitive and highly personal nature. The court recognizes that plaintiff, as the alleged victim of sexual abuse, has arguably suffered great emotional distress. Indeed, Dr. Phipps-Yonas' affidavit submitted in connection with the instant application states that plaintiff is likely to endure re-victimization if plaintiff's identify is disclosed.

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 plaintiff's name could unsettle plaintiff and perhaps deter plaintiff from litigating this matter. Such an outcome would undoubtedly undermine the very purpose for which the CVA was enacted.

Likewise, it is notable here that plaintiff is not relying on CRL §50-b to advance the instant application. Rather, plaintiff submits, based on the proofs annexed to plaintiff's application, that plaintiff's health and well-being while litigating this action outweigh the public's interest in knowing plaintiff's identity. Moreover, plaintiff underscores that defendants FRANCISCAN BROTHERS OF BROOKLYN have failed to advance any legitimate reason why plaintiff should not be afforded the protection of anonymity in this case. Instead, defendants FRANCISCAN BROTHERS OF BROOKLYN emphasize that they would endure prejudice while investigating this case if plaintiff is afforded the protection of anonymity. However, contrary to defendants FRANCISCAN BROTHERS OF BROOKLYN's argument, no prejudice can be alleged where, as here, defendants FRANCISCAN BROTHERS OF BROOKLYN will be provided with plaintiff's personal identifying information for the purpose of advancing discovery in this matter. Moreover, as recognized by plaintiff, 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 plaintiff has provided an affidavit from a licensed psychologist, Phipps-Yonas. As such, the court has a firm foundation here to support the grant of anonymity in this case. The court also notes here that even though defendants FRANCISCAN BROTHERS OF BROOKLYN submitted their opposition papers late, a court can in its discretion accept late papers, where the delinquent party offers “a valid excuse for the delay” (*Associates First Capital v Crabill*, 51 AD3d 1186, 1187 [3d Dept 2008], *lv denied* 11 NY3d 702, [2008] *see also Bush v Hayward*, 156 AD2d 899 [3d Dept 1989]). Here, defendants FRANCISCAN BROTHERS OF BROOKLYN forgot to serve timely opposition on account of the multitude of other CVA matters that they are actively litigating. Under such a scenario, the court does not believe that exclusion of defendants FRANCISCAN BROTHERS OF BROOKLYN's papers would be appropriate, especially where there is a strong interest in deciding the instant application on its merits.

The fact that all defendants except defendants FRANCISCAN BROTHERS OF BROOKLYN have consented to the instant relief inures in favor of this court granting plaintiff's application.

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 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 such pseudonym, rather than in plaintiff's own name, is granted; and it is further

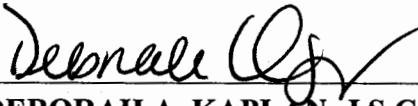
ORDERED that plaintiff serve a copy of this decision, with notice of entry, upon defendants within 20 days of this court's decision and order; and it is further

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

ORDERED that the court shall issue a separate notice to the parties regarding a future appearance in this matter.

The foregoing constitutes the decision and order of the court.

Dated: 12/23/2021

  
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DEBORAH A. KAPLAN, J.S.C.  
Hon. Deborah A. Kaplan  
J.S.C.