

Doe v Metropolitan Opera Assn., Inc.
2021 NY Slip Op 32961(U)
December 23, 2021
Supreme Court, New York County
Docket Number: Index No. 951461/2021
Judge: Deborah A. Kaplan
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. DEBORAH A. KAPLAN PART CVA*Justice*

JOHN DOE,

Plaintiff,

- v -

METROPOLITAN OPERA ASSOCIATION, INC. a/k/a "THE
METROPOLITAN OPERA," and SUZANNE E. THOMSON,
as Administrator of the Estate of JAMES LEVINE, Jointly
and Severally,

Defendants.

INDEX NO. 951461/2021

MOTION DATE _____

MOTION SEQ. NO. 001DECISION + ORDER ON
MOTIONThe following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16,
18, 19, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for

PROCEED ANONYMOUSLY

Upon the foregoing documents, it is ORDERED that the instant motion is granted.

With the instant application plaintiff JOHN DOE ("plaintiff") moves, by Order to Show Cause, for permission from this court to proceed in anonymity during this action. Plaintiff argues that allowing plaintiff to proceed under a pseudonym would spare plaintiff from "mental anguish, trauma, humiliation, re-victimization, and additional emotional harm" 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, among other things, resuscitates certain civil actions involving alleged sexual abuse against minors for which the statute of limitations has run (*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.

That said, the instant application is unique amongst other CVA lawsuits that this court has presided over insofar as plaintiff's actual name has already appeared in the press in connection with the allegations in his complaint. Defendants Metropolitan Opera Association, Inc. (the Met Opera) and Suzanne E. Thomson, as Administrator of the Estate of JAMES LEVINE (Estate) (collectively, defendants) both contend that plaintiff has not presented a compelling case to support the need for his request to proceed under the pseudonym "John Doe." Indeed, in opposition to the instant application, the Met Opera in particular underscores the existence of a front-page article in a prominent publication concerning plaintiff's allegations that he was sexually abused as a child, and the particular nature of those allegations. Defendants further argue that anonymity is not presumed in cases brought under the CVA, and is unwarranted here, where plaintiff has already identified himself publicly — volunteering his likeness and story for a front-page article concerning his allegations about his alleged abuser, as well as in social media posts about those claims. Defendants further argue that it would be manifestly unfair to allow plaintiff, who has publicly connected himself to the allegations at issue, to proceed behind "a cloak of anonymity" when doing so would hinder their ability to defend themselves.

As in other CVA lawsuits, plaintiff annexes an affidavit (the original of which this court has reviewed *in camera*). Plaintiff states within that affidavit 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. Plaintiff avers that the disclosure of sensitive details in connection with this lawsuit would be tantamount to re-victimization. In response to defendants' opposition, plaintiff argues that present public information about plaintiff does not reveal several sensitive

details regarding plaintiff's alleged abuse that plaintiff would like to keep private. Plaintiff emphasizes that defendants would not be at a strategic disadvantage if the instant application is granted, because plaintiff has already agreed to provide defendants with plaintiff's pedigree information to afford defendants the ability to adequately investigate his claims.

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).

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). 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 US 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, "[t]he 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]).

Though CRL § 50-b is criminal in nature, and the instant CVA lawsuit is civil in nature, analogizing how courts treat allegations of sexual abuse under both statutes is appropriate (*see Doe v Yeshiva Univ.*, 2020 NY Misc. LEXIS 2472 at *5 [Sup Ct N.Y. Cnty. 2020], *affd* 195 AD3d 565 [1st Dept 2021]). Likewise, the CVA's language makes clear that its central focus is 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" (*see Yeshiva*, 2020 N.Y. Misc. LEXIS 2472 at *6). 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]).

Here, contrary to defendants' assertions, plaintiff is not arguing that his right to anonymity in connection with this lawsuit should be presumed. Rather, plaintiff has submitted an affidavit that lists specific harms that may result from the disclosure of plaintiff's name in connection with this lawsuit. While defendants rely on *Doe v Macfarland*, 66 Misc 3d 604, 632 (Sup Ct Rockland Cnty. 2019) in support of the argument that plaintiff is not entitled to a presumption of anonymity, defendants overlook the fact that the trial court there actually granted plaintiff's request to proceed anonymously once the underlying allegations and facts had been considered. Confronted by a similar scenario here, the court finds that plaintiff has made the necessary showing to support the instant application. Indeed, as in *Doe*, the court notes that plaintiff's affidavit highlights real harms plaintiff is likely to endure if he is not afforded the ability to proceed anonymously (*McFarland*, 66 Misc. 3d 625-26, *supra*). Plaintiff's affidavit also incorporates the allegations in the complaint, and provides ample detail as to why he is seeking the requested relief. Plaintiff emphasizes that the sexual abuse he is alleged to have endured caused him to have, among other things, suicidal ideations, anxiety, shame, intimacy issues and nightmares (*see* First Amended Complaint at 18 [NYSCEF doc no 21]). Plaintiff further submits that publicly disclosing sensitive and highly personal details regarding his alleged abuse would likely make him re-live that alleged abuse. As observed by another trial court in *Doe v Szul Jewelry, Inc.*, Index No. 604277/07, 2008 N.Y. Misc Lexis 8733, at *18 (Sup Ct NY Cty May 13, 2008):

“[t]he only purpose revelation of plaintiff's name could have would be to further discomfit plaintiff and perhaps deter her from litigating the matter. In fact, revelation of plaintiff's identity would undermine the litigation by denying a portion of the relief ultimately requested in the action.”

As such, balancing the facts at issue with plaintiff's specific articulation of harms likely to result from the disclosure of his name, the court finds that plaintiff has made a sufficient showing to support his proceeding anonymously.

The court is not persuaded by defendants' suggestion that they are likely to be prejudiced by this court granting the instant application. Any perceived due process concerns are mitigated by this court's routine practice of having plaintiffs disclose their true identity and essential information to facilitate defendants' ability to investigate the claims at issue.

Plaintiff's previous public disclosures of his identity do not require a different finding by this court. For one, those disclosures were made prior to the enactment of the CVA, and therefore may have been occasioned by plaintiff's belief at the time that such legislation would never materialize. Indeed, plaintiff's previous disclosures occurred more than four years ago and do not incorporate every sensitive detail likely to be revealed in connection with this lawsuit. Even if that were not the case, several of the disclosures referenced by defendants were reported and transmitted by media outlets rather than being broadcast by plaintiff on his own volition. Although plaintiff may have been a source for the stories, such participation is not directly analogous to plaintiff indiscriminately broadcasting public details about the alleged abuse on his own accord. In addition, while defendants argue that plaintiff's previous public disclosures make anonymity inconsequential here, the court notes that plaintiff's alleged abuser has other potential claims by other alleged victims pending against him. Under such a scenario, anonymity is likely to guard against the ability for someone to characterize the allegations here as relating to plaintiff's previous public disclosures instead of the disclosures of the alleged abuser's other potential victims. Accordingly, anonymity serves a purpose here that is separate and distinct from plaintiff's previous public disclosures. Weighing the relevant factors and the interests of all parties and the public, the

court finds that plaintiff should be afforded the right to proceed anonymously in connection with this litigation.

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

ORDERED that in accordance with this court's Case Management Orders, plaintiff is directed provide 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 within twenty (20) days of this court's decision and order; and it is further

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

The foregoing constitutes the decision and order of the court.

<u>12/23/2021</u>			
DATE		HON. DEBORAH A. KAPLAN, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	Hon. Deborah A. Kaplan J.S.C.
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT ☐ REFERENCE	