

H.A. v Atoynatan

2022 NY Slip Op 32889(U)

August 12, 2022

Supreme Court, New York County

Docket Number: Index No. 951280/2021

Judge: Alexander Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER TISCH PART 18

Justice

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INDEX NO. 951280/2021
H. A., H. A., T. A., A. F.
MOTION DATE 01/20/2022, N/A
Plaintiffs,
MOTION SEQ. NO. 002 003
- v -

JOHN ATOYNATAN,

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents¹, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19 were read on this motion to/for AMEND CAPTION/PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34 were read on this motion to/for EXTEND - TIME

Upon the foregoing documents, plaintiffs move to proceed under the pseudonyms, H.M.A., H.J.A., T.A., and A.F; barring the parties and their agents and attorneys from publishing plaintiffs' names and identities; sealing a previously commenced action; and extending time to serve the defendant nunc pro tunc.

Initially, any requests for extensions of time to serve are moot in light of the parties' stipulation where defendant waived jurisdictional defenses and acknowledges proper and timely service of this motion and supporting papers (see NYSCEF Doc No 34).

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

¹ The Court also considers the papers filed under motion sequence no. 1, which is the first time the relief was requested. The subsequent applications were made solely because of the plaintiffs' difficulty with serving defendant with process, which are now moot (see NYSCEF Doc No 34).

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, allege that they suffered great emotional distress. Revelation of plaintiffs’ name could unsettle plaintiffs and perhaps deter them from litigating this matter. Such an outcome would undoubtedly undermine the very purpose for which the CVA was enacted.

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.

For the similar reasons, the Court finds that good cause exists under 22 NYCRR Part 216 to seal a prior case involving the same parties (see NYSCEF Doc No 3 at ¶¶ 18-20). However, the Court cannot grant that branch of the motion since the application was made in this index number, without notice to the defendant’s counsel who appeared in that index number (*see generally Financial Servs. Veh. Trust v Law Offs. of Dustin J. Dente*, 86 AD3d 532, 532–33 [2d Dept 2011] [“Absence of proper service of a motion is a sufficient and complete excuse for a default on a motion, and deprives the court of jurisdiction to entertain the motion”]). Any

subsequent application does not have to be made in that 2018 index number but should at least be served upon the defendant in that action.

Accordingly, it is, for the reasons stated above, hereby ORDERED that motion sequence no. 3 is granted to the extent that plaintiffs are permitted to proceed under pseudonym, rather than in their respective legal names (subdivisions [a], [b], and [e] of the order to show cause dated 2/16/2022 [NYSCEF Doc No 30] [OSC]); and it is further

ORDERED that the branch of the motion barring the parties and their attorneys and agents from publishing plaintiffs' names and identities (*id.*, subdivision [c]) is granted, while noting the limited exceptions as set forth in the court's Case Management Orders (*see, e.g.*, CMO No. 1, Section III) and Second Amended Confidentiality Order; and it is further

ORDERED that the branch of the motion regarding service of process upon the defendant (OSC at subdivision [f]) is resolved per the parties' stipulation dated 3/17/2022 or otherwise denied as moot in light of said stipulation (NYSCEF Doc No 34); and it is further

ORDERED that the branch of the motion to seal the action filed under index no. 152877/2018 (OSC at subdivision [d]) is denied without prejudice and leave to renew provided that all appropriate parties in that are given notice of the application; and it is further

ORDERED that motion sequence no. 2, which requested the same or similar relief, is denied as moot.

This constitutes the decision and order of the Court.

8/12/2022

DATE



ALEXANDER TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: