

Doe v Camelot Castle, LLC

2023 NY Slip Op 33672(U)

October 20, 2023

Supreme Court, New York County

Docket Number: Index No. 154481/2023

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LISA S. HEADLEY PART 28M

Justice

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JANE DOE,

Plaintiff,

- v -

CAMELOT CASTLE, LLC, FAT 2 MUSCLE, LLC, 22 EAST
54TH STREET RESTAURANT CORP., LEO XIE, LUIS
MARTINEZ, DANIEL VIVAR, MARIO BENITEZ, ANTHONY
CARRERA, FRANCIS MCCOLE, THOMAS BURKE,
DOUGLAS KAPLAN

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 11, 19, 20, 21, 22, 35, 36, 37, 38, 45, 46

were read on this motion to/for

MISCELLANEOUS

Plaintiff, Jane Doe (“Plaintiff”), moves this Court by way of an Order to Show Cause requesting Plaintiff to proceed anonymously as Jane Doe. Defendants, Camelot Castle LLC, Fat 2 Muscle, LLC, 22 East 54th Street Restaurant Corp., Luis Martinez, Leo Xie, Daniel Vivar, Mario Benitez, Francis McCole, Thomas Burke, and Douglas Kaplan (collectively the “Defendants”) filed opposition. Plaintiff filed a reply.

Background

From March 2021 through March 30, 2022, Plaintiff served as a server/hostess for the corporate Defendants. Plaintiff alleges throughout her employment she was subjected to sexual harassment, including comments of a sexual nature and unwanted touching. Plaintiff claims her co-worker, defendant, Anthony Carrera (“Defendant Carrera”), sexually assaulted her after work hours in her apartment. Subsequently, plaintiff was terminated from her server/hostess job on March 30, 2022.

Plaintiff’s Affirmation in Support of Order to Show Cause

In support of the instant motion, Plaintiff submits her own affidavit, and her attorney’s affirmation in support of the Order to Show cause, and argues, *inter alia*, that pursuant to *N.Y. Civ. Rights Law § 50-b*, New York Courts have the authority to keep the identities of victims of sex crimes confidential. Plaintiff claims that since she is a victim of a sex crime, she should be permitted to proceed anonymously under *N.Y. Civ. Rights Law § 50-b*. Plaintiff further argues that since this action is against private parties, and not against a government entity, plaintiff should be permitted to proceed in this action anonymously.

Additionally, Plaintiff argues that her identity should remain confidential, and this action should remain public, thereby preserving any general public interest in the subject matter of this litigation. Lastly, Plaintiff asserts Defendants are fully aware of Plaintiff's identity and Defendants will be able to defend themselves against Plaintiff's claims without prejudice. Therefore, Plaintiff requests this Court to grant the instant Order to Show Cause to allow Plaintiff to proceed anonymously as Jane Doe.

Defendants' Opposition to Plaintiff's Order to Show Cause

In opposition, Defendants argue, *inter alia*, that Plaintiff's Order to Show Cause is procedurally defective because in order to commence an action with an anonymous caption the movant should have filed an Order to Show Cause with the actual parties' names in the caption, and requesting an anonymous caption and sealing order. Here, the Plaintiff failed to file such Order to Show Cause. Defendants also argue that *Civil Rights Law § 50-b* is inapplicable in this case because it requires the defendants to be charged, arrested, and prosecuted, and here, the Plaintiff's application is devoid of any references that the Defendants were either arrested, prosecuted, or under a pending criminal investigation for the alleged sexual offense.

Additionally, Defendants argue the Plaintiff failed to demonstrate that her privacy interest outweighs any prejudice to defendants because the alleged highly sensitive and personal nature of Plaintiff's allegations is not dispositive. Specifically, Defendants argue Plaintiff's alleged risk of retaliatory physical or mental harm is speculative as Plaintiff submits no evidence of continued harm, the likelihood of retaliation, or any physical and mental harm.

Furthermore, Defendants argue they would be prejudiced if Plaintiff is permitted to proceed anonymously because would it be more difficult for Defendants to conduct discovery, and potential witnesses may not come forward if they do not know who the aggrieved party is. Defendants claim it would be more difficult to mitigate against the reputational damage associated with the lawsuit. Therefore, Defendants request this Court deny Plaintiff's Order to Show Cause.

Plaintiff's Reply in Support of The Order to Show Cause

In reply Plaintiff argues, *inter alia*, their Order to Show Cause is not procedurally defective, and refers to the New York State Supreme Court website instructions for this application, which no longer require submission of an Order to Show Cause with the parties' real names in the caption. Additionally, Plaintiff asserts Plaintiff should be permitted to proceed anonymously because Plaintiff is suffering from significant emotional distress from Defendants' unlawful sexual harassment and sexual assaults such that it would exacerbate Plaintiff's emotional distress and further victimize her should she have to disclose her real identity.

Discussion

Courts have afforded victims of sexual offenses identity protection under *Civil Rights Law §50-b* where there has either been an arrest and prosecution. *See, People v. McDaniel*, 81 N.Y.2d 10 (1993); *Matter of Fischetti*, 44 A.D.3d 89 (1st Dep't 2007). However, the First Department has held that *Civil Rights Law § 50-b* was inapplicable where a sex offense charged against a defendant in an underlying criminal case was dismissed. *See, Brown v. New York City Police Department*, 264 A.D.2d 558 (1st Dep't 1999). *N.Y. Civ. Rights Law § 50-b* states in part:

“[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. No report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection. No such public officer or employee shall disclose any portion of any police report, court file, or other document, which tends to identify such a victim except as provided in subdivision two of this section.”

N.Y. Civ. Rights Law § 50-b.

The determination of whether to allow a plaintiff to proceed anonymously requires a court to use its discretion in balancing the plaintiff's privacy interest against the presumption in favor of open trials and against any potential prejudice to the defendant. *Roe v. Harborfields Cent. Sch. Dist.*, 212 A.D.3d 853 (2d Dep't 2023); *Anonymous v. Lerner*, 124 A.D.3d 487 (1st Dep't 2015). Among the factors a court should consider are: 1) whether the plaintiff is challenging governmental activity or an individual's actions; 2) whether the plaintiff's action requires disclosure of information of the utmost intimacy; 3) whether identification would put the plaintiff [or innocent third-parties] at risk of suffering physical or mental injury; 4) whether the defendant would be prejudiced by allowing the plaintiff to proceed anonymously; and 5) the public interest in guaranteeing open access to proceedings without denying litigants access to the justice system. *See, Doe v. Hertz*, 2023 WL 3855494 (N.Y. Sup. Ct. May 25, 2023).

In balancing the plaintiff's privacy interest and the potential prejudice to defendants, this Court finds that the Plaintiff's Order to Show Cause to proceed anonymously as Jane Doe is denied. Here, the defendants are entities and individuals, and not a government entity. Plaintiff argues that the professional embarrassment and injury to her reputation warrants the pseudonymous caption. However, notwithstanding her desire to preserve her privacy, the claims of public humiliation and embarrassment are not sufficient grounds for allowing a plaintiff to proceed anonymously. *See, Anonymous v. Lerner, supra*. This Court further finds Plaintiff has failed to demonstrate to the Court any physical threat that disclosure would cause her, although she claims to suffer from emotional distress from the alleged events.

In addition, this Court finds Plaintiff's reliance upon *Civil Rights Law § 50-b* is misplaced because the Defendants have not been charged or convicted criminally. The exception in *Civil Rights Law § 50-b(2)(a)* applies to a person “charged” with a crime. A person charged with a crime is distinctly different from one who has already been convicted. A person charged with a crime, unlike a convicted person, enjoys a presumption of innocence, the right to counsel, the right to a jury trial and, significantly in the present context, the right to confront one's accuser. A person charged with a crime, thus cannot be equated with a convicted person for purposes of *Civil Rights Law § 50-b*. *See, Fappiano v. New York City Police Dep't*, 95 N.Y.2d 738 (2001). Here, the

plaintiff is not entitled to identity protection under this provision because there has not been an arrest or prosecution.

Accordingly, it is hereby,

ORDERED that Plaintiff Jane Doe’s Order to Show Cause requesting Plaintiff to proceed anonymously as ‘Jane Doe’ is DENIED, and it is further

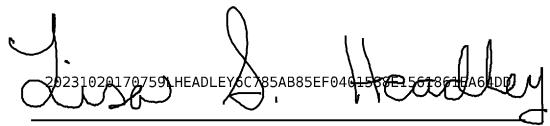
ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered.

This constitutes the Decision and Order of the Court.

10/20/2023

DATE



LISA S. HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE