

**ARK108 Doe v Diocese of Brooklyn**

2023 NY Slip Op 33940(U)

November 1, 2023

Supreme Court, Kings County

Docket Number: Index No. 519794/2019

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. SABRINA B. KRAUS PART 57

Justice

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INDEX NO. 519794/2019

ARK108 DOE,,,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

DIOCESE OF BROOKLYN a/k/a THE ROMAN CATHOLIC DIOCESE OF BROOKLYN NEW YORK; FRANCISCAN BROTHERS OF BROOKLYN a/k/a CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER OF REGULAR OF ST. FRANCIS a/k/a and d/b/a FRANCISCAN BROTHERS, INC., BROOKLYN, NY; ST. BRIGID'S; and DOES 1-5 whose identities are unknown to Plaintiff

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 20 - 42 were read on this motion to/for AMEND

Franciscan Brothers of Brooklyn A/K/A Congregation of The Religious Brothers of The Third Order of Regular of St. Francis A/K/A and D/B/A Franciscan Brothers, Inc., Brooklyn, NY, ("Franciscan Brothers of Brooklyn") move for an order pursuant to CPLR §3024(a) and §2101(c) directing the plaintiff to amend the caption and substitute plaintiff's real name in place of the pseudonym.

For the reasons set forth below, the motion is denied.

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*).

*Doe v. Yeshiva University*, No. 950012/2020, 2020 WL 2198234, at \*2 (N.Y. Sup. Ct. May 06, 2020).

In November 2019, the Hon. George Silver issued a decision and order in many similarly situated cases permitting plaintiffs to proceed using pseudonyms. (NYSCEF Doc # 29). The court ruled that “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. To be sure, revelation of plaintiff’s identify would undermine the litigation by denying a portion of the relief ultimately requested in the action.” *Id.*

Other New York courts have followed this lead. *See eg Doe v. Good Samaritan Hosp.*, 66 Misc.3d 444 (“[T]he only purpose public revelation of Plaintiff’s name could have would be to expose Plaintiff to the potential harms of public disclosure and perhaps deter her from litigating the matter. The public interest and the purpose of the CVA is in allowing the case to be determined on its merits, after the parties have had an opportunity to fully and fairly litigate the issues.”); *Doe v. MacFarland* 66 Misc3d 604 (“[P]lacing [a] plaintiff into a Hobson’s choice of proceeding under a pseudonym or discontinuing [the] action would negate the intent of the Child Victims Act. . . . In light of the stated purposes of the Child Victims Act, to allow the opportunity for relief to victims of alleged child sexual abuse, it would be manifestly unfair if the denial of an application to proceed anonymously would negate the party’s newly restored rights.”).

Defendant argues that by commencing this action under a pseudonym, Plaintiff has improperly elected to proceed in this fashion without leave of court. However, Plaintiff properly commenced this action by filing a Summons and Complaint and an accompanying Order to Show Cause seeking permission to proceed anonymously. The Order to Show Cause was resolved by stipulation between Plaintiff and Defendants, notwithstanding that movant asserts in their reply that the attorney had no authority to sign on their behalf.

Defendant argues that Plaintiff's privacy concerns do not outweigh the policy of judicial openness. However, "... plaintiff's proceeding anonymously would better serve the public's right to know than, for instance, having the records sealed. Defendants have not explained why the public must know plaintiff's identity in addition to all other aspects of the case. Nor have defendants shown that they will suffer any prejudice, as plaintiff has agreed to divulge his identity to them and to the court." *Doe v. Yeshiva Univ.*, 195 A.D.3d 565, 566, 146 N.Y.S.3d 482 (2021).

Plaintiff asserts that in view of the highly sensitive nature of the allegations, the fact that the matter involves child sexual abuse, and the fear of being subjected to embarrassment, stigma, and humiliation, Plaintiff's name has not been disclosed to the media or otherwise made public. Additionally, Plaintiff has expressed a desire to keep their identity concealed from the public to protect their privacy and to insulate them from social stigmatization. The sexual abuse of a child by an adult is a highly sensitive matter. Survivors do not only suffer embarrassment and shame as a result of the abuse, but have also historically been subjected to social stigma. These are the very same factors that have caused survivors of childhood sexual abuse not to come forward with their allegations and necessitated the passage of the Child Victims Act.


WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety; and it is further

ORDERED that counsel appear for a virtual compliance conference on January 25, 2024 at 12 PM; and it is further

ORDERED that this constitutes the decision and order of this court.

11/1/2023  
DATE

  
HON. SABRINA B. KRAUS, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE