

Doe, IV v New York & Presbyt. Hosp.
2024 NY Slip Op 35567(U)
February 1, 2024
Supreme Court, Queens County
Docket Number: Index No. 724912/23
Judge: Karen Lin
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS----- X
JANE DOE, IV,

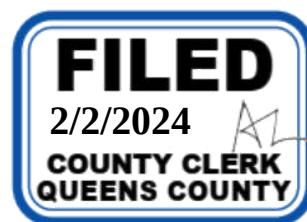
Plaintiff,

-against-

Index No: 724912/23

Motion Seq. #001

Other – Maintain Caption

DECISION & ORDERTHE NEW YORK AND PRESBYTERIAN HOSPITAL,
NEWYORK-PRESBYTERIAN/QUEENS, NEW YORK-
PRESBYTERIAN HEALTHCARE SYSTEM, INC., SYED
A. HUSSAIN, M.D., SANG HOON KIM, M.D., ZHI ALAN
CHENG, M.D., ABC CORPORATION #1-3, and JOHN DOE
#1-30,Defendants.
----- XPresent: **KAREN LIN, J.S.C.:**

With the instant application plaintiff moves, by Order to Show Cause, for permission from this court to proceed in anonymity during this action including from otherwise disclosing the true identity of the Plaintiff to anyone other than their attorneys, experts, consultants, or insurance carriers, so long as they agree to be bound by this Court's order to maintain the confidentiality of Plaintiff's identity.

ARGUMENT

Plaintiff filed the instant motion with her pleadings, by way of Order to Show Cause. Pursuant to this Court's Order dated December 21, 2023, the Order together with the papers upon which it is based, and the Summons and Complaint were served upon each Defendant and Defendants have agreed that they were so served.

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 ensure due to New York State's enactment of the Adult Survivors Act (S66 §214-j), and 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 sexual assault from coming forward. Plaintiff also maintains that Civil Rights Law ("CRL") § 50-b applies under the circumstances.

Defendants have notified the Court that they have no opposition to Plaintiff's application.

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 A.D.3d 487, 487 [1st Dept 2015] [internal quotation marks and citations omitted]; see, *J. Doe No. 1 v. CBS Broadcasting, Inc.*, 24 A.D.3d 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 “the State’s legitimate concern for the wellbeing” of an individual (*Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 [1982]).

A plaintiff’s privacy interests are found in the Civil Rights Law (“CRL”) (*see, Stephano v. News Group Publications, Inc.*, 64 N.Y.2d 174, 182 [1984]; *Arrington v. New York Times Co.*, 55 N.Y.2d 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...” The statute was enacted to spare alleged victims of sexual assault the embarrassment of being publicly identified in the news media and to encourage such alleged victims to cooperate in the prosecution of sexual offenses. *See, PC-12 Doe v. Diocese of Rockville Centre*, 2020 WL 4936912, at *2 (N.Y.Sup.Ct.Aug.21, 2020) (*citing* New York Bill Jacket, 1999 S.B. 5539, Ch. 643). Courts have afforded Plaintiffs who allege they are 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 adversary 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 recognized that plaintiff, as the alleged victim of sexual assault, alleges that she has suffered great emotional distress. In contrast, defendants are largely institutions, and/or individuals who Plaintiff has claimed, know her by name of virtue of their provision of medical treatment to Plaintiff and/or their access to her medical records. 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 ASA 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.

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 Defendants, their agents, servants, employees, and attorneys are enjoined from disclosing Plaintiff's true name and true identity in publicly filed documents, or otherwise to the public; and it is further

ORDERED that all documents that identify Plaintiff must be redacted prior to being filed to the docket and that each party that filed a redacted document pursuant to this Order must simultaneously serve all counsel who have recorded representation for this docket on NYSCEF, with an unredacted copy of the same document.

The foregoing constitutes the decision and order of this Court.

Dated: February 1, 2024



KAREN LIN, J.S.C.

