

Baidzar Arkun v Farman-Farma
2006 NY Slip Op 30724(U)
September 22, 2006
Supreme Court, New York County
Docket Number: 107335/06
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

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SUSAN BAIDZAR ARKUN a/k/a SUSAN
ARKUN,

Plaintiff,

-against-

AMIR FARMAN-FARMA a/k/a AMIR ALI
FARMAN-FARMA,

Defendant.

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Decision/Order

Index No.: 107335/06

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Pltf's OSC#1 [pi] w/SA affid in support	1
Pltf's affid (SA)	2
Pltf's affid for modification (SA)	3
Def's affirm in opp (LME) w/exhs	4

FILED
SEP 28 2006

NEW YORK COUNTY CLERK'S OFFICE

Upon the foregoing papers, the decision and order of the Court follows:

Plaintiff, appearing *pro se*, has commenced an action against defendant claiming

that he failed to disclose that he had herpes before the parties engaged in sexual relations. She claims that as a result she contracted herpes. She seeks monetary damages for both intentional and non-intentional torts.

By this Order to Show Cause she seeks to have the court file sealed or, alternatively, to proceed anonymously or under a pseudonym in this action. She also seeks an order that permits her to personally serve all legal papers in this matter upon defendant's attorneys.

The issue of future service of legal papers has already been resolved in court. Lloyd Eisenberg, Esq. has now appeared as defendant's counsel and he is authorized to accept service of all future legal papers that plaintiff needs to serve on defendant in this action. Plaintiff may serve the papers either through the mail or by overnight courier. She has agreed that she will not, however, serve any papers by personally delivering them to Mr. Eisenberg's office. This agreement was made without any admission by plaintiff that she previously engaged in disruptive conduct in Mr. Eisenberg's office.

Defendant otherwise opposes the sealing of the court file or use of any caption that masks the identity of the parties. He argues that plaintiff has not met the heavy legal burden required for such an order. He also argues that her actions so far have resulted in a waiver of any right of privacy. In the alternative, he requests that if any such order is granted that it also protect his identity and the identity of his spouse as well.

Section 216.1 of the Uniform Rules of the Trial Courts provides the circumstances for the filing of court records. It states in relevant part:

"(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown the court shall consider the interests of the public as well as of the parties...."

There is an important societal interest in conducting any court proceeding in an open forum. Open hearings are more conducive to the ascertainment of the truth, and the presence of the public historically has been believed to enhance the integrity and

the quality of what transpires. Anonymous v. Anonymous, 263 AD2d 341 (1st dept. 2000). The public needs to know that all who seek the court's protection will be treated evenhandedly. Matter of Marshal, 2006 WL 2546192 (NY Sup 2006).

The plaintiff's reasoning for the relief has to do with her personal embarrassment caused by the issues in this case that surround a sexually transmitted disease. She is concerned that others, including her work mates, will learn about this case, and she fears how others will treat her if they know.

While the court has no reason to doubt that the personal claims made by plaintiff in this case might cause her some embarrassment if others find out about them, her personal concern does not outweigh the need for open proceedings. Significantly, in circumstances involving claims of a sensitive nature, the legislature has passed laws that expressly protect privacy. For example Civil Rights Law § 50-b expressly forbids disclosure of the identity of victims of rape or incest or of offenses involving the transmission of HIV. No similar express legislation has been passed with respect to the transmission of herpes during what is otherwise consensual sexual relations. While the absence of express legislation is not determinative of this issue, plaintiff does not cite one case to the court where a record was sealed or the parties were made anonymous based upon such a claim. Indeed, this court's search for cases revealed that these cases are not routinely sealed and the identity of the parties is not routinely protected. See: Yong Wen Mo v. Gee Ming Chan, 17 AD3d 356 (2nd dept. 2006); Maharam v. Maharam, 177 AD2d 262 (1st dept. 1991). Finally, although plaintiff is concerned that others will learn about her claims, there is no indication that this case is, or will be, subject to any extraordinary attention.

In view of the court's conclusion, that this case is not entitled to the privacy protections requested, the court need not determine if the protections have otherwise been waived by plaintiff conduct.

Accordingly it is hereby:

ORDERED that plaintiff's motion is granted only to the extent that plaintiff may serve all future legal papers in this proceeding upon defendant's attorney of record; and it is further

ORDERED that such service of papers shall be made by mail or overnight courier, and it shall not be made by plaintiff in person; and it is further

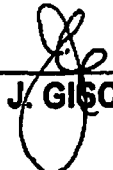
ORDERED that plaintiff's motion for sealing and anonymity is denied; and it is further

ORDERED that any requested relief not expressly granted herein is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
September 22, 2006

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

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