

Ark 102 Doe v National Boy Scouts of Am. Found.

2019 NY Slip Op 33465(U)

November 22, 2019

Supreme Court, New York County

Docket Number: 950098/2019

Judge: George J. Silver

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

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ARK 102 DOE,

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Plaintiff,

-against-

**NATIONAL BOY SCOUTS OF AMERICA
FOUNDATION A/K/A THE BOY SCOUTS
OF AMERICA; GREATER NEW YORK COUNCILS,
BOY SCOUTS OF AMERICA D/B/A MANHATTAN
COUNCIL, GREATER NEW YORK COUNCILS,
BOY SCOUTS OF AMERICA; BIG APPLE
DISTRICT, GREATER NEW YORK COUNCILS,
BOY SCOUTS OF AMERICA; and DOES 1-5
whose identities are unknown to Plaintiff,**

Defendants.

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HON. GEORGE J. SILVER:

With the instant application plaintiff moves, by Order to Show Cause, for permission from this court to proceed in anonymity during the course of this action.

ARGUMENT

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 ensue due to New York State’s enactment of the Child Victims Act (L. 2019 c.11) (“CVA”) which, *inter alia*, (1) extends the statute of limitations on criminal cases involving certain sex offenses against children under 18 (*see* CPL §30.10 [f]); (2) extends the time which civil actions based upon such criminal conduct may be brought until the child victim reaches 55 years old (*see* CPLR §208 [b]); and (3) opens a one-year window reviving civil actions for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing six months after the effective date of the measure, i.e. August 14, 2019 (*see* CPLR §214-g). Indeed, plaintiff 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 abuse from coming forward.

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Defendant GREATER NEW YORK COUNCIL OF THE BOY SCOUTS OF AMERICA (“defendant”) reached an agreement with plaintiff regarding the instant Order to Show Cause. That agreement is reflected in the attached stipulation, which has been so-ordered by this court. While the relief herein has been agreed to via stipulation, the court finds that a decision reflecting its deliberation on the application herein is warranted, especially where the remaining defendants do not oppose plaintiff’s instant application but chose not to stipulate to plaintiff’s requested relief. Accordingly, the decision and order that follows reflects the court’s determination as to all defendants, notwithstanding any agreement reached by stipulation.

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 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*).

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]).

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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 plaintiff of a sensitive and highly personal nature. The court recognizes that plaintiff, as the alleged victim of sexual abuse, has undoubtably suffered great emotional distress. Moreover, this case has not been brought against a government entity, a factor this court believes would militate in favor of the public’s right to know. Instead, defendants are private entities and institutions, and therefore are not prejudiced at this time. In contrast, 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 identity would undermine the litigation by denying a portion of the relief ultimately requested in the action.

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 in accordance with this court’s decision and order, defendant is directed to comply with the conditions reflected in the annexed stipulation; and it is further

ORDERED that plaintiff serve a copy of this decision, with notice of entry, upon the remaining defendants within 20 days of this court’s decision and order; and it is further

ORDERED that plaintiff personally serve the remaining defendants with the complaint within 20 days of this court’s decision and order; and it is further

ORDERED that plaintiff provide the remaining defendants with the abovenamed plaintiff’s name (including maiden name, if any), date of birth, social security number, parents and/or guardian’s names, current address, and address at the time of the alleged abuse; and it is further

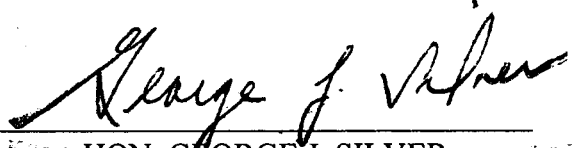
ORDERED that the time for the remaining defendants to appear and to answer, amend, or supplement the answer or to make any motion with relation to the summons or to the complaint in this action, be and the same hereby is extended 90-days from date of service; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on December 10, 2019 at the courthouse located at 111 Centre Street, New York, NY, Room 1227 at 2:00 P.M.

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The foregoing constitutes the decision and order of this court.

Dated: 11-22-19


HON. GEORGE J. SILVER