

John Doe No. 4 v Rockefeller Univ.
2019 NY Slip Op 33725(U)
November 22, 2019
Supreme Court, New York County
Docket Number: 950172/2019
Judge: George J. Silver
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

10-CUA

PRESENT: George J. Silver
Justice

PART _____

Doe, John No.4 (AKA 120653)

950172-19
INDEX NO. _____

-v-
Rocketfeller University

MOTION DATE _____

MOTION SEQ. NO. 1

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision and order of the court dated 11/22/19

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 11-22-19

George J. Silver
J.S.C.
HON. GEORGE J. SILVER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

-----X
JOHN DOE NO. 4,

Index No. 950172/2019

Plaintiff,

-against-

ROCKEFELLER UNIVERSITY, et al.

Defendant

-----X
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 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.

Defendants 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. Accordingly, the decision and order that follows reflects the court’s determination 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]).

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 undoubtedly 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

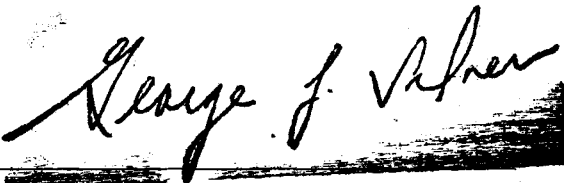
ORDERED that plaintiff's motion to file a complaint and proceed herein under a pseudonym, rather than in plaintiff's legal name, and to proceed throughout this action under such pseudonym, rather than in plaintiff's own name, is granted; and it is further

ORDERED that in accordance with this court's decision and order, the parties are directed to comply with the conditions reflected in the annexed stipulation; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on December 17, 2019 at the courthouse located at 111 Centre Street, New York, NY, Room 1227 at 2:00 P.M.

The foregoing constitutes the decision and order of this court.

Dated: 11/22/19


GEORGE J. SILVER

UNIVERSITY; THE ROCKEFELLER UNIVERSITY HOSPITAL; and THE HOSPITAL FOR SPECIAL SURGERY”;

ORDERED that any documents filed with the Court shall contain only the pseudonym “John Doe No. 4 (a/k/a “120653”)” rather than Plaintiff’s true name;

ORDERED that any document filed with the Court on its public docket shall be redacted by the filing party to the extent that it bears Plaintiff’s true name, but will include the pseudonym “John Doe No. 4 (a/k/a “120653”)”;

ORDERED that Plaintiff provide his true name to the University and HSS within one week of the entry of this Order;

ORDERED that any party filing a document in redacted form pursuant to this Order shall provide an unredacted copy of the document to the other parties’ counsel;

ORDERED that this Order does not diminish in any way the rights that the University and HSS otherwise would have in the absence of this Order as a litigant in this action, including, but not limited to:

1. disclosing Plaintiff’s true name to the Defendants’ attorneys, experts, consultants, any persons otherwise retained to provide specialized advice to the Defendants in this action and/or the support staff or vendors employed or retained by such persons;
2. disclosing Plaintiff’s true name in discovery in this action, including, but not limited to, requests for discovery, third-party subpoenas, depositions, and/or communications with persons responding to such discovery and/or potential party and non-party witnesses and/or their counsel (including, for example, current and former employees);
3. disclosing Plaintiff’s true name in information provided to the Defendants’ insurance carriers, their counsel, and/or consultants; and

- 4. disclosing Plaintiff's true name to any referee; special master; and/or mediator, arbitrator, neutral, and/or other person engaged or appointed to facilitate alternative dispute resolution; and it is further

ORDERED that in any and all aforementioned disclosures of Plaintiff's true name by the University, HSS, or both, the University and/or HSS will request that any person or entity to whom such disclosure is made keep Plaintiff's true name confidential from the public.

Dated: November 7, 2019

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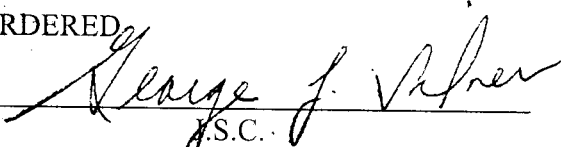
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SO ORDERED



 J.S.C.

HON. GEORGE J. SILVER