Index №. 950111/2019

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

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MORDECHAI TWERSKY, BARRY SINGER, JAY GOLDBERG, DAVID BRESSLER, ZACHARY BELIL, JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5, JOHN DOE 6, JOHN DOE 7, JOHN DOE 8, JOHN DOE 9, JOHN DOE 10, JOHN DOE 11, JOHN DOE 12, JOHN DOE 13, JOHN DOE 14, JOHN DOE 15, JOHN DOE 16, JOHN DOE 17, JOHN DOE 18, JOHN DOE 19, JOHN DOE 20, JOHN DOE 21, JOHN DOE 22, JOHN DOE 23, JOHN DOE 24, JOHN DOE 25, JOHN DOE 26, JOHN DOE 27, JOHN DOE 28, JOHN DOE 29, JOHN DOE 30, JOHN DOE 31, JOHN DOE 32, and JOHN DOE 33,

Plaintiffs,

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Motion Seq №. 001

-against-

YESHIVA UNIVERSITY, MARSHA STERN TALMUDICAL ACADEMY—YESHIVA UNIVERSITY HIGH SCHOOL FOR BOYS, PAT DOE 1-30, MEMBERS OF THE BOARD OF TRUSTEES OF YESHIVA UNIVERSITY, in their official and individual Capacities, whose identities are presently unknown to Plaintiffs, JAMES DOE 1-30, MEMBERS OF THE BOARD OF TRUSTEES OF MARSHA STERN TALMUDICAL ACADEMY—YESHIVA UNIVERSITY HIGH SCHOOL FOR BOYS, in their official and individual Capacities, whose identities are presently unknown to Plaintiffs, NORMAN LAMM, in his official and individual Capacity, and ROBERT HIRT, in his official and individual Capacity,

Defendants

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HON. GEORGE J. SILVER:

With the instant application plaintiffs JOHN DOE 1-33 ("plaintiffs") move, by Order to Show Cause, for permission from this court to proceed in anonymity during this action. Defendants YESHIVA UNIVERSITY and MARSHA STERN TALMUDICAL ACADEMY – YESHIVA UNIVERSITY HIGH SCHOOL FOR BOYS ("defendants") oppose the application, arguing that the anonymity protection sought by plaintiffs would run athwart of defendants' basic due process rights.

ARGUMENT

In support of the instant application to proceed anonymously, plaintiffs argue that allowing them 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.

Plaintiffs, like other similarly situated plaintiffs, are 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, plaintiffs maintain that this case is likely to draw attention from the media, and if plaintiffs are not allowed to proceed under a pseudonym, increased media attention may lead to a chilling effect that may inhibit plaintiffs and other alleged victims of abuse from coming forward. Plaintiffs further highlight that the protection of anonymity is uniquely afforded to victims of sexual assault rather than to their alleged perpetrators. Moreover, plaintiffs argue that revelation of defendants' names serves the public interest insofar as it alerts the public to potential institutional wrongdoing in the hopes that such wrongdoing is never repeated.

In opposition, defendants argue that plaintiffs' request for this court to permit plaintiffs to proceed anonymously should be denied because such a broad request is not justified in this case and would violate defendants' due process rights. In particular, defendants contend that if defendants are unable to ascertain plaintiffs' true identities, defendants will be unable to defend themselves against plaintiffs' claims because defendants will be incapable of connecting their alleged acts of impropriety to any specific person. This, defendants aver, would violate defendants' basic due process rights of notice and an opportunity to be heard. Citing *Doe v. Roman Catholic Archdiocese*, 64 Misc.3d 1220(A)(N.Y. Sup. Ct. West. County July 31, 2019), defendants submit that at least one trial court has concluded that potential embarrassment to a plaintiff does not outweigh a defendant's ability to defend itself against claims of alleged sexual abuse.

Defendants further aver that permitting plaintiffs to proceed anonymously on the vague and unsubstantiated record before it would amount to a "pro forma" approval of plaintiffs' application. Finally, defendants submit that, in passing the CVA, the legislature did not intend to grant plaintiffs the ability to proceed anonymously without employing the sound discretion of the courts, which by requires that all cases not be rubber-stamped. Granting plaintiffs the ability to proceed anonymously on this record, defendants argue, would be tantamount to a rubber stamp, and would raise "a very real possibility that numerous plaintiffs will similarly band together in large numbers and attempt to circumvent the well-established procedures by which courts conduct individualized assessments to determine whether anonymity is warranted." Accordingly, defendants submit that denial of plaintiffs' instant application is warranted.

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 CVA was enacted with the protections codified under CRL §50-b in mind. To be sure, the legislature wanted to avoid exposing alleged victims to the lasting scars of broadcasted exposure while "help[ing] the public identify hidden child predators through civil litigation discovery, and shift the significant and lasting costs of child sexual abuse to the responsible parties."

Considering the foregoing, it is axiomatic that plaintiffs should be afforded the protection of anonymity. To be sure, the instant case involves alleged acts that will no doubt center on information about plaintiffs of a sensitive and highly personal nature. The court recognizes that plaintiffs, as the alleged victims of sexual abuse, have 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. In contrast, defendants are primarily private institutions, and while revelation of their identity may be perceived as impinging upon an expectation of privacy, courts have long recognized that the anonymity protection afforded to a unique subset of plaintiffs oftentimes does not extend to defendants. Indeed, among the factors considered in permitting the use of a pseudonym are: " whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a

sensitive and highly personal nature" (*James v. Jacobson*, id. at 238; *see also Doe v. Provident Life & Acc. Ins. Co.*, 176 F.R.D. 464, 467-8 [E.D.Pa.1997]). Defendants' identify, were defendants seeking the same anonymity protections sought by plaintiff, would fall within the ambit of the former justification. To be sure, any embarrassment that stems from the publication of defendants' institutional names is indistinguishable from the embarrassment that is likely to befall any defendant accused of wrongdoing in a civil action. Defendants' assumption is that plaintiffs and defendants stand on an even plain as far as anonymity is concerned. This assumption is a false one under existing precedent. Moreover, as private institutions with scores of employees, defendants by definition and sheer size, are already receiving anonymity protections that do not inure to a private citizen accused of wrongdoing.

Finally, defendants' reliance on *Doe v. Roman Catholic Archdiocese*, 64 Misc.3d 1220(A)(N.Y. Sup. Ct. West. County July 31, 2019) is misplaced. That case involved a plaintiff who was seeking to proceed under a pseudonym while simultaneously refusing to disclose his true identity to both defendants and the court. Unlike *Doe*, here plaintiffs have agreed to share details about plaintiffs' identities with defendants so that defendants' due process rights are not violated.[1] In return, plaintiffs are simply asking defendants not to reveal those details publicly – an arrangement that has notably been accepted in the lion share of CVA cases litigated before this court.

At the end of the day, 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. Ultimately, in this court's view, the public 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, plaintiffs' application seeking anonymity is granted.

Accordingly, it is, for the reasons stated above, hereby

ORDERED that plaintiffs' motion to file a complaint and proceed herein under pseudonyms, rather than in plaintiffs' legal names, and to proceed throughout this action under pseudonyms, rather than in plaintiffs' own names, is granted; and it is further

ORDERED that plaintiffs are directed to serve a copy of this decision, with notice of entry, upon defendants within 10 days of this court's decision and order; and it is further

ORDERED that plaintiffs personally serve defendants with the complaint within 20 days thereafter; and it is further

ORDERED that plaintiffs provide defendants with the abovenamed plaintiffs' names (including maiden names, if any), dates of birth, social security numbers, parents and/or guardians' names, current addresses, and address at the time of the alleged abuse; and it is further

[1] In fact, it is notable that some plaintiffs even elected to disclose their identities at the outset of this litigation. While defendants may view such disclosure as evidence that all plaintiffs' names should be disclosed, the court views this phenomenon differently. Inasmuch as defendants may not stand on even footing with plaintiffs in general, it also is worth noting that the considerations of each plaintiff in a lawsuit such as this are not analogous. While some plaintiffs may feel that disclosure of their identities is not of great concern, others may differ when making a similar assessment.

ORDERED that the time for defendants to appear and to answer, amend, or supplement their answers or to make any motion with relation to the summons or to the complaint in this action, be and the same hereby is extended to July 31, 2020; and it is further

ORDERED that the parties will receive a separate notice from the court regarding a future appearance in this matter.

The foregoing constitutes the decision and order of this court.

Dated: July 6, 2020

GEORGE J. SILVER, J.S.C.