SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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J.M.,

Plaintiff,

-against-

ROMAN CATHOLIC DIOCESE OF BROOKLYN, ST. PAUL RETREAT CENTER a/k/a ST. PAUL CENTER FOR SPIRITUALITY a/k/a RETREAT HOUSE FOR ENGLISH CURSILLO AND SPANISH CURSILLO, ST. FRANCIS PREPARATORY SCHOOL, and THE ST. FRANCIS MONASTARY a/k/a THE CONGREAGATION OF FRANCISCAN BROTHERS OF BROOKLYN a/k/a FRANCISCAN BROTHERS OF BROOKLYN,

Defendants.

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Index No. 519612/2021

DECISION and ORDER
Mot Seq No. 002

HON. DEBORAH A. KAPLAN, J.S.C.

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion and cross-motion:

Papers	**Numbered**	
Defendants' Order to Show Cause:	1	Exhibits A-G
Plaintiff's Opposition	1	Exhibit A
Defendants' Reply	1	

In this action filed pursuant to the Child Victims Act (CVA), defendants St. Francis Preparatory School and The St. Francis Monastary (sic.) a/k/a The Congregation of Franciscan Brothers of Brooklyn a/k/a Franciscan Brothers of Brooklyn (collectively, the moving defendants) move, pursuant to CPLR 2221 (d), for leave to reargue and, upon re-argument, for an order denying the plaintiff's motion to proceed by pseudonym.

Familiarity with the decision and order dated November 3, 2021 (the November 3, 2021 Order) is presumed (*see* NYSCEF Doc No. 27). Although this action is currently assigned to

Justice Alexander M. Tisch, since this court rendered the November 3, 2021 Order, pursuant to CPLR 2221 (a), the instant motion was referred and reassigned to this court for disposition.

BACKGROUND

In the complaint, plaintiff alleges that, in approximately 1972-1973, when he was fourteen or fifteen years old, he "was repeatedly sexually assaulted and abused by" a nonparty Catholic priest, while participating in religious courses that took place at defendant St. Paul Retreat Center a/k/a St. Paul Center for Spirituality a/k/a Retreat House For English Cursillo and Spanish Cursillo (*see* NYSCEF Doc No. 2 [complaint, ¶¶ 4, 7, 58-62]).

In motion sequence number 001, plaintiff sought permission to proceed in anonymity. In the affidavit in support, plaintiff, in relevant parts, claimed that: (i) the alleged sexual assault took place while he was participating in a religious program into which he "was recruited" while he "was student at [defendant] St. Francis Preparatory School" (*see* NYSCEF Doc No. 5 [plaintiff aff in supp, ¶ 3]); (ii) he "will be required to disclose matters of the utmost intimacy in this action, consisting of one or more incidents of child sexual abuse" (*see id.*, ¶¶ 3, 5); (iii) "[t]he acts of sexual abuse forming the basis of this lawsuit have caused and continue to cause [him] severe emotional . . . distress" (*see id.*, ¶ 5); (iv) "[he] reasonably fear[s] further psychological injury, stress and trauma if [his] identity as a victim of child sexual abuse were to become known as a matter of public record" (*see id.*, ¶ 5); (v) "[he is] personally embarrassed by the allegations in the lawsuit" (*see id.*, ¶ 5); (vi) "[he wishes] to keep [his] name out of local and national news publications that are accessible to [his] friends and family who live and work in the Metropolitan New York City Area" (*see id.*, ¶ 6); (vii) "[he] genuinely fear[s] [his] past abuse will be the topic of amongst [his] family and friends who do not know about the sexual abuse [he] sustained as a child" (*see id.*, ¶ 6); (viii) "[he has] not disclosed the sexual abuse [he] sustained as a child to [his] friends and extended family and fear[s] that such disclosure would

cause tremendous harm to important relationships. [He] fear[s] stigmatization, ostracization and social repercussions if the sexual abuse [he] sustained as a child becomes public knowledge" (*see id.*, ¶ 7); (ix) "[he] has not disclosed the sexual abuse [he] sustained as a child to any media outlet and ha[s] not publicly spoken about [his] childhood trauma" (*see id.*, ¶ 8); and (x) "[i]f [he is] not allowed to proceed under a pseudonym in this lawsuit, and ha[s] to use [his] real name, [he does] not know if [he] would proceed with the lawsuit (*see id.*, ¶ 10).

In the affirmation in support, plaintiff's attorney, Jeff Herman, Esq., in relevant part, claimed that: (i) given that it is a CVA action, "[t]he Plaintiff will be required to disclose matters of the utmost intimacy" (*see* NYSCEF Doc No. 3 [08/04/2021 Herman affirmation, ¶ 3]); (ii) "[p]laintiff fears further psychological injury if [p]laintiff's identity as a victim of child sexual abuse were to become known as a matter of public record" (*see id.*, ¶ 6); (iii) "[p]laintiff seeks to use pseudonym for purposes of court filings and the public record. The use of a pseudonym for [p]laintiff, consisting of their initials, will not materially hamper the [d]efendants in their defense of this action, as [p]laintiff's counsel will disclose to [d]efendants the full name of [p]laintiff" (*see id.*, ¶ 5).

In opposition, the moving defendants argued that: (i) the plaintiff's affidavit in support largely lacked "facts specific to the plaintiff," rendering it a pro forma application (*see* NYSCEF Doc No. 20 [10/28/2021 Adams affirmation, ¶¶ 4-5]); (ii) the plaintiff's affidavit contained "boilerplate statements contained in every application to proceed by pseudonym" (*see id.*, ¶ 7); (iii) the plaintiff did not articulate any "special circumstances," which would "warrant preferential treatment" (*see id.*, ¶ 8); and (iv) "[t]he court has an obligation to protect the due process rights of the defendants since it may be unfair for the plaintiff to publicly accuse the defendants while at the same time being shielded from public scrutiny" (*see id.*, ¶ 6).

In the resulting November 3, 2021 Order, the court, among other things: (i) noted that under Civil Rights Law § 50-b, "[t]he identity of any victim of a sex offense . . . shall be confidential" and that "a criminal investigation could still be initiated" here (*see* NYSCEF Doc No. 27 [November 3, 2021 Order at 3, 4] [internal quotation marks omitted]); (ii) noted that "the primary function of a pleading is to apprise an adverse party of the pleader's claim" and not a pleader's name (*see id.* at 3 [internal quotation marks, citation and emphasis omitted]); (iii) considered that: this action involves "information about plaintiff of a sensitive and highly personal nature" (*see id.*); plaintiff claims "suffer[ing] from the lingering effects of emotional distress and embarrassment as a result of the alleged abuse" (*see id.* at 4); and "plaintiff avers that denial of [his] . . . application would chill plaintiff" and others "from coming forward with their claims" (*see id.*); (iv) concluded that "the balance weighs in favor of plaintiff because defendant will be permitted to know the name of the plaintiff," which eliminates prejudice to defendant; and that the possibility that plaintiff would be deterred from litigating this matter if his name is revealed would "undermine the very purpose for which the CVA was enacted" (*see id.*); and (v) added that: "[d]efendant has failed to advance any legitimate reason why plaintiff should not be afforded the protection of anonymity"; "plaintiff has demonstrated facts specific to the instant matter"; and "the public has an interest in seeing this case determined on its merits," an objective which the grant of anonymity would preserve (*see id.*).

Summary of Arguments

In support of their current application, the moving defendants, among other things, contend that: (i) "the burden is not on the defendant to advance any legitimate reason why the plaintiff should not be afforded anonymity" (*see* NYSCEF Doc No. 32 [12/08/2021 Nador affirmation, ¶ 6]); (ii) "the defendant is at a great disadvantage and that the playing field is

leveled against the defendant", because "the defendant has been publicly accused and has to defend itself publicly while the plaintiff makes accusations from behind a cloak of anonymity" (*see id.*); (iii) "the mere filing of a civil action causes damage to good name and reputation" of a defendant (*see id.*); (iv) plaintiff, who brought this lawsuit, "is making serious charges putting credibility at issue" and should "stand behind the charges" (*see id.*); (v) unlike CRL § 50 (b), a rape shield law in a criminal context, the plaintiff here "is seeking to vindicate only his own interests" (*see id.*); and (vi) "[l]awsuits are public events and the public has the right to know the facts which includes the identification of the parties involved" (*see id.*).

The moving defendants further contend that: (i) pseudonym applications should not be granted pro forma but only "in the most unique and compelling cases" (*see id.*, ¶ 7); (ii) the plaintiff's affidavit in support is boilerplate, and includes the typical claims of the sensitive nature of the case, embarrassment, and the fact that plaintiff's "friends and family who live in the area will have access to local news" (*see id.*, ¶ 8); (iii) "the allegations of abuse will be the topic amongst the plaintiffs family and friends[,] regardless of whether or not the plaintiffs name appears in the caption[,] because these individuals will be called to testify by the defendant during pretrial discovery" (*see id.*); and (iv) "[t]he claims of stigmatization, ostracization and social repercussions are merely conclusory and are unsupported by a statement of any facts upon which it could be concluded that these risks are real and not speculative" (*see id.*).

Finally, the moving defendants point out that: (i) unlike in the case of *Doe v Yeshiva University*, 195 AD3d 565 (1st Dept 2021), where, at oral argument, "plaintiff's counsel elaborated upon the potential for economic harm from the public disclosure of the plaintiff's identity, professional repercussions and isolation from the plaintiffs peers and colleagues in his legal profession," here, at oral argument, plaintiff's attorney did not elaborate on plaintiff's

conclusory statements and confirmed that "the potential harm was only speculative" (*see id.*, ¶ 10). "[T]here was no presentation of unique circumstances by counsel or facts specific to the plaintiff" (*see id.*).

In opposition, plaintiff's attorney, in relevant parts, argues that: (i) "[the moving d]efendants have not met the requisite burden of proof on a motion to reargue, failing to set forth points that were misapprehended or overlooked by the Court" (*see* NYSCEF Doc No. 50 [02/01/2022 Schmitt affirmation, ¶ 8]); (ii) the moving defendants make the same points that were rejected by the court in the underlying decision (*see id.*); (iii) the moving defendants "offer no explanation as to how [they] would be prejudiced, given that the identity of the [p]laintiff has been revealed to them" (*see id.*, ¶ 10); (iv) the court weighed the plaintiff's privacy interest against prejudice to the defendant and addressed "the accessibility of information by the public" (*see id.*, ¶¶ 11-12); (v) the court found that the revelation of the plaintiff's name may have a chilling effect on the prosecution of plaintiff's claims and those of other alleged victims (*see id.*, ¶ 12); (vi) the court addressed the issue of prejudice to the moving defendants by stating that plaintiff's name would be revealed to them (*see id.*, ¶ 13); (vii) "there is no specific level of detail the [p]laintiff's testimony must satisfy" regarding the alleged harms of embarrassment, stigmatization, ostracization and social repercussions, and "[t]he determination that Plaintiff will suffer harm should he be forced to proceed without the protection of anonymity is at the discretion of the Court" (*see id.*).

In reply, the moving defendants, among other things, argue that: (i) "the defendant has identified matters which may have been overlooked by the court[,] such as the plaintiff's burden of proof in establishing that the harm to the plaintiff, if not granted anonymity in dereliction of the common law, is real and not speculative and that plaintiff's counsel during oral argument

conceded that the potential harm was only speculative in this case" (*see* NYSCEF Doc No. 53 [02/10/2022 Nador affirmation, ¶ 4]); (ii) the moving defendants need not demonstrate prejudice "if the plaintiff has not met his burden of proof on the motion," and the defendants explained "the inherent unfairness of allowing a plaintiff to publicly accuse a defendant of . . . scandalous conduct, subjecting the defendant to public scorn while at the same time permitting the plaintiff to be shielded from public scrutiny" (*see id.*, ¶ 6); (iii) humiliation and embarrassment are insufficient grounds to grant an anonymity application (*see id.*, ¶ 9); (iv) plaintiff has not provided any specific facts that would support his claims of stigmatization, ostracization and social repercussions, and "[w]hether the plaintiff will suffer harm as a consequence of compliance with the CPLR[']s pleading requirements is for the plaintiff to prove" (*see id.*, ¶¶ 10, 11); and (v) the moving defendants will be seeking the depositions of the plaintiff's family and friends (*see id.*, ¶ 11).

DISCUSSION

CPLR 2221 (d) (2) provides, in relevant part, that "a motion for leave to reargue … shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion."

> "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision . . . Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided . . . or to present arguments different from those originally asserted . . . "

(*see William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal quotation marks and citations omitted], *lv dismissed in part, denied in part* 80 NY2d 1005

[1992]; *see also Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 492 [1st Dept 2016]).

On the issue of plaintiffs' applications to proceed in anonymity in the CVA actions, the Appellate Division has provided guidance in *Roe v Harborfields Cent. Sch. Dist.*, 212 AD3d 853, 854 (2d Dept 2023), *Twersky v Yeshiva Univ.*, 201 AD3d 559 (1st Dept 2022), and *Doe v Yeshiva Univ.*, 195 AD3d 565 (1st Dept 2021).

In *Roe*, the Supreme Court granted the plaintiff's pseudonym application "as required by Civil Rights Law § 50-b" (*see id.*, 212 AD3d at 854). The Appellate Division affirmed but on "on a different ground" (*see id.* at 855). It stated that "in balancing plaintiff's privacy interest against the presumption in favor of open trials and against any potential prejudice to defendant," the court should consider:

> "1) whether the plaintiff is challenging governmental activity or an individual's actions, 2) whether the plaintiff's action requires disclosure of information of the utmost intimacy, 3) whether identification would put the plaintiff [or innocent third-parties] at risk of suffering physical or mental injury, 4) whether the defendant would be prejudiced by allowing the plaintiff to proceed anonymously, and 5) the public interest in guaranteeing open access to proceedings without denying litigants access to the justice system"

(*see id.* at 855 [internal quotation marks and citations omitted]). The appellate court noted that in the affidavit in support, plaintiff, among other things, averred that: (i) "due to the sexual abuse[,] the plaintiff continues to suffer great pain of mind and body, shock, emotional distress, . . . embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life" (*see id.* at 855 [internal quotation marks omitted]); (ii) [if plaintiff's name is disclosed to the public,] "it would cause further emotional stress, embarrassment, and loss of self-esteem"; and (iii) "[as a result] the plaintiff may not pursue the action" (*see id.* [internal quotation marks omitted]). The

court also found that the defendants' contention of prejudice lacked merit because "the orders do not preclude the defendants from disclosing the plaintiff's name during investigations and the court clarified that the use of a pseudonym is limited to papers filed with the court" (*see id.* at 856).

In *Doe*, the Appellate Division affirmed the grant of plaintiff's motion to proceed under the pseudonym, where the motion "court credited plaintiff's assertions that he feared not only embarrassment and economic harm from the public disclosure of his identity but also social stigmatization, professional repercussions, and social isolation from his peers and colleagues in the legal profession" (*Doe*, 195 AD3d at 566). "Defendants argue that disclosure will have no chilling effect since plaintiff has already commenced suit, but this argument fails to account for the real possibility that plaintiff would be dissuaded from pursuing the action further and for the inhibiting effect it could have on other potential plaintiffs" (*id.*). "Defendants have not explained why the public must know plaintiff's identity in addition to all other aspects of the case. Nor have defendants shown that they will suffer any prejudice, as plaintiff has agreed to divulge his identity to them and to the court" (*id.*).

In *Twersky*, the Appellate Division reversed the grant of plaintiffs' motion to allow 33 plaintiffs to proceed anonymously for "fail[ure] to provide any specific evidence as to why each unnamed plaintiff should be entitled to proceed anonymously" (*see id.*, 201 AD3d at 560). "Plaintiffs only submitted a short attorney affirmation, which merely repeated the relief requested in the order to show cause and made a single vague statement that plaintiffs might suffer further mental harm should their identities be revealed" (*id.*).

The Appellate Division explained that: (i) "the legislature left it up to each alleged victim to determine whether to seek anonymity . . . and left it to the courts to assess each individual

case" (*see id.* at 559 [internal quotation marks and citations omitted]); (ii) " permission to use a pseudonym will not be granted automatically and . . . the motion court should exercise its discretion to limit the public nature of judicial proceedings sparingly and then, only when unusual circumstances necessitate it" (*id.* [internal quotation marks and citations omitted]); (iii) "[i]n determining whether to grant a plaintiff's request to proceed anonymously, the motion court must use its discretion in balancing plaintiff's privacy interest against the presumption in favor of open trials and against any potential prejudice to defendant" (*id.* at 559-560 [internal quotation marks and citations omitted]); and (iv) "[a] plaintiff seeking permission to proceed anonymously by employing a pseudonym must provide facts specific to the plaintiff that will allow the motion court to exercise its discretion in an informed manner" (*id.* at 560 [internal quotation marks and citations omitted]).

Here, one of the moving defendants' main arguments is that the plaintiff has not provided specific facts in support of his application. The court disagrees. As recounted above and in the November 3, 2021 Order, the plaintiff averred that: (i) in this action, he will be required to disclose matters of the utmost intimacy (*see* NYSCEF Doc No. 5, plaintiff aff, ¶¶ 3, 5); (ii) he fears further psychological injury, stress and trauma if his identity is revealed to the public (*see id.*, ¶ 5); (iii) he fears stigmatization, embarrassment, and ostracization if the sexual abuse he allegedly sustained becomes public knowledge, and has suffered from emotional distress (*see id.*, ¶ 7; *see also* November 3, 2021 Order at 2, 3, 4; *Doe*, 195 AD3d 565, 566 [discussing the motion court's crediting plaintiff's claims of embarrassment and social stigmatization and isolation if the plaintiff's name is revealed]; *Roe*, 212 AD3d at 856). The plaintiff here stated in his affidavit that he has not disclosed the alleged sexual abuse to his friends, extended family, or media and has not publicly spoken about it, and that he is personally embarrassed by the allegations in this

action (*see* plaintiff aff, ¶¶ 5, 7, 8). The plaintiff also claimed that disclosure of his actual name would have a chilling effect on the prosecution of his claims (*see id.*, ¶ 10), a factor that was considered in *Roe* (*see id.*, 212 AD3d at 855) and in *Doe* (*see id.*, 195 AD3d at 566). Unlike in *Twersky*, the plaintiff here provided a rather lengthy affidavit, which in its totality provided, in this court's view, sufficient detail in support of his application to "allow the motion court to exercise its discretion in an informed manner" (*see Twersky*, 201 AD3d at 560).

In the November 3, 2021 Order, the court also addressed the issue of prejudice to the moving defendants, and held that the fact that the plaintiff's name would be revealed to them ameliorates that concern (*see id.* at 4; *see also Roe*, 212 AD3d at 855-856, *Doe*, 195 AD3d at 566).

The court does not find that it overlooked or misapprehended the facts or the law or that it mistakenly arrived at the earlier decision (*see William P. Pahl Equipment Corp.*, 182 AD3d at 27). Accordingly, the court grants the moving defendants leave to reargue, and, upon reargument, adheres to its prior determination.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that that motion of defendants St. Francis Preparatory School and The St. Francis Monastary a/k/a The Congregation of Franciscan Brothers of Brooklyn a/k/a Franciscan Brothers of Brooklyn is granted to the extent that leave to reargue is granted, and upon reargument, the court adheres to its prior determination, and the motion is otherwise denied.

Dated: October 25, 2023

ENTER:

DEBORAH A. KAPLAN, J.S.C.

Hon. Deborah A. Kaplan
J.S.C.