

J.M. v Roman Catholic Diocese of Brooklyn
2021 NY Slip Op 32186(U)
November 3, 2021
Supreme Court, Kings County
Docket Number: Index No. 519612/2021
Judge: Deborah A. Kaplan
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

-----X
J.M.,

Index No. 519612/2021

Plaintiff,

-against-

**ROMAN CATHOLIC DIOCESE OF BROOKLYN
et al.**

Defendants

-----X
HON. DEBORAH A. KAPLAN:

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

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.

In opposition defendant ST. FRANCIS PREPATORY SCHOOL, and THE ST. FRANCIS MONASTARY a/k/a THE CONGREGATION OF FRANCISCAN BROTHERS OF BROOKLYN a/k/a FRANCISCAN BROTHERS OF BROOKLYN (“defendant”) argues that the instant application should be denied because plaintiff’s application is not supported by specific facts and only supported by an attorney’s affirmation. Defendant also argues that plaintiff’s application should be denied on procedural grounds because they were not timely served on or before August 24, 2021, in accordance with the signed Order to Show Cause. Although plaintiff failed to timely serve defendants, defendant received the papers shortly after on September 2, 2021,

which provided defendants with sufficient time to respond before the November 4, 2021 hearing. Defendants, indeed, filed opposition on October 28, 2021. Given that defendants were able to respond prior to the hearing, no prejudice can be garnered from the late service. In the interest of judicial economy, the court will proceed to the merits of the application.

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 arguably suffered great emotional distress. Indeed, plaintiff’s counsel

argues in support of the instant application that plaintiff suffers from the lingering effects of emotional distress and embarrassment as a result of the alleged abuse at issue here. Moreover, plaintiff avers that denial of plaintiff's present application would chill plaintiff, and other alleged victims of child sexual abuse, from coming forward with their claims.

Here, the balance weighs in favor of plaintiff because defendant will be permitted to know the name of the plaintiff and conduct discovery. By revealing plaintiff's name to defendant, any claimed prejudice is eliminated. In contrast, plaintiff's name will not be revealed to the public with a grant of this application and does not harm defendant. As previously alluded to, 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.

Defendant has failed to advance any legitimate reason why plaintiff should not be afforded the protection of anonymity in this case. Defendant's argument that plaintiff's failure to submit an affidavit is also unpersuasive. The First Department has already rejected this argument (*John Doe v. Yeshiva University et al*, 146 NYS3d 482, 482-483 [1st Dept 2021]). The plaintiff here has demonstrated facts specific to the instant matter and need not be supported by an affidavit from the plaintiff.

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 plaintiff should be afforded the protection of anonymity. Defendant's attacks on the viability of CRL §50-b to this proceeding are unavailing. While it is argued that no criminal prosecution has ever been initiated based on the alleged sexual misconduct at issue in this civil suit, the mere existence of the CVA, a claim revival statute, presupposes that a criminal investigation could still be initiated against individuals currently or formerly employed by defendant. To be sure, numerous criminal and civil prosecutions predicated upon otherwise time-barred claims have been advanced since the enactment of the CVA.

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, plaintiff's application seeking anonymity is granted.

Accordingly, for the reasons stated above, it is 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 contained within this court's Case Management Orders; and it is further

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

ORDERED that the court shall issue a separate notice to the parties regarding a future appearance in this matter.

The foregoing constitutes the decision and order of the court.

Dated: November 3, 2021



DEBORAH A. KAPLAN, J.S.C.