

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

<p>ANONYMOUS</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>RICK JAMES by and through THE JAMES AMBROSE JOHNSON, JR., 1999 TRUST</p> <p style="text-align: right;">Defendant</p>
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AFFIRMATION IN SUPPORT

DAVID M. ODDO, ESQ., an attorney at law, duly admitted to practice law in the Courts of the State of New York, hereby affirms, under penalties of perjury, as follows:

1. I am a member of the law firm of ODDO & BABAT, P.C., attorneys for the plaintiff herein, identified in the above caption as “ANONYMOUS,” and as such, I am fully familiar with all the facts and circumstances concerning the instant application.

RELIEF SOUGHT

2. I submit this affirmation in support of the plaintiff’s Order to Show Cause pursuant to CRL §50-B, allowing the plaintiff to proceed as “ANONYMOUS,” and pursuant to 22 NYCRR 216.1(a), permitting a limited sealing of the plaintiff’s deposition transcripts and any documents that may lead to the plaintiff’s identification in all future proceedings in this matter by the plaintiff against the defendant, RICK JAMES by and through THE JAMES AMBROSE JOHNSON, JR., 1999 TRUST, together with such other and future relief as this Court may deem just and proper. No prior relief of this matter has been previously requested.

FACTUAL HISTORY

3. As demonstrated by plaintiff’s affidavit, plaintiff clearly has a viable cause of action against the defendant. To preserve the anonymity of the plaintiff, the name and signature has been redacted from the affidavit. However the unredacted copies will be made available for an *in-camera* inspection on the return date, should the Court request so. For the sanctity of brevity and to spare the Court a factual recitation of the heinous sexual assaults endured by

factual statements in the plaintiff's affidavit annexed hereto.

4. These allegations were not simply accepted as reliable or trustworthy by our firm. My office conducted a very thorough and incredulous investigation into these allegations and determined that they are highly credible. Indeed, it turned out that numerous allegations have been made against defendant, RICK JAMES (now deceased), who abused and sexually assaulted women, and was arrested multiples times for violently sexually assaulting women.

PROCEDURAL HISTORY

5. Despite the overwhelming evidence that the current allegations against the defendant, RICK JAMES, are credible, it is most unfortunate that the instant application is necessary.

PROCEEDING ANONYMOUSLY AS ANONYMOUS

6. When a case involves claims of sexual assault and sexual misconduct, courts have allowed a plaintiff to proceed under the use of a pseudonym. Due v. New York University, 6 Misc. 3d 866, 786 N.Y.S.2d 892 (NY Sup. Ct. 2004), permitting the plaintiffs to proceed anonymously in a sexual assault case; Sevens v. Brown, 2012 N.Y. Slip Op 31823 (sup. Ct., N.Y. County 2012), allowing the plaintiff to proceed under a pseudonym due to the deeply personal and sensitive subject matter involving sexually transmitted diseases; Doe v. Szul Jewelry, N.Y. Slip Op 31382 (NY Sup. Ct. 2008), permitting the plaintiff to use a pseudonym in an action involving claims related to sexual harassment; Jane Doe 1 v. Beth Israel Med. Ctr., 2018 NY Slip Op 31964 (Sup. Ct.), where a plaintiff alleges sexual assault and misconduct.

7. Additionally, Civil Rights Law §50-b also provides authority for the plaintiff to proceed anonymously in this case. Anonymity in a civil lawsuit under §50-b has been permitted where the actions alleged relate to a criminal act where substantial evidence exists that a sex offense has been committed. Specifically, plaintiffs are permitted to proceed anonymously on cases that involve sexual abuse. Doe v. Szul Jewelry, Inc., 2008 N.Y. Slip Op 31382(U) (Sup.

substantial, so as to overcome the presumption of openness that attends judicial proceedings. Doe v. Kidd, 19 Misc. 3d 782, 788, 860 N.Y.S.2d 866 (Sup. Ct. 2008). Plaintiffs' privacy interests, although not recognized under New York State's common law, is found in the Civil Rights Law. Stephano v. News Group Publs, 64 N.Y.2d 174, 474 N.E.2d 580, 485 N.Y.S.2d 220 (Ct. of App. 1984); Arrington v. New York Times Co., 55 N.Y.2d 433, 434 N.E.2d 1319, 449 N.Y.S.2d 941 (Ct. of App. 1982).

8. In determining to request to proceed anonymously, the Doe v. Szul Jewelry court considered:

"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; whether the party seeking anonymity has an illegitimate ulterior motive; the extent to which the identity of the litigant has been kept confidential; whether identification poses a risk of mental or physical harm, harassment, ridicule or personal embarrassment; whether the case involves information of the utmost intimacy; whether the action is against a governmental entity; the magnitude of the public interest in maintaining confidentiality or knowing the party's identity; whether revealing the identity of the party will dissuade the party from bringing the lawsuit; whether the opposition to anonymity has an illegitimate basis; and whether the other side will be prejudiced by use of the pseudonym."

9. It is beyond civility, that due to the deeply personal and sensitive subject matter involving a rape at the tender age of 15 years old, the plaintiff should be permitted to proceed anonymously.

GRANTING LIMITED SEALING UNDER 22 NYCRR 216.1(a)

10. New York law presumptively favors broad access by the public and the press to judicial proceedings and court records, placing the burden on the party favoring sealing to show a compelling interest that likely would be harmed by granting public access. Mosallem v. Berenson, 76 A.D.3d 345, 905 N.Y.S.2d 575 (First Dept. 2010); Mancheski v. Gabelli Group Capital Partners, 39 A.D.3d 499, 835 N.Y.S.2d 595 (Second Dept. 2007). However, "the right of

access is not absolute." Danco Labs v. Chemical Works of Gedeon Richter, 274 A.D.3d 1, 711

N.Y.S.2d 419 (First Dept. 2000), and a court determining whether there is good cause for sealing court records pursuant to 22 NYCRR 216.1(a) must weigh the competing interests of the public and the parties, authorizing the sealing only in the prudent exercise of the court's discretion. See *supra* Mancheski v. Gabelli.

11. The Supreme Court conducted an independent review of, and made specific factual findings with respect to, each of the documents at issue, rendering a sealing order appropriately tailored to the circumstances. Notable, the court determined that only certain documents would be sealed O'Reilly v. Klar, 167 A.D.3d 919, 90 N.Y.S.3d 242 (Second Dept. 2018).

12. In the instant matter, the plaintiff is asking that in the litigation of this matter, that deposition transcripts be under a sealing order as well as any other documents, records, etc., that would contain names or pedigree information that could result in their identities being determined. Given the circumstances of the highly sensitive nature of the acts the plaintiff has been subjected to, this strikes a fair balance and is narrowly tailored.

CONCLUSION

13. Accordingly, the Court should execute an Order letting the defendants show cause why an Order, pursuant to CRL §50-b, allowing the plaintiff to proceed as "ANONYMOUS," and pursuant to 22 NYCRR 216.1(a), permitting a limited sealing of the plaintiff's deposition transcripts and any documents that may lead to plaintiff's identification in all future proceedings in this matter by the plaintiff against the defendant, RICK JAMES by and through THE JAMES AMBROSE JOHNSON, JR., 1999 TRUST, together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
February 13, 2020



DAVID M. ODDO