

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

PRESENT: HON. PHILLIP HOM PART 14

Justice

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P.F.,

Plaintiff,

- v -

MICHAEL FINELLI BROWN a/k/a MICHAEL
ROBERT FINELLI and CARMELA CALCETAS,

Defendants.

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INDEX NO. 705519/2023

MOTION DATE 6/1/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 9, 10, 15 were read on this motion to/for PERMIT PLAINTIFF TO FILE AS PSEUDONYM.

Upon the foregoing documents, it is ordered that Plaintiffs' order to show cause to allow Plaintiff to file as a pseudonym against Defendants Michael Finelli Brown a/k/a Michael Robert Finelli and Carmela Calcetas is determined as follows:

On March 15, 2023, Plaintiff P.F. ("Plaintiff") commenced this action against Defendants Michael Finelli Brown a/k/a Michael Robert Finelli ("Brown") and Carmela Calcetas ("Calcetas") (collectively "Defendants") seeking, among other relief, monetary damages, a permanent injunction, and punitive damages (EF Doc 1).

Plaintiff and Brown allegedly had an affair while Brown was married to Calcetas. Plaintiff alleges that Defendants, in concert or one at the direction of the other, and without Plaintiff's consent, disseminated intimate photographs and videos to Plaintiff's family members and business associates, causing damages to Plaintiff.

Now, Plaintiff moves for an order granting Plaintiff to proceed in this action using a pseudonym instead of her true identity.

In support, Plaintiff submits, among other things, an attorney affirmation (EF Doc 3), Plaintiff's affidavit (EF Doc 4), and a bill jacket for New York State Senate Bill S1719C (EF Doc 5). The Court notes that Senate Bill S1719C, which was signed by the governor on July 23, 2019, "establishes the crime of unlawful dissemination or publication of an intimate image" (*New York State Senate Bill S1719C*). "The unlawful dissemination and publication of such intimate images [is] also known as 'revenge porn'" (*id.*). Brown opposes the order to show cause.

"In determining whether to grant a plaintiff's request to proceed anonymously, the 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'" (*Roe v Harborfields Cent. Sch. Dist.*, 212 AD3d 853, 855 [2d Dept 2023], quoting *PB-7 Doe v Amherst Cent. Sch. Dist.*, 196 AD3d 9,

12 [4th Dept 2021] [internal quotation marks and citation omitted]; *see Twersky v Yeshiva Univ.*, 201 AD3d 559, 559-69 [1st Dept 2022]). “Among the factors the court should consider are ‘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” (*Roe v Harborfields Cent. Sch. Dist.*, 212 AD3d at 855, quoting *PB-7 Doe v Amherst Cent. Sch. Dist.*, 196 AD3d at 13 [internal quotation marks and citation omitted]).

Here, the Court considers and applies the factors described in the above-mentioned case law in order to balance Plaintiff's privacy interest against the presumption in favor of open trials and against any potential prejudice to Defendants.

“As to the first and fifth factors, whether the defendants are governmental entities is significant because a challenge to governmental policy ordinarily implicates a public interest and the government has less of a concern with protecting its reputation than a private individual” (*PB-7 Doe v Amherst Cent. Sch. Dist.*, 196 AD3d at 13, quoting *Doe No. 2 v Kolko*, 242 FRD 193, 195 [EDNY 2006]). Plaintiff is challenging the actions of two individuals and not governmental activity. Given the circumstances, including, among other things, Plaintiff's allegations of sexual abuse against private individuals, the Court finds that the public interest in guaranteeing open access to proceedings will not be negatively affected by allowing Plaintiff to proceed in this action using a pseudonym in this matter.

Regarding the second factor, the information involving Plaintiff is of the utmost intimacy and involves the distribution of “revenge porn” to Plaintiff's family members and business associates. Under the Senate Bill S1719C, “revenge porn” is considered, among other things, sexual abuse. Generally, there is a strong public interest in protecting the identities of alleged sexual abuse/assault victims, so that other victims will not be deterred from reporting similar crimes.

Plaintiff addresses the third factor in her affidavit, as she avers that identifying her publicly in court filings by her true identity would cause her significant mental harm and would be “devastating.” Plaintiff attests that she suffers from mental health problems due to the facts alleged in her complaint, and she is currently in therapy. She further avers that she may not proceed with this action, if required to publicly disclose her name. Plaintiff further attests that forcing her to use her name would revictimize her.

As to the fourth factor, Brown fails to identify any prejudice to him resulting from Plaintiff being allowed to proceed using a pseudonym, nor has he explained why the public should know Plaintiff's true identity (*see Harborfields Cent. Sch. Dist.*, 212 AD3d at 855). It is undisputed that Defendants know the identity of Plaintiff. Additionally, Brown's argument that Plaintiff has online commercial accounts with intimate photographs and videos of herself and Brown, and therefore should not be allowed to proceed using a pseudonym is unavailing. Under the Senate Bill S1719C, “revenge porn” is a crime, “REGARDLESS OF WHETHER THE ACTOR WAS PRESENT

WHEN THE STILL OR VIDEO IMAGE WAS TAKEN.” The Court notes that Brown’s antiquated argument is akin to the fallacy that a wife or a sex worker cannot be victims of sexual abuse/assault. The Court further finds that this case is distinguishable from the cases that Brown relies upon, including, *Anonymous v Lerner* (124 AD3d 487 [1st Dept 2015]). Here, unlike in *Anonymous v Lerner*, Plaintiff did not go to the media or otherwise publicize her allegations of “revenge porn.”

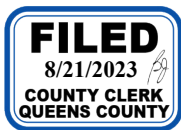
In accordance with the foregoing, it is hereby **ORDERED** that Plaintiff’s order to show cause permitting Plaintiff to proceed under a pseudonym is granted; and it is further

ORDERED that any requested relief and/or remaining contentions not expressly addressed herein have nonetheless been considered and are hereby expressly rejected; and it is further

ORDERED that Plaintiff shall serve, via NYSCEF, a copy of this Order with Notice of Entry upon Defendants, within twenty (20) days from the date of entry.

This constitutes the Decision and Order of this Court.

Dated: August 17, 2023





PHILLIP HOM, J.S.C.