

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-00313-KMT

JULIE SLIVKA,

Plaintiff,

v.

THE YOUNG MEN'S CHRISTIAN ASSOCIATION
OF THE PIKES PEAK REGION, and CARLOS LOZANO,

Defendants.

**DEFENDANT THE YOUNG MEN'S CHRISTIAN ASSOCIATION
OF THE PIKES PEAK REGION'S UNOPPOSED MOTION FOR RESTRICTED
ACCESS TO THE PROCEEDINGS, PURSUANT TO D.C.COLO.LCIVR 7.2(c)**

Defendant, The Young Men's Christian Association of the Pikes Peak Region ("Defendant YMCA"), by and through its undersigned counsel, Tyson & Mendes LLP, hereby moves unopposed, pursuant to D.C.COLO.LCivR 7.2(c), for an Order restricting public access to the entirety of these proceedings or, in the alternative, Defendant YMCA requests level 1 restriction for Document Number 1, as submitted in redacted form herewith, as well as Defendant YMCA's pre-Answer Motion to Strike, pursuant to Fed.R.Civ.P. 12(f), and Motion for a Gag Order filed at the time of this Motion, as well as any subsequent Court Order regarding same. In support of this Motion, Defendant YMCA states as follows:

I. CERTIFICATION PURSUANT TO D.C.COLO.LCivR 7.1(a)

Counsel for Defendant YMCA certifies, pursuant to D.C.COLO.LCivR 7.1(a), he conferred in good faith with counsel for Plaintiff, Julie Slivka ("Plaintiff"), on April 29, 2019 concerning this matter and counsel for Plaintiff has advised he does not oppose the relief sought herein.

II. RELEVANT PROCEDURAL BACKGROUND

On February 4, 2019, Plaintiff filed her Complaint (Docket No. 1). Undersigned counsel for Defendant YMCA, on April 29, 2019, spoke with counsel for Plaintiff and agreed to waive and accept service on behalf of Defendant YMCA only. On the same date, undersigned counsel for Defendant YMCA also conferred with counsel for Plaintiff regarding this Motion, as well as two additional motions Defendant YMCA intended to file upon receipt of a Waiver and Acceptance of Service; namely, a Motion to Strike Complaint paragraphs 18, 19, 63-67, and 69, pursuant to Fed.R.Civ.P. 12(f), and a Motion for a Gag Order. Despite the offer to waive and accept service, Plaintiff's counsel elected to personally serve Defendant YMCA on June 3, 2019. On the date of filing of the instant Motion, Defendant YMCA simultaneously filed the other aforementioned pre-Answer Motions it had contemplated.

III. ARGUMENT

A. Law Applicable to Motion for Restricted Access.

D.C.COLO.LCivR 7.2 states in relevant part as follows:

- (b) Levels of Restriction. There are three levels of restriction. Level 1 limits access to the parties and the court. Level 2 limits access to the filing party and the court. Level 3 limits access to the court.
- (c) Motion to Restrict. A motion to restrict public access shall be open to public inspection and shall:
 - (1) identify the document or the proceeding for which restriction is sought;
 - (2) address the interest to be protected and why such interest outweighs the presumption of public access...;
 - (3) identify a clearly defined and serious injury that would result if access is not restricted;
 - (4) explain why no alternative to restriction is practicable or why only restriction will adequately protect the interest in question

- (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits); and,
- (5) identify the level of restriction sought.

D.C.COLO.LCivR 7.2(b) and (c).

B. The Court Should Grant Defendant YMCA's Unopposed Motion for Restricted Access to the Entirety of these Proceedings or, in the Alternative, Should the Court Not Seal the Proceedings, Restrict Access to Plaintiff's Complaint (Docket No. 1) and Defendant YMCA's Pre-Answer Motions and any Subsequent Orders Regarding Same.

Plaintiff does not oppose the sealing of the proceedings in the above-captioned matter. For this reason alone, the Court should grant level 1 restricted access for the duration. While there is a presumption of public access, the subject matter of this litigation and the allegations put forth by Plaintiff to date, as well as the need to ensure all parties have the right to a fair trial, as discussed more completely below, outweigh that presumption. Sealing of the Court's file related to this matter will enable the parties to obtain a fair trial and allow this matter to be tried on its merits, rather than by public opinion.

In the event the Court does not grant Defendant YMCA's Unopposed Motion to seal the entirety of the proceedings in the above-captioned matter, in the alternative, Defendant YMCA requests level 1 restricted access to Plaintiff's Complaint (Docket No. 1) and two other pre-Answer Motions contemporaneously filed herewith and any subsequent Court Orders regarding same; namely, a Motion to Strike, pursuant to Fed.R.Civ.P. 12(f), and a Motion for a Gag Order.

Defendant YMCA has identified the following paragraphs in Plaintiff's Complaint as containing baseless, *per se* defamatory, tangential, and extremely prejudicial accusations injected into the above-captioned matter by Plaintiff, which are well beyond the scope of the operative Complaint (Docket No. 1) in this action: ¶¶ 18, 19, 63, 64, 65, 66, 67, and 69. Furthermore, Defendant YMCA has identified the following paragraphs in Plaintiff's Complaint as containing

ad hominem attacks on Defendant YMCA and its Chief Executive Officer which are prejudicial or, in part, defamatory in nature and have no place in publically accessible pleadings: ¶¶ 63, 64, 65, and 66.

The threatened harm to Defendant YMCA is profound, as the only purpose behind the public disclosure of these baseless allegations, believed to have been brought in bad-faith, is to gain an advantage in this litigation and/or to taint the prospective jury pool. Should such information be viewed by the public, including potential jurors, it would negatively affect Defendant YMCA's overall credibility and unnecessarily impugn its reputation, thus prejudicing the defense of this case.

It has been determined that throughout the month of February, Plaintiff provided information regarding this matter to the local press in Colorado Springs, including both print and on-air news outlets, with counsel for Plaintiff granting interview requests in at least two print publications commenting on the evidence.

As will be shown through presentation of the evidence by the defense, Plaintiff's substantive allegations are contradicted by police bodycam footage following her arrest on suspicion of Driving Under the Influence on the evening in question and Defendant YMCA's internal documents demonstrating a thorough and independent investigation into Plaintiff's allegations of misconduct by Defendant Carlos Lozano ("Defendant Lozano"), which occurred afterhours and to whom Plaintiff was not a subordinate. Defendant YMCA's internal documents further detail the actions taken by Defendant YMCA against Defendant Lozano, at the request of Plaintiff and her counsel, despite an independent investigator determining Defendant Lozano's version of events was more credible than Plaintiff's version of events.

While Defendant YMCA understands D.C.COLO.LCivR 7.2 includes a presumption of public access to information relating to lawsuits filed in this District, Defendant YMCA wholeheartedly believes the profound harm that would be inflicted upon Defendant YMCA should the public have access to these baseless, *per se* defamatory, tangential and extremely prejudicial accusations and the *ad hominem* character attacks on Defendant YMCA and its Chief Executive Officer vastly outweighs this presumption of public access. Indeed, Plaintiff's Complaint (Docket No. 1) has been redacted to restrict only those portions which are prejudicial and beyond the scope of the operative Complaint. The redacted Complaint has been annexed hereto as Exhibit A.

Since Defendant YMCA's Motion to Strike, pursuant to Fed.R.Civ.P. 12(f), and Motion for a Gag Order discuss the baseless, *per se* defamatory, tangential, and prejudicial allegations, as well as *ad hominem* character attacks on Defendant YMCA and its Chief Executive Officer found in Plaintiff's Complaint at paragraphs 18, 19, 63-67, and 69, Defendant YMCA further requests that those Motions and any subsequent Order of this Court detailing those offending paragraphs be similarly granted level 1 restricted access.

WHEREFORE, Defendant YMCA seeks entry of an Order granting level 1 restriction from public access with respect to the entirety of these proceedings, or, in the alternative, Docket Number 1, as submitted in redacted form herewith, as well as Defendant YMCA's Motion to Strike, pursuant to Fed.R.Civ.P. 12(f), and Motion for a Gag Order and any subsequent Order of this Court detailing those pre-Answer Motions, and for such other and further relief as this Court deems just and proper.

Respectfully submitted the 19th day of June, 2019.

TYSON & MENDES LLP

/s/ Michael D. Drews

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