

Multiple Documents

Part	Description
1	7 pages
2	Affidavit Executed Affidavit of Boyd Williams

**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

Michael D. Drews, Atty. Reg. #47290

Jacob R. Felderman, Atty. Reg. #

700 12th Street, Suite 200

Golden, Colorado 80401

Telephone: (720) 645-1699

Email: mdrews@tysonmendes.com

jfelderman@tysonmendes.com

Attorneys for Defendant

The Young Men's Christian Association of the Pikes

Peak Region

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2019 **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)** was served *via* ECF to the following:

Ryan C. Gilman, Esq.
Dickson Law Group
605 S. Tejon Street
Colorado Springs, CO 80903

Signed original document maintained
and available pursuant to Rule 121.

/s/ Favian Rodriguez
Favian Rodriguez

**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.

**AFFIDAVIT OF BOYD WILLIAMS IN SUPPORT OF DEFENDANT THE YOUNG
MEN'S CHRISTIAN ASSOCIATION OF THE PIKES PEAK REGION'S MOTION TO
STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(f)**

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

Boyd Williams, being of lawful age and being first duly sworn, upon oath, deposes and says the following:

1. I, Boyd Williams, am the President and Chief Executive Officer of The Young Men’s Christian Association of the Pikes Peak Region (“Defendant YMCA”), a Defendant in the above-captioned matter, and I submit this Affidavit in support of Defendant YMCA’s Motion to Strike Portions of Plaintiff’s Complaint, Pursuant to FED. R. CIV. P. 12(f). I have personal knowledge of the facts contained herein and could, if sworn at trial, competently testify thereto.

2. I have reviewed Plaintiff’s Complaint (Docket No. 1), as well as internal documentation made and/or maintained by Defendant YMCA related to the above-captioned matter, including, but not limited to, correspondence, investigation documents, disciplinary

action taken against Defendant Carlos Lozano (“Defendant Lozano”), media articles related to this matter, and the YMCA of the Pikes Peak Region’s organizational chart.

3. Defendant YMCA and I, as addressed individually in the Complaint, deny what has been alleged against us in the above-captioned matter, but we take particular issue with paragraphs 18, 19, 63, 64, 65, 66, 67, and 69 in Plaintiff’s Complaint (Docket No. 1).

4. I have been involved with the YMCA and its movement in some capacity for over twenty-five years and currently hold the position of President and Chief Executive Office of The Young Men’s Christian Association of the Pikes Peak Region. A position I have held over eight years.

5. Plaintiff’s allegations have jeopardized the integrity of Defendant YMCA as a whole and impugned the organization’s reputation in the community it is dedicated to helping, as well as my own reputation, calling into question my character and leadership abilities. Once the media began reporting on the above-captioned matter, nearly every YMCA in the United States - 812 individual associations - were made aware of these false claims. Colorado Public Radio, KKTV, and Google Alert all reported on portions of the Complaint.

6. Defendant YMCA has received correspondence and telephone calls from partners, board members, and staff questioning their association with an organization accused of treating women unprofessionally.

7. Defendant YMCA was forced to hire a public relations firm, costing the organization money that could have been allocated toward serving the community.

8. The YMCA of the Pikes Peak Region’s Leadership team consists of a male President and CEO, a male Executive VP and COO, a female Senior VP and Chief Human Resources Officer, a female Senior VP/Chief Development and Marketing Officer, a male Senior

Vice President/CFO, a female VP of Program Development, and a female Executive Offices Director.

9. Defendant YMCA's internal documents demonstrate a thorough and independent investigation into Plaintiff's allegations of misconduct by Defendant Lozano.

10. Plaintiff was not a subordinate to Defendant Lozano and they did not report through the same channels.

11. Defendant YMCA's internal documents 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.

12. Defendant YMCA's internal documents also demonstrate implementation of accommodations, including those requested by Plaintiff.

13. In light of the fact Defendant YMCA did complete an independent investigation, disciplined Defendant Lozano, and accommodated Plaintiff, Defendant YMCA is concerned Plaintiff's allegations will have a chilling effect on the reporting by any staff member who feels he/she or a co-worker has been sexually harassed, needs accommodations, or may fear retaliation if he/she does report an incident.

14. As for me personally, I also serve as the YMCA's Colorado's State Alliance Chair and the Southwest Alliance Chair for YMCAs in the States of Colorado, New Mexico, Arizona, Utah, and Nevada, as well as Armed Services YMCAs across the United States.

15. The roles of Colorado State Alliance Chair and Southwest Alliance Chair are respected, high profile positions, but Plaintiff's allegations have put my ascension to these prestigious roles in jeopardy.

16. Locally, I am an Honorary Commander for the United States Air Force Academy and am a volunteer and Supervisory Committee Member for Ent Credit Union, the largest Credit Union in the State of Colorado.

17. Plaintiff's allegations have damaged my local reputation to the point Ent Credit Union asked me to take a "voluntary leave of absence" just after the media began to run stories related to the above-captioned matter.


BOYD WILLIAMS

The foregoing was subscribed and sworn to before me on June 17th, 2019.

Witness my hand and official seal.

My commission expires: December 5, 2022 Cheryl Rhodes
Notary Public

CHERYL RHODES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144046160
MY COMMISSION EXPIRES DECEMBER 5, 2022