

9/1/2010 8:50 PM Filed Lee County Clerk of Court

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION**

JANE DOE,

Plaintiff,

v.

CASE NO. 10-CA-003258

Judge: Michael T. McHugh

JOHAN A. SANTANA,

Defendant.

DEFENDANT'S MOTION TO DISMISS AND MOTION TO STRIKE

COMES NOW the Defendant, JOHAN A. SANTANA ("Santana"), by and through his undersigned attorneys, and files this Motion to Dismiss and Strike, and in support thereof states as follows:

1. Plaintiff has anonymously filed a three-count Complaint against Santana whom she named on the face of the Complaint, accusing him of Sexual Battery, Assault, and False Imprisonment.
2. Plaintiff's Complaint should be dismissed as she has failed to identify herself in the caption of the Complaint, in violation of Fla. R. Civ. P. 1.100(c)(1), which requires a party filing a civil action to disclose his or her name in the complaint. "Every pleading, motion, order, judgment, or other paper shall have a caption containing the name of the court, the file number, the name of the first party on each side with an appropriate indication of other parties, . . ."
3. Section 794.024, Fla. Statutes, cited in Plaintiff's Complaint as authority for allowing her to file and prosecute this action anonymously, is not applicable to this civil action.

4. Plaintiff has not filed a motion to proceed anonymously in this proceeding, and to afford her the privilege of maintaining anonymity while specifically naming Santana in a public lawsuit would be wholly improper.

5. Generally, parties to lawsuits must identify themselves in their respective pleadings, and it is an exceptional case in which a plaintiff may proceed under a fictitious name. This rule protects the public's interest in knowing what the judicial system is doing, and prevents litigation from being conducted in secret. Personal embarrassment alone does not permit one to proceed under a pseudonym. Doe v. Frank, 951 F.2nd 320 (11th Cir. 1992); Doe v. Shakur, 164 F.R.D. 359 (S.D. N.Y. 1996).

6. The filing of a civil action against a defendant may damage his reputation until the case is resolved, leading to adverse publicity and the forced disclosure of certain public information. Basic fairness dictates that a defendant's accuser who wishes to participate in a suit as a party plaintiff must do so under her real name. Plaintiff B v. Francis, No. 08-79, 2010 WL 503067 (N.D. Fla. 2010). This is particularly true under the circumstances of this case where no criminal prosecution was filed, and Plaintiff is attempting to try her case in the media, sending a copy of the Complaint to the New York Daily News and giving a statement to the press, while hiding behind her "Jane Doe" identity.

7. Plaintiff is an adult who has chosen to bring this lawsuit. She has made serious charges and has put her credibility in issue. Fairness requires that she be prepared to stand by her charges publicly. This is a civil suit for damages where the Plaintiff is acting solely in her own interests. This is not a criminal case where rape shield laws might provide anonymity to encourage victims to testify to vindicate the

public's interest in enforcement of the laws. Mr. Santana has been publicly accused. If the Plaintiff is permitted to prosecute this action anonymously, Mr. Santana will be placed at a serious disadvantage, for he will be required to defend himself publicly while the Plaintiff will be allowed to make her accusations behind a cloak of anonymity.

Shakur, supra. See also, Rose v. Beaumont Independent School District, 240 F.R.D. 264 (E.D. Tex. 2007) (where a party brings a civil action of her own volition to vindicate her own interests, fairness usually dictates that such a plaintiff stand behind her charges publicly); and Doe v. Kidd, 860 N.Y.S. 2nd 866, 871 (S.Ct. N.Y. 2008) ("The use of fictitious names has been noted to run afoul of the public's common law right of access to judicial proceedings, a right that is supported by the First Amendment, U.S. Constit. amend. 1.").

8. Plaintiff's Complaint also contains scandalous and bellicose language that is unnecessary to state any of the causes of action alleged. A complaint in a lawsuit is not a press release designed to plead a litigant to victory. Rapp v. Jews for Jesus, Inc., 944 So. 2d 460, 463-64 (Fla. 4th DCA 2006) decision quashed on other grounds sub nom. Jews For Jesus, Inc. v. Rapp, 997 So. 2d 1098 (Fla. 2008). Accordingly, the following language in Plaintiff's Complaint should be stricken pursuant to Florida Rule of Civil Procedure 1.140(f) as redundant, immaterial, impertinent, or scandalous:

(a) Plaintiff repeatedly refers to alleged acts as "illegal" or as "crimes."

The characterization of the alleged acts as criminal or illegal is unnecessary to state any of the alleged causes of action and, importantly, has no basis in fact. Santana has not been convicted of or charged with any crime related to the events alleged in the Complaint. Accordingly, all references to "illegal acts,"

"illegal actions," "illegal and cruel acts," "illegal conduct," or "premeditated crimes" should be stricken from the Complaint.

(b) Plaintiff also alleges that Santana committed "lewd and lascivious exhibition" and "lewd and lascivious battery" in Paragraphs 6 and 11. However, nowhere in the Plaintiff's Complaint does she attempt to state a claim for these causes of action. In the event that Plaintiff is asserting these claims as causes of action separate from assault or battery, she has not attempted to state a claim for lewd and lascivious exhibition or lewd and lascivious battery and the references to those torts should be stricken as immaterial or impertinent. Otherwise, these references should be stricken as redundant.

(c) In Paragraph 7.10, Plaintiff alleges that Santana impregnated her. This allegation is inflammatory and immaterial to any cause of action claimed by Plaintiff. As such, the allegation should be stricken from the Complaint.

(d) Plaintiff has also included a "Statement of Intent Regarding Punitive Damages." This statement is not a procedural prerequisite to pleading punitive damages and serves no discernable, legitimate purpose. As such, Plaintiff's "Statement of Intent" to possibly plead punitive damages in the future should be stricken as impertinent and immaterial.

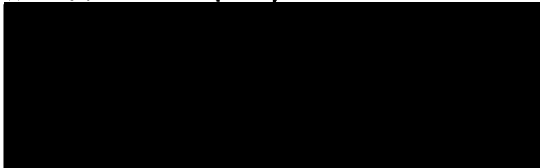
9. Paragraph 1 of the Complaint states that it is an action for legal and equitable relief, and the wherefore clauses of all three counts pray for unspecified equitable relief. However, there are no factual allegations in the Complaint or in any count thereof that would entitle the Plaintiff to equitable relief. Therefore, all references to equitable relief in the complaint should be stricken.

WHEREFORE, Defendant, JOHAN. A. SANTANA, respectfully requests that this Court enter an Order dismissing Plaintiff's Complaint and/or striking the above-described redundant, immaterial, impertinent, and scandalous language.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to the following:

Michael T. Dolce, Esq.



Attorneys for Plaintiff

by regular United States Mail, this 1st day of September, 2010.

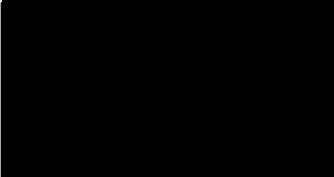
HENDERSON, FRANKLIN, STARNES & HOLT, P.A.
Co-Counsel for Defendant



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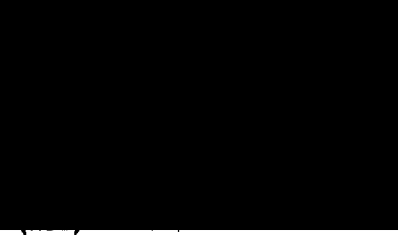
By:

Michael J. Corso
MICHAEL J. CORSO, ESQ.



and

CHRISTOPHER BROWN, ESQ.



Co-Counsel for Defendant