STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS CASE NO. 2022-CP-21-01980
JOHN DOE, PSEUDONYMOUS OWNER OF HEX ERC-20 TOKENS, ON BEHALF OF HIS OR HERSELF AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFF, vs. RICHARD JAMES SCHUELER A/K/A RICHARD HEART, DEFENDANT.	 ORDER

This matter is before the Court on the motion of non-party witness, Lorraine Schueler, seeking a protective order pursuant to Rule 26, SCRCP. Schueler seeks the following relief: 1) dismissal of the case; 2) destruction of materials obtained via subpoena; 3) prevention of the Plaintiff from taking further discovery; 4) the placing of publicly filed subpoenas under seal. As will be detailed below, this motion is denied. The Court issues a *sua sponte* order, however, requiring the Plaintiff to amend the caption to reflect his identity.

I. The Witness's Motion for Protective Order

Lorraine Schueler is a witness who is not a party to this lawsuit. Schueler is the mother of the Defendant, Richard Schueler. Information concerning the witness has been the subject of several subpoenas directed to real estate closing attorneys, a real estate agent, a bank, and a cryptocurrency exchange. The Plaintiff has also served a deposition notice and subpoena upon

Lorraine Schueler.[1] The movant contends that the requested relief should be granted for two reasons: first, the Plaintiff has failed to properly serve the Defendant and thus the action has not been commenced; and second, the Plaintiff has violated the Rules of Civil Procedure by pleading this case as a pseudonymous "John Doe". The Plaintiff disagrees.

a. <u>The availability of relief to the non-party witness</u>

A threshold question of this motion is whether a non-party witness has the ability to request the dismissal of a case. The movant frames her motion in the form of a Rule 26(c), SCRCP motion for protective order. As the movant notes in her briefing, Rule 26(c), SCRCP provides that a trial court "may make any order which justice requires … that the discovery not be had … [or] that the scope of the discovery be limited to certain matters." The rule, however, does not provide for the dismissal of a case should the trial court grant a motion for protective order. Accordingly, movant does not have ability to request dismissal under Rule 26. However, even to the extent that Mrs. Schueler might be able to request dismissal, the analysis in Section I.b (below) would lead the Court to conclude that the drastic remedy of dismissal would not be an "order which justice requires."

Movant further asserts she may request dismissal of Plaintiff's complaint under the public importance standing doctrine. *See S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 341, 878 S.E.2d 891, 895 (2022). Mrs. Schueler contends public importance standing applies because there is a need for future guidance on the issues raised in her motion—namely, whether dismissal is appropriate when a plaintiff files suit anonymously without requesting the Court's permission to

[1] In addition to the motion resolved by this order, Lorraine Schueler has also filed a Rule 45, SCRCP motion to quash the deposition subpoena. The Plaintiff and the witness have agreed to hold in abeyance compliance with the deposition subpoena and the hearing of the motion to quash, however, while other discovery is completed in the hope of resolving that disagreement. Thus, this order does not resolve that motion.

do so. Public importance standing such as that recognized in *Wilson*, however, generally is limited to instances in which an individual party brings its own action. The litany of cases cited by *Wilson* all confront whether a Plaintiff has standing to initiate its own lawsuit rather than intervening in an existing case. Furthermore, these cases require demonstration of the public's interest to give rise to such standing.

> Courts must cautiously balance competing interests—the citizenry's need to hold public officials accountable for alleged injustices and "the concomitant integrity of government action"—to determine whether the issue presented is "inextricably connected to the public need for court resolution for future guidance." Only then can the issue "transcend[ ] a purely private matter and rise[ ] to the level of public importance."

Id. at 341–42, 878 S.E.2d at 895 (string citation omitted). Whether the Defendant will be liable for his actions is a "purely private matter" as is the movant's objections to continuing discovery. Thus, to the extent that public importance standing may impower a non-party to intervene in an existing case, it would be inappropriately invoked here.

Rule 26 does provide, however, that a motion for protective order may be filed "upon motion by a party or by the person from whom discovery is sought." Rule 26(c), SCRCP (emphasis added). Thus Mrs. Schueler does have standing to request relief provided by the rule to protect her "from annoyance, embarrassment, oppression, or undue burden by expense." Rule 26(c), SCRCP. Beyond the dismissal of the case, the movant also requests destruction of materials obtained via subpoena, the prevention of any further discovery, and the placement of publicly filed subpoenas under seal.

b. The discoverability of the information sought

Mrs. Schueler describes the "annoyance, embarrassment, oppression, or undue burden" from which she seeks protection as the disclosure of "sensitive personal information."

(Memorandum in Support of Motion at 8) Her concerns are understandable, as the subpoenas in question sought and received information pertaining to numerous financial transactions. However, many lawsuits implicate sensitive personal information. Personal injury claims, for example, routinely implicate many years of a party's medical records. Loss of consortium claims expose to discovery the most intimate details of a party's marriage. Thus, it is not the sensitivity of a matter that governs its discoverability, but rather whether the discovery is "reasonably calculated to lead to the discovery of admissible evidence." Hollman v. Woolfson, 384 S.C. 571, 577-578, 683 S.E.2d 495, 498 (2009).

This case alleges that the movant's son has engaged in a pattern of unlawful sales of a cryptocurrency product whose value has since fallen nearly to zero. After the filing of this case, the U.S. Securities and Exchange Commission filed a very similar lawsuit in which it made the same allegations. Plaintiff points to the movant's recent cash purchase of two pieces of real estate as evidence that she may be a beneficiary of her son's allegedly ill-gotten gains. Plaintiff further points to evidence produced from the challenged subpoenas that demonstrate the witness has received a substantial amount of cash from a cryptocurrency exchange. Based on this evidence, I find that the subpoenas issued were reasonably calculated to lead to the discovery of admissible evidence and continuing discovery on these topics also is, as well. Accordingly, the Court refuses to order destruction of the materials received pursuant to subpoena.[2]

c. The service of the complaint

Mrs. Schueler argues that discovery should not be had because the Plaintiff has failed to affect service of the complaint upon the Defendant. The Plaintiff sought and received an order

[2] In his memorandum in opposition to Mrs. Schueler's motion, Plaintiff consented to the deletion of subpoenas from the docket. Accordingly, the Court need not rule on this requested relief, and the Plaintiff and Ms. Schueler shall arrange for the deletion of publicly filed subpoenas.

from the trial court approving service via "other means" pursuant to Rule 4.1(a)(3), SCRCP. As an initial matter, Mrs. Schueler asserts the trial court erred in approving alternative service because Plaintiff failed to establish Richard Schueler's address was unknown. Movant contends Plaintiff failed to exercise reasonable diligence in attempting to discover Mr. Schueler's international address, and such failure prevented Plaintiff from pursuing alternative service rather than serving Defendant under the Hague Convention. Mrs. Schueler further contends this Court can revisit the prior order approving alternative service because this action was subsequently designated complex, and the undersigned was granted exclusive jurisdiction over the case. The Court has reviewed the previous order. The previous judge carefully considered the requirements of Rule 4.1 and I decline to revisit his rulings.

The trial court approved five means of service: "1) via Twitter mention; 2) via Twitter direct message; 3) via email; 4) via Telegram group chat; and 5) via Telegram direct message." (October 12, 2022 Order) The Plaintiff concedes he was unable to serve the Defendant via Twitter direct message and via Telegram direct message because the Defendant had disabled those modes of communication, but contends that means 1, 3, and 4 were successful. The Court finds Plaintiff was not required to complete all five methods of alternative service approved by the trial court. As the previous order noted, "[e]ach of these methods is calculated independently to provide notice of the pendency of this action."

As an initial matter, the court questions whether a non-party witness has the ability to challenge the effectiveness of service in a Rule 26 motion. Such a challenge generally arises in the form of a Rule 12(b)(5) motion—a procedural vehicle unavailable to a non-party. Nonetheless, the Court finds that the complaint has been served in compliance with Rule 4.1(a)(3), SCRCP. In particular, the Court finds that service "via Twitter mention" and "via email" has been affected.

Mrs. Schueler contends that the Plaintiff's service via Twitter was ineffective because the "Twitter mention" was not a "public Tweet." However, the order approving Rule 4.1 service specifies service via "Twitter mention," not "public Tweet." Thus her argument is unavailing. The order also specifies service via "a publicly-available email address" associated with the HEX Etherscan.io listing. The Plaintiff has provided an affidavit of service confirming that this has been done. The movant contends this is not enough, but the Plaintiff has complied with the order's directive. The parties dispute whether service "via Telegram group chat" was affected, but that dispute is immaterial in light of the success of the two previously mentioned methods.

d. <u>The pseudonymity of the Plaintiff</u>

Lastly, Mrs. Schueler contends that the Plaintiff's filing of a pseudonymous "John Doe" complaint, without an accompanying request to proceed anonymously, precludes him from any further discovery. Movant relies on Rule 10, SCRCP, which states "[i]n the summons and complaint the title of the action shall include the names of all parties," and which directs the clerk of court not to file any pleadings that do not comply with Rule 10. Rule 10(a), (e), SCRCP. The movant further offers out-of-state authority suggesting that the filing of a pseudonymous complaint requires the dismissal of the complaint. In the face of Mrs. Schueler's challenge to the styling of the complaint's caption, the Plaintiff now requests permission to proceed as "John Doe." The Plaintiff concedes, however, that the putative class action status of this case will require him to reveal his identity to the class if it is certified.

The Court is not persuaded by the movant's out-of-state authority and finds Rule 10 does not provide for dismissal of an anonymous complaint. Plaintiffs filing under pseudonyms is common in the appropriate circumstances. Even if the trial court rules that a Plaintiff may not proceed anonymously, the appropriate remedy is amending the caption of the complaint rather than

dismissing the case. See, e.g., Doe v. Howe, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2004). In light of the movant's challenge of the Plaintiff's litigation of his case under a pseudonym, Plaintiff now requests court approval to do so. As discussed below, this request is denied.

II. *Sua Sponte* Order Reflecting Identity

While the Court has denied the movant's motion for protective order, the Court also finds that the Plaintiff has failed to allege sufficient grounds for proceeding as a "John Doe" under the guidelines set forth in Doe v. Howe, supra. As a result, the Court orders the Plaintiff to amend the caption of the complaint to reflect his identity. All future filings should contain the amended caption.

IT IS SO ORDERED.

Michael G. Nettles
Presiding Judge

Florence Common Pleas

Case Caption: John Doe VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140