

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
aka GAWKER MEDIA; GAWKER MEDIA
GROUP, INC. aka GAWKER MEDIA;
GAWKER ENTERTAINMENT, LLC;
GAWKER TECHNOLOGY, LLC; GAWKER
SALES, LLC; NICK DENTON; A.J.
DAULERIO; KATE BENNERT, and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,

Defendants.

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**PLAINTIFF TERRY GENE BOLLEA’S OPPOSITION TO
GAWKER MEDIA GROUP, INC.’S MOTION TO DISMISS**

I. INTRODUCTION

Gawker Media Group, Inc.’s (“GMGI”) motion to dismiss is an improper attempt to obtain a ruling from this Court on the merits of Terry Gene Bollea’s claims against it, in the form of a pleadings motion and before discovery is even complete. Under liberal notice pleading standards, Bollea has sufficiently alleged that GMGI is responsible for the acts of its wholly-owned subsidiary, Gawker Media, LLC, which published a surreptitiously recorded sex tape and invaded Bollea’s privacy. As Bollea’s claims against GMGI are sufficiently pleaded, it is inappropriate for GMGI to ask that the merits of Bollea’s claims against it be adjudicated. In any event, GMGI has not shown that discovery should be cut off and Bollea be given no chance to prove GMGI’s involvement in or responsibility for invading Bollea’s privacy.

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GMGI's jurisdictional objection also fails because no discovery has yet been directed at GMGI, which has not answered the First Amended Complaint. Bollea is entitled to jurisdictional discovery to test the veracity of GMGI's assertions that it lacks contacts with this jurisdiction.

Finally, even if Bollea's claims against GMGI are not adequately pleaded, Bollea should be granted leave to amend and to make a fuller statement of its claims against GMGI.

II. BOLLEA'S CLAIMS AGAINST GMGI ARE ADEQUATELY ALLEGED.

A motion to dismiss may only be granted where the complaint cannot be construed to state **any** cause of action against a defendant. *Nicholson v. Kellin*, 481 So.2d 931, 936 (Fla. 5th DCA 1985). The pleadings are **liberally construed** and all allegations therein are **taken as true** and all inferences are made in the **plaintiff's favor**. *Wallace v. Dean*, 3 So.3d 1035, 1042-43 (Fla. 2009). "The court must confine itself strictly to the allegations within the four corners of the complaint." *Pizzi v. Central Bank & Trust Co.*, 250 So.2d 895, 897 (Fla. 1971) (internal quotation omitted). It is **reversible error** for the Court to consider **extrinsic evidence** in ruling on a motion to dismiss. *Pesut v. National Ass'n of Securities Dealers*, 687 So.2d 881, 882 (Fla. 2d DCA 1997) (reversing trial court dismissal order where trial court considered representation of defendant as to its conduct in deciding to dismiss).

Bollea has sufficiently alleged that GMGI is responsible for the tortious conduct alleged in the First Amended Complaint. GMGI concedes that Bollea alleges that GMGI, along with the other Gawker Media entities, is responsible for the publication of the Sex Tape. *First Amended Complaint*, ¶¶ 19-20, 28-29, 35. Bollea also alleged that GMGI controlled the other Gawker Media entities. *First Amended Complaint* ¶ 17. Moreover, Bollea alleges that GMGI is responsible for the acts of the other defendants based on agency, instrumentality and similar legal theories. *First Amended Complaint* ¶ 24.

Those allegations are sufficient to defeat a motion to dismiss. Bollea has alleged that GMGI committed the tortious acts alleged in the Complaint, and that in the alternative it was legally responsible for those who did. GMGI is on full notice as to the nature of Bollea's claims.

GMGI's argument that Bollea has not sufficiently pleaded a veil piercing claim is without merit. The standards for pleading such claims are very liberal. "[I]n order to state a cause of action against a parent corporation for the acts of its subsidiary, it is sufficient to allege the latter to be the alter ego or agent of the parent." *Vantage View, Inc. v. Bali East Development Corp.*, 421 So.2d 728, 731 (Fla. 4th DCA 1982), *overruled on other grounds, Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So.2d 1114 (Fla. 1984).¹

Vantage View is specific and on point on what the pleading standard is in veil piercing lawsuits. The caselaw cited by Gawker Media involving the pleading of other sorts of claims is distinguishable. *Beckler v. Hoffman*, 550 So.2d 68, 70 (Fla. 5th DCA 1989), involved a claim for premises liability for rape, where the duty of care is set at gross negligence and thus the plaintiff must allege why specifically the landowner was responsible for preventing the rape. There is no heightened standard of proof for veil piercing claims.

The discussion of pleading standards in *Continental Baking Co. v. Vincent*, 634 So.2d 242, 244 (Fla. 5th DCA 1994), stating how Florida pleading standards differ from federal standards, is dicta. The court did not evaluate the sufficiency of the motion to dismiss in that case and was merely commenting on proceedings that had occurred in the trial court. In any event, the claims asserted in *Vincent* had nothing to do with piercing the corporate veil.

Lawrie v. Ginn Cos., 2010 WL 3746725 (M.D. Fla. Sep. 21, 2010), is a federal case

¹ Even if GMGI were correct that Bollea has not sufficiently stated a veil piercing claim, the First Amended Complaint nonetheless alleges that GMGI is directly responsible for the publication of the Sex Tape. Accordingly, it still states a cause of action against GMGI.

interpreting the pleading standard in Fed. R. Civ. Proc. 8 (which, as the dicta in *Vincent*, a case relied on by GMGI, notes, is inapplicable to Florida pleading standards). *Lawrie* involved a claim under RICO and for civil conspiracy; it does not supplant *Vantage View* as the pleading standard for veil piercing claims in Florida.

Dr. Navarro's Vein Centre v. Miller, 22 So.3d 776, 778 (Fla. 4th DCA 2009), involved a medical malpractice claim where there are pre-suit screening requirements, Fla. Stat. § 766.106(2), that do not exist for veil piercing claims.

III. THE CLAIMS AGAINST GMGI MAY NOT BE DISMISSED FOR LACK OF PERSONAL JURISDICTION UNTIL JURISDICTIONAL DISCOVERY IS CONDUCTED.

GMGI also argues that Bollea has failed to allege facts sufficient to establish personal jurisdiction over GMGI. However, GMGI concedes (as it must) that where the corporate veil may be properly pierced and a foreign corporation is liable for the acts of its subsidiary, the veil may also be pierced with respect to jurisdictional issues.

Because GMGI has submitted evidence on the issue of whether it is subject to the personal jurisdiction of this Court, Bollea is entitled to jurisdictional discovery on these issues. *Gleneagle Ship Management Co. v. Leondakos*, 602 So.2d 1282, 1284 (Fla. 1992). There have not been **any** interrogatories, requests for admissions or document requests directed at GMGI in this case, because GMGI immediately moved to dismiss and has not answered the First Amended Complaint. While discovery has occurred with respect to Gawker Media, LLC, Bollea is entitled to investigate the facts asserted by GMGI before any decision is made dismissing GMGI from the case.

Importantly, GMGI waited until **after** the New York depositions to file this motion,

thereby depriving Bollea of any opportunity to cross-examine Scott Kidder, who appeared as Gawker Media LLC's corporate designee witness, or any other witnesses, regarding Kidder's claims in his affidavit. This obvious procedural unfairness precludes GMGI from prevailing on its jurisdictional objection until discovery on the specifics of the objection takes place.

McFadden Ford, Inc. v. Mancuso ex rel. Mancuso, 766 So.2d 241, 242 (Fla. 4th DCA 2000), cited by GMGI, permitted **18 months** of jurisdictional discovery before allowing a dismissal.²

Bollea is entitled to take jurisdictional discovery before any dismissal may occur based on GMGI's claim of lack of personal jurisdiction. The motion should be denied.

IV. GMGI IS NOT ENTITLED TO MAKE FACTUAL CLAIMS AS PART OF A PLEADINGS MOTION.

The bulk of GMGI's motion takes a one-sided look at the record to supposedly show that GMGI was not responsible for the tortious acts of Gawker Media, LLC. This material is irrelevant to a challenge to the **pleadings** and is an inappropriate attempt to prejudice the Court. In a pleadings motion, **the facts alleged in the pleadings are taken as true.** *Wallace*, 3 So.3d at 1042-43. "A motion to dismiss is designed to test the legal sufficiency of a complaint, not to determine issues of fact." *Lowery v. Lowery*, 654 So.2d 1218, 1219 (Fla. 2d DCA 1995). "[W]e must take the pleaded facts as true and we are not concerned with the quality of the allegations or how they will ultimately be proved." *Troupe v. Redner*, 652 So.2d 394, 395 (Fla. 2d DCA 1995). "The opponent of a rule 1.140(b)(6) motion to dismiss is under no obligation to raise any disputed factual issues in opposition to the motion." *Wausau Insurance Co. v. Haynes*, 683 So.2d 1123, 1125 (Fla. 4th DCA 1996).

² GMGI concedes that the dismissal for lack of personal jurisdiction in *Blumberg v. Steve Weiss & Co.*, 922 So.2d 361, 363-64 (Fla. 3d DCA 2006), occurred after discovery.

In any event, discovery is continuing. The parties just concluded depositions of three Gawker-affiliated witnesses in New York. GMGI is asking this Court to simply take the self-serving statements of those witnesses as true when Bollea has had no opportunity to evaluate the veracity of these statements, investigate their claims, or take follow-up discovery.

V. IF THE COURT FINDS THAT THE CLAIMS AGAINST GMGI ARE INSUFFICIENTLY PLEADED, BOLLEA SHOULD BE GRANTED LEAVE TO AMEND.

Leave to amend should be liberally granted when a party's pleading is insufficient. Denial of leave to amend is an abuse of discretion unless the moving party shows there is no possibility of amending the pleading to state of cause of action, typically because there is no legal theory to support the claim or the party has had several chances to amend. "[T]he trial court is required to exercise the utmost liberality by giving the pleading party every opportunity to correct the defects in the challenged pleading, by dismissing it without prejudice and with leave to amend, provided that the pleading party requests leave to amend." Bruce J. Berman, *Berman's Florida Civil Procedure*, ¶ 1404.4[2][e] at 180 (2013). "Dismissal without leave to amend a petition at least one time has been held to be an abuse of discretion, particularly where it is not clear the complaint could not be made more definite and certain." *Orbe v. Orbe*, 651 So.2d 1295, 1298 (Fla. 5th DCA 1995).

Here, the First Amended Complaint was the first pleading that named GMGI as a defendant. Bollea should have the opportunity to plead additional allegations supporting his cause of action if the Court determines he has not made a sufficient pleading.

VI. CONCLUSION

For the foregoing reasons, the motion to dismiss should be denied. Jurisdictional

discovery regarding GMGI's contacts with the forum and Bollea's veil piercing claim should proceed. Alternatively, if the motion is granted, Bollea should be granted 30 days leave to amend his complaint.

DATED: October 23, 2013

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 23rd day of October, 2013 to the following:

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