

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.

HEATHER CLEM; GAWKER MEDIA,
LLC aka GAWKER MEDIA, et al.,

Defendants.

Case No.: 12012447-CI-011

FILED
ST. PETERSBURG COUNTY
2015 OCT 28 PM 3:33
KEN BURKE
CLERK OF CIRCUIT COURT

ORDER ON MOTIONS TO DETERMINE CONFIDENTIALITY

THIS CAUSE came before the Court on July 1, 2015 and October 1, 2015 on numerous Motions to Determine Confidentiality filed by the parties, as well as motions by intervening media organizations seeking public access to court records and transcripts. The Court has reviewed the motions and oppositions thereto, including the underlying court records provisionally filed under seal and the transcripts of closed court proceedings, heard the arguments of counsel for the parties and intervenors, and is otherwise fully advised in the premises. The Court FINDS as follows:

1. On July 25, 2013, the Court entered its Agreed Protective Order Governing Confidentiality (the "Protective Order"), which provides that any party wishing to use any information designated by a party or witness in discovery as confidential in any affidavits, briefs, memoranda of law, or other paper filed in Court in this litigation must file such information under seal with the Court consistent with Florida Rule of Judicial Administration 2.420.

2. On July 1, 2015 the Court heard eight motions filed by the parties to determine the confidentiality of court records relating to motions *in limine* or *Daubert* motions that were

adjudicated on that same date, that contain information designated as confidential under the Protective Order and that were provisionally filed under seal pursuant to the Protective Order.

3. On October 1, 2015, Defendants, Gawker Media, LLC, Nick Denton, and A.J. Daulerio (the “Gawker Defendants”) called up for hearing seventeen motions filed by the parties at various times throughout the case which sought to determine the confidentiality of additional court records that contain information that Plaintiff designated as confidential under the Protective Order and that were provisionally filed under seal pursuant to the Protective Order; as well as the Gawker Defendants’ motion to determine the confidentiality of transcripts of closed court proceedings (the “Transcript Motion”).

4. At both hearings, counsel for various intervenor media organizations appeared to oppose sealing and/or closure. Intervenors, First Look Media, Inc., WFTS-TV, WPTV-TV, Scripps Media, Inc., WFTX-TV, Journal Broadcast Group, the Associated Press, and the *Tampa Bay Times* (“Intervenors”), also filed a motion, heard on October 1, 2015, seeking public access to court records and transcripts, including records filed in connection with Plaintiff’s emergency motion seeking an investigation of alleged violations of the Court’s Protective Order (the “Intervenors’ Motion”).

5. The Court carefully reviewed the eight motions heard on July 1, 2015, the seventeen motions to determine confidentiality heard on October 1, 2015, the Intervenors’ Motion and the Transcript Motion, as well as the information designated as confidential that had been provisionally filed under seal in connection with each motion.

6. The Court also reviewed Rule of Judicial Administration 2.420 and the standard set forth in *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113 (Fla. 1988).

7. With respect to each of the Court's rulings sealing information set forth in paragraphs B, D and F below, the Court finds that the information being sealed is CONFIDENTIAL on the grounds that confidentiality is required to: avoid substantial injury to innocent third parties; avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in this proceeding; and, to comply with the established public policy set forth in the Florida and United States Constitution, statutes, rules and case law.

8. The degree, duration and manner of confidentiality ordered in paragraphs B, D and F below, is the least restrictive measure to protect the interests set forth in paragraph 7, above; and is no broader than necessary to protect the interests set forth in paragraph 7, above.

It is thereupon, ORDERED and ADJUDGED as follows:

A. The various media organizations' request to intervene in this proceeding for the purpose of seeking access to proceedings, records and transcripts is GRANTED. Counsel for the parties are directed to give notice to counsel for the Intervenors of any request to seal records or transcripts or to close proceedings, including to serve counsel for the Intervenors with all motions seeking such relief.

B. The following documents related to the parties' motions *in limine* are CONFIDENTIAL under Rule 2.420 (c)(9)(A)(v), (vi) and (vii), and shall be SEALED until further order of this Court:

- (1) The Gawker Defendants' Motion *in Limine* on Evidence Relating to Plaintiff's Admission that He Believed the Sex Tape(s) Showed Him Making Statements that Have Been Marked as Confidential, and Exhibits thereto, filed on June 12, 2015;
- (2) Plaintiff's Confidential Motion *in Limine* No. 6 to Exclude Evidence or Argument Related to Additional Videos of Terry Bollea, and Exhibits thereto, filed on June 12, 2015;

- (3) Plaintiff's Confidential Opposition to Gawker Defendants' Motion to Permit Presentation of Offensive Language at Trial, and Exhibits thereto, filed June 26, 2015; and
- (4) The Gawker Defendants' Opposition to Plaintiff's Motion *in Limine* No. 6 to Exclude Evidence Relating to Additional Videos, filed June 26, 2015.

C. For the reasons stated herein and on the record at the October 1, 2015 hearing, the Gawker Defendants' motion for reconsideration of the Court's ruling sealing the court records enumerated in Paragraph B(1) through B(4) of this order is DENIED.

D. The following documents are CONFIDENTIAL under Rule 2.420 (c)(9)(A)(v), (vi) and (vii), and shall be SEALED until further order of this Court:

- (1) Plaintiff's Confidential Motion for Protective Order re: Certain Content in Documents Produced in Discovery, as well as the Exhibits thereto, filed on May 27, 2014;
- (2) Affidavit of Charles J. Harder, and the Exhibits thereto, filed on May 27, 2014;
- (3) Defendant's Confidential Statement of Violations of Court Orders and Misrepresentations by Plaintiff and Plaintiff's Counsel, as well as the Exhibits thereto, filed on June 6, 2014;
- (4) The Gawker Defendants' Opposition to Plaintiff's Confidential Motion for Protective Order re: Certain Content in Documents Produced in Discovery, and the Exhibits thereto, filed on June 9, 2014;
- (5) Plaintiff's Confidential Reply in Support of Motion for Protective Order re: Certain Content in Documents Produced in Discovery, as well as the Exhibits thereto, filed on June 16, 2014, with the exception of Exhibit B to that Reply;
- (6) Plaintiff's Confidential Supplemental Opposition to Defendants' Motion for Sanctions and Response to Evidence Raised By Gawker for the First Time on Reply, and the Exhibits and Affidavits thereto, filed on June 18, 2014;
- (7) Exhibits 2, 3 and 4 to the Gawker Defendants' Opposition to Plaintiff's Motion for Setting of Trial Date and for Severance of Claims against Kinja, KFT, filed on October 16, 2014;

- (8) Exhibits A and B to the Gawker Defendants' Exceptions to Report and Recommendation Denying Motions for Sanctions, filed on October 30, 2014;
- (9) Confidential Supplemental Statement of Undisputed Material Facts in Support of the Gawker Defendants' Motion for Summary Judgment and the Confidential Supplemental Affidavit of Rachel E. Fugate in Support of the Publisher Defendants' Motion for Summary Judgment, as well as the Exhibits thereto, filed on April 20, 2015;
- (10) Confidential Information within Plaintiff's Opposition to the Gawker Defendants' Motion for Summary Judgment, Confidential Statement of Disputed and Undisputed Facts in Opposition to the Gawker Defendants' Motion for Summary Judgment, and the Confidential Supplemental Affidavit of Kenneth G. Turkel and Exhibits thereto, filed on May 11, 2015;
- (11) Confidential Information within Plaintiff's Opposition to Heather Cole's (sued as Heather Clem) Motion for Summary Judgment, Confidential Supplemental Affidavit of Charles J. Harder, and Exhibits thereto, filed on May 11, 2015;
- (12) Exhibits A, B, and G to the Gawker Defendants' Motion for Continuance, filed on June 29, 2015;
- (13) Confidential Declaration of Gregg D. Thomas, Esq., and the Exhibits thereto, filed on July 30, 2015;
- (14) Notice of Filing Confidential Exhibits, and the Exhibits thereto, in Support of the Joint Opposition to Plaintiff's Emergency Motion to Conduct Discovery Concerning Potential Violation of Protective Order, to Compel Turnover of Confidential Discovery Materials and for Order to Show Cause, filed on August 11, 2015; and
- (15) The Gawker Defendants' Confidential Supplemental Opposition to Plaintiff's Emergency Motion to Conduct Discovery Concerning Potential Violations of Protective Order, to Compel Turnover of Confidential Discovery Materials and For Order to Show Cause, and the Exhibits attached thereto, filed on August 25, 2015.¹

¹ At the October 1, 2015 hearing, the Court reserved ruling on the motion to determine confidentiality with respect to the Gawker Defendants' Notice of Filing Confidential Exhibits in support of Motion for an Order Declaring that Plaintiff Has Improperly Designated Certain Discovery Materials as "Attorneys' Eyes Only," and Exhibits thereto, filed on August 20, 2015.

E. The following court records are NOT CONFIDENTIAL under Rule 2.420, and shall be UNSEALED:

- (1) Exhibit B to Plaintiff's Confidential Reply in Support of Motion for Protective Order re: Certain Content in Documents Produced in Discovery, as well as the Exhibits thereto, filed on June 16, 2014;
- (2) The Gawker Defendants' Opposition to Plaintiff's Motion for Setting of Trial Date and for Severance of Claims against Kinja, KFT, and Exhibits 1 & 5-7 thereto, filed on October 16, 2014; and
- (3) Plaintiff's Trial Exhibits 15 and 16, which were attached to the Gawker Defendants' Motion *in Limine* to Exclude Letters Purporting to be Offers to Commercially Exploit the Sex Tape at Issue, filed on June 16, 2015.

Accordingly, the Clerk of the Court is directed to UNSEAL each of these records and to make them available in the case file for this action for inspection and/or copying by the press and public.

F. The transcripts of the following proceedings are CONFIDENTIAL under Rule 2.420 (c)(9)(A)(v), (vi) and (vii), and shall remain SEALED until further order of this Court:

- (1) The portion of the hearing held before this Court on April 23, 2014 that is contained in Confidential Exhibit 2-C of the Transcript Motion;
- (2) The hearing held before the Special Discovery Magistrate on July 18, 2014 that is contained in Confidential Exhibit 3-C of the Transcript Motion; and
- (3) The portion of the hearing held before the Court on April 22, 2015 that is contained in Confidential Exhibit 4-C of the Transcript Motion.

G. The motions to determine confidentiality of the following documents were withdrawn at the July 1, 2015 hearing before the Court; and therefore the following documents are NOT CONFIDENTIAL under Rule 2.420, and shall be UNSEALED:

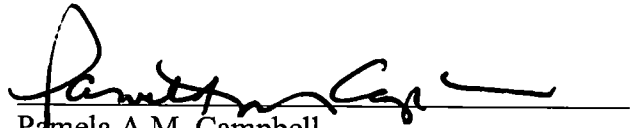
- (1) The Gawker Defendants' *Daubert* Motion to Exclude Testimony of Jeff Anderson, and Exhibits thereto, filed on May 18, 2015;
- (2) The Gawker Defendants' *Daubert* Motion to Exclude Testimony of Leslie John, and Exhibits thereto, filed on May 18, 2015;

- (3) The Gawker Defendants' *Daubert* Motion to Exclude Testimony of Shanti Shunn, and Exhibits thereto, filed on May 18, 2015; and
- (4) Plaintiff's *Daubert* Motion to Exclude Expert Testimony of Peter Horan, and Exhibits A, B, and C thereto, filed on May 18, 2015.

Accordingly, the Clerk of the Court is directed to UNSEAL each of these records and to make them available in the case file for this action for inspection and/or copying by the press and public.

H. The Clerk of the Court shall publish this Order in accordance with subdivision Florida Rule of Judicial Administration 2.420(e)(4).

DONE and ORDERED at Pinellas County, Florida this 27 day of October, 2015.


Pamela A.M. Campbell
Circuit Court Judge

Copies furnished to: Counsel of Record