

EXHIBIT 11

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

CASE NO. 12012447-CI-011

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

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

Defendants.

HEARING
BEFORE THE HONORABLE PAMELA A.M. CAMPBELL
(Pages 1 through 133)

Friday, January 17, 2014
9:35 a.m. - 12:09 p.m.

St. Petersburg Judicial Building
545 First Avenue North
Courtroom E
St. Petersburg, Florida 33701

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EXHIBITS

NO. DESCRIPTION PAGE

(No exhibits marked.)

1 you.

2 THE COURT: Next, motion to dismiss
3 Defendant Gawker and motion is found in
4 Plaintiff's tab Number 9 and the response is in
5 10. There's also a Defendant's response in 11
6 and the Plaintiff's second response is in 12.
7 And this relates to Gawker Media Group,
8 Incorporated's motion for protective order,
9 Number 13, which was motion for protective
10 order. They didn't want to respond until the
11 motion to dismiss has been heard. We'll take
12 those two together.

13 MR. BERLIN: Very well, Your Honor. Let
14 me propose in that regard, if I may, that the
15 motion for protective order, which was the last
16 thing that Your Honor mentioned, actually has
17 two forms. One is we would like not to respond
18 until the motion to dismiss is adjudicated and
19 secondly that also addresses the breadth of the
20 individual requests. And I would propose to
21 address the substance of the motion to dismiss,
22 and if for any reason that's denied and there
23 are specific discovery that we need to talk
24 about, we can come back and do that so we may
25 save some time.

1 THE COURT: Go ahead.

2 MR. BERLIN: Your Honor, when this case
3 started, the Plaintiff sued a number of
4 individuals and entities. And Gawker Media,
5 LLC is the publisher of Gawker.com and it is
6 the entity that is responsible for and
7 publishes that website as well as the
8 particular commentary and excerpts that are at
9 issue in this case. It is a Delaware LLC. Its
10 principal place of business is in New York. It
11 has an office building and scores of employees.

12 It has not in any way tried to circumvent
13 responsibility of responding to the allegations
14 of the Plaintiff's complaint. We obviously
15 have significant disagreements about the merits
16 of that on First Amendment grounds and common
17 law grounds. We have some questions as to
18 whether or not the Plaintiff's version of
19 events is in fact how it happened, but we have
20 not in any way -- Gawker Media, LLC has not in
21 any way tried to avoid responding. It's
22 answered more than a hundred discovery
23 requests, produced thousands of documents,
24 produced multiple witnesses, set multiple
25 witnesses for deposition.

1 We went to the Plaintiff at the beginning
2 of the case and said, look, this is the real
3 entity, this is the proper party. We would
4 propose that you dismiss the other entity
5 defendants. There are two, one of which is in
6 this motion.

7 Gawker Media Group, Inc. is the parent of
8 Gawker Media, LLC. I refer to them as GMGI,
9 which is the acronym. It's a company
10 separately incorporated in the Cayman Islands.
11 It's a 100 percent owner -- this is not any
12 secret -- of Gawker Media, LLC. It does not
13 have employees or operations. It's there to
14 basically facilitate the ownership of the
15 shares of Gawker Media, LLC, and it doesn't do
16 or say or publish anything, including
17 Gawker.com or including the story that's at
18 issue here.

19 So in this case we filed the motion to
20 dismiss Gawker Media Group, GMGI, on two
21 grounds. One is the complaint in this case
22 failed to state a claim against it, and the
23 second is that the Court lacks personal
24 jurisdiction over this non-US company that
25 otherwise has no connection to Florida.

1 Let me address each of those.

2 THE COURT: I read it in your memo.

3 MR. BERLIN: Then I'll try to do it in an
4 abbreviated fashion and save the Court some
5 time.

6 The failure to state a claim obviously
7 goes to the four corners of the complaint, and
8 the Plaintiff has not alleged any tortious
9 conduct anywhere and specifically in Florida by
10 GMGI. What they've done is they've said --
11 they say Gawker Media Group, Inc.,
12 Gawker Media, LLC, and four other entities,
13 three of which have now been dismissed from the
14 case, all operate together as Gawker Media, and
15 on that basis they say that they jointly are
16 responsible for publishing and that raises
17 essentially alter ego/corporate veil questions.

18 The claims that they've alleged does not
19 state a claim as a matter of law. As a matter
20 of law in Florida, to state a claim against a
21 separate entity based on the acts of somebody
22 else, the parent company in this case has to
23 have established a subsidiary as a mere
24 instrumentality or a sham, and the second is
25 that the parent used it for improper purposes,

1 such as to mislead creditors and to avoid
2 liability.

3 Those are the parts of the test. That's
4 been well studied in a case called "Dania
5 Jai-Alai vs. Sykes." I have a copy, if
6 Your Honor would like. We've gone back and
7 forth about whether that case changed the
8 standard from the earlier case, but it's clear
9 that that's the standard, and if the Court has
10 read the papers, unless this becomes a
11 question, rather than going through all of that
12 back and forth about whether -- what that
13 standard is.

14 In this case, the Plaintiff pleads only
15 that Gawker Media Group, Inc. and Gawker Media,
16 LLC are alter egos of another. They do not
17 plead any facts to say that the company -- that
18 Gawker Media was established as a sham, that
19 Gawker Media, LLC was established for the
20 purpose of misleading creditors; and I would
21 say, as the second part of my argument, they
22 couldn't do so in good faith. So that is in
23 essence they failed to state a claim.

24 Now, in this case, when we get to the lack
25 of personal jurisdiction argument, this is a

1 case that's gone like a lot of cases where you
2 move to dismiss for lack of personal
3 jurisdiction and then by the time we get into
4 this motion, you know, we are more than a year
5 into this case.

6 So on a motion to dismiss for lack of
7 personal jurisdiction, unlike for failure to
8 state a claim, the Court can and should look at
9 the facts. So where the Defendant -- and this
10 is again said in a lot of cases, which I can
11 hand up if Your Honor needs me to, where the
12 defendant sets forth facts before the Court
13 challenging the sufficiency of the
14 jurisdiction, the burden then shifts to the
15 Plaintiff to put forward facts of his own.

16 Now, in this case, we have put forward
17 deposition and interrogatory answers and a
18 declaration from Scott Kidder, who is a -- one
19 of the two officers of GMGI, and Mr. Kidder had
20 his deposition taken in New York for a full day
21 by Plaintiff's counsel. Mr. Kidder had the --
22 was asked about the relationship between the
23 two entities and he was asked about his role.

24 And here's what the testimony said:
25 Number 1, that they don't engage in any

1 conduct, including tortious conduct, in Florida
2 or anywhere else. They don't have any
3 operations or employees. There's been no money
4 transferred from Gawker Media to GMGI. So to
5 the extent there's some sort of sham to move
6 money around, there's no money. They did not
7 establish Gawker Media, LLC as a sham to avoid
8 creditors. In fact, GMGI, as said in the
9 testimony, was established years after
10 Gawker Media, LLC.

11 So to the extent you want to argue that
12 the parent established the sub to engage in
13 improper purposes, the parent didn't exist when
14 the sub was established. And most importantly,
15 Gawker Media, LLC is a fully functioning
16 company with employees, assets, operations, and
17 tens of millions of dollars of revenue.

18 I'm happy to hand up to the Court to look
19 at some financial documents that would
20 demonstrate that. We could attach them
21 confidentially. But we've given all that
22 information to the Plaintiffs, so they know
23 that.

24 The last point I'll make, Your Honor, is
25 this jurisdictional point, which is that you

1 can't haul a non-US company into Florida where
2 it's not legally done anything at all, let
3 alone involved in this case. It is not only a
4 matter of Florida's long-arm jurisdiction law
5 but also under the due process laws of the
6 United States Constitution.

7 In that regard, just the other day the
8 Supreme Court cited a case I would like to hand
9 up called Daimler AG versus Bauman. Let me
10 hand that up, if I may. I have copies here.
11 This is found for the record, Your Honor, at
12 2014 Westlaw 113486.

13 The case basically is a case against
14 Daimler AG, which is the people who make
15 Mercedes Benz, as well as their US subsidiary,
16 Mercedes Benz USA. They were sued in
17 California and the Court -- it went up to the
18 Ninth Circuit and they sustained the agency
19 theory and said that's enough to take
20 jurisdiction over the foreign parent company.

21 I submit to you that Daimler AG does a lot
22 more than Gawker Media Group, Inc.

23 The Supreme Court said you can't do this
24 and their opinion was a unanimous decision,
25 which incidentally Judge Sotomayor entered a

1 concurring opinion, and the case is notable not
2 only for the unusual point which the
3 Supreme Court, which is often divided, came to
4 a unanimous decision, but they basically said,
5 look, you cannot have jurisdiction as to a
6 foreign company -- and part of what they were
7 concerned about in that case, which I think is
8 appropriate here -- and I'm looking at now in
9 the part that I just handed up, which is found
10 on Page -- let me get to the right page. I
11 apologize. This is on Page 10 of the case
12 decision at Headnote 12 where the Court says,
13 "The transnational context of this dispute
14 bears attention." And then it says, "The Ninth
15 Circuit paid little heed to the risks of
16 international comity its expansive view of
17 general jurisdiction posed. Other nations do
18 not share the uninhibited approach to personal
19 jurisdiction advanced by the Court of appeals."

20 Then it goes on to cite, for example, "In
21 the European Union" -- which I mention because
22 this could be relevant to the next motion where
23 we have the Hungarian defendant -- "In the
24 European Union, for example, a corporation may
25 generally be sued in the nation in which it is

1 domiciled, a term defined to refer only to the
2 location of the corporation's statutory seat,
3 central administration, or principal place of
4 business."

5 The Court then goes on to say, "The
6 Solicitor General informs us, in this regard,
7 that foreign governments' objections to some
8 domestic courts' expansive views of general
9 jurisdiction have in the past impeded
10 negotiations of international agreements on the
11 reciprocal recognition and enforcement of
12 judgments." And it cites a variety of
13 authorities.

14 And then it says, "Considerations of
15 international rapport thus reinforce our
16 determination that subjecting Daimler to the
17 general jurisdiction of courts in California
18 would not accord with the fair play and
19 substantial justice due process demands."

20 I would say that that's one additional
21 reason conveniently for me cited within a
22 couple days before this hearing where we should
23 not be having -- we shouldn't be having
24 jurisdiction over GMGI, and I would
25 respectfully submit, Your Honor, there's no

1 real reason to.

2 Just as a point of information, Gawker has
3 been in business for a while now, and as is the
4 case with media companies, they've been sued
5 from time to time, happily not too often. But
6 this is the first time that anybody has tried
7 to bring any suit or case against the parent
8 company, because most other plaintiffs can make
9 their beef and litigate without having to, you
10 know, go up the chain to the holding company,
11 which has -- which is really the next motion
12 and I won't get into the specifics of the
13 requests -- has imposed all sorts of discovery
14 obligations on the other entity when the main
15 entity has already answered discovery quite
16 extensively. Thank you.

17 THE COURT: If we can just take a quick
18 comfort break, and when everybody comes back,
19 we'll continue.

20 (The proceedings were recessed from
21 10:56 a.m. to 11:02 a.m.)

22 THE COURT: All right. Mr. Harder.

23 MR. HARDER: Thank you, Your Honor.

24 I haven't had a chance to read the Daimler
25 case, so obviously I'm not going to address

1 whatever merits there are, if there are any in
2 connection to this case or not. And I'm happy
3 to supplement if the Court would like me to
4 supplement my briefing to address that case. I
5 don't think it's necessary, though.

6 GMGI is a parent company and it is
7 registered in the Cayman Islands. They've said
8 it doesn't operate in the Cayman Islands.
9 Gawker Media, LLC operates in New York City,
10 downtown Manhattan. They have offices and
11 that's where they do their work.

12 What we're trying to avoid here is a
13 situation where we get a judgment and then we
14 find out that they are hiding assets in the
15 Cayman Islands corporation. And so what we are
16 trying to do is some discovery to determine if
17 what they are saying here is true, because we
18 haven't done any discovery yet as to GMGI
19 because GMGI has a protective order to stop us
20 from doing discovery.

21 When we gave discovery to GMGI regarding
22 jurisdiction and regarding their operations,
23 they wouldn't answer any of the questions. And
24 when we took depositions in New York, they had
25 been holding back on their motion to dismiss.

1 After those depositions, then they filed their
2 motion to dismiss and made all of these
3 arguments, after we had not had the opportunity
4 to take discovery and take the three people who
5 showed up and those three people were not
6 representing GMGI and they were not
7 representing Kinja, the other defendant,
8 because they were preventing us from taking
9 that discovery.

10 So we had to go before Your Honor today on
11 their motion for protective order in order to
12 get some discovery. I mention Kinja because
13 it's part of the same ball of wax. Kinja owns
14 Gawker.com, the URL address, the domain name.
15 Kinja owns it. That's why we sued Kinja
16 because the activity that took place here took
17 place on Kinja's platform. Kinja is a proper
18 party in this case.

19 THE COURT: I see Kinja, now known as some
20 other name --

21 MR. HARDER: It used to be known as
22 Blogwire Hungary.

23 THE COURT: I see that as totally separate
24 from this. This one -- to me, it seems to be
25 the proper process would be if you get a large

1 judgment and they can't satisfy it or they can
2 show there's been transfer, then proceed
3 supplementary. Isn't that the proper
4 procedure?

5 MR. HARDER: Well, Your Honor, what we
6 would like to do is take discovery first to
7 make sure. I have had cases where a judge told
8 me the opposite, that what you do is you bring
9 in all the defendants and then through
10 discovery you figure out who should be there
11 and who should not.

12 I've probably said it 50 times in my
13 career. If the defendant shouldn't be in the
14 case, I get them out of there. I don't want
15 defendants in a case. It's a waste of my time
16 to litigate against defendants who shouldn't be
17 in a case. I have had judges tell me you get
18 all the parties who appear to be proper parties
19 and through discovery you figure out if they
20 are proper parties, especially when they are
21 all in the same ball of wax, when they are all
22 part of the same family of companies.

23 In here, what we have is the parent, which
24 is owned by Nick Denton, who lives in
25 Manhattan, and we have Kinja, which is owned by

1 Nick Denton, who lives in Manhattan, and we
2 have Gawker Media, which is owned by
3 Nick Denton and he lives in Manhattan, and we
4 have Nick Denton who is running the show of all
5 these different entities.

6 And we are just trying to understand is
7 the parent involved, is it not. Is it an alter
8 ego? Maybe it is. Maybe they are trying to
9 shelter assets. What we want to do is get to
10 the bottom of it. If it turns out that through
11 discovery we find out that everything that
12 they've said is correct, then we are going to
13 let them out.

14 THE COURT: It seems to me, though,
15 that -- and I guess it's a matter of
16 perception, but Mr. Berlin's argument that have
17 some discovery and then move to the motion to
18 dismiss meaning that you're getting some
19 discovery to at least satisfy your inquiry
20 versus your perception of they moved for the
21 motion to dismiss after we've done our limited
22 discovery so that we wouldn't know that they
23 were getting ready to try and get it dismissed.
24 Do you see the distinction?

25 MR. HARDER: We were doing the discovery

1 of Gawker Media.

2 THE COURT: I understand that, but at
3 least understand -- I think initially when I
4 first started hearing some of this, at that
5 point in time I think GMGI hadn't even been
6 served when we first started doing some of
7 this.

8 MR. HARDER: We asked them to accept
9 service. They said no. So we had to go
10 through a lengthy and expensive process to
11 serve them in the Cayman Islands. Same thing
12 with Kinja. We had to have the --

13 THE COURT: I think Kinja is different
14 only because I think some of the arguments that
15 were initially made about Kinja also not only
16 was another platform but what was the
17 representation as to what was -- the
18 dissemination, I guess, of the -- for the
19 audience, a broader audience than
20 United States. Okay.

21 MR. HARDER: Your Honor, we would like an
22 opportunity to take some limited discovery.
23 Gawker Media Group, Inc., GMGI, has not
24 produced a single piece of paper in this case.
25 We would like them to produce documents

1 pertaining to their corporate formalities so
2 that we can determine if they follow them,
3 regarding their capitalization so we can
4 determine the alter ego issue.

5 If it turns out that our alter ego claims
6 are going to fail, then we are going to get rid
7 of them, but we just need to be able to do the
8 investigation first because if we end up
9 litigating this case and then we have to go
10 against GMGI later on down the road, we don't
11 want to start at square one and we don't want
12 to have to go through this whole process again.
13 We are already a year plus down the road and we
14 just want to finish it up.

15 THE COURT: I thought part of this was to
16 determine -- to have some more discovery to
17 make certain that Gawker Media, LLC wasn't just
18 a shell, and at this point in time I'm not
19 hearing any arguments as to that point of it,
20 so --

21 MR. HARDER: Well, I don't know if that
22 was me saying that or if that was Seth Berlin
23 saying that that --

24 THE COURT: I thought it was really more
25 about to keep them in longer so that you can

1 make sure that Gawker Media, LLC just wasn't a
2 shell, so that the parent would --

3 MR. HARDER: Well, I don't know if
4 Gawker Media is a shell. But if Gawker Media
5 has certain assets, then if we have a judgment
6 to collect as to those assets, but if there's
7 more judgment to go for and we find out that
8 there are assets that have been sheltered in
9 the Cayman Islands corporation, we want to be
10 able to at least be in the position to pursue
11 those assets.

12 THE COURT: I'm going to grant the motion
13 to dismiss the Defendant Gawker Media Group,
14 Inc. with leave to amend if there's other facts
15 that you think that go in there, but at this
16 point in time I have not heard them. I think
17 really the correct procedure would be to plead
18 a supplementary after the conclusion as opposed
19 to a fishing expedition. Okay.

20 MR. HARDER: Thank you, Your Honor. One
21 last point. Service of the -- if we have an
22 amended complaint -- they have already been
23 served with the first amended complaint. They
24 brought their motion. I don't want to -- I
25 assume that I can just serve counsel with any


1 pleasure. Thank you.

2 (The proceedings were concluded
3 at 12:09 p.m.)
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3 CERTIFICATE OF REPORTER

4 STATE OF FLORIDA)

5 COUNTY OF HILLSBOROUGH)

6 I, Lori K. Ash, RPR-CP, certify that I was
7 authorized to and did stenographically report the
8 foregoing proceedings and that the foregoing pages,
9 numbered 1 through 132, are a true and complete
10 record of my stenographic notes taken during said
11 proceedings.12 I further certify that I am not a relative,
13 employee, attorney or counsel of any of the parties,
14 nor am I a relative or employee of any of the
15 parties' attorneys or counsel connected with the
16 action, nor am I financially interested in the
17 action.18 Dated this 20th of January, 2014.
1920
21
22 
23 LORI K. ASH, RPR-CP