

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

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

Defendants.

**PLAINTIFF'S EMERGENCY MOTION TO ENFORCE PERMANENT
INJUNCTION AND PREVENT A.J. DAULERIO FROM ENGAGING IN
REVENGE PORN, EXTORTION AND VIDEO VOYEURISM**

Plaintiff Terry Bollea known professionally as Hulk Hogan ("Mr. Bollea") by counsel and pursuant to the Court's June 7, 2016, Final Judgment and Permanent Injunction ("Permanent Injunction") moves for the entry of an order on an emergency basis enforcing the Permanent Injunction and, pursuant to and §§ 784.049, 836.05 and 810.145, *Fla. Stat.*, the entry of an order preventing Defendant A.J. Daulerio ("Mr. Daulerio") from violating Florida's "Revenge Porn," Video Voyeurism and Extortion Laws, by requiring Mr. Daulerio to immediately turn over to Mr. Bollea's counsel any and all copies, excerpts and/or still images of all surreptitiously recorded, sexually explicit recordings and images of Mr. Bollea, and to verify under oath that he no longer has any access to or ability to access such recordings and images, and in support states as follows:

Introduction

Since its inception, this case has always been and will continue to be about a person's right to stop other people from posting illegally recorded, sexually explicit images of him or her

on the Internet without their consent. This case is not an attack upon the freedom of press nor the First Amendment. Its goal has never been to silence the voice of the people nor journalists who are telling the public about matters of legitimate public concern. Rather, in an age in which everyone has a camera phone and computer hacks of peoples' private nude photos have become commonplace, the goal of this case has always been to draw a clear line that publishers cannot cross demarking the point at which journalism ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into the private life of another, with which a reasonable member of the public with decent standards would say that he or she has no legitimate concern. Seven months ago, a Pinellas County jury drew that line, held the defendants accountable for crossing it, and sent a message to anyone who might consider doing the same: don't post illegally obtained, private, sexually explicit images of people on the Internet without their consent because they are not "news." This Court did the same in its Permanent Injunction.

Incredibly, Mr. Daulerio has not learned anything over the past four years. He still believes that secretly recorded footage of people having sex can be passed off as "news," and that there are no limits to what he can post on the Internet. In fact, Mr. Daulerio proudly stated in a recent interview that he believes he can post the entire 30-minute video of Mr. Bollea on his website, Ratter.com, because he thinks it is "completely newsworthy." He even planned to do so. Mr. Daulerio even bragged about still having a copy of the entire 30-minute, illegally recorded encounter.

Mr. Daulerio should not be given the opportunity to follow-through on his threats. Mr. Bollea should not have to live in fear of being sexually exploited at the whim of an angry and desperate, self-proclaimed "voyeur and deviant," who has threatened to violate this Court's

Permanent Injunction and Florida law to try to coerce Mr. Bolela to stop collecting the \$115.1 million judgment that Mr. Daulerio owes.

Once again, and almost four years to the day of Mr. Daulerio's original Hulk Hogan sex tape post, Mr. Bollea finds himself being victimized and trying to stop Mr. Daulerio from publishing an illegally recorded sex tape against Mr. Bollea's will. Only this time, Mr. Bollea is already armed with a jury verdict, Permanent Injunction and Florida's Revenge Porn, Video Voyeurism and extortion statutes at his sides. Mr. Daulerio must be stopped before he inflicts more harm than he has already caused.

Factual Background

Six months ago, Mr. Daulerio and his attorneys stood in a Pinellas County courtroom and promised the jury, this Court and Mr. Bollea that Mr. Daulerio understood that he could no longer post explicit, illegally recorded sex tapes masquerading as news, that he would be deterred by the jury's verdict, and that he had learned his lesson. He has not.

Ex-Gawker Editor Almost Went Into Hiding After Hulk Hogan Verdict

But AJ Daulerio also had a plan to go out with a bang

Tim McLeary | September 28, 2016 @ 8:11 PM



Deadspin

As set forth in the above-referenced article,¹ on or about September 28, 2016, an interview of Mr. Daulerio was posted on the *Longform Podcast* (a copy of the transcript of which is attached as **Exhibit A**²), during which he stated, among other things:

MR. DAULERIO: I don't think anybody was going to give me, the child pornographer, like any sort of money at that point, but what I did think initially was that, well, all is lost, **but I do still have a copy of the sex tape, and it is completely newsworthy at this point.** I was just like, okay, well, **how about I do a post on Ratter³ that says here's what \$140 million sex tape looks like, and then just "peace out," and then just go to Miami, and just like be on the lam and just do that.** And this is what I was planning on doing. I was getting -- I was getting phones, like, you know, I was basically going to get burner phones, I was going to do this all kind of covert and have, you know, signals and all these people I was working for, and thankfully some people talked me off the ledge --

INTERVIEWER: Yeah.

MR. DAULERIO: -- and just said, you know, you're not out of this yet, obviously, and Gawker is not out of this, and I didn't want to do anything to jeopardize Gawker more so than I already had in trial, but that was my first instinct was basically just like, you know, that -- **that much frustration and that much kind of anger and that much sadness over just like what had transpired.** It was just like I had that brief sliver of a **revenge fantasy** so to speak, and also at that time I said to myself, well, what is a thing that we can do that makes this a positive experience in some ways for someone. [Emphasis added.]

Mr. Daulerio's thinly-veiled threat to release the entire full length 30-minute Video confirms the fears Mr. Bollea expressed throughout this case and, most recently, in his request for the Permanent Injunction. (See Bollea's 5/11/2016 Motion, p. 9-10.) Mr. Daulerio opposed entry of the Permanent Injunction by representing that: "All Denton and Daulerio were saying is that they still believe that the video excerpts were part of a legitimately newsworthy publication,

¹ See Ex. 1 to Affidavit of Gayla Arnold.

² See Ex. 2 to Affidavit of Gayla Arnold.

³ With funding approved by Gawker Media, LLC's CEO, Nick Denton, Ratter.com is a now-defunct website still controlled by Mr. Daulerio.

not that they plan to repost the video excerpts, or post any additional sex-tape footage.” (*See* 5/23/16 Opposition, p. 6.) The September 28, 2016 interview makes clear that, once again, this Court and Mr. Bollea have been misled.

Fortunately, the Court knew better than to take Mr. Daulerio’s representation at face value. It entered the Permanent Injunction based in part on findings that “Gawker Defendants continue to possess additional footage of Mr. Bollea, including the full 30-Minute Video that they received, the contents of which have never been made public... [and that]... while Gawker Defendants are not currently making the Gawker Video or 30-Minute Video available, there is no court order currently in place that prohibits them from doing so.” (*See* Permanent Injunction ¶ 52.)

For most people, a court order such as the Permanent Injunction (and its attendant threat of contempt) would be a sufficient deterrent. However, this remains a special case involving defendants such as Mr. Daulerio who have exhibited complete disrespect for the law and this Court’s authority. For example:

- The day after this Court entered its temporary injunction (but before it was reversed on appeal) the defendants defiantly posted a story headlined: “A Judge Told Us to Take Down Our Hulk Hogan Sex Tape Post. We Won’t.” (*See* Depo. Ex. 227.)
- Mr. Daulerio was willing to go to jail in order to post pictures of Brett Favre’s penis. (*See* Depo. Ex. 4; Daulerio 9/30/2013 Depo. pp. 75-77.)
- Sealed discovery was leaked to and published by *The National Enquirer*. Mr. Daulerio tweeted “xoxoxo” to Mr. Bollea at 6:52 a.m., within minutes of the leak being posted. This prompted the Court to enter an electronic discovery order. (*See* 10/21/2015 Order; Ex. A to Mr. Bollea’s Reply in Support of Emergency Motion.)
- Mr. Daulerio misled this Court about the value of GMGI stock to obtain a temporary stay of execution. (*See* 7/29/2016 Order.)
- Mr. Daulerio made material misrepresentations about his net worth (most notably, his indemnity rights), before, during and after trial. (*See* 8/5/16

Renewed Motion for Sanctions.) Several of these misrepresentations were made in filings required by Court Order.

Mr. Daulerio's lack of respect and appreciation for this Court's authority is particularly disconcerting now that Mr. Daulerio claims to have reached the end of his rope and believes he has "nothing to lose." For example, Nick Denton and Gawker Media, LLC ("Gawker") abandoned Mr. Daulerio after they each filed for bankruptcy protection, leaving Mr. Daulerio standing alone to face collection. ("Somehow, getting \$115 million is basically falling squarely on my head, because, you know, Gawker and Nick have both declared bankruptcy..."⁴) Mr. Denton secured a \$200,000 "loan"⁵ for himself from Gawker to retain personal bankruptcy counsel immediately before Gawker filed for bankruptcy protection, but left Mr. Daulerio without the same protection—even though they both held some of the same indemnity rights.

According to Mr. Daulerio, his desperation is exacerbated by his belief that he was wronged by "Gawker's lawyers." ("...any conversations I would have with *the lawyers that were representing Gawker in this case*, it was always bad news, and it was always there's another worst case scenario, another bad day in court.")⁶ Throughout this case, Mr. Daulerio apparently operated under the assumption that because he was indemnified, Mr. Bollea couldn't pursue him personally. (9/28/16 Trans. p. 17:14-24) However, Mr. Daulerio recently revealed that he was blindsided by the reality of his personal liability at the last minute. (9/28/16 Trans. p. 17:14-24) In fact, in the September 28, 2016 interview, Mr. Daulerio states: "**everything that was told to me from the beginning about that this would actually impact me personally—was bullsh*t.**" (9/28/16 Trans. p. 20:10-18) Mr. Daulerio also contends his lawyers did not advise him about his indemnity rights due to "conflicts." (9/28/16 Trans. p. 18:3-6)

⁴ See 9/28/16 Trans. p. 10:14-24.

⁵ According to Mr. Daulerio, he would have needed \$30,000 to retain his own bankruptcy counsel. (See 9/28/16 Trans. pp. 16:16-17:13.)

⁶ See 9/28/16 Trans. p. 9:4-9. [Emphasis added]

Mr. Daulerio further attributes his desolation to the upcoming October 31, 2016, sanctions hearing involving, among other things, the concealment of these same indemnity rights. (9/28/16 Trans. pp. 78:7-79:5) Mr. Daulerio now admits that his indemnity rights have significant monetary value. (9/28/16 Trans. pp. 12:24-13:13; 78:7-79:14) In fact, on September 29, 2016, Mr. Daulerio filed bankruptcy Proofs of Claim against Gawker, Gawker Media Group, Inc. (“GMGI”) and Kinja, Kft. (“Kinja”), in the amount of \$6 million each, based on the companies’ duties to defend and indemnify Mr. Daulerio in this case. (A copy of the Proof of Claim against Gawker, and the Supplement (without exhibits) is attached as **Exhibit B**). According to these filings, Mr. Daulerio (who claims he is broke) already owes LSKS \$190,000 for services rendered from June 10, 2016 through August 31, 2016 (*See* S. Berlin 9/28/16 letter attached as **Exhibit C**), and another \$20,000 to his recently retained independent counsel. (*See* Marburger Law 9/29/16 letter attached as **Exhibit D**.)

Unfortunately, Mr. Daulerio’s anger and frustration over his litany of problems is being directed solely toward Mr. Bollea, simply because Mr. Bollea is engaging in routine collection efforts to secure the money Mr. Daulerio owes. Mr. Daulerio’s last ditch effort to avoid paying Mr. Bollea entails threatening to engage in revenge porn and video voyeurism by releasing more or all of the 30-minute, illegally recorded, sexually explicit footage of Mr. Bollea. The timing of Mr. Daulerio’s decision to publicly brag about still having a copy of that video footage and his plan to release it is not a coincidence.⁷

Moreover, Mr. Daulerio persists in his belief that he has every right to publicly disclose the entirety of the illegally recorded sex tape without Mr. Bollea’s consent, and in violation of Florida law and the Permanent Injunction. In fact, Mr. Daulerio inexplicably claims that it is

⁷ For example, Mr. Daulerio’s September 28, 2016 interview was contemporaneous with his filing of the Proofs of Claim against the Gawker entities.

somehow “completely newsworthy at this point,” even though the jury and this Court have already concluded otherwise.

Mr. Daulerio cannot be trusted with any sexually explicit footage of Mr. Bollea. He certainly should not be allowed to keep the means through which he could follow through on his recent threats against Mr. Bollea.

Argument

Recently, Florida’s Legislature recognized what Mr. Bollea has been saying throughout this case: publishing sexually explicit images of another on the Internet without that victim’s consent creates a permanent record of that victim’s private nudity and private sexual conduct worldwide, which can be easily reproduced and shared, and causes significant psychological harm. *See* § 784.09(1)(b)-(f), *Fla. Stat.* In order to protect against this harm, an aggrieved person is entitled to “obtain all appropriate relief in order to prevent or remedy a violation of this section.” *See* § 784.09(5)(a), *Fla. Stat.*

In the Permanent Injunction previously entered in this case, this Court reached the same conclusions: “Publication of the explicit content of the Gawker Video and/or the 30-Minute Video would violate a clear legal right and cause irreparable injury for which Mr. Bollea has no adequate remedy at law... Mr. Bollea will suffer irreparable harm unless a permanent injunction is entered to prohibit further public dissemination of the explicit content of the Gawker Video and the 30-Minute Video... The publication of the explicit contents of Gawker Video or the 30-Minute Video would constitute an invasion of Mr. Bollea’s privacy and violation of Florida law accompanied by extensive harm which an award of monetary damages is insufficient to address.” (*See* Permanent Injunction ¶¶ 42, 50, 51.) This Court also specifically found that:

While the jury’s award of compensatory damages represents an attempt to redress the harm and injuries Mr. Bollea suffered in the

past as a result of the posting of the Gawker Video, several factors require that an injunction issue to prohibit any further distribution of explicit audio or visual footage of Mr. Bollea engaged in sexual activity in a private bedroom. Second, Gawker defendants continue to possess additional footage of Mr. Bollea, including the full 30-Minute Video that they received, the contents of which have never been made public. (Permanent Injunction ¶ 52)

Accordingly, this Court permanently enjoined Mr. Daulerio from publicly posting, publishing, broadcasting, or disclosing any nudity or sexual activity, whether video or audio, contained in the Gawker Video or 30-Minute Video. However, the Court also reserved jurisdiction to enforce the Permanent Injunction, and to issue additional relief, including, but not limited to, an order requiring that Mr. Daulerio and the other Gawker Defendants deliver all copies of the Gawker Video or the 30-Minute Video, or any excerpts thereof, to Mr. Bollea and/or his counsel. (Permanent Injunction p. 9, ¶ 2) The Permanent Injunction has not been stayed pending appeal.

Mr. Daulerio's desperate situation and his above-quoted threats clearly establish that he still does not respect the verdict or this Court's authority, and does not fear the consequences of violating Florida law or this Court's Permanent Injunction. Mr. Daulerio has possession of the subject recording, and is more than prepared to release it and then "go into hiding." Mr. Daulerio also knows that doing so would be wrong, but believes he has nothing to lose.

Given the overall content and context of Mr. Daulerio's September 28, 2016, interview, in which he states that he will never settle with Mr. Bollea and that Mr. Bollea needs to stop collection efforts against him, while at the same time threatening the release of the entire 30-minute video, Mr. Daulerio's conduct also amounts to extortion under Florida law. Florida Statute section 836.05 provides:

Threats; extortion.—Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication *maliciously*

threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

If Mr. Daulerio were allowed to follow through on his threats, he also would violate Florida's Video Voyeurism Law, section 810.45, Florida Statutes. Under § 810.145(3), a person "commits the offense of video voyeurism dissemination if that person, knowing or having reason to believe that an image was created [with a secret camera], intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement... or for the purpose of degrading or abusing another person." The jury and this Court already concluded that Mr. Bollea was secretly recorded naked and having sex in a private bedroom. (Permanent Injunction ¶ 11) The jury and this Court also concluded that Mr. Daulerio knew or had reason to know that Mr. Bollea was recorded without his knowledge or consent. (Permanent Injunction ¶ 12)

Florida law allows its courts to prevent violations of criminal laws. *Mid-American Waste Systems v. City of Jacksonville*, 596 So.2d 1187, 1189 (Fla. 1st DCA 1992). That authority should be exercised to prevent Mr. Daulerio from engaging in revenge porn, extortion and video voyeurism.

Through this motion, Mr. Bollea seeks to enforce the Permanent Injunction, while simultaneously seeking protection under Florida's Revenge Porn, Video Voyeurism and Extortion Laws. A bond is not required for a permanent injunction entered upon a final decree. *International Longshoreman's Assoc., Local 146, AFL-CIO v. Eastern Steamship Lines, Inc.*,

206 So.2d 473 (Fla. 3d DCA 1968). Accordingly, a bond should not be required in connection with the relief sought herein.

However, to the extent the relief sought herein could be characterized as temporary injunctive relief, Mr. Bollea is prepared to post a bond. The purpose of an injunction bond is to provide sufficient funds to cover the adverse party's costs and damages if the injunction is wrongly issued. *Longshore Lakes Joint Venture v. Mundy*, 616 So.2d 1047 (Fla. 2d DCA 1993). When setting the bond, the trial court may also consider other factors, including the adverse party's chances of overturning the temporary injunction. *Id.*

Here, Mr. Daulerio has already been permanently enjoined from publishing the materials that Mr. Bollea seeks to have returned and deleted. Mr. Daulerio's potential damages, if any, are *de minimus*.⁸ His prospects of overturning the relief requested herein are equally miniscule, particularly given the Permanent Injunction and recent enactment of Florida's Revenge Porn Law. Consequently, if a bond is required, it should be no greater than \$10,000.

CONCLUSION

Time and time again, Mr. Daulerio has proven that he is an angry "buccaneering fellow" who thumbs his nose at the law and cannot be trusted. He should not be given the opportunity to violate Florida's Revenge Porn, Video Voyeurism and Extortion Laws, as well as the Permanent Injunction. To prevent such misconduct, Mr. Daulerio should not be permitted to retain any copies or excerpts of any sexually explicit footage, images or recordings of Mr. Bollea, including, but not limited to, the Gawker Video and 30-Minute Video. Moreover, Mr. Daulerio should be required to appear before this Court and verify under oath that he: (1) has turned over to Mr. Bollea's counsel any and all hard copies (*i.e.*, CDs, DVDs, thumb drives) of sexually

⁸ Mr. Daulerio's counsel of record still has a copy of the subject footage, so requiring Mr. Daulerio to return and delete his copy/copies will not cause any harm, including for purposes of any pending appeals.

explicit video and audio recordings (including all excerpts thereof and still images) of Mr. Bollea which he possesses; (2) has permanently deleted or otherwise destroyed any and all electronically stored (*i.e.*, computer files, files stored on the cloud) copies of such recordings, excerpts and images within his possession or control; (3) has no access, or ability to access, any such recordings, excerpts and images; and (4) verify before this Court the identity of every person to whom he has ever personally transmitted or afforded access to such recordings, excerpts and images.

Basis for Emergency Relief

The undersigned hereby certifies that Mr. Bollea seeks the relief set forth herein on an emergency basis because, as recognized in Florida Statute Section 784.049 and this Court's Permanent Injunction, the publication of explicit images of Mr. Bollea on the Internet will cause irreparable and significant psychological harm and create a permanent record of such images worldwide that can be easily reproduced and shared. Moreover, given Mr. Daulerio's past conduct, current legal and financial situations, mental state, obvious animosity toward Mr. Bollea, plan to release the footage, and expressed belief that the entire 30-Minute Video is "completely newsworthy at this point," there is a significant and substantial likelihood that Mr. Daulerio will release the footage at any time.

/s/ Shane B. Vogt

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail via the e-portal system, this 6th day of October, 2016, to the following:

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