

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.

MOTION FOR STAY PENDING APPEAL

Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio (collectively the “Gawker Defendants”), and non-party Heather Dietrick, Gawker Media, LLC’s President and General Counsel, hereby move the Court for an order staying this Court’s Order Permitting Limited Discovery On Potential Violation Of Protective Order And Appointing Electronic Forensic Expert (hereinafter, the “Order”), signed on October 21, 2015, so that they may pursue appellate relief. In support of this motion, the Gawker Defendants and Ms. Dietrick state as follows:

1. On July 29, 2015, Plaintiff filed an Emergency Motion for Leave to Conduct Discovery (hereinafter, the “Motion”).
2. That same day, Plaintiff noticed the Motion for a previously set case management conference scheduled the next day.
3. On July 30, 2015, this Court held a hearing on Plaintiff’s Motion. Defense counsel opposed the Motion at the hearing and requested the opportunity to respond in writing.

4. On August 11, 2015, the Gawker Defendants and their counsel filed a joint opposition to Plaintiff's Motion.

5. On August 25, 2015, the Gawker Defendants and their counsel filed a supplemental opposition, based on newly discovered facts.

6. On August 28, 2015, Plaintiff filed a reply in support of his Motion. He also submitted to the Court a proposed written order on his Motion, which sought relief materially different than the relief sought in the original Motion.

7. On October 1, 2015, at a prescheduled case-management conference, the Court entertained additional argument on Plaintiff's Motion.

8. On October 21, 2015, the Court signed the Order, which differs from both of the proposed orders submitted by Plaintiff. The Order authorizes unprecedented discovery, deputizes the Plaintiff to conduct a leak investigation under the supervision of a Special Discovery Magistrate, and orders a court-appointed "computer forensic examiner" to seize all data from all of the Gawker Defendants' computers, email systems and electronic devices, as well as the computers, email systems and electronic devices of its General Counsel, Ms. Dietrick.

9. The Gawker Defendants and Ms. Dietrick intend to petition the District Court of Appeal for a writ or writs quashing the Order.

10. Among many other legal defects, the Order

- a. requires the Gawker Defendants and their in-house counsel to permit the wholesale confiscation and inspection by a court-appointed "computer forensic examiner" of all data on their computers, phones, and other devices, without regard to, among other things, privilege or confidentiality;

- b. sharply limits the privileges that the Gawker Defendants and their in-house counsel may ultimately assert to prevent disclosure of protected information and/or communications to Plaintiff;
- c. does not permit *any* objections to the disclosure of data to the Plaintiff on other proper grounds, including, but not limited to, relevance;
- d. permits this seizure, inspection, and discovery even though Plaintiff has not met and cannot meet his burden to show an entitlement to *any* discovery on this issue; and
- e. instructs that a Special Discovery Magistrate will supervise this unprecedented and unlawful seizure and discovery, even though the Gawker Defendants and Ms. Dietrick do not consent to a magistrate's involvement in this matter.

11. These and the many other defects in the Order constitute clear grounds for certiorari relief. *See, e.g., Menke v. Broward County Sch. Bd.*, 916 So. 2d 8, 12 (Fla. 4th DCA 2005) (granting certiorari relief from order requiring party to turn over computers and other devices for wholesale inspection by third-party expert); *Fifth Third Bank v. ACA Plus, Inc.*, 73 So. 3d 850, 852 (Fla. 5th DCA 2011) (“Certiorari is particularly appropriate to review an order which improperly requires a party to produce documents or disclose information for which a privilege is asserted because disclosure of privileged or protected material may cause irreparable injury.”); *Root v. Balfour Beauty Constr. LLC*, 132 So. 3d 867, 869 (Fla. 2d DCA 2014) (“[A]n order that entitles a party to carte blanche discovery of irrelevant material demonstrates the type of irreparable harm that may be remedied via petition for writ of certiorari.”).

12. The Gawker Defendants and Ms. Dietrick respectfully request that this Court stay the Order pending the final disposition of their forthcoming appeals, as the Order is collateral to the underlying case. In addition, because the Court entered a preservation order on August 6,

2015, and the Gawker Defendants and Ms. Dietrick are complying with that order, the status quo will be preserved while their appeals are pending. In the alternative, the Gawker Defendants and Ms. Dietrick respectfully request that the Order be stayed until December 4, 2015, which will allow the District Court of Appeal additional time to consider a motion for a stay during its appellate review.¹

13. In determining whether to grant a stay pending appeal, a court must consider, *inter alia*, the likelihood of harm to the moving party in the absence of the stay. *Perez v. Perez*, 769 So. 2d 389, 391 n. 4 (Fla. 3d DCA 1999).

14. An order such as the one, which “require[s] the disclosure of confidential ‘cat-out-of-the-bag’ information,” constitutes “precisely the type of order that can cause irreparable harm.” *Roussio v. Hannon*, 146 So. 3d 66, 71 (Fla. 3d DCA 2014).

15. In contrast, Plaintiff will suffer no harm if a stay is entered because the Gawker Defendants and Ms. Dietrick are complying with the Court’s preservation order. In addition, the issues addressed by the Order are collateral to the underlying litigation.

16. Because the Order will cause irreparable harm if not stayed, the motion for stay should be granted.

¹ The requested 44-day stay is one day less than this Court has granted to Plaintiff in the past. When Plaintiff pursued an interlocutory appeal of a discovery order earlier in this case, this Court granted Plaintiff an extension of 45 days within which to comply with the order, in order for him to obtain a stay from the Court of Appeal before his obligations under the order commenced. *See* Order on Plaintiff’s Motion for Stay Pending Writ of Certiorari Review (May 14, 2014). At the very least, the same consideration should be provided to the Gawker Defendants and Ms. Dietrick, given the Order’s admittedly “extraordinary nature.”

WHEREFORE, the Gawker Defendants and Ms. Dietrick respectfully request that this Court grant their motion for stay pending appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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