

EXHIBIT 3

ELECTRONICALLY FILED 12/18/2013 11:45:27 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

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

TERRY GENE BOLLEA, professionally
known as HULK HOGAN,

Plaintiff,

No. 12-012447-CI-011

vs.

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

Defendants.

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HEARING BEFORE THE HONORABLE PAMELA CAMPBELL

DATE: October 29, 2013
TIME: 10:22 a.m. to 12:31 p.m.
PLACE: Pinellas County Courthouse
545 First Avenue North
St. Petersburg, Florida
REPORTED BY: Susan C. Riesdorph, RPR, CRR
Notary Public, State of
Florida

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1 MR. COHEN: Yes, Your Honor. Thank you.

2 MR. BERLIN: If this is too loud, I'll try to
3 step back. There seems to be an echo.

4 THE COURT: No. The whole -- this room is
5 hard to hear. And if you're not in there,
6 Mr. Cohen and Mr. Harder won't be able to hear
7 you.

8 MR. BERLIN: I remember the last time I was
9 before you, you were courteous enough to allow me
10 to hear by phone -- to participate by phone and it
11 was actually quite difficult to hear.

12 THE COURT: It is.

13 MR. BERLIN: So just turning back to that,
14 Your Honor, Mr. Hogan in his -- or Mr. Bollea in
15 his complaint told a particular story, this is
16 what happened. We have a couple of indications
17 that have caused us to call into question whether
18 that in fact -- those in fact are the facts.

19 Number one, we have some text messages -- let
20 me just, so that I'm not handing you up my work
21 product, just remove the stickers here from it.
22 I've shown this to them.

23 Actually, I think I can do this probably
24 without this particular document. So let me try
25 and move that one so that this is as easy as

1 possible. Then we have some -- the text messages,
2 but also public statements saying there was some
3 awareness of cameras. We have public statements
4 from Mr. Bollea saying that this was not just a
5 one-time thing and that he believes that he had an
6 encounter, a sexual encounter, with Mrs. Clem at
7 least twice and maybe as many as three times,
8 that -- we have public statements saying that
9 Mr. Hogan lived with the Clems for a lengthy
10 period, I believe somewhere between a couple of
11 weeks and a couple of months.

12 When we had our meet and confer about this in
13 August, we addressed -- this is a separate issue
14 for later, but we addressed that particular issue
15 and said, look, you -- we asked you about, you
16 know, his time in the Clem household, and you said
17 you visited, but you didn't stay there. So we
18 said, you've got these public statements. And
19 Mr. Harder said, well, he did live there, but I
20 don't exactly know the period and I'll get back to
21 you. We're still waiting.

22 In -- Mr. Bollea has served objections to the
23 discovery that we served on Mrs. Clem and Mr. Clem
24 and -- even though the discovery that we served on
25 Mrs. Clem is identical to discovery that he was

1 served -- that suggests that he may have made
2 other tapes, both generally and with Mrs. Clem.
3 Rather than simply saying, I don't have any
4 documents, as he's now done for a lot of other
5 requests, he's objecting to their production.
6 Mrs. Clem was served an admission request by the
7 plaintiff asking her to admit that, quote,
8 "Plaintiff was not aware that he was being
9 recorded at the time the video was made." And she
10 denied that. She's in other words saying, yeah,
11 he was aware that he was being recorded.

12 THE COURT: Would you do me a favor. I think
13 Mr. Harder is having a hard time. How about if
14 you move that whole podium back a little bit. I
15 have excellent hearing, so I'll be able to hear
16 you if you're back by the door. But if you move
17 it back a little bit, then I think both of them
18 can hear you.

19 MR. BERLIN: Is that a little better?

20 THE COURT: Hopefully so. If not, I'm sure
21 they'll tell us.

22 MR. HARDER: I appreciate it. The acoustics
23 are strange.

24 THE COURT: They've very bad.

25 MR. BERLIN: It's one of the only times I've

1 been told I'm not loud enough.

2 THE COURT: Well, just speak up.

3 MR. BERLIN: I'll try and do that.

4 Mr. Clem -- so we have three people who know
5 sort of about what happened here, Mr. Bollea,
6 Mrs. Clem, and Mr. Clem. Mr. Clem, after this
7 tape was posted and he was a defendant in this
8 lawsuit, he told his radio audience, "Hulk was in
9 on the sex tape release from the get-go." That's
10 a quote from Mr. Clem. He was in on the stunt.
11 He is, quote, the ultimate lying showman. And,
12 quote, "You can't play the victim like that."

13 Then he went on the Howard Stern show two
14 days later and he said, everybody understood that
15 this was being taped and that this was being --
16 and he was in on the release.

17 (Proceedings marked "Confidential" are
18 contained under separate cover and must be sealed
19 if filed with the court.)

20 MR. BERLIN: Now, we don't know which one of
21 his versions of this is true. We've sought to
22 take discovery from him. That's a separate issue
23 which I want to come back to later today if
24 there's time -- including because we've been
25 trying to get his deposition scheduled now for --

1 we've noticed it, but we haven't actually gotten
2 confirmation from his counsel -- for the better of
3 two months.

4 And what all this means -- let me say one
5 other thing actually before I tell you what it all
6 means.

7 The other thing that's happened is that the
8 plaintiff has shifted his story on when this
9 encounter happened. For most of the past year, he
10 contended it was in 2006 while he was still
11 married. It -- since then he's contended it
12 happened in 2008, after he and his first wife had
13 filed for divorce. It happened while they were
14 legally separated, which would be sometime in
15 between. In fact, this is -- this -- the effect
16 of all the filings in this case, the complaint
17 says this happened in 2006. They amended the
18 complaint, which you just had handed up, to 2006.
19 His affidavit sworn under penalty of perjury in
20 support of the temporary injunction proceeding
21 says 2006. Apparently he communicated that to his
22 wife, because that's what his wife's affidavit
23 also says in support of the temporary injunction
24 motion. His discovery responses then say 2008.
25 His motion for protective order, which you have

1 before you, says, well, we were separated at the
2 time with divorce proceedings commencing
3 thereafter. And his opposition to our motion to
4 compel says, well, we were separated and living in
5 a different residence.

6 Now, it is very difficult for us to litigate
7 a case where we don't even know when this -- the
8 key event at issue happened. But this shifting
9 story about when this happened calls into further
10 question the assorted details of it, including
11 whether this was the only time when it happened,
12 let alone his knowledge of whether he was recorded
13 or in on the dissemination of the tape.

14 Now, it may be that Mr. Clem's initial tale
15 was correct and that Mr. Bollea was in on this
16 from the get-go, knew he was being recorded, was
17 in on the release as a publicity stunt, which
18 celebrities do, right? They -- they release this
19 tape and then in fact they say, I had nothing to
20 do with it, so that it drives further interest in
21 people seeing something the famous celebrity
22 doesn't want them to see.

23 I don't know if that's what happened here.
24 I'm not suggesting to the Court that is what
25 happened or it isn't what happened. What I am

1 saying is that there's -- this isn't just what
2 might have happened. There's enough factual
3 record, Your Honor -- I'm trying not to give you
4 every last piece of it, but enough of it that you
5 have a sense that I'm not just making stuff up.
6 But that's what's gone on.

7 So when we say -- because we only have three
8 people who actually know what happened and we're
9 not one of them. When we say we need information
10 about the extent to which the plaintiff kept his
11 sex life private, it's because we need to be able
12 to test the fundamental core key facts that he is
13 alleging in his complaint and in this case that he
14 claims entitles him to a hundred million dollars.
15 And if you are going to come into court and say, I
16 have this version of events, and say, but that
17 version of events involves sensitive facts, so I'm
18 not going to let you explore that that in fact is
19 what happened, that -- that flies in the face of
20 the discovery rules.

21 Now, the -- you know, let me give you an
22 example of this. They cite in their papers this
23 case called Tylo, T-y-l-o, which is a California
24 case involving a television actress who used to be
25 on a daytime soap, gave that up to be on a

1 program, which I'm sure enriched the world for
2 many, called Melrose Place. And it was a soap
3 opera, evening soap opera in the '90s, I think.
4 She wanted to be on Melrose Place. She took this
5 contract for several years and then got pregnant.
6 And the producers of Melrose Place said, this is
7 about beautiful people who live in this
8 condominium complex in L.A. and we're not really
9 looking for a pregnant actress, and terminated her
10 contract. And she sued for pregnancy
11 discrimination. And the Court says, look, some of
12 the discovery that you're asking for seems to be
13 completely, you know, pulled out of the air like
14 you're just asking to harass. But they said --
15 because one of the issues was whether she had, in
16 fact, known that she was trying to get pregnant
17 and took this contract and was hoping to just get
18 a contract, get fired, and still get paid. One of
19 the issues was did she knowingly get pregnant.

20 So because it was relevant to the case, the
21 court -- even in California, which is very
22 solicitous of privacy -- said, look, you're
23 allowed to ask this witness whether she knew that
24 her husband had had a vasectomy. She was allowed
25 to be asked, did you know that your husband had

1 his vasectomy reversed? She was allowed to be
2 asked, did you have a -- you know, did you
3 consider this pregnancy to be an asset? And so --
4 and the point of that is to say that where it's
5 relevant to the facts of the case, you have to be
6 able to take some reasonable discovery. I'm not
7 saying I'm going to want to know everything about
8 the guy's sex life. That would be improper, and I
9 admit that that would be improper.

10 What I am saying is where we have a series of
11 serious questions about whether the tale that he's
12 telling is, in fact, the actual facts of what
13 happened, we need to be able to have some leeway
14 to explore this so that if he made other sex tapes
15 with Mrs. Clem or otherwise, he says, I didn't
16 make any for public dissemination, but that's --
17 that's sort of a very -- it's almost like a
18 Clintonesque distinction, Your Honor, where, you
19 know -- you know, he's drawing a very fine line.
20 And that's really not, I think, appropriate given
21 what the facts of this case are.

22 The last thing I'll say is that he asked
23 Mrs. Clem the same kinds of questions because he
24 was trying to get -- you know, he says, look,
25 they're limited to inquiries regarding how the sex

1 tape came to be recorded and disseminated and her
2 proclivities for engaging in recording of sex
3 tapes, right? Because she's -- that's relevant.
4 Well, if it's relevant for Mrs. Clem about what
5 he's trying to find out from one of our
6 codefendants, it's going to be relevant for us to
7 find out when he's the one doing the questioning
8 how that's done. And we would ask for some
9 reasonable amount of leeway on that subject. I'm
10 sorry that took a little longer to explain than
11 the others, but that's why.

12 THE COURT: All right. What about the second
13 motion for protective order regarding having the
14 depositions videotaped?

15 MR. BERLIN: Well, if I could -- if it would
16 be all right, Your Honor, before I turn to the --

17 THE COURT: You were continuing. I thought
18 you were done.

19 MR. BERLIN: I'm sorry. Before I turn --
20 before turning to the videotaping of the
21 depositions, I would like to address the rest of
22 the topics that are at issue.

23 Oh, I'm sorry. Mr. Thomas reminds me that I
24 can say that this is now unsealed and will be
25 okay -- we'll try to go back with the court