

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.

_____ /

GAWKER MEDIA GROUP, INC.’S MOTION FOR A PROTECTIVE ORDER

Pursuant to Rule 1.280(c) of the Florida Rules of Civil Procedure, Defendant Gawker Media Group, Inc. (“GMGI”) specially appears and, without intending to waive its challenge to this Court’s exercise of jurisdiction over it, respectfully moves this Court for a protective order to limit discovery from GMGI, including to stay discovery from GMGI until the resolution of GMGI’s pending motion to dismiss, which is scheduled to be adjudicated on January 17, 2013.

BACKGROUND

As this Court is aware, this case challenges a report and commentary (the “Gawker Story”) published on Gawker.com by a different defendant – Gawker Media, LLC. The Gawker Story concerns an extramarital sexual encounter between plaintiff, the celebrity publicly known as Hulk Hogan (“plaintiff” or “Hogan”), and Heather Clem, the then-wife of Bubba Clem (himself a well-known radio personality and, at the time, Hogan’s best friend), all with Mr. Clem’s blessing. This case also challenges that other defendant’s publication, along with the Gawker Story, of brief excerpts (the “Excerpts”) of a longer video (the “Video”) depicting the encounter. Based on the Gawker Story and the Excerpts, plaintiff asserts claims for invasion of

ELECTRONICALLY FILED 12/12/2013 2:57:51 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

privacy, for violation of his publicity rights, for negligent and intentional infliction of emotional distress, and for violation of the publication prong of Florida's wiretap statute.

In addition to suing Gawker Media, LLC, the entity that actually publishes www.gawker.com and that published the Gawker Story and the Excerpts, plaintiff also named as defendants several other entities, including Gawker Media, LLC's parent company, GMGI.¹ However, the substantial document and deposition discovery taken to date confirms that only Gawker Media, LLC is responsible for the publication of the Gawker Story and Excerpts, and that *none* of the other entities named as defendants had anything to do with it. That discovery also has confirmed that there is no basis to pierce the corporate veil and to hold GMGI responsible for the acts of its subsidiary, Gawker Media, LLC. *See* GMGI Mot. to Dismiss at 3-7. Given plaintiff's refusal to voluntarily dismiss GMGI in spite of ample evidence demonstrating that it is not a proper defendant, GMGI filed a motion to dismiss on October 11, 2013. That motion, which asserted two bases for dismissal (failure to state a claim and lack of personal jurisdiction), is now fully briefed and scheduled for argument on January 17, 2014.

Notwithstanding GMGI's pending motion to dismiss, and notwithstanding that he had already served Gawker Media, LLC with a total of 116 document requests, plaintiff, on November 1, 2013, served GMGI with 32 wide-ranging and intrusive document requests and interrogatories seeking inappropriate and utterly irrelevant information. For example, plaintiff's document requests include, *inter alia*:

∑ “*All documents* that relate to the identity of the owners of each of the Gawker companies.” (No. 2, emphasis added);

¹ Plaintiff also sued an affiliated company based in Hungary, Blogwire Hungary Szellemi Alkotást Hasznosító KFT, now known as Kinja KFT, and three subsidiaries of Gawker Media, LLC, that have since been dissolved (Gawker Sales, LLC, Gawker Entertainment, LLC, and Gawker Technology, LLC). Plaintiff voluntarily dismissed the three subsidiaries from this action, but has insisted on continuing to assert claims against GMGI and Kinja.

- Σ “Documents sufficient to identify the shareholders or owners of Gawker Media, LLC, and the percentage share of Gawker Media, LLC owned by each shareholder or owner.” (No. 10);
- Σ “Documents sufficient to identify the shareholders or owners of Kinja KFT, and the percentage share of Kinja KFT owned by each shareholder or owner.” (No. 11);
- Σ “*All documents* that relate to any movements of money between [GMGI] and anyone in the United States.” (No. 14, emphasis added);
- Σ “Documents establishing the capitalization and equity of each direct or indirect subsidiary of GMGI.” (No. 25); and
- Σ “*All documents* that contain or constitute financial statements for any Gawker entity.” (No. 28, emphasis added).

Pl.’s Requests for Prod. of Docs. to GMGI at 6-8 (capitalizations omitted) (attached hereto as Exhibit 1).

The interrogatories plaintiff propounded are similarly overbroad and burdensome, demanding, *inter alia*, that GMGI:

- Σ “State *all facts* that support [its] contention that GMGI has respected all corporate formalities in its relationships with its shareholders and direct and indirect subsidiaries.” (No. 1, emphasis added);
- Σ “Identify the shareholders, and the percentage of outstanding shares owned, for each of the Gawker entities.” (No. 4);
- Σ “Identify *every person* whom GMGI has done business or communicated with who is located in the United States.” (No. 10, emphasis added); and
- Σ “State the current assets, liabilities, and equity for each Gawker entity.” (No. 11).

Pl.’s Interrog. to GMGI at 5-9 (capitalizations omitted) (attached hereto as Exhibit 2).

As an initial matter, Gawker notes that much of the information requested has already been provided in this litigation (for example, the shareholders of Gawker Media, LLC and Kinja, KFT; detailed financial information for Gawker Media, LLC). Moreover, a number of these topics (including, for example, other shareholder information and information about individual

transactions) were ruled by the Court to be outside the scope of proper discovery – even from Gawker Media, LLC, the real party in interest – at the November 25, 2013 hearing.

In light of the foregoing, GMGI has served formal objections to plaintiff’s requests for production and interrogatories, and now also moves for a protective order. GMGI should not be required to respond to such extraordinarily burdensome requests in any event, but especially not before this Court determines whether it even has jurisdiction over GMGI.

ARGUMENT

Pursuant to Florida Rule of Civil Procedure 1.280(c), a court may enter a protective order staying discovery “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires.” Here, a protective order is necessary both to protect GMGI from undue burden and also because the evidence sought is utterly irrelevant to any issue in the case, and unlikely to lead to the discovery of admissible evidence.

I. The Requested Discovery is Overly Broad, Unduly Burdensome and Seeks Information That Is Neither Relevant nor Likely to Lead to the Discovery of Admissible Evidence.

An order relieving GMGI of the obligation to respond to plaintiff’s sweeping discovery requests is appropriate to protect GMGI from the undue burden of responding to invasive discovery demands for sensitive information about GMGI and *every one* of its related corporate entities and shareholders, particularly before the Court even determines whether GMGI is a proper party to this action. As indicated above, plaintiff’s discovery demands are expansive: they seek, for example, all manner of financial and other information about GMGI and many of its corporate relatives. Gawker Media, LLC, has already invested significant time into its responses to discovery requests directed to it seeking similar information. This burden should not be imposed on GMGI – a Cayman Islands entity that has no staff or operations, that was not

involved in the conduct forming the basis for this action and that has moved to be dismissed from this case on two bases, including that it is not subject to the jurisdiction of this Court at all. And while requiring GMGI to answer this discovery would impose a serious and undue burden, a protective order would cause no prejudice to plaintiff, particularly until the pending motion to dismiss is decided. The underlying motion to dismiss is fully briefed and is expected to be adjudicated shortly. If GMGI is dismissed, the discovery will not be necessary. In the unlikely event that plaintiff is able to overcome GMGI's motion, then the Court can and should severely limit the discovery requested so it does not intrude into sensitive areas and unduly burden GMGI.

Moreover, there is no basis to believe that the information requested from GMGI is likely to lead to the discovery of admissible evidence. *See* Fla. R. Civ. P. 1.280(b)(1) (permitting discovery of matters that are “relevant to the subject matter of the pending action, whether [the discovery] relates to the claim or defense of the party seeking discovery or the claim or defense of any other party”); *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 946 (Fla. 2002) (discovery sought “must be relevant to issues properly framed by the pleadings in the litigation”); *Sugarmill Woods Civic Ass’n, Inc. v. S. States Utilities*, 687 So. 2d 1346, 1351 (Fla. 1st DCA 1997) (party may not use discovery process as “a fishing expedition,” particularly where it would cause undue burden). Indeed, the Court has already determined that a number of the topics on which plaintiff seeks discovery from GMGI are improper, even when sought from Gawker Media, LLC, the real party in interest. That is all the more so if GMGI is no longer a defendant, so at a minimum no discovery should proceed until and unless the Court determines that plaintiff's claims against GMGI survive.

II. At a Minimum, The Court Should Stay Discovery from GMGI Until Its Jurisdictional Challenge is Resolved.

Although the fact of a pending dispositive motion does not automatically stay discovery, it is well within a court's discretion to stay discovery during the pendency of a motion that may render all of the discovery moot. *See LatAm Invs., LLC v. Holland & Knight, LLP*, 88 So. 3d 240, 245 (Fla. 3d DCA 2011) (stating that "discovery is inapposite" to motions to dismiss for failure to state a claim and affirming dismissal before the plaintiff was afforded discovery); *review denied*, 81 So. 3d 414 (Fla. 2012); *Far Out Music, Inc. v. Jordan*, 438 So. 2d 912, 913 (Fla. 3d DCA 1983) (no discovery permitted during pendency of appeal from decision denying motion to dismiss for lack of personal jurisdiction); *Ward v. Gibson*, 340 So. 2d 481, 482 (Fla. 3d DCA 1976) (explaining that service of discovery request on defendant before question of personal jurisdiction has been finally resolved "presupposes that the court has acquired jurisdiction of the defendant" and therefore is improper); *see also, e.g., Feigin v. Hosp. Staffing Servs.*, 569 So. 2d 941, 942 (Fla. 4th DCA 1990) (affirming stay of depositions pending hearing on motion to dismiss); *Am. Southern Co. v. Tinter, Inc.*, 565 So. 2d 891, 892 (Fla 3d. DCA 1990) (noting trial courts' "broad discretion" in overseeing discovery, "and in protecting the parties" that come before it); *Richardson v. Nath*, 2005 WL 408132, at *2 (Fla. 6th Cir. Ct. Jan. 18, 2005) (same).

GMGI's motion to dismiss asserts both that plaintiff has failed to state a claim against it (based on the four corners of the complaint) *and* that discovery has established that the Court cannot exercise personal jurisdiction over GMGI. Discovery plainly is unnecessary to resolve the first part of GMGI's motion, which is based solely on the allegations in the operative complaint. To the extent plaintiff seeks discovery in aid of his opposition to GMGI's motion to dismiss on jurisdictional grounds, the Court should deny the request. Courts repeatedly have

held that while *some* discovery may be appropriate during the pendency of a motion to dismiss to aid a court's determination of threshold jurisdictional issues, such discovery "should not be broad, onerous or expansive," and "should be carried out so as to minimize expense to the defendant." *Gleneagle Ship Mgmt. Co. v. Leondakos*, 602 So. 2d 1282, 1284 (Fla. 1992).

Plaintiff's opposition to GMGI's motion to dismiss makes a half-hearted request for jurisdictional discovery, but it is plain that additional discovery is neither necessary nor appropriate here. First, Gawker Media, LLC, has already provided plaintiff with significant and complete information about GMGI, including through verified interrogatory responses and the sworn deposition testimony of three Gawker witnesses, two of whom are officers of GMGI. All of that discovery confirms that Gawker Media, LLC, is the only Gawker entity responsible for the Gawker Story and Excerpts, that it is not a sham corporation, and that it is sufficiently capitalized to honor any judgment imposed in this case. Second, the overbroad and onerous discovery requests plaintiff served on GMGI *after* asking this Court to permit jurisdictional discovery and *before* this Court ruled on that request are far broader than what is required for simple jurisdictional discovery, including "the assets, liabilities and equity for *each* Gawker entity," Pl.'s Interrogs. to GMGI at 9 (No. 11), and "[a]ll documents that contain or constitute financial statements for any Gawker entity," Pl.'s Requests for Prod. of Docs. to GMGI at 8 (No. 28).

Given the extraordinary discovery plaintiff has already obtained in this case, the Court should grant this motion and sustain GMGI's objections to discovery. At a minimum, this Court should defer discovery until and unless it determines, upon hearing GMGI's motion to dismiss, that some *limited* additional discovery on the jurisdictional question nevertheless is warranted

(which, given Gawker Media, LLC's full disclosure, it is not), and would assist the Court in deciding the motion.

CONCLUSION

For the foregoing reasons, GMGI should not be required to respond to plaintiff's broad-based and untargeted discovery demands seeking virtually every piece of information available about GMGI and other Gawker entities, particularly before it is even determined that GMGI is a proper party. Accordingly, GMGI respectfully requests that this Court grant its Motion for a Protective Order, and that it sustain GMGI's objections to plaintiff's burdensome and irrelevant discovery. In the alternative, GMGI requests that, at a minimum, the Court stay discovery against it pending resolution of GMGI's motion to dismiss.

Dated: December 12, 2013

Respectfully submitted,

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas

Gregg D. Thomas

Florida Bar No.: 223913

Rachel E. Fugate

Florida Bar No.: 0144029

601 South Boulevard

P.O. Box 2602 (33601)

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

rfugate@tlolawfirm.com

and

Seth D. Berlin
Pro Hac Vice Number: 103440
Alia L. Smith
Pro Hac Vice Number: 104249
Paul J. Safier
Pro Hac Vice Number: 103437
LEVINE SULLIVAN KOCH & SCHULZ, LLP
1899 L Street, NW, Suite 200
Washington, DC 20036
Telephone: (202) 508-1122
Facsimile: (202) 861-9888
sberlin@lskslaw.com
asmith@lskslaw.com
psafier@lskslaw.com

*Counsel for specially appearing
Defendant Gawker Media Group, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2013, I caused a true and correct copy of the foregoing to be served electronically upon the following counsel of record at their respective email addresses via the Florida Courts E-Filing Portal:

Kenneth G. Turkel, Esq.
kturkel@BajoCuva.com
Christina K. Ramirez, Esq.
cramirez@BajoCuva.com
Bajo Cuva Cohen & Turkel, P.A.
100 N. Tampa Street, Suite 1900
Tampa, FL 33602
Tel: (813) 443-2199
Fax: (813) 443-2193

David Houston, Esq.
Law Office of David Houston
dhouston@houstonatlaw.com
432 Court Street
Reno, NV 89501
Tel: (775) 786-4188

Charles J. Harder, Esq.
charder@HMAfirm.com
Harder Mirell & Abrams LLP
1801 Avenue of the Stars, Suite 1120
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601

Attorneys for Plaintiff

Barry A. Cohen, Esq.
bcohen@tampalawfirm.com
Michael W. Gaines
mgaines@tampalawfirm.com
Barry A. Cohen Law Group
201 East Kennedy Boulevard, Suite 1000
Tampa, FL 33602
Tel: (813) 225-1655
Fax: (813) 225-1921

Attorneys for Defendant Heather Clem

/s/ Gregg D. Thomas
Attorney