

ELECTRONICALLY FILED 2/12/2014 5:43:33 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

EXHIBIT 1

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. Riesdorff, RPR, CRR
Notary Public, State of
Florida

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1 APPEARANCES:

2 CHARLES J. HARDER, ESQUIRE
 3 Harder Mirell & Abrams, LLP
 4 1801 Avenue of the Stars
 Suite 1120
 Los Angeles, California 90067

- and -

5 KENNETH G. TURKEL, ESQUIRE
 6 Bajo Cuva Cohen & Turkel, P.A.
 7 100 North Tampa Street
 Suite 1900
 Tampa, Florida 33602
 Attorneys for Plaintiff

9 SETH D. BERLIN, ESQUIRE
 10 ALIA L. SMITH, ESQUIRE
 Levine Sullivan Koch & Schulz, LLP
 11 1899 L Street, N.W.
 Suite 200
 Washington, D.C. 20036

12 - and -

13 GREGG D. THOMAS, ESQUIRE
 Thomas & Locicero, PL
 14 601 South Boulevard
 Tampa, Florida 33606
 Attorneys for Defendant Gawker Media, LLC

16 BARRY A. COHEN, ESQUIRE
 Barry A. Cohen Law Group
 17 201 East Kennedy Boulevard
 Suite 1000
 18 Tampa, Florida 33602
 Attorney for Defendant Heather Clem

22 I N D E X

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25

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

1 reporter and actually end the part that talks
2 about the actual sealed document which was
3 earlier. I just neglected to deal with that
4 housekeeping issue.

5 Thank you, Mr. Thomas.

6 We've talked about the fact that we have
7 virtually no documents. We have talked about the
8 fact that we have virtually no information. We
9 found out a variety of things from our own
10 Internet searching, searching of court records,
11 but that's not how this process is supposed to
12 work. I'm not supposed to hope that I get lucky
13 getting it from somewhere else when I ought to be
14 able to get it from the plaintiff in the first
15 instance.

16 One of the things that is addressed is, you
17 know, he said that, for example, he was trying to
18 get the FBI and the Florida authorities to
19 prosecute the Clems and Gawker. We have no
20 records relating to those efforts, just as an
21 example.

22 One of the issues appears to be that
23 Mr. Bollea is taking the position that documents
24 are equally available to Gawker and he doesn't
25 need to produce them. And our response is, when

1 we say we have no documents, it means we have no
2 documents in our possession, custody, or control.
3 It seems to be that when he says it, it appears to
4 be something other, as in if you can get that
5 document from somewhere else, be it a court or
6 another source, we're not producing it. And I
7 want to be clear in whatever ruling the Court
8 issues that if something is ordered to be produced
9 that it is -- it applies to his possession,
10 custody, or control, including his attorneys and
11 other agents, because that's what the rules
12 require.

13 We have no privilege log. Now, I understand
14 his position is, I'm not logging the stuff that is
15 between me and my client after the lawsuit was
16 filed. We did the same thing. And I'm fine with
17 that. I'm not trying to -- that's a burdensome
18 task in a lawsuit that's gone on for a year. I'm
19 not asking for that burden to be taken. But in
20 one of his motions, he claims that certain things
21 are protected by spousal privilege. That stuff is
22 not logged. And we can't assess whether, in fact,
23 it is legitimately protected.

24 He's not produced any documents concerning
25 the agreement that I provided to Your Honor other

1 than that agreement itself. Mr. Clem's lawyers
2 have asserted that that material is protected by a
3 so-called settlement privilege. If that's the
4 position that Mr. Hogan is taking, we should have
5 that on a log. That's not in the category of
6 attorney/client privileged materials after the
7 lawsuit was filed.

8 Several of the documents produced reflect
9 conversations with counsel before the case was
10 filed. And, again, we -- we went up until the day
11 the lawsuit was filed in federal court in October,
12 and we would expect that the plaintiff would do
13 the same, because that way the Court is able to
14 assess whether the claim of privilege is
15 legitimate and not just have to take their word
16 for it. Trust but verify it first.

17 Now, we have a bunch of allegations where
18 we've not gotten -- we've gotten some documents on
19 Friday saying we have no documents, but there are
20 a number that are still outstanding, and these
21 include things like documents about the privacy
22 interests you claim were violated, documents
23 related to Gawker's conduct challenged in the
24 complaint, documents related to Heather Clem's
25 conduct challenged in the complaint, documents in

1 support or refuting the allegations in the
2 complaint, communications you had about the
3 alleged violations of your privacy. We've gotten
4 literally nothing in response to those things.
5 And those are some basic questions about the
6 allegations of his own complaint.

7 We've talked a little bit about the documents
8 from prior legal proceedings including sworn
9 testimony. He has not responded. He hasn't
10 supplemented and he hasn't addressed that at all
11 in the opposition to our motion to compel. And we
12 would respectfully submit that that is -- at a
13 minimum, that's an easy thing to go to one's
14 lawyers and say, look, turn this stuff over so
15 that -- and if there's a legitimate objection,
16 let's deal with it. But we're not at that point.
17 We're at a point where we have literally nothing.

18 Documents relating to his public writings and
19 statements and appearances, as the Court knows,
20 this is a case about, is this private? Is this
21 public? If you're talking about this stuff in
22 public, as you did in your book, we're entitled to
23 know about it. And the argument is, well, you can
24 search the Internet and find the stuff. Well, we
25 don't -- we've done some of that, as is obvious

1 from my comments this morning, but that's not how
2 the process is supposed to work. That's a
3 legitimate question in a case where we're talking
4 about whether something is private, whether
5 something is newsworthy. We've got nothing.

6 And then we've talked a little bit about the
7 two incorrect statements. One is the -- the
8 question is, did this happen in 2006; did this
9 happen in 2008? Did you live with the Clems or
10 did you only visit the Clems? We've called that
11 to their attention in our motion -- in our meet
12 and confer. It's two months later. The
13 depositions are two weeks away. We have nothing.

14 In sum, I think before we move on to the
15 motion for protective order, I would say that
16 taken in its totality -- and I don't -- I'm not
17 casting aspersion either to Mr. Hogan or
18 Mr. Harder, but taken in their totality, this
19 reflects an approach to this case which says, you
20 know, this is a privacy case and, therefore, I
21 object to having to do the -- the stuff that has
22 to do with discovery so that you can test whether
23 there's a legitimate claim here. And that's not
24 how this process is supposed to work. We would
25 respectfully ask the Court to order them to, you

1 THE COURT: Okay. Thank you. All right. So
2 since we have mostly treated these by topics, I'm
3 just going to give the topic and then my ruling as
4 to the topic as opposed to going down motion by
5 motion. I'll let you all figure how is the best
6 way to prepare the orders on this.

7 The depositions of the plaintiff, Jennifer
8 Bollea, and Linda Bollea will be permitted to be
9 videotaped, which is then denying the primary or
10 the first request of the second plaintiff's motion
11 for protective order; however, granting the
12 alternative, which is they would be videotaped
13 under seal, not to be disseminated to anyone other
14 than the attorneys representing these specific
15 parties without further order of the Court. And
16 there's to be no further dissemination beyond the
17 attorneys representing the parties specifically in
18 this case without further order of the Court.

19 The deposition of the plaintiff, Mr. Bollea,
20 will be permitted to take place over two days.
21 Any further time frame than the two days would
22 need to have Court approval or at the agreement of
23 parties.

24 The deposition of Jennifer Bollea will be
25 permitted to take place over a one half hour -- or

1 the people that prepare his taxes, any of those,
2 the plaintiff's objection is sustained.

3 Let me back up. As far as the medical
4 records, that includes the names of all of
5 Mr. Bollea's physicians.

6 The divorce proceeding, information regarding
7 the divorce proceeding, as far as Mr. Bollea, the
8 plaintiff's objections are sustained.

9 As it pertains to Mr. Bollea, or for that
10 matter, Ms. Clem's sex life, the questions that
11 the Court would determine to be relevant are only
12 as it relates to the sexual relations between
13 Mr. Bollea and Ms. Clem for the time frame 2002 to
14 the present, which was the time frame related I
15 believe in the request, 2002 to the present, but
16 the other additional -- for example, interrogatory
17 No. 4, interrogatory No. 5, No. 6, No. 7, No. 8,
18 No. 9, the objections by the plaintiff are being
19 sustained. So questions pertaining to like, for
20 example, interrogatory No. 10, identify any and
21 all times you discussed having sexual relations
22 with Heather Clem and her husband, Todd Alan Clem,
23 during the relevant time period stating for each
24 time the date, approximate time, location, and
25 substantive discussion, the objections would be

1 overruled. Plaintiff's objections would be
2 overruled. So as it pertains to the three -- and
3 I guess we really need to include Mr. Clem in that
4 aspect -- those three parties are fair game for
5 questions as it pertains to each other.

6 Is that pretty clear? I think that pretty
7 much gives guidance as to all the different
8 interrogatories globally as to the sex life aspect
9 of it.

10 Do you think so, Mr. Berlin?

11 MR. BERLIN: If I may ask just a clarifying
12 question. In the questioning you had an exchange
13 with Mr. Harder about, if we're going to limit
14 proof on emotional distress and we're going to
15 limit proof on economic damages, which I
16 understand your ruling to do, then there would be
17 limits on proof at trial. I wanted to -- in an
18 effort not to run afoul of the Court's ruling and
19 to understand how we should prepare our case, I
20 want to understand what the appropriate -- you
21 know, what that would look like at trial so that
22 we can prepare and get the information we need,
23 but not overstep the bounds of the Court's ruling.

24 THE COURT: I think some of that is going to
25 have to come up later on and maybe even more

1 REPORTER'S CERTIFICATE

2
3 STATE OF FLORIDA :

4 COUNTY OF HILLSBOROUGH :

5
6
7 I, Susan C. Riesdorff, RPR, CRR certify that I
8 was authorized to and did stenographically report the
9 foregoing proceedings and that the transcript is a true
10 and complete record of my stenographic notes.11 I further certify that I am not a relative,
12 employee, attorney, or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the outcome of the foregoing
16 action.17 Dated this 31st day of October, 2013, IN THE
18 CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF
19 FLORIDA.20
21
22 Susan C. Riesdorff, RPR, CRR, CLSP
23
24
25