

EXHIBIT 3

ELECTRONICALLY FILED 3/18/2014 1:43:43 PM: 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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TELEPHONIC HEARING BEFORE
THE HONORABLE JAMES CASE

DATE: January 31, 2104
TIME: 3:34 p.m. to 4:05 p.m.
PLACE: 201 East Kennedy Boulevard
Suite 712
Tampa, Florida
REPORTED BY: Susan C. Riesdorff, RPR, CRR
Notary Public, State of
Florida

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I N D E X

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1 responses that would seek the same kind of
2 information. Given this, we believe that his
3 counsel -- his and his counsel's official
4 statements to the FBI and additional facts
5 provided to the FBI, which may not otherwise be
6 known to Gawker but would be known to the
7 plaintiff, go to the core issues in this case.
8 It's for that reason that we made what is a
9 somewhat routine request to produce -- a records
10 request. You do that for medical records. You do
11 that for other types of records. After waiting
12 for several weeks, we finally got a response
13 objecting, so we filed this motion. It's pretty
14 clear that under Florida Supreme Court
15 precedent -- we cited a case called Rojas -- the
16 Court is authorized to require plaintiff to sign a
17 release for records. The primary grounds for
18 plaintiff's objection appears -- which were not
19 stated earlier, but were in opposition to the
20 motion -- to be that the records are shielded from
21 disclosure by law enforcement privilege. As we
22 said in the supplemental brief, or reply brief
23 that we filed earlier, the law enforcement
24 privilege is limited and does not apply to all
25 facts involved in an investigation. Second,

1 perhaps even more importantly, if there is a
2 privilege, it's not the plaintiff's privilege.
3 It's the privilege of the FBI. It's not up to the
4 plaintiff. He's not the one who determines
5 whether the investigation is opened or closed.
6 He's not the one that knows whether any
7 confidential informants were involved and so on.
8 If the FBI has these concerns, it can -- and I
9 think it probably will -- raise those in
10 responding to Gawker. As you can see on page 4 of
11 his brief, any such order that Your Honor would
12 make would not guarantee production of the
13 documents because the FBI still may assert this
14 privilege. So this is sort of jumping ahead on
15 the plaintiff's part.

16 Third, Hogan has alleged that Gawker may be
17 the target of the investigation and it would be
18 unwise for the FBI to give a target such records.
19 I will say that in 18 months, Gawker has not in
20 any way been contacted by the FBI or any of its
21 employees that I know of. We have no information
22 suggesting that the investigation is even open
23 some 18 months later. Again, if the FBI is
24 concerned that Gawker is nevertheless in the FBI
25 sights and there is still an ongoing

1 what we've heard the most about. The privilege,
2 as I understand Mr. Harder's argument and his
3 papers, he concedes that if the documents are not
4 privileged, a case like Rojas, which is a Florida
5 Supreme Court case that's been followed by a lot
6 of other cases, it would allow Your Honor to
7 compel him to provide a release so that we can get
8 those records. That I think is a settled piece in
9 Florida law.

10 So the question is, does a case like Franco
11 otherwise affect the privilege? I'm going to do
12 that in two pieces. The first is the privilege
13 itself. The law enforcement privilege is a narrow
14 privilege. It does not protect every case and
15 every piece of information that the government has
16 about an investigation. That's not how Florida
17 law works. That's not how the exemptions under
18 Florida law work. So what I understand the
19 plaintiff to be saying is because some of these
20 documents arguably could be subject to privilege
21 and because none of us know what they are, you
22 can't make us give you an authorization to get any
23 of them. The smart thing to do is to ask, get a
24 release, go to the FBI. The FBI will tell us if
25 these documents are or are not privileged, if

1 these are or are not subject to the Florida
2 exemption or otherwise protected and we're not
3 giving them to you. That's -- with an argument
4 that starts with the premise that only privileged
5 documents can be even arguably not subject to
6 Rojas, that's what we ought to do, because we
7 don't know whether the documents are privileged or
8 not. They may say our investigation is closed and
9 you can have all of them. I suspect that's not
10 likely. The FBI in my experience -- and I have
11 had experience as we represent a lot of different
12 news media outlets, so we do periodically send
13 requests to the FBI and to other federal agencies.
14 They are quite adept at telling us this is
15 something that you can't have because we object to
16 it.

17 And for what it's worth, speaking to the
18 institutional purposes of a privilege, the other
19 privilege is talking to your psychotherapist,
20 talking to your priest, talking to your attorney,
21 those are designed in a different way. The law
22 enforcement privilege is not -- except with the
23 exception of a confidential informant, it is very
24 much just protecting things like, you know, law
25 enforcement methods, confidential informants, and

1 the like. They'll tell us this will interfere
2 with future investigations. And they're in a
3 position to know that and not -- we certainly
4 aren't. And with respect to the plaintiff,
5 frankly neither is he or his counsel.

6 The second thing is I want to speak about
7 this Franco case, which was a case in which --
8 what happened there -- it did involve the
9 psychotherapist privilege. What happened there is
10 the psychotherapist was sent a subpoena and sent
11 back an objection. All right? And the -- part of
12 the objection said, we can't release these
13 without -- we think they're confidential and we
14 can't release the records without a release from
15 the patient in any event. Then the other side,
16 the husband, went to court and said, okay, I want
17 a release. And what the District Court of Appeals
18 was objecting to was the fact that the court
19 ordered -- the trial court had ordered the release
20 signed without addressing the privilege issue that
21 had been raised by the psychotherapist.

22 If this was a case where we had sent the
23 subpoena to the FBI and they objected where they
24 would have had to produce the records if there was
25 a release, which is not true of the FBI as it is

1 with a psychotherapist, then, you know, Your Honor
2 would have before you the privilege issue, but
3 that's not before you in the way that it was
4 before the trial court in Franco. And what the
5 court in Franco is essentially saying is that
6 where this privilege has been properly asserted by
7 the psychotherapist, you had to address that
8 before you could order a records release.

9 This is a different situation obviously.
10 First of all, the FBI hasn't objected because
11 there's been -- we haven't submitted a release
12 yet. And, second, even if we do submit a release,
13 the FBI is not obliged in the way a doctor's
14 office would be or a psychotherapist's office
15 would be to release records. It operates
16 completely differently.

17 So the concerns that were annotated in the
18 Franco case, which recognize that Rojas was
19 settled law but just thought it didn't apply in
20 that unique set of circumstances, don't really
21 apply here.

22 So having talked about the privilege issues,
23 I do think that, you know -- we cited a Florida
24 Supreme Court authority on this, and the only
25 argument in response is, you can't get any

1 documents which are privileged, which begs the
2 question, are these documents privileged or not?
3 We don't know. And since we don't know, you ought
4 to be able to get a release and preserve for some
5 other day the privilege issue. But if there is
6 one, the FBI will assert it.

7 And the -- excuse me. The fact of the matter
8 is that the plaintiff and his lawyer know what
9 they sent to the FBI. The plaintiff and his
10 lawyer probably kept a copy of any documents they
11 submitted to the FBI. We have asked for those
12 things. We have not gotten them. And so to
13 simply say this is something that is not
14 privileged because they didn't claim a privilege,
15 it is raising the additional specter that the
16 information that's being sent to the FBI is
17 different than the information that's being sent
18 to this Court, and that's something that we, in a
19 matter of fairness to us, need to be able to get
20 to the bottom of. We should not be asked to
21 defend this litigation, at the end of which we're
22 asked to pay a hundred million dollars, but that's
23 what's gone on. That's why we're asking for this
24 release and, again, reserving for another day the
25 question of whether there is a privilege that the

1 FBI may assert and what records it may apply to.
2 And really that's where we are.

3 In terms of the preclusion order, because we
4 have, I think, explained -- and I won't rehearse
5 this again, Your Honor, but because we have
6 explained, I think in a fair bit of detail, why it
7 is that the statements to the FBI are the core --
8 the case's core of the public statements, the
9 public narrative that the plaintiff engaged in
10 over and over and over again was, you know, if you
11 don't do this, you better watch out because I'm
12 pursuing criminal charges. My lawyer and I are
13 meeting with the FBI, etcetera, etcetera,
14 etcetera. Those are all things that are part -- a
15 central part of the narrative that the plaintiff
16 is telling about what happened here, which we've
17 called into serious question. It can't be that he
18 can get up and testify that that's what he did and
19 then we can't even find out -- we don't even know
20 if he did that. Maybe he didn't do that at all.
21 I don't think that's true, because I think if that
22 were true, they would have come and said this
23 motion is unnecessary because we didn't initiate
24 an FBI investigation. But we can't have a
25 situation where we go to a trial and the plaintiff

REPORTER'S CERTIFICATE

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STATE OF FLORIDA :
COUNTY OF HILLSBOROUGH :

I, Susan C. Riedorff, RPR, CRR certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of the foregoing action.

Dated this 12th day of February, 2014, IN THE CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF FLORIDA.

Susan C. Riedorff, RPR, CRR, CLSP