

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

TERRY GENE BOLLEA, professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
aka GAWKER MEDIA; GAWKER MEDIA
GROUP, INC. aka GAWKER MEDIA;
GAWKER ENTERTAINMENT, LLC;
GAWKER TECHNOLOGY, LLC; GAWKER
SALES, LLC; NICK DENTON; A.J.
DAULERIO; KATE BENNERT, and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,

Defendants.

_____ /

**PLAINTIFF TERRY GENE BOLLEA’S OPPOSITION TO
BLOGWIRE HUNGARY SZELLEMI ALKOTAST HASZNOSITO, KFT’S
PURPORTED “RE-NOTICED” MOTION TO DISMISS**

I. INTRODUCTION

In November 2013, Defendant Blogwire Hungary Szellemi Alkotast Hasznosito, KFT (now known as Kinja KFT; hereinafter “Kinja”), brought a motion to dismiss Plaintiff Terry Bollea’s First Amended Complaint (the “FAC”), alleging that the Court lacked personal jurisdiction and that Mr. Bollea had failed to state a cause of action. Mr. Bollea opposed the motion in part on the ground that it was entitled to jurisdictional discovery on the issue of whether Kinja, the Gawker Media LLC (“Gawker”) affiliate that owns the Gawker website and trademarks, had sufficient contacts with Florida either on its own or as an alter ego of Gawker. In January 2014, **this Court denied Kinja’s motion to dismiss.**

ELECTRONICALLY FILED 4/16/2014 2:37:44 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Now, Kinja has purported to “re-notice” its motion without even acknowledging this Court’s prior ruling and without providing any reason why it should reconsider its earlier decision denying the motion to dismiss on jurisdictional grounds.¹ Further, Gawker and Kinja have not provided **any** jurisdictional discovery responses despite the fact that this Court has **ordered** Gawker to produce all documents relating to the role or function of Kinja, as well as all documents reflecting financial transactions between Kinja and Gawker. Despite the Court’s order to produce such documents, and despite the sworn testimony of Gawker executives that Gawker licenses intellectual property from Kinja,² neither entity has produced even a single document evidencing a financial transaction between Gawker and Kinja.³ Thus, the jurisdictional discovery that the Court called for has been obstructed by Gawker and Kinja. Kinja’s motion to dismiss should be denied.

II. STANDARD OF REVIEW

A motion to dismiss may only be granted where the complaint cannot be construed to state **any** cause of action against a defendant. *Nicholson v. Kellin*, 481 So.2d 931, 936 (Fla. 5th DCA 1985). The pleadings are **liberally construed** and all allegations therein are **taken as true** and all inferences are made in the **plaintiff’s favor**. *Wallace v. Dean*, 3 So.3d 1035, 1042–43 (Fla. 2009). “The court must confine itself strictly to the allegations within the four corners of the complaint.” *Pizzi v. Central Bank & Trust Co.*, 250 So.2d 895, 897 (Fla. 1971) (internal

¹ Kinja joined its co-defendants in arguing that the Court of Appeal’s decision should be given stare decisis effect in the motion to dismiss proceedings. Mr. Bollea has addressed that argument in a separately filed brief.

² *Kidder Depo.* at 57:20–21 (“Kinja KFT receives a royalty payment from Gawker Media, LLC.”); *id.* at 104:23–25 (“Kinja KFT licenses the Gawker brand names to Gawker Media, LLC in the U.S.”).

³ Mr. Bollea intends to move for discovery sanctions for Gawker’s and Kinja’s noncompliance with this Court’s orders.

quotation omitted). It is **reversible error** for the Court to consider **extrinsic evidence** in ruling on a motion to dismiss. *Pesut v. National Ass'n of Securities Dealers*, 687 So.2d 881, 882 (Fla. 2d DCA 1997) (reversing trial court dismissal order where trial court considered representation of defendant as to its conduct in deciding to dismiss).

III. ARGUMENT

A. Kinja's Motion To Dismiss Was Denied By This Court, And Kinja Has Not Asserted Any Proper Ground For Reconsideration.

Kinja brought a motion to dismiss the FAC in November 2013. That motion was heard and denied by the Court on January 17, 2014. Kinja's purported "re-noticing" of the same motion is essentially a motion for reconsideration of the Court's order denying its earlier motion. This is improper. A motion for reconsideration cannot simply reargue the previously denied motion. The moving party must show a **changed circumstance** that justifies revisiting the Court's ruling. *Hunter v. Dennies Contracting Co.*, 693 So.2d 615, 616 (Fla. 2d DCA 1997) (motion to dissolve injunction that did not show changed circumstances was properly denied even though evidence had been insufficient to grant injunction in first instance). Kinja has not attempted to set forth any new or different facts or change in circumstances that would justify reconsideration of the Court's ruling regarding personal jurisdiction. Accordingly, the Court's prior ruling should stand.

B. Independently, Kinja's Motion Must Be Denied Because Mr. Bollea Has Not Received The Jurisdictional Discovery That The Court Ordered Produced.

One of the grounds for this Court's denial of Kinja's motion to dismiss was the fact that Mr. Bollea had not been provided with jurisdictional discovery regarding: (1) the relationship between Kinja and Gawker; and (2) any contacts between Kinja and Florida.

Gawker and Kinja have entirely failed to provide any information regarding Kinja's contacts with Gawker and with Florida, despite the fact that the Court ordered that Gawker produce such information. Specifically, the Court's March 1, 2014, Order on Mr. Bollea's motion to compel required that Gawker produce all documents regarding the role or function of Kinja (Demands 89 and 90, Paragraph 8 of the Order), as well as all documents that reflect amounts of any financial transactions between Gawker and Kinja (Demand 92, Paragraph 10 of the Order). The Court also required Gawker to produce all documents reflecting direct or indirect receipt of advertising revenues by Kinja (Demand 93, Paragraph 11 of the Order).

Despite these **court orders**, neither entity has produced a single sheet of paper describing or relating to Kinja's function, reflecting any transactions between Kinja and Gawker, or reflecting Kinja's receipt of license fees. Gawker and Kinja have stonewalled with respect to their obligation to provide jurisdictional discovery.

Kinja may not re-notice its motion to dismiss unless and until Mr. Bollea has had an opportunity to obtain meaningful jurisdictional discovery. Kinja's motion should be denied.

C. Kinja's Motion Should Be Denied For The Reasons Stated In Mr. Bollea's Original And Supplemental Opposition Papers.

Because Kinja relies on its moving papers that it originally filed in November in support of its original motion to dismiss, Mr. Bollea incorporates by reference the arguments he made in his memorandum filed in opposition to that motion and at the January 17 oral argument on that motion.

Additionally, to the extent Kinja seeks to move to dismiss on the basis of the District Court of Appeal's ruling in the temporary injunction appeal, Mr. Bollea incorporates by reference the arguments found in his concurrently filed supplemental response on that issue.

IV. CONCLUSION

For the foregoing reasons, and those stated in the original opposition and supplemental opposition papers, the motion to dismiss should be denied in its entirety. Should any portion of Kinja's motion be granted, Mr. Bollea should be granted leave to amend.

DATED: April 16, 2014

/s/ Charles J. Harder

Charles J. Harder, Esq.

PHV No. 102333

HARDER MIRELL & ABRAMS LLP

1925 Century Park East, Suite 800

Los Angeles, California 90067

Tel: (424) 203-1600

Fax: (424) 203-1601

Email: charder@hmafirm.com

-and-

Kenneth G. Turkel, Esq.

Florida Bar No. 867233

Christina K. Ramirez, Esq.

Florida Bar No. 954497

BAJO CUVA COHEN & TURKEL, P.A.

100 North Tampa Street, Suite 1900

Tampa, Florida 33602

Tel: (813) 443-2199

Fax: (813) 443-2193

Email: kturkel@bajocuva.com

Email: cramirez@bajocuva.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail via the e-portal system this 16th day of April, 2014 to the following:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
Barry Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1000
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaines@tampalawfirm.com
jrosario@tampalawfirm.com
Counsel for Heather Clem

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com

Julie B. Ehrlich, Esquire
Levine Sullivan Koch & Schultz, LLP
321 West 44th Street, Suite 1000
New York, NY 10036
jehrich@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
Counsel for Gawker Defendants

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

/s/ Kenneth G. Turkel
Attorney