

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, *et al.*,

Defendants.

**REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS DEFENDANT
BLOGWIRE HUNGARY SZELLEMI ALKOTAST HASZNOSITO, KFT**

Blogwire Hungary Szellemi Alkotast Hasznosito, KFT (now known as Kinja, KFT and referred to herein as “Kinja”), by and through its undersigned counsel, specially appears and respectfully submits this brief reply to the Opposition plaintiff filed on April 16, 2014, apparently in response to the Notice of Hearing on Kinja’s motion to dismiss. The Opposition makes two points, each of which misstates the record and neither of which has any bearing on the issue before the Court – whether plaintiff can state a viable claim.

1. First, plaintiff complains that the Court “denied Kinja’s motion to dismiss” in January 2014, and accuses Kinja of attempting to seek “reconsideration of the Court’s order.” Opp. 2, 3. That simply is not correct. At the January 17, 2014 hearing, the Court *and* the parties – including counsel for plaintiff – addressed only the question of whether Kinja is subject to the Court’s jurisdiction and had sufficiently alleged jurisdictional facts in its Complaint. Kinja expressly reserved its arguments about plaintiff’s ability to state a viable claim on the merits. It is now asking the Court to rule on that question.

2. Kinja repeatedly made clear – without any objection from plaintiff or his counsel – that it was limiting the scope of the January 17, 2014 hearing to the jurisdictional matters, and

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was expressly reserving its merits arguments, which mirror the arguments by the other Gawker Defendants, until after the District Court of Appeals ruled. For example, Kinja's opening motion papers explicitly stated that the portion of its motion addressing "the merits of each of plaintiff's causes of action" was not being addressed "because those merits are before the District Court of Appeal in connection with Gawker Media, LLC's appeal of this Court's order entering a temporary injunction," and therefore "defendants have deferred noticing [it] for a hearing until after the appellate court rules so that its decision can inform this court's adjudication of that substantive motion for failure to state a claim." Mot. to Dismiss (filed Nov. 12, 2013) at 2 n.2.¹ Likewise, plaintiff's opposition and Kinja's reply addressed only the jurisdictional arguments. Accordingly, at the January 17, 2014 hearing, the Court addressed only the jurisdictional arguments. The proposed order Kinja submitted to plaintiff a week later confirmed this:

The Court has not adjudicated the portion of Kinja's motion to dismiss in which it joined in the substantive grounds for dismissal set forth in Defendant Gawker Media, LLC's motion to dismiss, which will be adjudicated at a later date.

Exhibit 2.

3. Following the DCA Ruling, on January 28, 2014, Kinja and the other Gawker Defendants noticed a hearing for April 23, 2014, on the merits of their motion to dismiss for failure to state claim. When counsel for the Gawker Defendants submitted the briefing binder for that hearing to the Court, he once again explained the procedural history of the motions:

¹ At the October 29, 2013 hearing, counsel for the Gawker Defendants made a similar statement with respect to the motion to dismiss by Gawker Media Group, Inc. ("GMGI"), differentiating between the jurisdictional and merits arguments. *See* 10/29/13 Tr. at 102:22 – 103:8 (Exhibit 1) (MR. BERLIN: "[W]e actually have several motions to dismiss, Your Honor, that have been filed at various times. Some of them are involving the substance of the case, and we actually thought it might promote judicial economy to bring those on for a hearing after the appeal is heard that's pending in the DCA on the temporary injunction and decided. One of those is a jurisdictional motion about the parent of Gawker Media. That can actually be heard even before the DCA rules."). At the January 17, 2014 hearing, the Court granted GMGI's jurisdictional motion to dismiss (affording plaintiff leave to amend within 30 days).

The *jurisdictional* arguments presented in Blogwire Hungary Szellemi Alkotast Hasznosito, KFT's Motion to Dismiss were already heard by the Court on January 17, 2014. It is relevant to this hearing only insofar as it joins the arguments previously presented in Gawker Media LLC's Motion to Dismiss *on the merits*.

Exhibit 3 at 3 n.1 (emphasis added). Plaintiff did not object to proceeding this way at any of the above-described junctures. Instead, he waited until a week before the April 23, 2014 hearing and then contended that Kinja was somehow acting improperly by simply noticing for hearing arguments that had not yet been adjudicated and that were expressly reserved. Plaintiff has understood for many months that the Court has yet to rule on Kinja's arguments about the merits of plaintiff's claims, and that Kinja is not seeking reconsideration of jurisdictional issues already adjudicated. His argument is not well founded and should be rejected.

4. Second, plaintiff contends that Kinja has somehow violated a court order requiring discovery from it. This contention is flatly incorrect for several reasons. First, no order has been entered from the January 17, 2014 hearing because plaintiff's counsel has never responded to the proposed order sent shortly after that hearing (described above). Second, the Court's oral ruling was simple: "I am going to deny the motion to dismiss at this time," noting that it was without prejudice to being renewed after jurisdictional discovery proceeds. 1/17/14 Tr. at 96:19-24 (Exhibit 4) ("Some of the discovery needs to go forward. And if the discovery doesn't pan out for what Mr. Harder is believing, then that's [a] different issue."). Not only was there no discovery order, but there was no motion to compel discovery from Kinja. Indeed, plaintiff has *never even served discovery on Kinja*.² In any case, jurisdictional discovery has no

² To the extent that plaintiff contends that defendant Gawker has failed to respond to discovery served on it, Kinja notes that Gawker has produced over 23,000 pages of documents (including many thousands of pages since the Court's February 26, 2014 Order), responded to voluminous interrogatories and requests for admission, and submitted its witnesses to multiple days of depositions. Contrary to plaintiff's assertions, Gawker has, in the course of that discovery, provided plaintiff with detailed information about Kinja's role and function and the licensing arrangement between Kinja and Gawker.

bearing on the pending motion to dismiss, which addresses solely whether plaintiff can state a viable claim against any of the Gawker Defendants. Particularly in light of the DCA's recent decision, he plainly cannot, and his Amended Complaint should be dismissed with prejudice.

Dated: April 21, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April 2014, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing portal upon the following counsel of record:

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