

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.

_____ /

**REPLY TO MOTION TO DETERMINE
CONFIDENTIALITY OF COURT RECORDS**

Pursuant to Rule 2.420 of the Florida Rules of Judicial Administration, Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio (collectively, “Defendants), by and through undersigned counsel, file this Reply on their Motion to Determine Confidentiality of Court Records, filed March 9, 2015 (the “Confidentiality Motion”). In support of this reply, Defendants state as follows:

1. On March 9, 2015, Defendants moved to determine the confidentiality of their Exceptions to Ruling Precluding Discovery About Media Reports Bearing on Whether The Gawker Publication Addressed Matters of Public Concern (the “Exceptions”) and the Exhibits attached thereto.

2. The material at issue in the motion consists of excerpts from the deposition of Elizabeth Rosenthal Traub that Plaintiff designated as confidential. Defendants do not believe that any of the excerpts are properly deemed confidential, but were required to file the Motion to Determine Confidentiality pursuant to the parties’ protective order.

3. Both the Exceptions and the Motion to Determine Confidentiality were noticed for hearing on March 19, 2015. At that hearing, this Court took the Motion to Determine Confidentiality under advisement, and directed Plaintiff to provide his position on confidentiality by April 6, 2013 and for Defendants to reply by April 13, 2015. Mar. 19, 2015 Hrg. Tr. at 86-87 (Ex. A).

4. On April 2, 2015, via letter to the Court, Plaintiff opposed the disclosure of ten (10) pages from the excerpts. In support of his objection, Plaintiff maintains (1) that Plaintiff designated the pages as confidential pursuant to the parties' protective order; and (2) the Court ruled that the subject matter is outside the scope of allowable discovery. April 2, 2015 Ltr. (Ex. B).

5. Plaintiff's objection letter is procedurally deficient. First, pursuant to Florida Rule of Judicial Administration 2.420, a motion to determine confidentiality of court records and the response thereto, should be placed in the court file. Accordingly, we have attached as Exhibit B Plaintiff's April 2, 2015 correspondence. Moreover, if a party wishes to designate material as confidential he or she must specify the bases, including the specific legal authority and applicable legal standards, for determining that such court records are confidential without revealing confidential information. Fla. R. Jud. Admin. 2.420(e). Plaintiff's objection letter fails in this regard.

6. More importantly, however, Plaintiff's objection letter is substantively deficient and does not provide a proper basis to seal court records. When considering a request to seal judicial records, this Court's "analysis must begin with the proposition that all civil and criminal court proceedings are public events, records of court proceedings are public records and there is

a strong presumption in favor of public access to such matters.” Sentinel Commc’ns Co. v. Watson, 615 So. 2d 768 (Fla. 5th DCA 1993).

7. Against this backdrop of openness, it is well established that the closure of judicial records is warranted only under very limited circumstances. Generally, the party seeking closure must demonstrate that: (1) closure of the records is necessary to serve a compelling interest; (2) no reasonable alternative is available to accomplish the desired result; and (3) closure is not greater than necessary to accomplish its purpose. Barron v. Florida Freedom Newspapers, 531 So. 2d 113 (Fla. 1988). The Barron standard has been codified in Florida Rule of Judicial Administration 2.420(c)(9), which sets forth several specific interests on which closure may be based.¹ Additionally, any order sealing a court record must contain specific findings justifying the requested closure. Fla. R. Jud. Admin 2.420(e)(3).

8. The fact that Plaintiff has designated something as “confidential” pursuant to a protective order is not a recognized or sufficient basis for closing a court record. To be sure, Florida case law is clear that a Court may not seal a court record based on the mere wishes of a party. See, e.g., Friend v. Friend, 866 So. 2d 116, 117 (Fla. 3d DCA 2004).

9. Finally, a review of the excerpts at issue demonstrates that there is no valid basis for closure. Contrary to Plaintiff’s objection letter, the excerpts do not reveal any substantive information the Court has ruled is not discoverable (which would not in and of itself provide a proper basis for closure). Rather, the excerpts simply contain colloquy between counsel. In fact,

¹ Pursuant to Barron and Rule 2.420, a party must demonstrate that closure is necessary to: prevent a serious and imminent threat to the administration of justice; protect trade secrets; protect a compelling government interest; obtain evidence to determine legal issues in a case; avoid substantial injury to innocent third parties; avoid substantial injury to a party by disclosure of matters protected by a privacy right not generally inherent in the specific type of proceeding sought to be closed; comply with established public policy set for the in the Constitution, statutes, court rules, or case law.

the colloquy is very similar to the argument of counsel that occurred before the Court – in a public courtroom – on Defendants’ exceptions. *See* Ex. A at 70-81.

10. Simply put, Plaintiff has not provided this Court with a sufficient justification recognized by Rule 2.420 and Florida case law to overcome the strong presumption that court records are public or to seal the excerpts at issue. This Court should therefore determine that the excerpts are not confidential and part of the public court file.

WHEREFORE, the Defendants respectfully request that this Court determine the confidentiality of the Exceptions and the Exhibits attached thereto, overrule Plaintiff’s objection and direct the clerk of court to file the material in the public court file.

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April 2015, 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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