

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 MOTION FOR SETTING OF TRIAL DATE
AND FOR SEVERANCE OF CLAIMS AGAINST KINJA, KFT**

I. INTRODUCTION

This case was filed in October 2012 and has been pending for two years. Mr. Bollea seeks an order setting it for a two-week jury trial on June 1, 2015, or a suitable available date, and severing the claims against defendant Kinja, KFT for trial on a later date.

The parties have conducted most of the necessary discovery. Mr. Bollea, the key Gawker executives, and the author of the story that accompanied the sex video at issue (the "Sex Video"), defendant A.J. Daulerio, have all been deposed, as has Bubba Clem, who was involved in the creation of the Sex Video. While there are still some outstanding discovery disputes, they do not concern the main issues in this case, which are whether the publication of the Sex Video invaded Mr. Bollea's privacy, whether Gawker has a First Amendment defense, and Mr. Bollea's

damages.

There are only two defendants who have not yet either been dismissed from the case or answered the Complaint: Kinja KFT (formerly known as Blogwire Hungary), and Heather Clem. With respect to Ms. Clem, her motion to dismiss is set for hearing October 22, 2014, and she either will be required to answer or will be dismissed from the case.

Kinja is currently appealing this Court's order requiring jurisdictional discovery. However, the claims against Kinja (based on Kinja either participating in the tortious conduct or as an alter ego of Gawker) are dependent on whether Gawker is found liable for publishing the Sex Video. Should Gawker's conduct be held to be non-actionable or protected under the First Amendment, Kinja will not be liable. Thus, it makes sense to sever the claims against Kinja from the case and proceed against Gawker.

Moreover, it could take an additional six to twelve months for the Court of Appeal to rule on Kinja's appeal, and Mr. Bollea should not be required to wait to bring his claims to trial against the Gawker defendants and Heather Clem, while the issue of whether Mr. Bollea is entitled to jurisdictional discovery from Kinja makes its way through the appellate process. Substantial prejudice could result from such extreme delay, particularly when the case is already two years old. Mr. Bollea cannot afford an endless litigation, and an additional delay of six to twelve months for the Kinja appeal could cause evidence to be lost or grow stale. The old adage, "justice delayed is justice denied," applies here.

II. ARGUMENT

This case has been pending for two years, since October 2012. During the two years it has been pending, depositions have been taken of the major percipient witnesses (including Mr. Bollea, Nick Denton and Scott Kidder of Gawker, Bubba Clem, who was involved in the

recording of the Sex Video, and AJ Daulerio, the bylined author of the story which accompanied the Sex Video). Thousands of pages of documents have been produced. While there are still discovery disputes, none of them are crucial to the core issues of the case: (1) whether Mr. Bollea's privacy was invaded by Gawker; (2) whether Gawker's publication of the Sex Video was protected by the First Amendment; and (3) whether and to what extent Mr. Bollea suffered damages.

Thus, it is time to set this matter for trial. Setting a two-week jury trial date for June 1, 2015, or a date most convenient to the Court, will allow the parties ample time to resolve their remaining discovery disputes, and provide for sufficient time for trial preparation, expert discovery, and in limine motions.

Mr. Bollea expects that Gawker will argue that no trial date should be set because two parties, Heather Clem and Kinja, KFT, have not yet answered. However, Ms. Clem's motion to dismiss will be heard on October 22, 2014, and she will either be dismissed from the case or will answer soon thereafter.

As for Kinja, it has appealed this Court's order permitting jurisdictional discovery. Briefing for the appeal will be concluded on October 17, 2014. The Court can and should sever Kinja from this action, to permit the claims against the main Gawker defendants, and Ms. Clem, to proceed to trial. "The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues." Fla. R. Civ. Proc. 1.270(b). "[C]onsolidation and severance of third party claims are within the sound judicial discretion of the trial judge" *Burns v. Riccardi*, 356 So.2d 1334, 1335 (Fla. 3d DCA 1978).

Severing Kinja is proper because it will allow the parties to proceed to trial, may conserve judicial resources, and will not prejudice any party. Should Gawker be held liable, the trial of Kinja, if Kinja's appeal is rejected by the Second DCA, will focus on whether Kinja, which has the same counsel as Gawker, is either directly liable for Gawker's conduct or liable as an alter ego. If the other Gawker defendants are found not to be liable, that will foreclose any claim against Kinja and there will be no second trial. Kinja also is not a necessary party to Gawker's defenses against Mr. Bollea's claims.

Thus, the Court should sever Kinja for a separate trial and set a trial date for Mr. Bollea's claims against the other defendants.

III. CONCLUSION

For the foregoing reasons, the Court should set this matter for a two-week jury trial on or about June 1, 2015, and should sever the claims against Kinja for trial on a later date.

Respectfully submitted,

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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 1st day of October, 2014 to the following:

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