

IN THE CIRCUIT COURT OR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

Case No. 12012447CI-011

vs.

HEATHER CLEM; GAWKER MEDIA LLC  
et al.,

**DISPOSITIVE MOTION**

Defendants

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**DEFENDANT, HEATHER COLE'S, MOTION FOR SUMMARY JUDGMENT**

Defendant, HEATHER CLEM (now known as "HEATHER COLE" and referred to herein as Ms. COLE), by and through her undersigned attorneys and pursuant to Rule 1.510, Fla. R. Civ. P., hereby moves for the entry of final summary judgment in her favor as to all issues and causes of action as alleged in the First Amended Complaint filed against her in the above-styled matter and states:

1. Plaintiff's First Amended Complaint asserts alleged causes of action based on the release and publication of a videotape depicting Plaintiff and Ms. COLE engaging in consensual sexual relations. The First Amended Complaint purports to allege causes of action against HEATHER COLE for "Invasion of Privacy by Intrusion upon Seclusion Against Defendant Heather Clem" (Count One); "Publication of Private Facts Against Defendant Heather Clem" (Count Two); "Intentional Infliction of Emotional Distress Against All Defendants" (Count Six); "Negligent

Infliction of Emotional Distress Against All Defendants” (Count Seven)<sup>1</sup>; and “Violation of Section 934.10, Florida Statutes Against All Defendants” (Count Eight). Counts Three, Four and Five are against the GAWKER Defendants.

2. Plaintiff alleges that an “edited” version of the video together with a narrative was published on the Internet by GAWKER MEDIA and others (collectively referred to herein and in the First Amended Complaint as the “GAWKER Defendants”). It is alleged that Ms. COLE “disclos[ed] the secretly-filmed video to third parties.” (1st Am. Complaint ¶39). The “third parties” referenced in the First Amended Complaint are never identified or otherwise named - as parties or otherwise - nor is the date or the means by which the video was alleged to have been disseminated to GAWKER identified or alleged at all. There are no allegations whatsoever concerning the alleged role of Ms. COLE in the dissemination or publication of the video. There are no allegations that Ms. COLE at any time had custody or control of the video; no allegations other than “in or about 2006” (First Amended Complaint ¶26) as to when the video was allegedly made or under what circumstances; no allegations as to when the video was allegedly given to any unknown “third parties” or when and how it was subsequently provided to GAWKER or what role, if any, that Ms. COLE may have had in any of these circumstances. The only substantive allegation relating to Ms. COLE is that she can be identified on the video excerpt as having been a participant with the Plaintiff.

3. From the outset of this action, there has been not a single shred of evidence or proof in any form whatsoever that would support any cause of action against Ms. COLE. Discovery is now complete and the depositions have been taken of the parties and all persons who could have had any involvement in the distribution of the subject video.

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<sup>1</sup> Plaintiff’s claims for negligent infliction of emotional distress were voluntarily dismissed on Dec. 4, 2014.

4. In all respects, it has been conclusively demonstrated that Ms. COLE had nothing whatsoever to do with the distribution or publication of the video and there is not a single fact or allegation in any document, transcript or interview to suggest otherwise.

5. There are no material issues of fact and no issues of law at this time that would justify the continuation of this action as to Ms. COLE. As a matter of both fact and law, therefore, Ms. COLE is entitled to the entry of summary judgment in her favor as to all of the counts and allegations of the First Amended Complaint.

6. In support of this motion, Ms. COLE offers the entire court file, including all depositions previously filed, whether or not designated as confidential pursuant to the Court's July 25, 2013 Protective Order. This Defendant also adopts and incorporates by reference the Publisher Defendants' Motion for Summary Judgment together with its Statement of Undisputed Material Facts ("SUMF" including all confidential portions) and all exhibits, attachments and references thereto.<sup>2</sup>

7. The primary facts upon which Ms. COLE's motion is based are the following:

- A. The subject video was recorded by Bubba Clem, Ms. COLE's former husband. (1st Am. Compl. ¶1, 12; Publisher's Confidential SUMF ¶ 28). His video surveillance system was described by Mr. Clem at his deposition. (B. Clem depo. at 194:11 – 195:3; Publisher's Confidential SUMF ¶ 29). Ms. COLE did not know that the encounter with Plaintiff BOLLEA was to be filmed. (confidential depo. H. Cole 18:14-20). Bubba Clem was the only person who could initiate any

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<sup>2</sup> In the interests of brevity and judicial economy, Ms. COLE references those exhibits and attachments by name and page and line designations without actually attaching additional copies of the deposition transcripts to her present motion, as those depositions and exhibits have already been filed with the Court and/or are attached to the Publishers' Motion for Summary Judgment. If necessary, this Defendant will file additional copies of those deposition excerpts and exhibits prior to hearing on this motion.

recording and was the person who downloaded it (B. Clem depo 210:10-15; 214:8 thru 215:7). There is no contrary evidence in the record that Ms. COLE knew about the recording of her activity with Plaintiff BOLLEA.

B. It is absolutely without dispute that there is no record evidence whatsoever to indicate that Ms. COLE played any part in the dissemination, transmission, sharing, or publication of the subject video. No witness or party has testified as to any such involvement of Ms. COLE in any way, shape or form.

C. As to those factual matters concerning previous publicity and public knowledge concerning Plaintiff's sex life, including the incident depicted in the subject video; Plaintiff's self-reporting, admissions and public discussions concerning various other sexual and private, personal matters; this Defendant adopts, incorporates and relies upon by reference herein, the Publisher's Motion for Summary Judgment and supporting materials.

8. As to the substantial matters of law in support of this motion, Ms. COLE also adopts, incorporates and relies upon by reference herein, the Publisher's Motion for Summary Judgment and supporting materials referenced therein and attached thereto.

9. The function of a motion for summary judgment is merely to determine if the respective parties can produce sufficient evidence in support of the operative issues made in the pleadings to require a trial to determine who shall prevail. *Hart Properties, Inc. v. Slack*, 159 So. 2d 236, 239 (Fla. 1963). As to the unsupported allegations and the lack of supporting evidence against Ms. COLE in the present case, there are no issues as to either the weight of any conflicting evidence or the credibility of any witnesses in determining

that there is no genuine issue of material fact and no factual or legal dispute as to the complete lack of culpability on the part of Ms. COLE.

10. The record that in this case is considered on motion for summary judgment demonstrates conclusively an absence of any causal relationship between any actions of Ms. COLE and any damages or alleged injury on the part of the Plaintiff, BOLLEA. As such, the entry of summary judgment in favor of Defendant, COLE, is appropriate as to all counts of the First Amended Complaint applicable to her.

WHEREFORE, Defendant, HEATHER COLE, respectfully requests the entry of final summary judgment in her favor as to those counts of the First Amended Complaint.

Dated: April 20, 2015.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of April 2015, a true and correct copy of *Defendant Heather Cole's Motion for Summary Judgment* was served via the Florida Courts' E-Filing Portal upon the following counsel of record:

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