

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 BOLLEA'S MOTION IN LIMINE NO. 17 TO EXCLUDE
EVIDENCE OR ARGUMENT RELATED TO CRIMINAL INVESTIGATIONS**

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. § 90.104 for an Order prohibiting Defendants from introducing any evidence or argument, during any portion of the trial, related to the criminal investigations arising out of the secretly recorded footage of Mr. Bollea naked and engaged in sexual intercourse, and the use of that footage to try to extort Mr. Bollea.

In support of his motion, Mr. Bollea states the following:

1. Mr. Bollea's claims in this case arise out of defendant Gawker Media, LLC's ("Gawker") publication of a secretly filmed recording of Mr. Bollea naked and engaged in sexual relations with Heather Clem (the "Sex Video"). This illegally recorded footage was and still is the subject of a pending criminal investigation.

2. Gawker may seek to introduce evidence or argument associated with the criminal investigation into the crimes committed against Mr. Bollea involving the illegally recorded footage. In particular, the video was used to try to extort Mr. Bollea, which is the subject of a continuing law enforcement investigation that Gawker is trying to jeopardize to use as leverage against Mr. Bollea in this case.

3. The FBI has declined to provide Gawker with records associated with an ongoing investigation of the crimes committed against Mr. Bollea under FOIA based on its law enforcement privilege.

4. Nevertheless, Gawker may seek to introduce evidence or argument concerning the criminal investigation, and has listed such evidence on its trial exhibit list and designated deposition testimony relating to the same. [See Gawker Trial Exhibit #171, 179-182, 186-190, 621-665] Such evidence is irrelevant and would serve only to confuse the jury.

5. “A motion in limine is especially appropriate when ‘addressed to evidence which will be highly prejudicial to the moving party and which, if referred to in a question which the court rules inadmissible, would be unlikely to be disregarded by the jury despite an instruction by the court to do so.’” *Fischman v. Suen*, 672 So.2d 644, 645 (Fla. 4th DCA 1996) (citing Ehrhardt, Florida Evidence § 104.5 (1995 Ed.)).

6. “Obtaining a pretrial order conserves the jury’s time and serves as a firm warning to a party not to take the first step toward mistrial or reversal. A practical advantage of a motion in limine is not having to object in the jury’s presence to evidence which is logically relevant but legally inadmissible. Being human, jurors typically want to hear all the evidence pertaining to a case. By using a motion in limine, a prudent lawyer can avoid giving the jury the impression that he is concealing something crucial.” *Id.*

7. The criminal investigation has no tendency to prove or disprove any material facts in this case. Such evidence or argument therefore is inadmissible. *See Fla. Stat. §§ 90.401, 90.402.*

8. Even if some arguable relevance exists as to the criminal investigations, any probative value is substantially outweighed by the prejudice of putting this matter before the jury. Fla. Stat. § 90.403. Evidence or argument regarding the investigations would serve only to confuse and mislead the jury. *Fischman*, 672 So. 2d at 645; *see Orvis v. Caulkins Indiantown Citrus Co.*, 861 So.2d 1181, 1182-1183 (Fla. 4th DCA 2003) (holding that employer's counsel's violation of order in limine, precluding any evidence or questions regarding alleged impropriety of consultation agreements entered into between employee and growers with potential legal claims against former employer, warranted a new trial in employee's action).

9. Additionally, evidence or argument concerning the criminal investigations is prejudicial because they involve primarily hearsay statements of an extortionist, which are inherently unreliable and not credible. Further, Mr. Bollea cannot cross-examine the extortionist, who has an incentive to lie, exaggerate, or otherwise make false statements, in furtherance of committing and concealing his criminal activities. Likewise, Mr. Bollea has no opportunity to elicit testimony from those involved in the investigation, because they are asserting the law enforcement privilege. Admitting such statements into evidence would be highly prejudicial to Mr. Bollea.

10. This holds particularly true given that the extortionist claimed there were additional videos involving Mr. Bollea. The existence of these tapes has never been proven or established. Reference to additional videos based solely upon claims made by an extortionist is also highly prejudicial to Mr. Bollea.

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing any evidence or argument at trial referencing criminal investigations.

Respectfully submitted,

/s/ Kenneth G. Turkel
Kenneth G. Turkel, Esq.
Florida Bar No. 867233
Shane B. Vogt
Florida Bar No. 0257620
BAJO | CUVA | COHEN | TURKEL
100 North Tampa Street, Suite 1900
Tampa, Florida 33602
Tel: (813) 443-2199
Fax: (813) 443-2193
Email: kturkel@bajocuva.com
Email: svogt@bajocuva.com

-and-

Charles J. Harder, Esq.
PHV No. 102333
Douglas E. Mirell, Esq.
PHV No. 109885
Jennifer J. McGrath, Esq.
PHV No. 114890
Sarah E. Luppen, Esq.
PHV No. 113729
HARDER MIRELL & ABRAMS LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: dmirell@hmafirm.com
Email: jmcgrath@hmafirm.com
Email: sluppen@hmafirm.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 12th day of June, 2015 to the following:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1950
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaines@tampalawfirm.com
jhalle@tampalawfirm.com
mwalsh@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
krosser@houstonatlaw.com

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

Kirk S. Davis, Esquire
Shawn M. Goodwin, Esquire
Akerman LLP
401 E. Jackson Street, Suite 1700
Tampa, Florida 33602
kirk.davis@akerman.com
shawn.goodwin@akerman.com
Co-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
abeene@tlolawfirm.com
Counsel for Gawker Defendants

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

/s/ Kenneth G. Turkel

Attorney