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.
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PUBLISHER DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE ANY EVIDENCE CONCERNING THE CORPORATE STRUCTURE OF GAWKER MEDIA, LLC AND INCORPORATED MEMORANDUM OF LAW

Defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (collectively, the "Publisher Defendants") hereby respectfully move the Court for the entry of an order excluding any evidence concerning the corporate structure of Gawker, including, specifically, any evidence concerning Gawker's parent company, Gawker Media Group, Inc. ("GMGI) and its sister company Kinja, KFT, formerly known as Blogwire Hungary Szellemi Alkotást Hasznosító, KFT ("Kinja"), including without limitation either entity's finances.

1. It is anticipated that plaintiff intends to offer evidence concerning Gawker's corporate structure, including evidence concerning non-party foreign business entities GMGI (Gawker's parent company, based in the Cayman Islands) and Kinja (a Hungarian software and intellectual property licensing company which, like Gawker, is wholly owned by GMGI).[1] *See,*

[1] GMGI was initially named as a defendant in this case, but at a hearing on January 17, 2014, the Court granted GMGI's motion to dismiss. *See* Order Granting Gawker Media Group, Inc.'s Mot. to Dismiss, May 14, 2014. Likewise, Kinja was named as a defendant, and is challenging the exercise of jurisdiction over it. Plaintiff successfully moved in this court to have Kinja severed so that he could proceed with a trial against the Publisher Defendants without having to wait for resolution of the issue of whether the court had personal jurisdiction over

e.g., Pl.'s Exs. 198 & 207 (regarding Kinja's finances); Pl.'s Exs. 150, 208-210 (regarding GMGI's finances); Pl.'s Dep. Designations of Gawker Media, LLC Corp. Designee S. Kidder (including numerous references to Kinja and GMGI).

2. It is unequivocally clear under Florida law, however, that a plaintiff is not entitled to seek recovery against non-party corporate parents and/or affiliates of a limited liability company defendant, absent a showing that the defendant's corporate form is a "sham" and should therefore be disregarded. *See Gasparini v. Pordomingo*, 972 So. 2d 1053, 1055 (Fla. 3d DCA 2008).

3. Plaintiff has failed to make any showing that Gawker is a sham entity. Indeed, this Court already ruled that GMGI, which was initially named as a defendant, does not belong in this case. *See* Order Granting Gawker Media Group, Inc.'s Mot. to Dismiss, May 14, 2014. This motion also assumes that either the plaintiff or the Court has dismissed Kinja, and that it, too, is not a party. *See* note 1, *supra.*

4. Because GMGI is no longer a party to the case, and Kinja will also no longer be a party if the trial proceeds; because those foreign companies have not been found to be "alter-egos" of Gawker; and because they are engaged in separate lines of business and had nothing to do with the publication at issue in this lawsuit, plaintiff has no reason, whatsoever, to introduce any evidence about them. Plaintiff should not be permitted to effectively keep in the case

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Kinja. On May 7, 2015, however, the Second District Court of Appeal quashed the severance order and the trial/pretrial order that set trial for July 6, 2015. *See* Order, *Gawker Media, LLC v. Bollea*, Nos. 2D14-5591 & 2D15-1259 (Fla. 2d DCA May 7, 2015). Since then, plaintiff has indicated that he intends to dismiss Kinja so that he may try to keep his July 6, 2015 trial date, but, as of today, he still has not done so. The Publisher Defendants believe that it is too late to set a new trial date for July 6 under Rule 1.440, even if Kinja is now dismissed. This motion assumes that a trial will proceed at some point in the future and that either plaintiff or the Court will have dismissed Kinja. Thus, this motion treats Kinja, like GMGI, as a non-party. The Publisher Defendants reserve the right to file an amended motion if for any reason Kinja remains as a defendant in the action.

entities that have been (or will be) dismissed, particularly where he abandoned his efforts to establish that they properly belong or have anything relevant to add.

5. Accordingly, any evidence regarding Gawker's corporate structure and/or its relationship with any other corporation or other business entity is not relevant to any claim or issue in this case; allowing the presentation of such non-relevant evidence would unnecessarily prolong the trial, mislead and/or confuse the jury, and would also be highly prejudicial to Gawker, as well as to the other Publisher Defendants, including to attempt to inflame the jury against foreign companies.

6. WHEREFORE, the Publisher Defendants respectfully request that this Court enter an order barring the Plaintiff from introducing any evidence, inquiring of any witnesses, or his counsel making any reference in opening statements, concerning the corporate structure of Gawker Media LLC, or its relationship with any parent company, corporation or other business entity, including GMGI and Kinja.

MEMORANDUM OF LAW

The only possible reason plaintiff could have for seeking to introduce evidence about Gawker's corporate structure is to suggest to the jury either that GMGI and/or Kinja (a) played some part in the publication at issue, or (b) are "alter-egos" of Gawker such that they should be treated the same as Gawker. But plaintiff made those exact arguments in initially asserting that this Court had personal jurisdiction over GMGI and Kinja. This Court found *no* basis for any claims against GMGI, and Kinja has (or will have, by the time of trial) been dismissed from the case. *See* note 1, *infra*.

Given that these former defendants have been, or will be, dismissed from the case (with no finding that they were actually involved in the events at issue or that plaintiff is entitled to

pierce the corporate veil), plaintiff cannot now argue that they were somehow involved or that they are "one and the same" with Gawker or that the company's corporate structure otherwise has any bearing on the case. Florida law explicitly recognizes that corporations and limited liability companies are distinct legal entities, and should be treated as such. *See, e.g.*, *Beltran v. Miraglia,* 125 So. 3d 855, 858 (Fla. 4th DCA 2013) ("A general principle of corporate law is that a corporation is a separate legal entity"); *Olmstead v. FTC*, 44 So. 3d 76, 80 (Fla. 2010) ("An LLC is a type of corporate entity"); 8A Fla. Jur. 2d Business Relationships §§ 13, 16 (under Florida law, corporate form will be disregarded "only in exceptional circumstances" where the subsidiary "manifests no separate corporate interests of its own"). Accordingly, companies related to the defendant have nothing relevant to add to the case where there has been no showing (as there has not been here) that the defendant (here, Gawker) was used by another entity to perpetrate a fraud causing injury to the plaintiff.[2] *See Gasparini*, 972 So. 2d at 1055; *see also Hobbs v. Don Mealey Chevrolet, Inc.*, 642 So. 2d 1149, 1156 (Fla. 5th DCA 1994) (absent a showing that a corporate entity was "formed or used for some illegal, fraudulent, or other unjust purpose, the mere fact of . . . ownership and control . . . [i]s insufficient to justify piercing [the] corporate veil.").

Thus, pursuant to the authorities cited above, any evidence concerning other business entities with whom Gawker may have a relationship (including, but not limited to GMGI and

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[2] Specifically, the discovery record in this case makes clear that Gawker is not "under-capitalized," is not organized for the purpose of "mislead[ing] creditors," and otherwise is not a "shell" corporation or corporate fiction. *See, e.g., Hilton Oil Transp. v. Oil Transp. Co.,* 659 So. 2d 1141, 1151-52 (Fla. 3d DCA 1995) (outlining rare circumstances, not applicable here, in which corporate veil may be pierced). Indeed, the financial documents provided by Gawker in this case amply demonstrate that Gawker has hundreds of employees and earns millions of dollars in revenues each year. And, again, having had his claims against GMGI dismissed and his claims against Kinja either abandoned or dismissed, plaintiff should not be allowed to make his veil-piercing argument at trial.

Kinja) would be clearly not relevant to any issue that the jury will be asked to decide. *See* Fla. Stat. § 90.402. In addition, any reference made before the jury to any corporate or business entity other than Gawker is likely to create unfair prejudice, mislead the jury, and divert the jury's attention from the issues properly before it, including to attempt to inflame the jury against foreign companies. Such evidence is inadmissible pursuant to sections 90.402 and 90.403 of the Florida Statutes as the prejudicial nature of such evidence clearly outweighs its probative value. *See Hendry v. Zelaya*, 841 So. 2d 572, 575 (Fla. 3d DCA 2003) ("Evidence that is confusing to the jury can be excluded pursuant to section 90.403, Florida Statutes").

CONCLUSION

For the foregoing reasons, the Court should enter an Order, *in limine*, prohibiting the Plaintiff from introducing any evidence, inquiring of any witnesses, or his counsel making any reference in opening statements or closing arguments, concerning GMGI, Kinja, and the corporate structure of Gawker.

June 12, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June 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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