

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. 12012447CI-011

vs.

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 OPPOSITION TO MOTION IN LIMINE OF
GAWKER MEDIA, LLC, DENTON, AND DAULERIO TO EXCLUDE EVIDENCE OF
OFFERS MADE TO PURCHASE THE RIGHTS TO THE SEX VIDEO (STYLED
“Publisher Defendants’ Motion *In Limine* to Exclude Letters Purporting To Be Offers To
Commercially Exploit the Sex Tape At Issue”)**

Gawker Media, LLC’s (“Gawker”), Nick Denton’s, and A.J. Daulerio’s (together, the “Gawker Defendants”), motion *in limine* to exclude evidence of two substantial offers to purchase the rights to the video of Mr. Bollea naked and engaged in sexual intercourse (the “Sex Video”) based solely on the argument that these letters do not qualify under the business record hearsay exception is entirely misplaced. These letters are not hearsay. They are verbal acts—words that have independent legal significance. *A.J. v. State*, 677 So.2d 935, 937 (Fla. 4th DCA 1996); *State v. Welker*, 536 So.2d 1017, 1020 (Fla. 1988); *Zeigler v. State*, 402 So.2d 365, 374 (Fla. 1981).

Documents such as offers are verbal acts constituting matters of independent legal significance. *Crawford v. Franklin Credit Management Corp.*, 2015 WL 1378882 at *3 (S.D.N.Y. Mar. 26); *Mueller v. Abdnor*, 972 F.2d 931, 937 (8th Cir. 1992). In *Pronesti v. State*, 847 So.2d 1165, 1166 (Fla. 5th DCA 2003), a defendant's verbal offer made to an undercover officer to perform a sex act in exchange for money was held to be admissible non-hearsay. *Accord Pauline v. Lee*, 147 So.2d 359, 363 (Fla. 2d DCA 1962).

Gawker Defendants' assertion that Mr. Bollea has not designated any witnesses that will testify and lay the proper predicate foundations, and that their "first encounter with the witnesses would be on cross-examination at trial," is **knowingly false**. Gawker Defendants' own expert witness, Kevin Blatt, testified that he himself authored the offer letter from Sex.com.

Gawker Defendants have also waived any objection to the admissibility of the offer letters from Vivid.com by including as one of its trial exhibits (Ex. 402), an article on TMZ.com titled "Porn King to Hulk Hogan: There's a HUGE Appetite for Your Sex Tape." This article includes an image of the very letter Gawker Defendants now seek to exclude and discusses its contents. Under the rule of completeness, Mr. Bollea is entitled to introduce this letter.

The offers received by Mr. Bollea, seeking the right to commercially exploit the Sex Video, therefore are not hearsay. Mr. Bollea is not seeking to introduce the letters to prove the truth of their contents. He is offering the letters merely to prove that these letters were sent and offers made.

For the foregoing reasons, the motion *in limine* should be denied.

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

Charles J. Harder, Esq.
PHV No. 102333
Jennifer J. McGrath, Esq.
PHV No. 114890
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: jmcgrath@hmafirm.com

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 25th 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@lskslaw.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
abcene@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@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

/s/ Kenneth G. Turkel

Kenneth G. Turkel