

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.: 12012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA,
LLC aka GAWKER MEDIA; et al.,

Defendants.

MOTION FOR STAY PENDING APPEAL

Gawker Media, LLC, Nick Denton, A.J. Daulerio (collectively the “Gawker Defendants”) move the court for an order staying this Court’s September 23, 2015 Order on Plaintiff’s Emergency Motion for Clarification so that they may pursue appellate relief. In support of this motion, Gawker states:

1. On July 13, 2015, Plaintiff filed an Emergency Motion for Clarification (hereinafter “Emergency Motion”). The Emergency Motion purportedly sought to confirm the Agreed Protective Order that was already in place and to clarify the protocol for certain material produced by the FBI.
2. The next day, the Gawker Defendants responded via letter to the Court that Plaintiff’s motion was not an emergency, confirming, among other things, that the Gawker Defendants had been complying, and would continue to comply, with both the Agreed Protective Order and the agreed protocol for the material produced by the FBI.

3. On July 30, 2015, this Court held a hearing on Plaintiff's Emergency Motion. Defense counsel opposed the Motion at the hearing.

4. The parties submitted competing proposed orders to this Court, and, on September 23, 2015, this Court adopted Plaintiff's Order on Plaintiff's Emergency Motion for Clarification.

5. The Gawker Defendants intend to petition the District Court of Appeal for a writ of certiorari quashing the Court's Order.

6. The Court's September 23 Order is fundamentally flawed and causes irreparable injury to the Gawker Defendants for a number of reasons. Most significantly, it requires counsel to relinquish key evidence in this case.

7. The Order mandates that "[n]o copies of any records, video and audio recordings, documents and other materials" produced by the federal government "shall remain in Ms. Dietrick's possession, custody, or control." The Order also mandates that "[n]o copies of the audio recordings shall remain in Gawker Defendants' counsels' possession, custody, or control," and that they shall be turned over to Judge James R. Case, whom the Court had previously designated to serve as Special Discovery Magistrate.

8. This relief (which Plaintiff never requested in his Emergency Motion) directly conflicts with this Court's August 6, 2015 Preservation Order. It is simply impossible for Ms. Dietrick and counsel to both preserve all evidence and simultaneously delete certain evidence, and this is particularly significant in light of the Gawker Defendants' and their counsel's need to defend themselves against Plaintiff's baseless charge that they might have leaked that very evidence.

9. Moreover, the audio footage is central evidence in this case and the ongoing FOIA litigation. It also disproves Plaintiff's charges that the Gawker Defendants or their counsel violated the Agreed Protective Order. In addition, the Gawker Defendants have not consented to further proceedings before a Special Discovery Magistrate generally and have not consented to proceeding before a Special Discovery Magistrate respect to the matters addressed by the Court's Order specifically.

10. The Court's Order causes the Gawker Defendants irreparable harm as, among other things, it requires them to relinquish key evidence, to proceed before a Special Discovery Magistrate, and to remove electronic material from their possession at a time when they are under a Court order to preserve all such material. In contrast, Plaintiff will suffer no harm if a stay is entered because the Gawker Defendants and their counsel are complying with both the Court's August 6, 2015 preservation order and the Agreed Protective Order, and, thus, the status quo will be preserved.¹

11. Because this Court's order causes irreparable harm, the motion for stay should be granted. *See, e.g., Perez v. Perez*, 769 So. 2d 389, 391 n. 4 (Fla. 3d DCA 1999) (in determining whether to grant stay pending appeal a court should consider, *inter alia*, harm to the moving party in the absence of a stay).

¹ When Plaintiff pursued an interlocutory appeal of a discovery order earlier in this case, this Court granted Plaintiff an extension of 45 days within which to comply with the order, in order for him to obtain a stay from the Court of Appeal before his obligations under the order commenced. *See* Order on Plaintiff's Motion for Stay Pending Writ of Certiorari Review (May 14, 2014). At the very least, the same consideration should be provided to the Gawker Defendants.

WHEREFORE, the Gawker Defendants respectfully request that this Court grant its motion for stay pending appeal.

Respectfully submitted,

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas

Gregg D. Thomas

Florida Bar No.: 223913

Rachel E. Fugate

Florida Bar No.: 0144029

601 South Boulevard

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

rfugate@tlolawfirm.com

Seth D. Berlin

Pro Hac Vice Number: 103440

Michael D. Sullivan

Pro Hac Vice Number: 53347

Michael Berry

Pro Hac Vice Number: 108191

Alia L. Smith

Pro Hac Vice Number: 104249

Paul J. Safier

Pro Hac Vice Number: 103437

LEVINE SULLIVAN KOCH & SCHULZ, LLP

1899 L Street, NW, Suite 200

Washington, DC 20036

Telephone: (202) 508-1122

Facsimile: (202) 861-9888

sberlin@lskslaw.com

msullivan@lskslaw.com

mberry@lskslaw.com

asmith@lskslaw.com

psafier@lskslaw.com

Counsel for Defendants Gawker Media, LLC,

Nick Denton, and A.J. Daulerio

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September 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:

Kenneth G. Turkel, Esq.
kturkel@BajoCuva.com
Shane B. Vogt, Esq.
shane.vogt@BajoCuva.com
Bajo Cuva Cohen & Turkel, P.A.
100 N. Tampa Street, Suite 1900
Tampa, FL 33602
Tel: (813) 443-2199
Fax: (813) 443-2193

Charles J. Harder, Esq.
charder@HMAfirm.com
Douglas E. Mirell, Esq.
dmirell@HMAfirm.com
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
Attorneys for Plaintiff

David Houston, Esq.
Law Office of David Houston
dhouston@houstonatlaw.com
432 Court Street
Reno, NV 89501
Tel: (775) 786-4188

/s/ Gregg D. Thomas
Attorney