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

GAWKER MEDIA, LLC, *et al.*,

Defendants.

DEFENDANTS' MOTION *IN LIMINE* NO. 5: STATEMENTS BY AND OPINIONS OF THIRD PARTIES CONCERNING ALLEGED "BAD ACTS"

Defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (collectively, "Defendants") hereby move *in limine* to preclude plaintiff Terry Bollea, professionally known as "Hulk Hogan," from introducing evidence as to statements by and opinions of third parties concerning alleged "bad acts" by Gawker that have nothing to do with this lawsuit.

I. The Exhibits at Issue

Plaintiff's Fourth Supplemental Exhibit List, filed January 28, 2015, seeks to offer into evidence more than a dozen articles and/or pieces of commentary from other media organizations discussing publications and other alleged conduct by Gawker and its employees. For example, Plaintiff seeks to admit:

- Plaintiff's trial exhibit 459, which is an article published by *HuffingtonPost.com* (attached as Exhibit A), speculating that the celebrity James Franco should sue Gawker based on an alleged incident from 2008.
- Plaintiff's trial exhibit 475, which is *New York Times* article from 2005 (attached as Exhibit B) that discusses a Gawker publication about the musician Fred Durst.
- Plaintiff's trial exhibit 573, which is an article published by *Medium.com* (attached as Exhibit C), in which a former employee of Gawker discusses her perception of the treatment of women at the company.

- Plaintiff's trial exhibits 457, 458, 467, 472, 476, 477, 479, 481 and 486 (collected together as Exhibit D), which consist of articles by other publishers about a since-removed July 2015 Gawker post that reported on the activities of a media executive.

These exhibits are inadmissible on several grounds, including that they constitute hearsay and improper non-expert opinion.[1]

II. The Articles Are Inadmissible Hearsay.

To the extent that plaintiff intends to offer articles by third parties about Gawker's conduct for the truth of the matters asserted therein, the exhibits are clearly inadmissible hearsay. *See* Fla. Stat. § 90.801. These articles were not written under oath, their respective authors will not be making the statements comprising those articles in the view of the jury, and – most importantly – the authors are not subject to cross-examination in this case. *See State v. Freber*, 366 So. 2d 426, 427-28 (Fla. 1978) ("Hearsay testimony is generally inadmissible for three reasons. First, the declarant is not testifying under oath. Second, the declarant is not in court for the trier of fact to observe his or her demeanor. Third, and of prime importance, the declarant is not subjected to cross-examination in order to test the truth of the statement."). This applies even to those articles that purport to convey statements by parties to this case, such as Nick Denton. *See, e.g.*, *Dollar v. State*, 685 So. 2d 901, 902-03 (Fla. 5th DCA 1996) (newspaper article

[1] Defendants are also filing a separate motion *in limine* addressing the exclusion, as improper evidence of remedial measures, of exhibits or testimony regarding steps taken by Gawker, following the publication of the article at issue in this case, to make changes to its staffing, editorial, corporate, and/or operating policies or procedures. Many of the exhibits discussed in this motion are inadmissible on that additional ground as well.

In addition, Defendants previously filed a motion *in limine* to preclude even non-hearsay evidence relating to alleged "other bad acts" by Gawker, *see* Mot. in Limine to Preclude Pl. from Introducing Evidence Related to Other Gawker Articles (filed June 12, 2015), on the ground that Bollea may not attempt to show that defendants invaded his privacy, and/or did so in a manner warranting an award of punitive damages, by introducing evidence of other instances in which Bollea alleges that defendants invaded other people's privacy, or committed other torts. This Court reserved on that motion. *See* Ex. E (July 1, 2015 Hrg. Tr.) at 264:1 – 268:5.

quoting defendant was inadmissible hearsay because "the reporter did not testify at trial as to what the defendant said to him."). Accordingly, the exhibits are all inadmissible as hearsay.

III. Many of the Articles Constitute Improper Non-Expert Opinion.

In addition, many of the third-party articles that Bollea has identified as proposed trial exhibits put forth the *opinions* of their respective authors about alleged conduct by Gawker unrelated to this lawsuit. For instance, Bollea has identified as potential exhibits articles by non-Gawker authors opining about (a) Gawker's potential vulnerability to other unrelated, hypothetical lawsuits, an opinion based on a series of hearsay statements contained in since-deleted social media posts (Pl.'s Trial Ex. 459, found at Ex. A), (b) Gawker's alleged failures to cultivate a diverse workforce (Pl.'s Trial Ex. 573, found at Ex. C), (c) changes in Gawker's business approach (Pl.'s Trial Ex. 479, found in Ex. D), and (d) the adequacy of one author at Gawker's defense of the since-removed July 2015 post reporting on the activities of a media executive (Pl.'s Trial Ex. 477, found in Ex. D). The "opinions" expressed in these articles would be inadmissible, even if they were being offered in the form of testimony, rather than hearsay statements. *See* Fla. Stat. § 90.604 (defining lay testimony as testimony based on "personal knowledge," and contrasting that with expert testimony, which gets admitted via Fla. Stat. § 90.702); *see also Fittipaldi USA, Inc. v. Castroneves*, 905 So. 2d 182, 185 (Fla. 3d DCA 2005) (only a designated expert witness can provide expert testimony).

Indeed, even if these opinions *were* being offered in the form of testimony, *and* by a designated expert, they would still be inadmissible because expert opinion testimony is only admissible where it will "assist the trier of fact in understanding the evidence or in determining a fact in issue." Fla. Stat. § 90.702. Here, these are opinions about facts unrelated to any issue in the case.

CONCLUSION

Defendants respectfully request that this Court grant the motion *in limine* and enter an order excluding all evidence consisting of statements by and opinions of third parties concerning alleged "bad acts" by Defendants, including plaintiff's trial exhibits 457-59, 467, 472, 475-77, 479, 481, 486, and 573.

February 1, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2016, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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