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.

GAWKER MEDIA, LLC aka GAWKER MEDIA; NICK DENTON; A.J. DAULERIO,

Defendants.
_____/

PLAINTIFF'S OPPOSITION TO GAWKER DEFENDANTS' MOTION TO PRECLUDE EVIDENCE OF CERTAIN STATEMENTS BY GAWKER EMPLOYEES (STYLED "Defendants' Motion in Limine No. 7: Commentary About This Litigation")

Mr. Bollea opposes Gawker Defendants' motion in limine number 7 seeking to exclude their admissions against interest as follows:

Gawker Defendants seek to exclude various exhibits which contain admissions by Gawker employees and executives regarding the central issues in this case. Gawker Defendants falsely portray these authorized admissions as if they are mere statements about who is likely to win or lose the litigation. Untrue. These exhibits evidence statements by Gawker employees and executives about issues including Gawker's attitudes towards privacy and whether they feel they have a First Amendment right to smear people or publish the intimate details of their sex lives. These statements are admissible, and at the very least should be available for impeachment. If there are specific comments in the articles that the trial court feels the jury should not see or read, they can be addressed at trial.

Gawker Defendants' specific arguments about these exhibits are without merit. Gawker Defendants sought and courted pre-trial publicity for almost a year, routinely making comments

and giving interviews to the press about the case. Now, they purport to decry the admissions they made to bolster their image heading into trial. That is a breathtaking turnaround that also misses the point. Mr. Bollea agrees that the jury should be shielded from the wider discussion of this case in the media. However, when Nick Denton makes relevant statements about the case (for instance, about Gawker's attitudes about privacy or what it did to Mr. Bollea), those statements are not inadmissible simply because they are made to members of the press as part of Gawker's pre-trial publicity campaign.

The articles Gawker seeks to exclude contain such statements. *See* Ex. 367 (containing Nick Denton's claim that publishing secretly recorded sex footage holds "elites accountable" and Heather Dietrick's claim that Mr. Bollea waived his privacy rights by discussing sex in the media); Ex. 368 (Mr. Denton saying a lot of Gawker traffic comes from stories Gawker is not proud of); Ex. 381 (Ms. Dietrick saying that Mr. Bollea waives his privacy rights by discussing sex); Ex. 383 (Ms. Dietrick stating that publishing the sex video was Gawker closing "the gap between a celebrity's marketed version of a story and reality"); Ex. 384 (Ms. Dietrick saying the public has the right to know the details of a celebrity's sex acts during an allegedly adulterous encounter); Ex. 386 (Gawker article mocking Mr. Bollea for claiming that sex tapes are private); Ex. 374 (Mr. Denton tweeting that anything the public wants to look at is newsworthy); Ex. 395 (Gawker editor Max Read saying it is "grossest thing in 2015" that celebrities assert a right to privacy); Ex. 452 (Mr. Denton stating Mr. Bollea's sex tape had news value because Mr. Bollea had publicly discussed sex); Ex. 464 (Ms. Dietrick saying that Gawker was justified in publishing sex video because Mr. Bollea had talked about sex in public, but also stating that she regrets Gawker's publication of a story about a media executive that resulted in heavy criticism of Gawker); Ex. 487 (Ms. Dietrick stating it was "common sense" that story was newsworthy);

Ex. 482 (Mr. Denton admitting in an internal meeting that the "Hogan story… was actually on the edge").

These are all relevant admissions of a party opponent which establish Gawker Defendants' callous disregard of Mr. Bollea's privacy and their self-serving justifications for invading it. Gawker Defendants cannot shield their harmful admissions from the jury by making them to the press.

The suggestion that these statements are hearsay is meritless. These are all party admissions uttered by Mr. Denton and Ms. Dietrick. Further, at the very least they can be used as impeachment if inconsistent testimony is given at trial. Fla. Stat. § 90.801(2)(a).[1]

Finally, any prejudicial effect of actual admissions about the central issues in this case can be handled on a document by document basis if and when this material is presented to the jury. Mr. Bollea agrees that the jury should be shielded from statements such as a media commentator opining that Mr. Bollea or Gawker should win the case. However, that is not a justification for the blanket exclusion of exhibits containing admissions of parties to the case.

For the foregoing reasons, Gawker Defendants' motion in limine 7 should be denied.

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[1] If Gawker Defendants' position is that anything a party says to a reporter is inadmissible under the hearsay rule, that standard would apply to almost all the material that Gawker Defendants have marked containing alleged statements by Mr. Bollea to the press.

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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 February, 2016 to the following:

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