

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.

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**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION *IN LIMINE* NO. 23:  
TO EXCLUDE, OR ALTERNATIVELY, TO STRIKE, ARGUMENTS OR  
EVIDENCE SUBMITTED TO SHOW FRAUD ON THE COURT**

Defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio hereby oppose the Motion *in Limine* No. 23 of Plaintiff Terry Gene Bollea, professionally know as Hulk Hogan, which seeks to exclude evidence or argument related to Defendants' December 22, 2015 motion to dismiss on the grounds of fraud on the court. Bollea's motion is unnecessary to the extent it simply seeks to bar Defendants from making a fraud on the court *argument* to the jury, as the parties have already stipulated that Defendants will not do so. And the motion is unsound to the extent it seeks to bar Defendants from presenting the *evidence* that formed the basis of the fraud on the court motion, as that material can be used for the purposes of impeachment as well as any other relevant matter – a point that Bollea conceded time and again to this Court in opposing the motion to dismiss.

**1. Defendants Have Agreed Not to Argue Fraud on the Court to the Jury so Plaintiff's Motion Should Be Denied as Moot.**

On July 17, 2015, Defendants filed their amended answers, including affirmative defenses that Bollea's claims are barred as a result of an ongoing pattern of fraud on the court. Am. Answer of Def. Gawker Media, LLC; Am. Answer of Def. Nick Denton; Am. Answer of

Def. A.J. Daulerio. Bollea moved to strike that defense on October 30, 2015. Pl.’s Mot. to Strike Affirmative Defenses. On November 13, 2015, the parties stipulated that Defendants would withdraw their fraud on the court defense, without limiting Defendants’ right to file a motion to dismiss based on fraud on the court. Ex. 1 (Stipulation Re: Pl.’s Mot. to Strike Affirmative Defenses) at ¶ 3. Bollea now writes that “[f]raud on the court is not an affirmative defense” and asks the Court to prohibit this argument from being “raised or discussed in the presence of the jury.” Mot. at ¶ 5. But the November 13, 2015 stipulation makes such an order redundant, because defendants have agreed not to raise an affirmative defense of fraud on the court. Plaintiff’s motion should therefore be denied as moot.

**2. Material from the Fraud on the Court Motion May be Used as Evidence.**

Throughout the fraud on the court motion, Defendants pointed to inconsistent statements made by Bollea and Bollea’s counsel concerning, among other central issues, causation of Bollea’s alleged harm and the amount of any damages caused by such harm. In opposing that motion to dismiss, Bollea repeatedly conceded – and indeed insisted – that these contradictions are grounds for impeachment at trial, not cause for dismissing his claims outright. Pl.’s Omnibus Resp. at 3, Jan. 12, 2016 (characterizing the fraud on the court motion as “little more than a roadmap of impeachment evidence they intend to use at trial,” and representing that such “impeachment evidence [] can easily be countered by other facts and testimony that Mr. Bollea is not inclined (nor required) to explain to his opponents before trial.”); *id.* at 17-18 (stating that “Florida law clearly provides that ‘. . . inconsistency, nondisclosure, poor recollection, dissemblance and even lying, is insufficient to support dismissal for fraud, and, in many cases, may be well-managed and best resolved by bringing the issue to the jury’s attention through cross-examination.’”) (citing *Perrine v. Henderson*, 85 So. 3d 1210, 1212 (Fla. 5th DCA 2012));

Ex. 2 (Jan. 13, 2016 Hrg. Tr.) at 69:8-13 (“I’m not going to answer tit for tat, differing interpretations of evidence that have differing interpretations. That’s not your job as a judge, particularly on this procedural vehicle. It’s a job for six people in Pinellas County.”); *id.* at 76:10-13 (“You have numerous statements at numerous times. It happens. You reconcile them at trial or you impeach a witness. That’s what we do.”); *id.* at 78:16-22 (reading aloud the language from *Perrine* cited above). And so, after the Court denied the motion to dismiss, Defendants followed the very path that Bollea advocated, filing motions *in limine* as to what types of evidence they might seek to use for impeachment purposes at trial. *See* Defs.’ Mot. *in Limine* No. 1 at 7-8, Feb. 1, 2016; Defs.’ Mot. *in Limine* No. 2 at 14-17, Feb. 1, 2016; Defs.’ Mot. *in Limine* No. 3 at 4, Feb. 1, 2016.

As Bollea previously conceded, the testimony and other material that formed the basis of the fraud on the court motion amount to classic impeachment evidence, and there may be other issues to which some of it could be relevant as well. To give just one example, Bollea would now bar defendants from impeaching him on the contradictory statements that he made to the FBI and during his deposition on the key issue of whether he knew about the presence of surveillance cameras in the Clems’ home, simply because those statements were part of the evidence included in the fraud on the court motion. *See* Defs.’ Mot. to Dismiss on the Grounds of Fraud on the Ct. at 26, Dec. 22, 2015. However, excluding such material would be improper. *See Morowitz v. Vistaview Apartments, Ltd.*, 613 So. 2d 493, 495 (Fla. 3d DCA 1993) (holding that trial court erred in not admitting evidence to impeach witness where that evidence “clearly contradicted” the witness’s testimony regarding a fact at issue). Bollea has offered no explanation and cited no case law as to why evidence fit for impeachment purposes in January should be subject to exclusion in February.

In short, the fact that this Court denied Defendants' fraud on the court motion does not mean that the evidentiary basis for that motion is inadmissible for some other purpose, especially when the main ground on which the motion was opposed was that it constituted fodder for impeachment, not grounds to dismiss the case. The motion should therefore be denied.

### CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court deny plaintiff's Motion *in Limine* No. 23.

February 12, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th 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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