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.

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

Defendants.
_____/

Case No.: 12012447-CI-011

TERRY BOLLEA'S MOTION FOR LEAVE TO CONDUCT EXPEDITED POST-TRIAL FINANCIAL WORTH DISCOVERY[1]

Plaintiff, Terry Bollea known professionally as Hulk Hogan ("Mr. Bollea"), by counsel and pursuant to section 45.045,[2] Florida Statutes, Rule 1.560, Florida Rules of Civil Procedure, and the Court's inherent authority, moves this Court for the entry of an Order permitting Mr. Bollea to conduct expedited financial discovery in connection with the appropriate amount of any supersedeas bond sought by Defendants, discovery into any potential dissipation or diversion of assets by Defendants, discovery in aid of execution, and discovery to determine whether the parties' net worth stipulation for purposes of punitive damages was the product of omissions or misrepresentations of material fact; including third-party discovery directed to, among others, Gawker Media Group, Inc. ("GMGI") and Kinja, KFT ("Kinja"). In support, Mr. Bollea states as follows:

[1] The public version of this filing is being redacted based upon the Protective Order in this case.

[2] Mr. Bollea makes this motion with full reservation of rights, and without admitting or conceding the applicability of § 45.045 to this proceeding.

Introduction

On March 18, 2016, the jury entered its verdict awarding Mr. Bollea $115 million in compensatory damages, jointly and severally, against Defendants, Gawker Media, LLC ("Gawker"), Nick Denton ("Denton") and A.J. Daulerio ("Daulerio") (collectively, "Gawker Defendants"). In the March 18, 2016 verdict, the jury also determined that Mr. Bollea was entitled to punitive damages, and that Gawker Defendants acted with a specific intent to harm Mr. Bollea. As a result of this finding, there was no cap on punitive damages. *See* § 768.73, Florida Statutes. On March 21, 2016, the jury entered its verdict awarding punitive damages against each of the Gawker Defendants, including $15 million against Gawker, $10 million against Denton and $100,000 against Daulerio.[3]

At the conclusion of the trial, the Court scheduled a full-day hearing for May 25, 2016 to address post-trial motions and the entry of final judgment in favor of Mr. Bollea. On April 4, 2016, Gawker Defendants filed two post-trial motions seek a judgment notwithstanding the verdict and a new trial and/or remittitur of the jury's compensatory and punitive damages awards. Additionally, since the trial Gawker Defendants have publicly stated their intent to appeal any final judgment entered by this Court; and discussed the posting of a reduced bond under section 45.045, *Fla. Stat.*[4] (which caps supersedeas bonds necessary to obtain an automatic stay of execution pending an appeal at $50 million for each appellant).

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[3] Gawker Defendants successfully limited their punitive damages exposure by admitting they "owe" and "must pay" the $115 million compensatory damage award, and by relying upon a stipulation regarding their net worth for purposes of punitive damages. The net worth stipulation was based on the opinions of Mr. Bollea's expert, James Donohue, who relied upon certain limited financial documents and testimony that Mr. Bollea was able to obtain during discovery.

[4] Mr. Bollea notes that the final relief he seeks in this action is monetary and non-monetary (*i.e.,* permanent injunctive relief). Accordingly, the automatic stay associated with posting a supersedeas bond under § 9.310(b)(1), and consequently the cap permitted under §45.045(1), should not apply. *Florida Coast Bank of Pompano Beach v. Mayes*, 433 So.2d 1033, 1034 (Fla. 4th DCA 1983) (money judgment exception applies only to judgments wherein the only relief granted is for the payment of money).

In anticipation of the entry of a final judgment based on the verdicts, Gawker Defendants' anticipated motions for stay and/or to reduce the required bond, and in an effort to determine whether the net worth stipulation entered into at trial was the product of misrepresentations or omissions, Mr. Bollea seeks leave of Court to conduct expedited financial discovery, including fact information sheets for each defendant under Rule 1.560(b) and Form 1.977, *Fla. R. Civ. P.*, depositions of Gawker Defendants, interrogatories and requests for production, and the issuance of subpoenas duces tecum without deposition to third-parties. In essence, Mr. Bollea should be permitted to conduct discovery to determine whether any of Gawker Defendants' assets are being dissipated or diverted, and to establish facts relevant to the supersedeas bond.

Gawker Defendants' Anticipated Motion to Stay & Limit Amount of Supersedes Bond

Gawker Defendants have expressed their intention to appeal any final judgment entered in this case. In order to stay execution pending an appeal, Gawker Defendants each must post supersedeas bonds. Under § 9.310(a), *Fla. R. App. P.*, a party seeking a stay must file a motion and a stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both. Rule 9.310(b)(1) provides for an "automatic" stay for judgments solely for the payment of money, when a bond equal to the principal amount of the judgment plus twice the statutory rate of interest is posted. Under section 45.045, *Fla. Stat.*, the amount of a supersedeas bond necessary to obtain the "automatic" stay of execution is capped at $50 million **for each appellant**, as adjusted annually to reflect changes in the Consumer Price Index compiled by the U.S. Department of Labor. Pursuant to § 45.045(2), *Florida Statutes*, Gawker Defendants may seek a reduction in the amount of the bond required to obtain a stay.

Mr. Bollea will oppose any motion by Gawker Defendants to reduce the supersedeas bond, seek a bond lower than the amount specified in 9.310(b)(1) and/or cap the bond. Moreover, Mr. Bollea will request, consistent with § 45.045(1), *Fla. Stat.*, that **each** of the Gawker Defendants be required to post a $50 million bond (as adjusted) in order to stay execution.

"The guiding principle in setting a supersedeas bond is to protect the party in whose favor judgment was entered by assuring its payment in the event the judgment is affirmed on appeal." *Pabian v. Pabian*, 469 So.2d 189, 191 (Fla. 4th DCA 1985) (citing *Knipe v. Knipe*, 290 So.2d 271 (Fla 2d DCA 1974)). "To this end, the proper amount and conditions of the supersedeas bond are determined by the facts of the particular case." *Id.* (citing *Kahn v. American Surety Co. of New York*, 162 So. 335 (Fla. 1953). In ruling on a stay motion, the trial court should consider the likelihood of success on appeal and the potential harms involved in granting on denying a stay. *Sunbeam Television Corp. v. Clear Channel Metroplex, Inc.*, 117 So.3d 772 (Fla. 3d DCA 2012). The trial court also has "considerable latitude" in determining stay conditions, which should be tailored to protect the appellee while the appeal is pending. *Id.*; *Pabian*, 469 So.2d 189, 191; *Lawson v. County Board of Public Instruction*, 154 So. 170 (Fla. 1934).

Here, as set forth in Mr. Bollea's Motion to Strike Gawker Defendants' Motion for New Trial (filed May 2, 2016), and for the reasons that will be set forth in his Oppositions to Gawker Defendants' post-trial motions, Gawker Defendants' likelihood of success on appeal is minimal. The potential harm to Mr. Bollea if execution is stayed is considerable, particularly if Gawker Defendants are permitted to post a reduced bond to stay execution. Prior to the supersedeas bond amount being set, Mr. Bollea should be permitted to conduct financial discovery in advance to

establish Gawker Defendants' financial resources and to verify whether their assets are being diverted or dissipated.

Plaintiff's Entitlement to Discovery Under Section 45.045, Florida Statutes

When an appellant posts a supersedeas bond for an amount less than that which would be required for an automatic stay pursuant to Rule 9.310(b)(i), *Fla. R. App. P.* (the full amount of the judgment plus twice the statutory rate of interest), the appellee is entitled to engage in discovery to determine whether the appellant has dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so. *See* § 45.045(3), *Fla. Stat.*; *BDO Seidman, LLP v. Banco Espirito Santo Int., Ltd.*, 26 So.3d 1 (Fla. 3d DCA 2009).

In order to take advantage of the reduced supersedeas bond permitted under § 45.045, Gawker Defendants must permit Mr. Bollea to conduct discovery to determine whether their assets are being dissipated or diverted. The risk of dissipation or diversion of assets is a great concern to Mr. Bollea in this case—Nick Denton's largest asset consists of stock in GMGI (a Cayman Islands company), and Gawker has a history of sending profits overseas to its sister company, Kinja, as an alleged "royalty" payment used to shelter Gawker's profits. These facts are explained in greater detail in Mr. Bollea's Request for Ruling on Claim of Privilege Associated with Transfer Pricing Study, served contemporaneously herewith.

In addition to the risk of dissipation or diversion, shortly before trial an "investor," Columbus Nova (formally, "US VC Partners LP"), was reported to have acquired a minority stake in GMGI. *See* Ex. A (New York Times article). Subsequent discovery has shown that

[redacted]

Moreover, and having apparently concluded the above-described acquisition by Columbus Nova, Gawker also entered negotiations with Univision over the potential acquisition of an interest in various of the properties owned by the company—a representative of the company confirmed to the New York post that it has been in "discussions" about the creation or licensing of "Spanish-language versions of lifestyle sites Gizmodo and Lifehacker," two websites that Gawker operates under license from Kinja. *See* Ex. B (New York Post article). Gawker Defendants may be entertaining offers from other potential investors or lenders as well.

Plaintiff's Entitlement to Discovery Into Representations Inducing Net Worth Stipulation

During the trial, and despite only limited amounts of the above information being available to him at the time, Mr. Bollea entered into a stipulation with Gawker Defendants regarding the latter's net worth. That stipulation was entered into "**solely for the purposes of the punitive damages phase of the trial** and for no other purpose" (emphasis in original). Ex. C (Stipulation). Aside from the facts pertaining to Univision and Columbus Nova, the Stipulation was reached before Mr. Bollea was able to review any documents from Denton's family members in the United Kingdom that provided the details for the substantial holding in GMGI that Denton's family has. As such, the Stipulation was based upon representations Denton made in this case that he had no interest in or control over his family trust.

In contrast, Mr. Denton's interest in and control over his family trust appears to be greater than he claims. [redacted] Therefore, as demonstrated in Plaintiff's October 2015 Motion (incorporated herein by reference), not only does Denton own a plurality of the shares in GMGI, if his shares are added to those purportedly owned by his family through Gawker Media Ltd.,[5] he owns a majority.

Denton's family's ownership of the GMGI shares is reflected in the publicly filed accounts for Gawker Media Ltd, the UK-based company that holds the GMGI shares for Denton's Family.[6] *See*, Ex. D (Gawker Media Limited Accounts). Gawker Media Ltd appears to have acquired those shares from [redacted]

Denton's family documents were only made available to Mr. Bollea after significant litigation in this Court and the Second DCA. Mr. Bollea first tried to obtain these documents through discovery in the instant action from Denton, but documents were withheld; instead Denton provided affidavits which went no further to clarify any of the above. Ex. 7_C (Affidavit of Nick Denton, July 30, 2015).[7]

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[5] Gawker Media, Ltd. is a UK corporation; which appears to be a holding company operated from the home of Denton's family members.

[6] As of March 4, 2016, **just as the trial in this case commenced**, Gawker Media Limited changed it's named to "Greenmount Creek Limited". Ex. E (Formal Change of Name). For the purposes of consistency herein, Plaintiff has continued to use Gawker Media Limited.

[7] For completeness, Mr. Bollea has also attached as Ex. 10_C the only other affidavit provided by Denton that pertains to net worth.

On Mr. Bollea's motion, this Court issued its Letter of Request on February 1, 2016. That Letter mandated the production of various documents necessary to determine the level of control Denton has over GMGI through Gawker Media, Ltd and enabled Mr. Bollea to ultimately obtained some documents directly from Denton's family members in the UK. However, these documents were purposely withheld until after the trial concluded (and only then upon threats by Mr. Bollea to move for sanctions).

Although this production still appears incomplete, as outlined above, the documents that were produced demonstrate that Denton was not being candid when he denied any involvement in his family trust. (*See* Ex. 4; November 12, 2015 Opposition to Second Motion to Compel). These documents also demonstrate that ownership of a portion of Mr. Denton's shares did not transfer in the manner he originally claimed.

In addition to the majority share ownership, Denton also has the potential to control the board of GMGI. [redacted]

The secrecy surrounding and the timing of Gawker's corporate restructuring and the transfer of shares to Denton's family members raises concerns when considered within the context of Gawker's transfers of profits overseas to avoid U.S. taxes. Gawker concedes that it is using Kinja as a tax shelter. *See*, Ex. F. ("How Much is All this Offshore Tax Dodging Costing

Us") This relationship appears to have been orchestrated by John Duncan, a lawyer specializing in corporate governance and taxation, who also was involved in the creation of Gawker Media, Ltd. *See,* Ex. G (Incorporation documents for Gawker Media Ltd.)

As more specifically set forth in Mr. Bollea's request for ruling on the claim of privilege over the Transfer Pricing Study, Gawker is using Kinja to hide its assets and profits overseas. The transfer of shares to his family members through a shell UK corporation appears to be more of the same.

Thus, it appears that Gawker's and Denton's net worth are greater than originally believed based upon the select information they chose to disclose during discovery. In fact, Denton recently stated in a post-trial interview that the $125 million damage award against him only leaves him feeling "a little bit poorer than I did before." *See*, Ex. H (Transcript of CNBC March 23, 2016 interview). During the same interview, Denton assured that Gawker can "absolutely" stay in business despite the verdict in this case. *Id.*

Plaintiff's Entitlement to Discovery In Aid Of Execution

Ordinarily, discovery in aid of execution is not appropriate until after a judgment has been entered and become final. The rationale for this delay is the general proposition that discovery into parties' finances is ordinarily not permitted. *Capco Properties, LLC v. Monterey Gardens of Pinecrest Condo*, 982 So.2d 1211, 1214 (Fla. 3d DCA 2008).

However, Mr. Bollea has already conducted discovery concerning Gawker Defendants net worth for the purposes of punitive damages. Their net worth and finances were also publicly disclosed during the course of the trial, and in recent news publications.

Consequently, there are no privacy concerns and Mr. Bollea should be permitted to commence discovery in aid of execution.

Plaintiff's Entitlement to Discovery from Third-Parties

Given the facts and events described above, Mr. Bollea should be permitted to obtain discovery from Gawker Defendants and following third-parties to uncover documents and information associated with Gawker Defendants' true financial worth:

1. Kinja
2. GMGI
3. Columbus Nova
4. Univision
5. Citrin Cooperman & Company, LLC (accountants)
6. Silicon Valley Bank (banking institution and lender)

Relevance is the "polestar" in a discovery request. *2245 Venetian Court Building 4, Inc. v. Harrison*, 149 So.3d 1176, 1179 (Fla. 2d DCA 2014). In post-judgment discovery, the matters relevant for discovery are those that will enable the judgment creditor to collect the debt. *Id.* This means that the creditor has the right to discover any assets the debtor might have that could be subject to levy or execution to satisfy the judgment, or assets that the debtor might have recently transferred. *Id.*

A non-party may be subject to post-judgment discovery where the judgment creditor can provide a good reason and close link between the non-party and judgment debtor. *Id.* Judgment creditors are allowed broad discovery, even if the discovery concerns property jointly owned with others. *Id.* Discovery from third-party lenders is also proper when a proper predicate has been laid. *General Elec. Capital Corp. v. Nunziata*, 124 So.3d 940, 943 (Fla. 2d DCA 2013).

Here, there is "good reason and close link" between Gawker Defendants and the third-parties from which Mr. Bollea wishes to seek discovery, and a proper predicate has been laid to demonstrate why Mr. Bollea is entitled to discovery from them regarding Gawker's assets.

DATED: May 9, 2016.

/s/ Kenneth G. Turkel

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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 9th day of May, 2016 to the following:

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