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*Pro Se Plaintiff*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MICHAEL E. SPREADBURY	) Cause No: cv-11-64-DWM-JCL
Plaintiff	)
v.	) <b>BRIEF IN SUPPORT</b>
BITTERROOT PUBLIC LIBRARY,	) <b>OF OPPOSITION TO</b>
CITY OF HAMILTON,	) <b>DEFENDANT LEE</b>
LEE ENTERPRISES, INC.,	) <b>SUMMARY JUDGMENT</b>
BOONE KARLBERG, PC,	)
_____	)

Comes now Spreadbury with brief in support of motion, affidavit to dismiss summary judgment Defendant Lee Enterprises PC (hereafter "Lee ") in the aforementioned.

Brief in Support

Defendant Lee Enterprises pleads for summary judgment before this court.

Lee Defense Counsel Jeffrey B. Smith presents a foundational affidavit, list of uncontroverted facts and motion for summary judgment filed on or around September 28, 2011 before this court.

Plaintiff Spreadbury files motion in opposition, affidavit, this brief in opposition to summary judgment, leave file motion for sanctions against Defense on this date.

Defense Counsel Smith's foundational affidavit contains several alleged false statements, representations which are addressed specifically in Plaintiff affidavit in re: discovery article, defense pleadings of October 6, 2011. Spreadbury seeks prosecution or suitable sanction for the false swearing by Lee Counsel of record Jeffrey B. Smith *esq. American Communications Assn. v. Douds 339 US 382 (1958)*. Spreadbury believes sufficient evidence supporting the claimed factual dispute is contained in Spreadbury Affidavit of October 6, 2011 *First Nat'l Bank of Ariz v. Cities Service Co. 391 US 253 (1968)*. With this allegation, Spreadbury interjects sufficient issue of material fact to preclude summary judgment for Defendant Lee *ibid*.

In Defendant Lee statement of undisputed material facts, #5 served on this court September 28, 2011 Lee alleges Defendant Public Library owns private property; is public property owned by the City of Hamilton, Montana. Spreadbury pled in TR. # 87 (Objection to Findings & Recommendations) that Bitterroot Public

Library is public property using well established original platt map of Hamilton, Montana 59840USA.

Defendant Lee in #10 of the uncontroverted facts allege verbally abusive behavior July 9, 2009 which has no authentication other then republished malice by Lee, Boone Defense counsel in non-privileged communication to this court *Canada v. Blain's Helicopters Inc. F. 2d 920 925 (9<sup>th</sup> Cir., 1987), Montana Code Ann. MCA§ 27-1-804(3)*. Defendant Lee has not established via affidavit or other authenticated means the alleged misconduct, and threats alleged in Defense pleadings in this matter *ibid at 925*.

A major portion of Defendant Lee Brief was the misapplication of the Communications Decency Act (CDA) 47 USC§ 230(c) *et. seq.* Spreadbury plead 9 elements of fraud citing *Sprunk v. First Bank W. Missoula 288 Mont at 174 (1987)* within TR. # 93 and will not be re-addressed here. Defendant Lee relies heavily on *Cox v. Lee Enterprises* which is a simple state defamation case, affirming respondent Lee due to court privilege under Montana Code Ann. MCA§ 27-1-804(4); however the aforementioned deals with peaceful assembly on public property, third party comments from a newspaper publisher such as Defendant Lee; not protected by 47 USC§ 230 *et. seq.* the Communications Decency Act, or court privilege under Montana Code Ann MCA§ 27-1-804 *et. seq.* A motion for summary judgment claiming false statutory protection falls short of FRCP 56

standard due to issues of material fact remaining, and unauthenticated facts regarding third party defamatory online comments published by Defendant Lee *Canada at 925, citing US v. Dibble 429 F.2d 598 601-602 (9<sup>th</sup> Cir. 1970).*

Publishers of newspapers such as Defendant Lee, are found liable for “...publishing or distributing obscene or defamatory material written by others.” *Batzel v. Smith F. 3d at 1026 (9<sup>th</sup> Cir. 2003).*

Defendant Lee is not an internet service provider such as American Online (AOL) and therefore is not immune to defamation liability when third party comments are published within print media or online assets of Defendant Lee *Batzel*. Defendant Lee misleads the court citing *Carafano v. Metroflash 339 F. 3d 1119 (9<sup>th</sup> cir., 2003)* due to the case revolving around an internet service provider, AOL which is a separate class from Newspaper publisher such as Defendant Lee.

Specific issue of fact as to published defamatory per se comments arise from the August 9, 2010 article imputing conviction of Disturbing the Peace which Spreadbury was never charged, or convicted. Subsequent failed attempt at correction by Defendant Lee brings punitive liability, material fact in case. Issue of August 9, 2010 Lee article addressed with specifics in Spreadbury affidavit of October 6, 2011 served upon this honorable court.

These issues of material fact preclude finding of summary judgment for Lee.

Honorable court is directed to Spreadbury affidavit, leave file motion for sanctions for misconduct of Defense counsel Jeffrey B. Smith on alleged perjury on several matters and omissions within his September 27, 2011 foundational affidavit served upon this court. Motion in opposition to Summary Judgment filed in support October 6, 2011 by Spreadbury. Court is urged to oppose, reject, and dismiss Defendant Lee motion for summary judgment before this court as issues of material fact remain which preclude the grantor of summary judgment to Defendant Lee per FRCP 56.

Certificate of Compliance

From LR 7(d)(2)(E) US District Court Rules Montana, I certify that this brief conforms with 14 point font, New Times Roman typeface, is double spaced, contains 781 words excluding title page, this compliance.

Respectfully submitted this 6<sup>th</sup> day of October, 2011

BY: \_\_\_\_\_

Michael E. Spreadbury, Self Represented Plaintiff