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Attorneys for City and Library Defendants

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

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY, CITY OF HAMILTON, LEE ENTERPRISES, INC., BOONE KARLBERG P.C., DR. ROBERT BROPHY, TRISTA SMITH, NANSU RODDY, JERRY STEELE, STEVE SNAVELY, STEVEN BRUNER-MURPHY, RYAN OSTER, KENNETH S. BELL, and JENNIFER LINT,

Defendants.

Cause No. CV-11-064-M-DWM-JCL

CITY AND LIBRARY DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO DEFER SUMMARY JUDGMENT MOTIONS

INTRODUCTION

On behalf of the City and Library Defendants, this opposes Plaintiff's motion, dated November 23, 2011, seeking to defer a consideration of the summary judgment motions of the City and Library Defendants. [Doc. 168.] Plaintiff's motion should be denied. He has not satisfied the proof requirements to defer a summary judgment determination. [Docs. 168 and 169.]

DISCUSSION

On November 17, 2011, the City and Library Defendants filed their motions for summary judgment on Plaintiff's claims against them. In response, on November 21, 2011, Plaintiff served Requests for Admissions, Requests for Production and Interrogatories on the Library and the City. Boone Karlberg P.C. has filed a motion for protective order concerning discovery separately served on it. [Docs. 191 and 192.]

Rule 56(d), Mont. R. Civ. P., reads as follows:

> (d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
>
> (1) defer considering the motion or deny it;
> (2) allow time to obtain affidavits or declarations or to take discovery; or
> (3) issue any other appropriate order.

Motions to defer a consideration of a summary judgment motion fall within the Court's discretion. *Qualls v. Blue Cross of California, Inc.*, 22 F.3d 839, 844 (9th Cir. 1994). However, the procedural rule does not apply automatically. Instead, certain proof requirements must be satisfied. Rule 56(d), Fed. R. Civ. P.; *Price ex rel. Price v. Western Resources, Inc.*, 232 F.3d 779, 783 (9th Cir. 2000). Specifically, Plaintiff has the burden of demonstrating that specific facts sought by him exist and why those facts preclude a summary judgment in favor of the Defendants. *Price, id.*; *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100-01 (9th Cir. 2006); *Nidds, supra.*

Here, Plaintiff's Affidavit, dated November 22, 2011, does not satisfy his burden of proof. Plaintiff has not demonstrated which specific facts exist and how they would preclude a summary judgment in favor of the City and Library Defendants. Therefore, his motion to defer the summary judgment motion should be denied.

CONCLUSION

Plaintiff's motion to defer the determinations of summary judgment motions should be denied. Plaintiff has not satisfied the necessary proof requirements.

DATED this 1st day of December, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for City and Library Defendants

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 376 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 1st day of December, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for City and Library Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of December, 2011, a copy of the foregoing document was served on the following persons by the following means:

__1____ CM/ECF

_____ Hand Delivery

__2____ Mail

_____ Overnight Delivery Service

_____ Fax

_____ E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
   700 South Fourth Street
   Hamilton, MT 59840

/s/ William L. Crowley
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