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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., and BOONE  
KARLBERG P.C.,

Defendants.

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

DEFENDANT LEE ENTERPRISES,  
INC.'S OBJECTION IN PART  
TO MAGISTRATE'S FINDINGS  
AND RECOMMENDATIONS RE:  
MOTION FOR SUMMARY  
JUDGMENT ON REMAINING  
COUNTS

Defendant, Lee Enterprises, Inc. ("Lee Enterprises" or "Lee"), through its counsel, Garlington, Lohn & Robinson, PLLP, respectfully submits its objection, in part, to the Magistrate's Findings and Recommendations regarding Lee Enterprises' Motion for Summary Judgment (Dkt. 181).

## I. BACKGROUND

The Findings and Recommendations set out the relevant procedural history. Briefly, Spreadbury sued numerous defendants, including Lee Enterprises. Lee moved to dismiss all claims against it. The Court dismissed the claims, except for those based on comments posted by readers on Lee Enterprises' internet website in connection with its September 10, 2009, news article about Spreadbury, including defamation, negligence, tortious interference with prospective economic advantage, negligent and intentional infliction of emotional distress, punitive damages and injunctive relief.

Spreadbury then filed a second amended complaint adding similar claims related to a news article dated August 9, 2010.

Lee Enterprises moved for summary judgment on all remaining claims relating to both (1) the online comments posted in response to the September 10, 2009 article and (2) the August 9, 2010 article.

In the Findings and Recommendations, the Magistrate found that Spreadbury was not a public figure and, on that basis, recommended denying summary judgment on Spreadbury's action for defamation per se, negligence, tortious interference with prospective economic advantage and punitive damages, but only to the extent those claims are predicated on the 8/9/10 news article that mistakenly described Spreadbury's criminal charge as disturbing the peace rather than criminal trespass. The Findings and Recommendations recommend granting

summary judgment on all other claims.

Lee Enterprises objects to the Magistrate's factual finding that Spreadbury is not a public figure, and objects to the recommendation to deny summary judgment on these remaining claims.

## II. FACTUAL FINDINGS TO WHICH LEE OBJECTS

The Magistrate incorrectly determined Spreadbury was not a public figure, simply because he had already lost the election for Mayor of Hamilton prior to publication of the 8/9/10 article. The Findings state:

Here, although Spreadbury had been a candidate for mayor in the City of Hamilton, his candidacy ended in November, 2009, upon his defeat in the election. Thus, at the time of Lee Enterprises' August 9, 2010 article Spreadbury was a private figure, and Lee Enterprises does not argue to the contrary.

(Dkt. 181:28). However, Lee Enterprises did argue that Spreadbury was a limited public figure who voluntarily injected himself into his own public controversy.

(Dkt. 126:7).

Spreadbury has deliberately and voluntarily provoked and continued a public controversy with himself at its center, with his relentless campaign against the local public library and its staff, local government, and various other individuals in public service. His campaign began as early as May 2009, when Spreadbury demanded a letter be placed on reserve at the Bitterroot Public Library (the "Library") to be available to the public. The letter alleged corruption by local

officials and was addressed to President Obama. (Dkt. 152, Exs. A- B). Librarian, Nansu Roddy (“Roddy”) declined to add the letter to the Library’s collection, telling Spreadbury the Library was not a depository for personal letters. (Dkt. 110 at ¶¶ 1-3). Spreadbury said it was not a private letter, that the police and judges in Ravalli County are corrupt and have ruined his life, and that he would be present at the next Library Board meeting to address his issues. (Dkt. 152, Ex. A).

Spreadbury also tried to have his letter put on reserve at the North Valley Library in Stevensville, Montana, with similar results. (Dkt. 152, Ex. C). Spreadbury wrote to the directors of both libraries arguing the letter was a matter of public concern. He stated “[t]he subject matter [of the letter] is justice within Ravalli County and Montana; it meets a public informational need.” (Dkt. 152, Ex. D. at ¶ 2). Spreadbury further explains “[i]n this case, it is a critical and emergent situation to civil rights, justice, and general public safety. . . I think the public has a right to know about these crimes, and the efforts of concerned citizens; this includes the letter to the President of the United States from March, 2009.” (Dkt. 152, Ex. D. at ¶¶ 3-4).

Spreadbury clearly intended to make this a public controversy and to interject himself into it in order to affect the resolution. On June 11, 2009, after Spreadbury confronted another Library staff person, his disruptive behavior was reported to law enforcement. (Dkt. 152, Exs. G - K - some exhibits filed under seal). Eventually, Spreadbury was banned from the Library. (Dkt. 110 at ¶ 4).

Spreadbury reacted by complaining to City Hall. Spreadbury reported to Police Officer Jake Auch that he had received a letter banning him from the Library and he wanted it to be filed as a false report. Office Auch told Spreadbury that he would investigate. (Dkt. 152, Exs. M, N - some exhibits filed under seal).

Spreadbury defied the ban and returned to the Library, and was charged with criminal trespass as a result. (Dkt. 110 at ¶¶ 5-6). He was also charged with felony intimidation after accosting Roddy outside the Library. Roddy obtained an Order of Protection against Spreadbury, which Spreadbury appealed. (Dkt. 110 at ¶¶ 19-20).

Spreadbury escalated the matter with further written demands to the Library, as well as new allegations. In an email to Library Board member Ellyn Jones, he alleged he had been banned from the Library after telling the Library Director that he intended to publicize information which would get her fired. Spreadbury also accused the Director of committing a crime by giving information to the Hamilton Police Department. He made it clear he intended to make his issues into a public controversy, attaching a copy of his internet web page which he claimed “got 500 hits a week,” and on which he could inform people about his allegations about the Library. (Dkt. 152, Ex. Q).

At the same time, Spreadbury expanded his campaign, taking on the local newspaper, the *Ravalli Republic*. Multiple heated confrontations by Spreadbury with employees at the *Ravalli Republic*'s office in Hamilton resulted in a call to the

police, and Spreadbury was banned from the newspaper's place of business. (Dkt. 152, Exs. K, S, T, U - some exhibits filed under seal).

Spreadbury did all he could to keep his complaint in the public eye. On August 25, 2009, he wrote to the Library Board alleging Library employees were involved in a criminal relationship with the police. (Dkt. 152, Ex. BB). On the same day, Spreadbury posted on the public website, "Bitterroot Rising," that the Library Director was violating the law and the Library was working with the Hamilton Police to commit crimes and to violate civil rights. He claimed that embezzlement was occurring at the Library, which would soon be made known to the public in a documentary due out in September. (Dkt. 152, Ex. CC).

On September 10, 2009, the *Ravalli Republic* published a news article reporting the criminal trespass charge brought against Spreadbury. (Dkt. 110 at ¶¶ 11). The article was posted on the online version of the newspaper. (Dkt. 110 at ¶¶ 13-14). A number of on-line readers posted comments on the article, demonstrating that Spreadbury had succeeded in making his battle with the Library a matter of public interest. (Dkt. 110 at ¶¶ 15-16).

Both the *Ravalli Republic* and the *Missoulian* published news articles reporting the felony intimidation charges brought against Spreadbury, based on official Ravalli County Court documents. (Dkt. 110 at ¶¶ 20-21).

Spreadbury lost his bid for Mayor in November 2009, but he kept himself in the news with public appearances numerous court filings in which he repeated his

issues and allegations regarding the Library. In February, 2010, he was found guilty of criminal trespass by a jury. (Dkt. 110 at ¶ 22). He appealed the conviction. (Dkt. 110 at ¶ 22).

On April 20, 2010, Spreadbury issued a written statement to the public alleging misconduct by City Attorney Ken Bell at a public hearing on the Order of Protection. The statement concluded with a threat: “Get Ready for a constant pummeling in the courts. The hunters will become the hunted. Destroying the lives for ego is pricey on budgets.” (Dkt. 152, Ex. KK).

In May 2010, Spreadbury filed separate lawsuits against Librarian Roddy, attorneys Angela Wetzsteon and George Corn, employees of Ravalli County, and Kenneth Bell, Hamilton City Attorney. (Dkt. 110 at ¶ 24). A public hearing on Defendants’ motions for summary judgment was held on August 6, 2010. (Dkt. 110 at ¶ 25). On the same day, a pretrial conference for Spreadbury’s appeal of his conviction for criminal trespass was held in the Ravalli courthouse. (Dkt 110 at ¶ 29).

On August 9, 2010, the *Ravalli Republic* reported on the August 6 proceedings. (Dkt. 110 at ¶ 30.) The article mistakenly stated that Spreadbury had been charged with disturbing the peace, rather than criminal trespass. On August 24, 2010, after being notified of the error by Spreadbury, the *Ravalli Republic* published a correction to the August 9, 2010 article. (Dkt. 110 at ¶ 34).

Spreadbury has continued to maintain his locally public profile with multiple

court actions against individuals, businesses and government entities of Ravalli County. Running for Mayor of Hamilton was only a small part of Spreadbury's local notoriety. Losing the election did nothing to dampen his efforts to remain in the public eye with his allegations of conspiracy and injustice, and to affect the resolution of the controversies he created. Spreadbury was a limited public figure and the Magistrate's finding that he was a private figure is in error.

### III. RECOMMENDATIONS TO WHICH LEE OBJECTS

Lee Enterprises objects to the recommendation that summary judgment be denied with respect to Spreadbury's claims of defamation per se, negligence, tortious interference, and punitive damages, arising from the error in the 8/9/10 article.

#### A. Defamation Per Se

The recommendation to deny summary judgment on defamation per se is based on the erroneous finding that Spreadbury is a private figure. Instead, summary judgment should be granted because, on the undisputed facts, Spreadbury was a limited public figure concerning his self-created and self-perpetuated controversy, and Lee Enterprises did not act with actual malice in publishing the 8/9/10 article.

##### *1. Spreadbury is a Limited Public Figure.*

Montana Code Annotated § 27-1-802 (2011) defines libel:

Libel is a false and unprivileged publication by writing,



printing, picture, effigy, or other fixed representation that exposes any person to hatred, contempt, ridicule, or obloquy or causes a person to be shunned or avoided or that has a tendency to injure a person in the person's occupation.

When a plaintiff is a public figure, the plaintiff can only recover damages if the alleged defamatory statement was made with actual malice. *Williams v. Pasma*, 202 Mont. 66, 72, 656 P.2d 212, 215 (1982), (citing *N. Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964)); *Madison v. Yunker*, 180 Mont. 54, 67, 589 P.2d 126, 133 (1978).

Public figures in this context are divided into two subcategories: public figures for all purposes and public figures for a limited purpose. All purpose public figures have achieved such pervasive fame and notoriety that they become public figures for all purposes and in all contexts. On the other hand, limited purpose public figures have voluntarily injected themselves into a particular public controversy and, thereby, become public figures for that limited range of issues. *Kurth v. Great Falls Tribune Co.*, 246 Mont. 407, 408, 804 P.2d 393, 394 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)). In either case, public figure plaintiffs must show the alleged defamatory statement was made with actual malice, meaning it was published “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Kurth*, 804 P. 2d at 394 (citing *N. Y. Times*, 376 U.S. at 280.)

The rationale for the malice requirement with regard to public figures is two-

fold. First, public figures are less vulnerable to injury from defamatory statements because of their ability to resort to effective self-help. “They usually enjoy significantly greater access than private individuals to channels of effective communication, which enable them through discussion to counter criticism and expose the falsehood and fallacies of defamatory statements.” *Wolston v. Reader’s Digest Assn., Inc.*, 443 U.S. 157, 164 (1979) (citing *Gertz*, 418 U.S. at 344). Spreadbury clearly has had access to such channels of communication, and has used them, including the internet, letters, writings and public statements.

The second rationale for requiring a malice standard is that public figures are deemed less deserving of protection than private persons because they have “voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them.” *Wolston*, 443 U.S. at 164 (citing *Gertz*, 418 U.S. at 345). This particularly applies to Spreadbury, who cannot claim he should be treated as a private person to whom something just happened, when he “voluntarily exposed himself to an increased risk of injury from defamatory falsehoods . . .” by creating the controversy and relentlessly keeping it in the public eye.

The Supreme Court in *Gertz* identified two ways in which a person may become a public figure for purposes of the First Amendment:

For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as

public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.

*Gertz*, 418 U.S. at 345 (emphasis added). The focus is on the “nature and extent of an individual’s participation in the particular controversy giving rise to the defamation.” *Wolston*, 443 U.S. at 167 (citing *Gertz*, 418 U.S. at 352). A limited purpose public figure need only gain “local notoriety” with respect to the public controversy at issue. *Williams*, 656 P.2d at 216.

Spreadbury was certainly a public figure when he ran for Mayor of Hamilton in 2009. However, as the record demonstrates, he remained very much a local public figure at the time the 8/9/10 article was published, because he had voluntarily injected himself into the forefront of a public controversy – his very public and multi-pronged attack on the institutions of local government.

2. *Lee Enterprises Did Not Act With Malice.*

Summary judgment is appropriate because Spreadbury is a public figure plaintiff who has failed to establish actual malice in publishing the 8/9/10 article. *Williams*, 656 P.2d at 215. Lee Enterprises raised this argument in its briefing in support of its motion for summary judgment, noting Spreadbury had failed to establish malice. (Dkt. 126:7).

The Magistrate’s Findings and Recommendations correctly state “Spreadbury has failed to present any evidence on which a jury could conclude that Lee Enterprises published any of its news articles with malice – he has failed to

raise a genuine issue of material fact in that regard.” (Dkt. 181:9 at M. 3).

Accordingly, since Spreadbury is a limited public figure, and he has failed to present facts sufficient to show malice, Lee Enterprises is entitled to judgment as a matter of law on defamation per se.

B. Negligence

Spreadbury’s negligence claim cannot survive if Spreadbury is a limited public figure. The duty owed by Lee Enterprises to a limited public figure like Spreadbury is to avoid acting with actual malice. As noted in the Magistrate’s Findings and Recommendations, the Montana Supreme Court has held a negligence standard should apply *unless* the plaintiff is a public figure. (See Dkt. 181:27 (citing *Madison*, 589 P.2d at 132-133 (1978)). A finding that Spreadbury is a limited public figure with respect to his confrontation with the public Library necessitates summary judgment for Lee Enterprises on negligence.

C. Tortious Interference

The Magistrate’s finding that Spreadbury produced no evidence of malicious intent by Lee Enterprises warrants summary judgment on the claim of tortious interference with prospective economic advantage.

To establish a case of tortious interference with prospective business advantage, a plaintiff must show acts which: (1) were intentional and willful; (2) were calculated to cause damage to the plaintiff’s business; (3) were done with unlawful purpose of causing damages or loss, without right or justifiable cause on

the part of the actor; and (4) resulted in actual damages or loss. *Sebena v. Am. Automobile Assn.*, 280 Mont. 305, 309, 930 P.2d 51, 53 (1996) (emphasis added).

In a cause of action for intentional interference with prospective economic advantage “. . . the focus of the legal inquiry is on the intentional acts of the ‘malicious interloper’ in disrupting a business relationship.” *Maloney v. Home & Inv. Ctr., Inc.*, 2000 MT 34, ¶ 42, 298 Mont. 213, 994 P.2d 1124.

Intentional conduct for a malicious purpose is an essential element of a claim for tortious interference with prospective economic advantage. Montana does not recognize a tort of negligent interference. The definition itself excludes the possibility of liability for tortious interference based on negligence.

The first element of tortious interference is that the defendant’s conduct must be “intentional and willful.” The second and third elements also eliminate negligence as a cause: the defendant’s conduct must be calculated (i.e., intended) to damage plaintiff’s business, and must be done with the unlawful purpose (i.e., intent) of injuring the plaintiff. *Bolz v. Myers*, 200 Mont. 286, 295, 651 P.2d 606, 611 (1982). Unless the plaintiff can produce evidence that the defendant’s acts were calculated to cause damage to the plaintiff, a prima facie case of tortious interference fails as a matter of law. *Hughes v. Lynch*, 2007 MT 177, ¶ 29, 338 Mont. 214, 164 P.3d 913.

The Montana Supreme Court has endorsed the *Restatement (Second) of Torts*, which states a party is not liable for economic loss resulting from negligent

interference with contractual or business relations. *Restatement (Second) of Torts* § 766c (1979); *Bolz*, 651 P.2d at 610.

When the plaintiff fails to make a showing sufficient to establish the existence of any single element essential to his case, and on which he will bear the burden of proof at trial, summary judgment is the proper remedy. *Celotex, Corp. v. Catrett*, 477 U.S., 317, 323 (1986). In Montana, malicious intent to cause harm to the plaintiff is an essential element of a claim for tortious interference. Because there is no evidence of malice as a matter of law, summary judgment for Lee Enterprises on this claim is warranted.

#### D. Punitive Damages

As the Montana Supreme Court held in *Madison*, a plaintiff in a defamation suit may only recover punitive damages upon a showing of actual malice, and such malice does not mean hatred, personal spite, ill-will, or a desire to injure.

*Madison*, 589 P.2d at 133. The United States Supreme Court has held “that the States may not permit recovery of presumed or punitive damages, at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth.” *Gertz*, 418 U.S. at 349 (emphasis added).

Because Spreadbury has failed to establish actual malice as a matter of law, his claim for punitive damages must fail.

Moreover, since Spreadbury was a limited public figure, the defamation per se claim fails, and the derivative punitive damages claim must fail for want of a

viable theory of recovery. As noted in the Magistrate's Findings and Recommendations, the absence of an underlying cause of action resulting in an award of actual damages precludes Spreadbury's claim for punitive damages. See *Doll v. Major Muffler Ctrs., Inc.*, 208 Mont. 401, 414, 687 P.2d 48, 55 (1984); *Peterson v. Eichhorn*, 200 MT 250, ¶37, 344 Mont. 540, 189 P.3d 615.

Finally, because Lee Enterprises promptly corrected the alleged defamatory statement, Spreadbury is precluded from recovering punitive damages. Montana Code Annotated § 27-1-818 (2011) (emphasis added) states:

In order to claim punitive damages because of any defamatory publication in or broadcast on any newspaper, magazine, periodical, radio or television station, or cable television system, the defamed person shall first give those alleged to be responsible or liable for the publication or broadcast a reasonable opportunity to correct the defamatory matter. Such opportunity shall be given by notice in writing specifying the article or broadcast and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty.

Montana Code Annotated § 27-1-821 also provides that a timely correction constitutes a defense against the recovery of punitive damages.

Here, because there was no malice, and Lee Enterprises promptly issued a correction article on the front page of the publication that constitutes a defense to punitive damages, Lee Enterprises is entitled to judgment on the punitive damages claim as a matter of law.

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#### IV. CONCLUSION

The Supreme Court in *Celotex* emphasized that summary judgment is not to be disfavored but, rather, employed as an “integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Celotex*, 477 U.S. at 327 (citations omitted). Courts must construe Rule 56 with regard to the rights of both parties, including persons who oppose claims having no basis in fact. *Celotex*, 477 U.S. at 327.

Lee Enterprises is entitled to summary judgment on all remaining counts of Spreadbury’s Amended Complaint. While the Magistrate’s Findings and Recommendations correctly concluded Lee Enterprises is entitled to judgment on the majority of Spreadbury’s remaining counts, it erred in failing to find Spreadbury was a public figure. This resulted in an erroneous recommendation to deny summary judgment on the allegations of defamation per se and negligence. The finding that there is no evidence of malicious intent defeats the claims for tortious interference with prospective business advantage and punitive damages.

For all the reasons stated above, Lee Enterprises respectfully requests the Court grant its Motion for Summary Judgment on Remaining Counts in its entirety.

DATED this 30<sup>th</sup> day of January, 2012.

/s/ Jeffrey B. Smith  
Attorneys for Defendant, Lee Enterprises, Inc.



## CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 72.3(b), I certify that DEFENDANT LEE ENTERPRISES, INC.'S OBJECTION TO MAGISTRATE'S FINDINGS AND RECOMMENDATIONS RE: MOTION FOR SUMMARY JUDGMENT ON REMAINING COUNTS is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word 2007, is 3670 words long, excluding Caption, Certificate of Service, and Certificate of Compliance.

/s/ Jeffrey B. Smith  
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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2012, a copy of the foregoing document was served on the following persons by the following means:

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