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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 BRIEF IN RESPONSE TO  
PLAINTIFF'S 'OBJECTIONS TO  
COURT FINDINGS IN RE: DOC.  
# 210 LEE ENTERPRISES INC.  
SUMMARY JUDGMENT'

Defendant, Lee Enterprises, Inc. ("Lee Enterprises"), through its counsel, Garlington, Lohn & Robinson, PLLP, respectfully submits this Response Brief in Opposition to Plaintiff's 'Objection to Court Findings in Re: Doc. # 210 Lee Enterprises Inc. Summary Judgment' (Dkt. 215).

On November 30, 2011, the Magistrate entered Findings and

Recommendations regarding Lee Enterprises' Motion for Summary Judgment. Dkt. 181. On December 12, 2011, Plaintiff, Michael Spreadbury ("Spreadbury"), filed objection to the Magistrate's Findings and Recommendations. Dkt. 188. Prior to the deadline for Lee Enterprises to file its objections, this matter was stayed pursuant to 11 U.S.C. § 362, due to Lee Enterprises' bankruptcy. Accordingly, the District Court denied Lee Enterprises' motion for summary judgment, subject to renewal when the bankruptcy stay was lifted. Dkt. 193.

Lee Enterprises filed notice with the Court on January 30, 2012, that the bankruptcy stay was lifted as of that day. Dkt. 204. On January 31, 2012, Lee Enterprises properly moved to renew its summary judgment motion. Dkt. 206. On January 31, 2012, the day after the stay was lifted, Lee Enterprises filed its Objections, in part, to the Magistrate's Findings and Recommendations (Dkt. 207), and a Brief in Opposition to Spreadbury's Objections (Dkt. 209).

The Magistrate properly granted Lee Enterprises' motion to renew, so that the Court can decide the summary judgment issue. Dkt. 210. It is this decision to which Spreadbury's current pleading is directed.

Spreadbury's current objections do not, however, address the decision to renew. Rather, Spreadbury raises unrelated factual issues which he contends should defeat summary judgment. The Magistrate's Order did not invite an opportunity to further argue his Findings and Recommendations on the merits of

Summary Judgment. Spreadbury presented no argument against renewing the motion upon the lifting of the bankruptcy stay.

Upon the filing of bankruptcy, 11 U.S.C. § 362(a) imposed an automatic stay prohibiting continuation of actions against Lee Enterprises that began before the bankruptcy was filed. 11 U.S.C. § 362(a)(1),(3) (2010). Actions taken during the stay would be void. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). Lee Enterprises was, therefore, precluded from filing its Objections and Response Brief until the automatic stay was lifted, and the Court was, likewise, precluded from deciding the Motion for Summary Judgment, during that time.

Upon the lifting of the stay, the Magistrate properly granted Lee Enterprises' Motion to Renew, so that the case may continue. Spreadbury has not offered any reason why the Order and Findings and Recommendations are not proper.

Lee Enterprises respectfully requests the Court sustain the Magistrate's Order to renew its Motion for Summary Judgment, and reconsider the prior Findings and Recommendations, as well as the parties' objections and responses to objections.

DATED this 14th day of February, 2012.

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

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that this *Defendant Lee Enterprises, Inc.'s Response Brief in Opposition to Plaintiff's 'Objections to Court Findings In Re: Doc. # 210 Lee Enterprises Inc. Summary Judgment'* 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 462 words long, excluding Caption, Certificate of Service and Certificate of Compliance.

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

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2012, a copy of the foregoing document was served on the following persons by the following means:

  2   CM/ECF  
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