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CLERK, U.S. DISTRICT COURT  
DISTRICT OF MONTANA  
MISSOULA

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

MICHAEL SPREADBURY	)	Cause 9:11-cv-064-DWM-JCL
Plaintiff	)	
v.	)	
BITTERROOT PUBLIC LIBRARY,	)	<b>MOTION, BRIEF IN</b>
CITY OF HAMILTON,	)	<b>SUPPORT IN OPPOSITION</b>
LEE ENTERPRISES, INC.,	)	<b>TO LEE SERIAL</b>
BOONE KARLBERG, PC,	)	<b>SUMMARY JUDGMENT</b>
_____	)	

Comes now the Plaintiff with motion in opposition to Lee summary Judgment.

Motion:

Spreadbury moves court to reject Lee summary judgment due to genuine material fact remain, Lee publication in actual malice makes Spreadbury status irrelevant, Lee August 9, 2010 report on judicial hearing: Spreadbury is *only* private citizen.

Brief in Support:

Spreadbury serves concurrently with this motion, brief in support to reject Lee Summary Judgment 1) Statement of Disputed Facts (SODF) in opposition to Lee Summary Judgment; 2) Affidavit of Michael E. Spreadbury April 18, 2012 .

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Current, History of Lee misconduct in aforementioned:

Lee Enterprises, through its counsel has filed serial summary judgment in this case for the third (3<sup>rd</sup>) time in violation of this court's authority, in harassment of Court as Honorable Court makes order (Doc. #249) March 6, 2012 Spreadbury status as private or citizen *to be briefed or sent to jury*. Summary judgment filed before this court in violation of Rule 11 April 4, 2012. Judicial notice given that Spreadbury served motion April 12, 2012, to find Lee in contempt of March 6, 2012 Order (Doc. #249) and put Lee Enterprises in "safe harbor" April 12, 2012 for Rule 11 sanctions for the second time in this case.

Honorable Court reminded that Lee Counsel gave false sworn statement (Doc. #124) regarding true and accurate copy of the August 9, 2010 article with false conviction for Disturbing the peace absent; a false sworn statement to the court.

In Sworn statement dated April 4, 2012 executed by former Lee editor Perry Backus makes false and misleading statement about venue of court hearings, and pretext and irrelevant reasoning for Lee coverage of Spreadbury, misleading before this court. Court given notice that the "desire" for coverage by Lee does not preclude the controlling authority on this court with respect to journalistic report on a judicial hearing precluding public figure status *Time Inc. v. Firestone 424 US 448 (1976)*. Lee has abused discretion before this court to file serial motions for

summary judgment as material facts remain, actual malice standard established in August 9, 2010 reporting on a judicial hearing as Lee publication of false conviction of Spreadbury as presenter *Pierce v. Underwood 487 US 552 (1988)*.

Lee Argument fails that Spreadbury is public figure

It is well established in this Federal Circuit that a public figure "...can influence the resolution of public policy matters..." *Curtis Publishing v. Butts 388 US at 163-164 (1967)*. Spreadbury swears never to have any influence on the finalized public policy and has no ear of any public official more than any other private citizen (Affidavit of Michael E. Spreadbury April 18, 2012, #9; SODF #6).

Controlling authority to this court dictates that a report on a judicial hearing August 6, 2010 with Lee article August 9, 2010 rejects standard of publication meeting actual malice; Spreadbury private citizen as participant at judicial hearing *Time Inc. v. Firestone 424 US at 453 (1976)*; (affidavit of Michael Spreadbury #15). Further controlling authority to this court does not extend the *New York Times (1964)* standard to reports on court proceedings *Ibid at 455 citing Cox v. Cohn 420 US 469 (1975)*. As title of Lee August 9, 2010 article identify Spreadbury, judicial hearing, quote participants in hearing, no public figure status can attach to Spreadbury *Times Inc, Cox (SODF#35)*. More importantly, this federal circuit does not accept all public controversies and convert the litigants into

public figures; Spreadbury did not ask to be prosecuted by an unsupervised law student outside established rights, or published by Lee *Time Inc. at 454*, (Affidavit of Michael Spreadbury April 18, 2012 # 2, 3,11; (SODF 25,34,44).

Regardless of the implied intention, and false swearing of Lee as former editor sworn document April 4, 2012, Lee publishes report on judicial hearing, status for Spreadbury is private citizen, a material fact in the aforementioned *Time Inc, Cox*.

Actual Malice Standard met by Lee in August 9, 2010 article

The actual malice standard in *New York Times (1964)* is “knowledge of untrue facts, or a reckless disregard for the truth.” Lee’s fact checking, editorial control, and publisher oversight was not disclosed in discovery, material to a jury to decide actual malice (SODF# 27, 28,29, 30, 31, 34,37,39,40, 45); Affidavit of Michael Spreadbury April 18, 2012 #12,17. Lee choose to attack Spreadbury’s personal character with published comment, false conviction in August 9, 2010 article which attaches actual malice liability to Lee *New York Times v. Sullivan 376 US at 287 (1964)*. The *New York Times(1964) court* found liability for libel as “attacks of a personal character” made in Lee August 9, 2010 article, a material fact in the aforementioned (SODF # 19,20, 21, 27,30, 37,38,40,41,42,43, 44,45), *Ibid*.

Lee went well beyond a printed grievance against an alleged public figure; protected by the 1<sup>st</sup> Amendment in their report of a judicial hearing published

August 9, 2010 and would be convicted by a jury of negligence, actual malice, Emotional Distress, Tortious Interference, and Defamation, punitive damages for defamatory comments, *inter alia Times v. Sullivan 376 US 254 (1964); Affidavit of Michael Spreadbury April 18, 2012 #6,7,8,9,10,12,13,17.*

Liability standard: Emotional Distress in Supplemental Jurisdiction

This Honorable Court has supplemental jurisdiction over Emotional Distress claims by way of 28 USC§ 1367. This court has not followed the prima facie case in Montana as is required under supplemental jurisdiction of this court, a corresponding example of personal privacy deferred to state jurisdiction under *Saucier v. Katz 533 US 194 (2001)*. This honorable court is given notice that *Johnson v. Supersave Markets Inc. 686 P. 2d 209 Mont. (1984)* is the standard for Emotional Distress, and false conviction of crime published by Lee August 9, 2010 meets the *Johnson* standard for emotional distress due to falsely accusing Spreadbury of being *convicted* of a crime.

This court has discovered evidence of Spreadbury's full disability, possibly the most pronounced manifestation of emotional distress this honorable court might encounter. Notice is given that *Johnson* does not require a physical or psychological damage to establish claim, Lee's publication August 9, 2010

establishes a prima facie case, and this court would err to deny Spreadbury this property interest without due process of law *Paul v. Davis* 424 US 693 (1976).

Lee, in summary judgment motion has not removed material fact of emotional distress from false publication of conviction of crime with actual malice and associated liability to Spreadbury *Celotex v. Catrett* 477 US 317 (1986).

An element of negligence and duty to Spreadbury by Lee to not publish false conviction in August 9, 2010 article was breeched as no fact checking, edit, or publisher review caught false publication of conviction [Affidavit of Michael Spreadbury #17;(SODF # 19,21,24,26-30,35,38,39,42-45)]. Lee's negligence caused damage to Spreadbury is just as disturbing as that action caused by Lee intentionally; the relevance is the disability status of Spreadbury as a proximate cause *Johnson at 213*. Lee has met the criteria of reckless conduct under negligence to create a submissible issue to a jury on emotional distress from false conviction August 9, 2010 with these five damage elements to Spreadbury:

1. Damage to reputation
2. Social stigma from front page headline including Spreadbury's name
3. Shame and Embarrassment

4. Mental Anguish—severe due to continued defamation from failed correction attempt (Affidavit of Michael Spreadbury April 18, 2012 #12, 17; (SODF # 30,33,37, 45).
5. Damage to self-image severe as disability attaches to Spreadbury.

Lee has not Dispatched Joint Function with City

Lee Enterprises has not foreclosed the issue of joint function in depriving Spreadbury established right to liberty, act in defamation of his character July 9, 2009 as City, Lee expelled Spreadbury without due process *Adickes v. SH Kress Co. 398 US 144 (1970)*. Although Honorable Court has been very effective in deciding Spreadbury case does not have merit, burden is on Lee as jury would find in Spreadbury's favor with respect to joint function and deprivation of liberty *ibid*. Testimony of witnesses July 9, 2009 would determine no threat occurred, and Spreadbury's right to liberty to enter Lee business deprived.

Lee has not Dispatched public comments, omissions as Newspaper publisher

Spreadbury has been defamed by published comments by Defendant Lee, an admitted Newspaper Publisher (by court ordered discovery March 22, 2012) in the aforementioned. As Newspaper Publishers are precluded from protection from the Communications Decency Act 47 USC§230 et. seq. Lee has not foreclosed issue,



nor proven its case before this court, however this court has attempted to foreclose issue for Lee. It is the burden of the moving party in Rule 56 Summary Judgment to foreclose all material facts, Lee has not dispatched issue of online comments defamatory to Spreadbury *Adickes v. SH Kress Co. 398 US 144 (1970)*, *Batzel v. Smith 333 F. 3d 1018 (9<sup>th</sup> Cir., 2003)*.

As August 9, 2010 article is a report on judicial hearing and Lee is precluded from attaching public figure status to Spreadbury for presenting argument at hearing, online comment of August 9, 2010 not a fair grievance protected by free speech, but defamation per se as Spreadbury's mental health is targeted, and a personal attack on character which meets actual malice standard *Times v. Sullivan 396 US 254 (1964)*, *Time Inc. v. Firestone 424 US 448 (1976)*, *Batzel v. Smith 333 F. 3d 1018 (9<sup>th</sup> Cir., 2003)*.

A jury would convict Lee Enterprises for online comments defamatory to Spreadbury, in breach of duty to edit or limit comments; jury would find "...highly unreasonable conduct consisting of extreme departure from the standards of investigation and reporting ordinarily adhered to by reasonable publishers." *Curtis Publishing Co. v. Butz 388 US 130 (1967)*, *Gertz v. Robert Welch Inc 418 US 323 (1974)*. As Lee "caves in" to checking on facts in August 9, 2010 article, reasonable jury would find punitive damages for Spreadbury *Curtis*

*Publishing at 156.* The jury would find Lee proceeded with wanton and reckless indifference to Spreadbury *ibid.*

Jury is required to settle facts

Spreadbury does not have to show with convincing clarity actual malice, although actual malice is clearly shown by Lee in the aforementioned *Anderson v. Liberty Lobby Inc. 477 US 272 (1986)*. Lee failed to verify information or provide editor process to check facts to Spreadbury in discovery; shows actual malice, negligence and liability for defamation in aforementioned *Anderson at 246*.

Lee has failed to meet standard Rule 56(c) summary judgment due to material fact of non-public figure status, actual malice, and preclusion of public figure status in journalistic report of judicial hearing *Celotex Corp. v. Catrett 477 US 317 (1986)*.

As Lee publishes convictions, comments negating employment with FEMA, status of mental health, a reasonable conclusion Spreadbury had no convictions as national security clearance required for FEMA employment and jury would find in Spreadbury's favor *Anderson at 247* .

Lee fails to show all material facts in aforementioned are resolved, jury would find for Spreadbury regardless of public figure status; evidence of actual malice, requirement Spreadbury is private citizen, as Lee reports on judicial hearing in

August 9, 2010 article *Anderson at 248*, citing *First National Bank of AZ v. Cites Service Co. 391 US 253 (1968)* *Time Inc. v. Firestone 424 US 448 (1976)*.

### Conclusion

As Lee has failed to remove material fact to this case as to Spreadbury status presenting in oral argument, Lee reported article as judicial hearing, or removed all liability and instances of actual malice to Spreadbury, this court cannot find Lee has met a reasonable standard for summary judgment. The mere filing of serial summary judgment motions as this Honorable Court has asked for briefing, (not motions to dismiss) on Spreadbury's status is grounds for Rule 11 sanction, and finding in Contempt of court authority, as Spreadbury has previously moved court.

The methods of fact checking at Lee for the August 9, 2010 article were not disclosed in discovery requiring this court to allow a jury to determine actual malice and liability to Lee for its negligence, omissions, and duty to Spreadbury.

Several genuine facts that this Honorable Court has removed for Lee Enterprises include: published comments, joint function with Defendant City July 9, 2010 deprive Spreadbury liberty, property without due process. Lee has not sufficiently resolved all material facts in their April 4, 2012 summary judgment. A desire to cover what is considered "newsworthy" is pretext for the pathological coverage of Spreadbury by Lee, has no place in a court of law. Lawful controlling authority to

this court is Spreadbury's status as a private citizen while presenting at oral argument August 6, 2010 in judicial hearing, reported by Lee August 9, 2010.

As Lee's argument of "reasonable mistake" for publication of false conviction fails the New York Times 1964 standard for printed grievance against public figures, and fails to remove all genuine issues of material fact in the aforementioned. Lee is precluded from the grant of summary judgment for not removing all material facts as presented in the aforementioned.

Spreadbury thanks the court for allowing this analysis, and apologizes for Lee's harassment and serial pleadings before this court. As material fact remain, controlling authority constrain this Honorable court: findings of fact and conclusions of law require this court's denial of Lee Summary Judgment.

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 2257 words excluding title page, this compliance.

Respectfully submitted this 18<sup>th</sup> day of April, 2012

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

Michael E. Spreadbury, Self Represented Plaintiff.