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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 REPLY BRIEF IN SUPPORT
OF MOTIONS IN LIMINE

Defendant, Lee Enterprises, Inc. ("Lee" or "Lee Enterprises"), through its counsel, Garlington, Lohn & Robinson, PLLP, respectfully files its Reply Brief in Support of Its Motions in Limine.

I. INTRODUCTION

On April 11, 2012, Lee filed its Motions in Limine and Brief in Support (Dkt. 262, 263) to ensure the jury will only hear admissible evidence and to help clarify whether some of the evidence and argument that is still being raised by the Plaintiff Pro Se in his pleadings will not be permitted at trial under the Federal Rules of Civil Procedure. Spreadbury's responses in opposition reinforce the need for Lee's Motions.

II. ARGUMENT

MOTION NO. 1 – Portrayal of Lee Enterprises and Appeal to Local Bias

Lee seeks an Order to prevent any questioning, evidence, argument, innuendo, or reference to its size, assets, net worth or financial condition. The Motion also seeks to prohibit Spreadbury from making any argument referencing Lee's status as an out-of-state corporation or appealing to local bias.

Spreadbury responds that Lee "asks court to restrict Lee's corporate personhood. . . ." Dkt. 274 at 3. This is not true. The Motion does not ask the Court to prohibit Spreadbury from acknowledging that Lee is a corporation. However, its corporate status, size, wealth or headquarters is not relevant to any issues in the case and Spreadbury should not be permitted to appeal to potential bias.

MOTION NO. 2 – Failure to Call Witnesses

This Motion seeks to prohibit Spreadbury from making any argument or statement or question that Lee has failed to call any particular witness, whom the Plaintiff himself could have called. Spreadbury responds that the requested Motion “violates Federal Rules of Civil Procedure as to presenting a case, or commenting on opposing witnesses.” (Dkt. 274 at 3.) Spreadbury fails to cite to a particular rule which the motion allegedly violates. Arguing or suggesting that Lee could have called a witness and did not, when that witness was equally available to Spreadbury, would be irrelevant, and, even if relevant, the probative value would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, and undue waste of time. Fed. R. Evid. 401, 403.

MOTION NO. 3 – Conduct of Discovery

Motion No. 3 asks the Court to prohibit Spreadbury from arguing that Lee or its counsel objected to discovery requests or failed to provide any information to Spreadbury in discovery. In response, Spreadbury implies he does intend to raise such an argument. (Dkt. 274 at 3.) Spreadbury’s Motion to Compel discovery has been decided by the Court, and to the extent Spreadbury disagrees with the Court’s disposition, those objections are not properly presented by him to the jury. *See* Dkt. 254. Any such argument would be irrelevant and highly prejudicial. *See* Fed. R. Evid. 401, 403. The case law cited by Spreadbury does not support his objection.

MOTION NO. 4 – Golden Rule Argument

Lee moves that Spreadbury be prohibited from asking jurors to apply the “Golden Rule” by putting themselves or their loved ones in Plaintiff’s position and giving Plaintiff what they would want if they or their loved ones were similarly damaged, as this interferes with the jury’s objectivity. Spreadbury responds that this would be a violation of his freedom of speech, and “of federal procedure to allow fair, and free discourse and ability to make any argument supporting case.” (Dkt. 274 at 3.) Spreadbury cites no authority for his assertion that federal rules allow him to make any argument to the jury he wishes. The trial court is required to be the “gatekeeper,” allowing the jury to hear only admissible evidence, and evidence which is more likely to assist than to mislead. Fed. R. Evid. 104(a). Spreadbury’s first amendment rights are not implicated by Motion in Limine No. 4. The Golden Rule argument is recognized in Montana courts and others as being an improper interference with the jury’s objectivity.

MOTION NO. 5 – Exclusion of Comments on Pretrial Motions

Motion in Limine No. 5 is to prohibit any questions, comments, or references to any pretrial motions, including the foundational affidavit which was timely corrected (Dkt. 111) and Spreadbury’s contention that Defendants violated his right to privacy by obtaining his medical records. In response, Spreadbury argues this information is a material fact. (Dkt. 274.) He is mistaken. Spreadbury’s

disagreement with the Court's pretrial rulings is not appealable to the jury, nor are these pretrial arguments relevant to Spreadbury's remaining claims. Their only purpose would be to appeal to bias and prejudice.

MOTION NO. 6 – Plaintiff's Closing Argument

Motion No. 6 is to prohibit Plaintiff from reserving or taking more time for rebuttal in his closing argument than used in his opening argument, and from raising new information during rebuttal that was not raised in his opening argument. In response, Plaintiff argues that “[a]ny limitation on Spreadbury's time in court is in violation of court rules, ethics, and abuse of discretion. . . .” Dkt. 274 at 4. Spreadbury cites to no authority, and the Court clearly has discretion to manage the trial. Moreover, Lee's Motion does not seek to limit Spreadbury's time in Court, but only to prohibit him conduct that would deprive Lee of an opportunity in its closing to rebut matters raised in Spreadbury's closing. Lee simply asks, reasonably, that Spreadbury's rebuttal be actual rebuttal. *See Misch v. C. B. Contracting Co.*, 394 S.W.2d 98, 103 (Mo. App. 1965).

Motion No. 7 – Order of Witnesses

Motion No. 7 seeks to require all parties advise opposing counsel by 5:00 p.m. on the last business day before trial begins and at the close of each trial day, the identities of witnesses counsel expects to call the following day. This Motion will assist the parties in trial and will help avoid delay and wasted time.

Spreadbury argues he does not have the resources of Lee's counsel and, therefore, will not know what witnesses he will call within the time suggested in Lee's Motion No. 7. Lee acknowledges Spreadbury is pro se, and reiterates that Lee's Motion will assist both parties in preparing for trial and will avoid wasting the jury's time. As such, the Motion is not unreasonable and should be granted.

Motion No. 8 – Statements Made By Unavailable Witnesses

Spreadbury does not object to Lee's Motion No. 8 seeking to prohibit Plaintiff from introducing statements made by witnesses not available to testify at trial. Accordingly, the Motion should be granted.

Motion No. 9 – Liability Insurance

In accordance with Federal Rule of Evidence 411, Lee seeks an order prohibiting any reference to liability insurance. Lee does not understand Spreadbury's objection, which is "[t]he request to limit the spectrum of a corporate person in a court of law is not available as a matter of law, status of Lee before this court and should be rejected." Dkt. 274 at 4. Regardless, Rule 411 clearly prohibits reference to liability insurance. Since no exception to Rule 411 exists in this matter, the Motion should be granted.

Motion No. 10 – Matters Already Decided

Lee seeks an order prohibiting Plaintiff from presenting to the jury any questions, evidence, argument or other reference to matters already decided by the

Court. Spreadbury has offered no valid objection, and his responses to these motions makes it clear he does intend to raise issues before the jury which this Court has already decided. For example, in his response, Spreadbury continues to argue the Court was wrong to hold Lee is protected by the Communications Decency Act and, therefore, not liable for on-line comments of readers and he clearly intends to argue this issue to the jury. (Dkt. 274.) Trial is not the proper appeal of decisions with which Spreadbury does not agree. Arguing to the jury about matters of law already decided by the Court is irrelevant, prejudicial and confusing and should be prohibited.

Motion No. 11 – Other Articles Not At Issue

Motion No. 11 seeks to prohibit Spreadbury from presenting any evidence or argument that he was injured by articles other than the August 9, 2010, article published by the *Ravalli Republic*. The Court's rulings have limited the remaining issues for trial to this one article. In response, Spreadbury continues to raise new issues and attempt to characterize the excluded claims in new ways. Reviving dismissed claims or raising new ones is irrelevant and any probative value would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading of the jury, and undue waste of time. Fed. R. Evid. 401, 403.

Motion No. 12 – Plaintiff's Opinion Testimony

Spreadbury does not object to Lee's motion to preclude Plaintiff from

testifying as an expert at trial and from stating legal conclusions. Accordingly, Lee's Motion in Limine No. 12 should be granted.

Motion No. 13 – Speculative Statements Unsupported By Evidence

Motion No. 13 seeks to prohibit Spreadbury from presenting purely speculative statements, unsupported by factual evidence. In response, Spreadbury claims his bid for Mayor is a material fact as to whether he was a public figure. Spreadbury misconstrues the motion. Lee agrees that the fact Spreadbury ran for mayor is relevant evidence. It is also not speculative, so is not the type of statement Lee seeks to exclude. On the contrary, Spreadbury's statement that he lost his bid for Mayor because of Lee is unsupported by any testimony or evidence, is speculative only, and should be excluded as such, along with similar speculations.

Motion No. 14 – Unrelated Complaints and Character Attacks

Lee seeks an order prohibiting Plaintiff from presenting questions, evidence and argument which have no relation to whether the *Ravalli Republic* article at issue was defamatory or caused him damages. This Motion is based on Plaintiff's past insults and personal attacks against Lee's personnel and its counsel, as well as other defendants. Spreadbury responds that such a restriction is not necessary and can be handled by the Court. While Lee is confident that these matters can and will be handled by the Court, Lee urges that is best done prior to trial. *See Fed. R.*

Evid. 403.

Motion No. 15 – Expert Testimony

Because Spreadbury failed to disclose any liability and damage experts, Motion in Limine No. 15 seeks to prohibit Plaintiff from presenting expert opinion testimony at trial. Spreadbury apparently objects, suggesting it does not take an expert to opine on the standard of care. *See* Dkt. 274. Spreadbury can, of course, cross-examine Lee’s experts and argue about their qualifications, independence and opinions. However, he is not an expert, nor has he disclosed any expert opinions, so he should not be permitted to offer such testimony to the jury on standard of care, or damages.

III. CONCLUSION

Lee’s Motions are intended to remove confusing, irrelevant and highly prejudicial matters from the trial so that the jury can focus on the material disputed issues. Spreadbury’s responses in opposition are not persuasive.

In accordance with the Court’s gate-keeping function, Lee respectfully requests the Court grant its Motions in Limine.

DATED this 7th day of May, 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 Reply Brief In Support of Motions In Limine* 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 1819 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 the 7th day of May, 2012, a copy of the foregoing document was served on the following persons by the following means:

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