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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

**BRIEF OF CITY AND LIBRARY  
DEFENDANTS AND DEFENDANT  
BOONE KARLBERG P.C. IN  
OPPOSITION TO PLAINTIFF'S  
MOTION TO STRIKE**

## **INTRODUCTION**

Plaintiff has filed a motion to strike, dated June 28, 2011. It would be an abuse of discretion to grant Plaintiff's motion. The motion is not supported by the law or the record.

## **BACKGROUND**

Plaintiff alleges, in part, that his ban from the Bitterroot Public Library violated his rights. In this connection, he alleges evidence about his confrontation with Defendant Roddy on November 4, 2009, is immaterial to his claims.

On September 2, 2009, Plaintiff was charged with criminal trespass at the Bitterroot Public Library on August 20, 2009. One of the conditions of his pretrial release was that he was not to be within 600 feet of the Library and he was not to have contact with Library employees. Plaintiff's conduct on November 4, 2009, violated the terms of his release on the trespass charge. [City Court Order, 1/19/10, p. 1 (CV-2009-168).]

On November 4, 2009, Plaintiff confronted Defendant Roddy outside the Bitterroot Public Library. During the confrontation, Plaintiff demanded that Ms. Roddy go to the offices of Kenneth Bell, the City Attorney, and get the criminal charge of trespass against Plaintiff dismissed. A man who witnessed the event was concerned for Ms. Roddy as a result of the confrontation. Further, as a

result of the confrontation, Ms. Roddy applied for an order of protection.

Following a hearing where Plaintiff was represented by an attorney, an Order of Protection was issued on November 20, 2009. It requires Plaintiff to stay at least 600 feet away from Defendant Roddy, her home, her workplace or her vehicle. Defendant Roddy works at the Bitterroot Public Library.

The incident also led to Plaintiff being investigated and later charged with felony intimidation. Subsequently, the state District Court found a factual basis for the charge of intimidation against Plaintiff who was represented by an attorney. The state district court accepted Plaintiff's plea of *nolo contendere* on October 15, 2010. Next, the confrontation also led to or was involved in various lawsuits filed by Plaintiff against the City of Hamilton, Defendant Roddy and Defendant Bell, who were represented by Boone Karlberg P.C. Plaintiff alleges in this case that Boone Karlberg P.C. defamed him in court filings during those lawsuits.

### **DISCUSSION**

Plaintiff's motion is not timely. He has already responded to the motions filed to date by the Defendants. Therefore, the motion to strike should be denied for this reason.

In any event, motions to strike are addressed to the Court's discretion. *See, e.g., Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9<sup>th</sup> Cir. 1993); rev'd on other grds, 510 U.S. 517, 534-35 (1994). They are disfavored, and, they will be granted only if it is clear that the matter will have no bearing on the controversy before the Court. *RDF Media Ltd. v. Fox Broadcasting Co.*, 372 F. Supp. 2d 556, 561, 566 (C.D. Cal. 2005).

Plaintiff has not identified what particular information relating to his confrontation with Defendant Roddy on November 4, 2009, is addressed by his motion to strike. Stated differently, Plaintiff has not demonstrated how the information is irrelevant or immaterial to the claims and defenses in this matter. *LeDuc v. Kentucky Cent. Life Ins. Co.*, 814 F. Supp. 820, 830 (N.D. Cal. 1992).

Especially with Plaintiff refusing to answer written discovery requests served on him, one cannot say with any certainty that the November 4, 2009, incident is not relevant or material to the subject matter of the claims and defenses in this action. In fact, the record contradicts Plaintiff's argument. Specifically, the facts and circumstances of Plaintiff's November 4, 2009, confrontation with Defendant Roddy relate to Plaintiff's ongoing conduct which supported his ban from the Library, both by the Library Board and a court of law. It also relates to Ken Bell's alleged wrongful acts or omissions, including his prosecution of

Plaintiff. Next, it also relates to the subject matter involved in Boone Karlberg P.C.'s representation of Mr. Bell and Ms. Roddy during which Plaintiff is alleged to have been defamed in court filings. In fact, in his brief opposing Boone Karlberg P.C.'s motion to dismiss, Plaintiff points to the discussion of the November 4, 2009, confrontation in a Supreme Court brief and other briefs as defamation of him. [Doc. 37, p. 5 Nos. 4 and 5, p. 6 No. 8, p. 7 No. 9, pp. 8-10 and p. 15.] Finally, the matter believed to be referred to by Plaintiff relates to the basis for the application of *res judicata* and *collateral estoppel* to Plaintiff's various allegations in this action, including those related to liability and damages. [See, e.g., Doc. 3 (Joint Answer, Second Defense), ¶¶ 21, 25, 26, 30-32, 37, 49 and 57; Doc. 12, pp. 3-5, 9 and 13; Doc. 29 and Doc. 32, pp. 2-3.]

### CONCLUSION

Plaintiff's motion to strike should be denied. He has not identified with any particularity what information is alleged to be irrelevant to the subject matter of this action. The record is to the contrary. Under these circumstances, especially with Plaintiff refusing to answer any written discovery, one cannot say with any certainty that the incident is not material to the subject matter of this action.

DATED this 8<sup>th</sup> day of July, 2011.

/s/ William L. Crowley  
William L. Crowley  
BOONE KARLBERG P.C.  
*Attorneys for Defendants*  
*Bitterroot Public Library, City of*  
*Hamilton and Boone Karlberg P.C.*

**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 853 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 8<sup>th</sup> day of July, 2011.

/s/ William L. Crowley  
William L. Crowley  
BOONE KARLBERG P.C.  
*Attorneys for Defendants Bitterroot  
Public Library, City of Hamilton and  
Boone Karlberg P.C.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 8<sup>th</sup> day of July, 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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