

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MONTANA

In re:

THORCO, INC.,

Debtor.

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THORCO, INC., a Montana corporation,

Plaintiff,

vs.

WHITEFISH CREDIT UNION, a \_\_\_\_\_ credit union; MO SOMERS, LLC, a Montana limited liability company; RUIS GLACIER, LLC, a Montana limited liability company; and DOES 1-10,

Defendants.

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Case No. 22-90119-JMM

Chapter 11  
(Subchapter V)

Adversary No. 22-\_\_\_\_-JMM

**Second Affidavit from Katherine Wilson**

BEFORE ME, the undersigned authority, on this day personally, January 26, 2023, I, Katherine Wilson, Agent for Cogburn Enterprises, LLC, being of full age, swore or affirmed to tell the truth and on her oath deposes and says:

1. I am not a party to this case.
2. I am a citizen of the United States, a resident of the State of Montana, and over the age of 18.
3. I have been retained by Dennis and Donna Thornton and Thorco, Inc to investigate the filing of the Satisfaction of Mortgage dated May 12, 2022.
4. The following are the findings of my investigation thus far:

02/16/2009, WCU's internal value of Thorco, Inc. property was \$8,775,000.

03/19/2009, Thorco Inc. entered into a mortgage contract with Whitefish Credit Union thereafter WCU. The loan was personally guaranteed by Dennis and Donna Thornton.

3/24/2009, There is no loan application for the loan taken out with WCU because the Glacier Bank loan file was hand-delivered by Glacier Bank loan officer Pete Davis. WCU agreed to take the same position as Glacier Bank.

03/24/2009, WCU recorded the mortgage and the personal guarantees with the Flathead County Clerk and Recorder's Office. After reading former NCUA director, Alan Carver's expert witness report, sometime in June 2009, the Montana Division of Banking issued an order stopping WCU from making any more member business loans.

08/10/2010, I found deposition documents of Randy Cogdill, taken on 7-16-2013, where WCU's loan officer Randy Cogdill admitted to being on the property with another developer for the potential sale of the property.

01/23/2011, I found an internal WCU document called Collateral Analysis where the property is valued at \$2,333,100 and the Action Plan is to move forward with foreclosure. I found the mortgage was current and had been current throughout the history of the loan. The plan to foreclose was 20 days prior to the 2009 maturity date of March 15, 2009. I find this to be a preplanned engineered foreclosure. I found documents that show that Thorco Inc. had a credit bonding line in place, at the time the collateral analysis was written, in the amount of \$20,735,000, that had been taken out on 7-23-2003.

This is evidence to me that had Thorco Inc. been aware of the preplanned foreclosure, Thorco Inc. could have refinanced somewhere else, once past the maturity date, Thorco Inc. became in default and those options were not available.

2/16/2012, I found WCU filed a foreclosure action against Thorco Inc. and the personal guarantors, Dennis and Donna Thornton, in DV-12-174B.

I found Thorco Inc. and the personal guarantors, Dennis and Donna Thornton, filed a counterclaim in the amount of \$60 million.

2/23/2016, I found in Case No. DV-12-174B, WCU received a partial summary judgment in the amount of \$4,348,880.

04/04/2016, I found they settled their disputes in DV-12-174B. The parties agreed to two new trust indenture mortgages whereby Thorco would provide trust indenture deeds for security to be held in escrow at First American Title.

I found the parties agreed to dismiss their claims against each other.

06/08/2016, I found the parties agreed to a trust indenture agreement. The agreement is titled Settlement Agreement and Mutual Release, whereby Thorco would provide security deeds for two new mortgages; one in the amount of \$300,000 for a 200-acre tract of land and one in the amount of \$1,100,000 for a 300-acre tract of land, to be held in escrow by a neutral third party, First American Title.

The trust indenture document states that it supersedes all other agreements. The agreement states there is to be no money owed in connection with the foreclosure lawsuit and counterclaim lawsuit that was Dismissed with Prejudice, DV-12-174B.

The document contains deeds to the property, along with a Reality Transfer Certificate (RTC), that was prepared & signed by WCU's attorney Johnna Preble. Part 4 indicates the deeds were not "deeds in lieu", because the box for "deeds in lieu" is not checked, the "other" box is checked.

I examined the email documentation found where Thornton's were instructed by their attorneys to sign the agreement and deliver it to Whitefish Credit Union's attorney, Sean Frampton, and the Thornton's did so. I will also note the Declaration of John Amsden dated 08/16/2018, "4. The attorney for WCU (Sean Frampton, Esq.) required delivery of the original signed Non-Merger Warranty Deeds and Realty Transfer Certificate (to be attached as Exhibit C to the Settlements Agreement and Mutual Release, as provided in Section 2.c) to his office prior to disbursing settlement funds (as required by Section 1) to Plaintiffs.

The deeds were delivered to Sean Frampton and term #1 was satisfied. WCU provided the Thorntons with a payment of \$150,000.

The Montana code 31-2-217, Effect of failing to record, clearly states that mortgages must be recorded within 20 days of signing. When I examined the title for the 2009 mortgage, it stayed in place until 5-12-2022 and the two new mortgages were never recorded.

When I examined WCU's Motion to Modify Stay, I found that after delivery of the documents, attorney Sean Frampton kept the documents in his possession. I found that no escrow was EVER opened at First American Title.

08/12/2016, I found WCU's attorney Johnna Preble filed a Joint Motion to Vacate the Partial Summary Judgment of February 23, 2016 and a Joint Motion to Dismiss the Foreclosure and Order of Sale Lawsuit and Counterclaims with Prejudice.

08/16/2016, I found the court granted the Motion and Vacated the Judgment.

08/24/2016, I found the court granted the motion and Case No. DV-12-174B Dismissed with Prejudice.

It is well established, and the Montana code makes it clear, in 71-3-131 that a mortgage lien, if adjudicated by a court of competent jurisdiction, must be satisfied within 30 calendar days of adjudication. This would've been September 23, 2016. When I examined the title, this did not occur until 5-12-2022, almost 6 years later. By leaving the 2009 mortgage in place, anyone examining the title would come to the conclusion that the 2009 mortgage was in default and still owing to WCU. That mortgage was in place for 13 years, 1 month, and 18 days.

I found expert witness testimony from the banking commissioner and the chief legal counsel for the division of banking that states, "a mortgage is a special lien that can only be used for one obligation and there is only one action to foreclose on a mortgage". The testimony goes on to state in the Thornton case, once the judgment was vacated, the debt was no longer owed, once the lawsuit was dismissed with prejudice, the 2009 mortgage was done and over.

I found evidence that WCU was claiming after August 24, 2016, that Thorco was in foreclosure and owed more than 4 ½ million dollars.

10/12/2017, I found evidence where Thorco Inc. had a potential buyer for 300 acres for \$15 million; that failed because of WCU's claim that Thorco was in foreclosure.

11/10/2017, I found evidence that Thorco had a purchase and sale agreement for over \$2 million for 12 lots, more than enough to satisfy the \$1,400,000 trust indentures.

11/17/2017, I found evidence Thorco Inc. had an approved loan for more than enough to satisfy the \$1,400,000 trust indentures.

12/1/2017, I found that the title agent, Debbie Pierce, contacted Attorney Sean Frampton, and he could not determine what was owed on the property, so she did not get a payoff amount. Alliance Title could not issue a title policy in the amount of \$1,400,000.

I found Thorco had contacted their attorneys to resolve these issues.

I found their efforts failed because the 2009 mortgage was never released and trust indenture mortgage loans were never completed.

I found in testimony from attorney Mike Black that Frampton claimed he did not know if escrow had been opened or where the documents were.

12/1/2017, I found that Frampton did know where the documents were because he had sent a copy to the title agent in December 2017.

12/17/2018, I found after Thorco Inc.'s efforts failed, that Thorco Inc. filed for Chapter 11 bankruptcy protection.

04/06/2018, I found that after several requests by attorney Michael Klinkhammer to Sean Frampton demanding that WCU extinguish the Thornton's personal guarantees the Thornton's filed a personal lawsuit (DV-18-336D) to extinguish the personal guarantees.

I found in the personal lawsuit that Frampton admitted he kept the documents in his possession.

04/26/2018, I found a proof of claim filed in the bankruptcy action stating WCU had recorded mortgages in the amount of \$1,400,000. As stated above, there is no recorded mortgages for \$1,400,000, only the original mortgage from 2009 for \$3.36 MM that remained until 5/12/22.

I found communications between Thorco Inc.'s attorney, Jon Binnie, whereby Frampton WCU's bankruptcy attorney, Dean Stensland, agreed WCU would open the escrow at First American title if Thorco Inc. dismiss the bankruptcy.

I found that Thorco Inc. dismissed the bankruptcy after WCU delivered the documents to First American Title.

I found Frampton retrieve the documents from First American Title after the bankruptcy was dismissed and no escrow was EVER opened.

07/24/2018, I found in the personal lawsuit that Frampton and Archer claimed the 2009 mortgage was still owed.

8/24/2018, I found an affidavit of Aaron Archer that claims Thorco Inc. owes more than \$4 million, although on 4/26/18, Proof of Claim in the Thorco Inc.'s bankruptcy case, filed by WCU's attorney Dean Stensland, he stated, "7. How much is the claim? \$ 1.4 MM."

I found where Frampton filed a motion for summary judgment against the Thornton's naming over \$4 million was owed. Frampton knew when he filed the motion for summary judgment that the Thornton's did not owe more than \$4 million.

I found in DV-18-336D, where Thorco Inc. tried to join in the personal suit and the court rejected the filing.

10/04/2018, I found that Judge Dan Wilson, in Case No. DV-18-336D, reinstated the February 23, 2016, vacated judgment against the Thornton's, from Case No. DV-12-174B.

10/25/18, I found Frampton then used the trust indenture deeds and transferred the property into WCU's name, while the mortgage was still in place. Frampton then cut the locks off the gates to the property seizing Thorco Inc.'s equipment.

I found Frampton and Archer then cut the locks off of the gate that is at the entrance of the property then replaced placed the locks with their own, seizing multiple pieces of equipment belonging to Thorco Inc.

I found after lengthy litigation that Dennis Thornton cut the locks off the gate to the property to inspect the property and equipment.

I found reports that some of the tools and equipment was missing and that all of the equipment had been intentionally vandalized.

I had an interview with Sheriff Brian Heino. Heino stated that Dennis Thornton had filed a theft report for the theft of the real property and that he had interviewed Dennis Thornton Sheriff Brian Heino claimed that the Thornton's convinced him that WCU did not come into lawful ownership of the property.

I found documents where Thorco Inc. gave Sheriff Heino temporary custody to retrieve Thorco Inc.'s loan file that was co-requested by Rep. Mark Noland.

In my interview with Sheriff Heino, he said he went to WCU to get the loan file and was referred to Sean Frampton who told him to F off.

Sheriff Heino said he then went to the county attorney to get a subpoena. The county attorney refused subpoena and wanted Heino to charge Dennis Thornton with criminal trespass.

Sheriff Heino said that he told the county attorney he needed a subpoena to examine the loan file and that no one should be charged until the investigation is completed.

01/19/2022, the county attorney charged Dennis Thornton with criminal trespass for trespassing on property that he still had a mortgage in place on. This action is still pending.

02/10/2022, I found documentation on a hearing that took place in Helena, MT, in front of the Montana Bank Oversight Committee. I looked it up and watched the hearing.

The Commissioner Melanie Hall, with the Division of Banking, testified that borrowers are entitled to their loan files, that a mortgage is a special lien, that it can only be used for one obligation, that there is only one action to foreclose a lien on a mortgage. They testified that in the Thornton case, the 2009 mortgage was done after the judgment was vacated and the lawsuit was dismissed with prejudice.

02/10/2022, at the Economic Affairs Interim Committee, Bank Oversight Hearing in Helena, MT, according to Commissioner Melanie Hall's and State Attorney Kelly O'Sullivan's testimony, "*there is a single action for a foreclosure, once it is done, it is done.*" When asked, "*If a judgment in a foreclosure lawsuit is vacated is the judgment still owed?*" And Ms. Hall replied, "*No, Mr. Chair, members of the committee, No. The judgment is not still owed.*"

02/11/2022, I found after the Banking Oversight Hearing in Helena, Sean Frampton's law partner, Ryan Purdy, formed an LLC and registered it with the state, in the name of Mo Somers, LLC.

02/14/2022, I found where CEO James Kenyon electronically transferred the property from WCU to Mo Somers, LLC, using a Special Warranty Deed. They did so with no title insurance and no power of attorney, stating, "Grantor acquired this property through foreclosure and therefore makes no warranty not particularly described herein." There was no Sheriff's sale.

04/29/22, Ryan Purdy, Sean Frampton's Law Partner, registers with the state as registered agent and manager for Ruis Glacier, LLC.

5/3/22, just four days later, Ryan Purdy, through Mo Somers, received 200 acres of the Thorco Property.

03/28/2022, I found where Sean Frampton then filed a lawsuit on behalf of Mo Somers against Thorco Inc. Dennis and Donna Thornton and all of Thorco's shareholders. The lawsuit asks for two things a quiet title action on the equipment and temporary restraining order against Dennis and Donna Thornton and all of Thorco Inc.'s shareholders.

07/29/2022, I found documentation where Thorco Inc. filed for Chapter 11 bankruptcy protection.

12/22/2022, I found testimony by Sean Frampton in a Motion to Lift the Automatic Stay and return the Mo Somers lawsuit back to state District Court, where Frampton claims WCU was given deeds in lieu. As stated above the deeds given were trust indenture deeds, not conveyance deeds.

5/12/2022, I found TFSS, at the request of WCU, recorded a Satisfaction of Mortgage which contains a quit claim along with the legal description to the property. This document states in part, "the aforementioned debt, fully paid, satisfied and released and discharged, and in consideration thereof the said Mortgagee does hereby release and quitclaim unto the said Mortgagor the premises thereby conveyed and mortgaged." The letter to Thorco also stated, "Your lien with WCU has been released". TFSS was authorized to record this.

6/7/2022, I found where WCU CEO, James Kenyon, filed a Corrected Release of Mortgage. It states in part, "The Warranty Deeds recorded as Flathead County Records 201800026290 and 201800026291 were recorded pursuant to a Settlement Agreement and in Lieu of Foreclosure of the Mortgage." Realty Transfer Certificate states they are not "In Lieu of Foreclosure".

There is no required recorded power of attorney (PoA) from WCU allowing Sean Frampton to transfer any documents for WCU. The only granted power of attorney (PoA) recorded with the Flathead County Clerk and Recorder's Office is to Title Financial Specialty Services (TFSS). recorded on 7-24-2014 that stays in place until a substitution takes place or it is rescinded.

I checked with the Montana Security and Insurance Commission and found the only authorized entity to transfer documents for WCU is TFSS.

I checked with the Flathead County Clerk and Recorder's Office. There is no recorded power of attorney (PoA) from Thorco Inc. to anyone to use these documents as conveyance documents.

The Securities Exchange Act of 1933 the trust indenture act of 1939 clearly lays out that the transferring any documents for a federally regulated lender must be done by a licensed authorized transfer agent that is registered with the security and insurance commission.

There is no required UCC transfer statement stating how much debt was canceled that is required to be recorded with deeds in lieu.

09/27/2022, when TFSS was contacted, they stated that WCU only had a lien on the property. They also stated, "I don't know how WCU sold the property, they only had a lien on it." According to MCA 71-3-106 Extent of Lien, it states, "The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than which the lien originally secured. The original obligation was dismissed with prejudice on 8-24-2016.

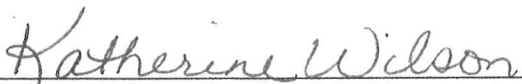
Additionally, MCA 71-3-108 states, "Lien or contract for lien transfers no title. Notwithstanding an agreement to the contrary, a lien or contract for a lien transfers no title to the property subject to the lien."



1/24/23, when checking with the state's Chief Financial Officer with the Securities and Insurance Division, Steve Matthews, he could confirm that TFSS and Shauna Romrell are licensed as Title Insurance Producers. He could not confirm the same for James Kenyon or WCU.

The investigation is ongoing and every effort will be made to have the investigation completed within 60 days.

I DECLARE UNDER PENALTY OF PERJURY AND UNDER THE LAWS OF THE STATE OF MONTANA THAT THE FOREGOING IS TRUE AND CORRECT.

  
Katherine Wilson PSP-PI-LIC-16517



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Re: *WHITEFISH CREDIT UNION, Plaintiff vs. THORCO INC., a Montana corporation, DENNIS THORNTON, DONNA THORNTON and JOHN DOE(s) 1-10. Defendants; Counter claimants vs. WHITEFISH CREDIT UNION, and JOHN DOE(s) 1 – 10 Counter-Defendants. Cause No. DV-12-174B, MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY*

**EXPERT REPORT OF ALLEN CARVER**

Prepared for counsel for  
THORCO INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON,  
and JOHN DOES (s) 1 - 10

November 8, 2013

## **EXPERT REPORT OF ALLEN CARVER**

### **Scope and Purpose of Engagement:**

I was retained by counsel for THORCO INC., a Montana Corporation, DENNIS THORNTON, DONNA THORNTON, AND JOHN DOE(S) 1 – 10. ("Thorntons") in the above-referenced lawsuit to review, opine and, if called upon to do so, provide expert testimony regarding whether Whitefish Credit Union Association ("Whitefish"), a Federally insured credit union chartered under the laws of the State of Montana, committed a Breach of a Written Contract involving the loaning of money to finance a Thornton land development project. I have not previously performed any expert work or consulting services for Thornton or its counsel. I am being compensated at my standard hourly rate and no part of my compensation is dependent on the outcome of the lawsuits.

### **Professional Experience:**

I am the principal of Allen Carver & Associates, Inc., a consulting firm located in Cumming, Georgia, (Atlanta) which I founded in 1998. Allen Carver & Associates' work relates exclusively to advising and consulting with credit union clients, or other clients on matters involving credit union-related matters, throughout the country. I also have provided expert witness testimony relating to credit union issues. I have never been precluded by a court from giving expert testimony. Our Firm has broad experience, among other things, in assisting clients in preparing regulatory filings for mergers, charter changes and conversions, reviewing member business loan portfolios and various regulatory issues. Detailed information about our Firm can be found at [www.allencarver.com](http://www.allencarver.com), which I incorporate as part of this report.

Prior to starting Allen Carver & Associates, Inc., I spent 33 years with the National Credit Union Administration ("NCUA") beginning in 1965. NCUA is the federal regulatory agency responsible for administering the federal deposit insurance program for Federally insured credit unions. For sixteen of those years, I was NCUA Regional Director in Atlanta and Chicago. For over 20 years, I was NCUA's Task Force Director for all chartering (including community charters), field of membership and merger policy revisions. I received numerous awards while at the NCUA, including the Presidential Meritorious Executive Award from President George Bush. I have testified before Congress, spoken at numerous national credit union meetings and conferences relating to credit unions.

Through my work with NCUA, and later as a consultant, I have developed broad expertise regarding NCUA's rules, practices, procedures and credit union oversight. For the last 15 years our Firm, Allen Carver and Associates, Inc., has provided management assistance, developed and facilitated strategic planning activities and developed and provided documentation. In some instances, our Firm provided interim management including providing staff to perform functions including but not limited to Chief Executive Officers and Chief Financial Officers. Our Firm has conducted many reviews of credit union policies and procedures. Our Firm has been accepted by NCUA to conduct reviews of credit union Member Business Loan Portfolios ("MBL") and we have reviewed such portfolios nationwide when called upon.

I am a graduate of Virginia Commonwealth University in Richmond, Virginia with a B.S. degree in Accounting. I also attended the John F. Kennedy School of Government at Harvard University in 1989.

**Materials Reviewed/Interviews:**

In preparing for this engagement and rendering the opinions described below, I was provided various written case materials by counsel for the Thorntons. Those written materials, along with others that I reviewed and considered, are set forth in Attachment A.

## **Background:**

### **Credit Unions**

Credit unions are member (customer) owned financial cooperatives. They provide an opportunity for persons of average means or less to build savings, receive loans for provident and productive purposes in a cooperative environment that many times reduces the interest costs to the members and provides for greater dividends on their savings versus other financial institutions.

As of September 30, 2013 there are approximately 6,600 credit unions in the United States with total assets of \$1.05 trillion. . Individually the three largest banks in the United States have more assets than the entire credit union industry. About one-third of all credit unions are "mom and pop" operations with under \$10 million in assets.

Large credit unions, defined as with assets exceeding \$500 million are more sophisticated offering a full range of products and services one would expect from a similar size local community bank.

While credit unions primarily serve the savings and consumer borrowing needs of members, they are allowed to make a limited amount of Member Business Loans.

In addition, each credit union making Member Business Loans must have staff expertise and procedures in place or utilize outside third-parties meeting those requirements. Requirements and restrictions for making Member Business Loans are contained in Section 107A of the Federal Credit Union Act and Part 723 of the NCUA Rules and Regulations. Member Business Loans may not exceed the lessor of 1.75 times net worth or 12.5% of each credit union's assets. In recent years the common denominator found in several large troubled credit unions involved them having loan portfolios

holding Member Business Loans. Within the last several years two large credit unions, Arrowhead Federal Credit Union (California) and Texans Credit Union (Texas) with large troubled Member Business Loan Portfolios were placed into Conservatorship by the National Credit Union Administration.

Please note for the purposes of this Expert Witness Report that the terms, Commercial Loans, Business Loans, Development Loans and Member Business Loans are all used interchangeably.

#### **Whitefish Credit Union Association**

Whitefish Credit Union Association "Whitefish" is a State of Montana chartered credit union whose deposits are insured by the National Credit Union Administration "NCUA", a Federal regulatory agency.

According to Call Reports filed with the NCUA, as of September 30, 2013, Whitefish was reported to be Montana's largest credit union with 56,527 members, assets of \$1.2 billion dollars and a branching structure of six offices that allowed them to service persons residing in Sanders, Flathead, Lake or Lincoln counties or within 50 miles of Whitefish. It is believed that Whitefish is one of the largest 250 credit unions in the United States. Those Call Reports show Whitefish engaged in potentially high risk Member Business Loan Activities that increased dramatically from \$63 million as of March 31, 2003 to \$317,320,126 as of March 31, 2009. Douglas Johnson, Whitefish's Vice President Member Business Loan Officer, incorrectly stated the Member Business Loan portfolio peaked at \$305 million. As of March 31, 2009, Member Business Loans represented 28.5% of Whitefish's assets with the regulatory limit being 12.5%. Since

Whitefish is classified as a limited income credit union, the regulatory limit on member business loans can be waived. However, such a dramatic increase in Member Business Lending came with increased regulatory concerns and oversight from the NCUA and Montana Division of Banking and Financial Institutions. Other documents clearly showed that Whitefish was having major operational issues including failure to properly underwrite, document and monitor MBL activity. Charlie Abell, Whitefish's long time Chief Executive Officer resigned and was replaced by Jim Kenyon in September 2009 (Deposition of Kenyon page 8). When Whitefish's Board of Directors hired Mr. Kenyon, they mandated that he "take care" of problems with loans, delinquent loans, but especially development type or commercial loans (Kenyon deposition page 23). The Board enacted a policy in 2009 of not loaning any more money on development loans until circumstances were worked out that were causing a problem. (Underline added for emphasis) (Deposition of Randy Cogdill Page 20). It was disclosed that newly hired CEO Kenyon perhaps went beyond the Board's policy and said that there was a new policy adopted by him and followed by the credit union regarding this no new lending on ongoing development loans (underline added for emphasis). (Deposition of Randy Cogdill Page 24). During the same time, regulatory examiners showed a shift and discouraged any spec. home financing and subdivision financing (Deposition of Randy Cogdill Page 22). It is important to note that borrowers with Member Business Loans were not notified by Whitefish that they would not be loaning any more money on development loans, including existing loans (Deposition of Randy Cogdill Pages 24 and 25.) even though Whitefish's Loan Modification Guidelines dated March 4, 2010 required among other things that approximately two months prior to the balloon due date, a computer generated notice is mailed to the borrowers. The lack of such notification certainly violated usual and customary standards in the business lending



community. The only reasons I can give that Whitefish failed to notify their Member Business Loan borrowers is that Whitefish wanted to retain the loans and their related interest income as long as possible, which was contra to their policy of attempting to reduce their Member Business Loans, or Whitefish staff wanted to delay having a confrontation with Member Business Loan borrowers when they informed them Whitefish was not going to provide any additional funding.

Member Business Loan activity started to diminish, due to Whitefish's Board of Directors' mandate to Mr. Kenyon, and Mr. Kenyon's policy that was perhaps more restrictive than the Board's policy and perhaps in part, as a result of regulatory concerns. Member Business Loans were reduced to \$275 million as of March 31, 2011 and had declined further to \$193 million as of September 30, 2013. Unless indicated otherwise, all financial information is from Whitefish Call Reports filed with the NCUA.

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**THORCO, INC, DENNIS THORNTON AND DONNA THORNTON MEMBER**

**BUSINESS LOAN:**

**THORNTONS**

Dennis Thornton and Donna Thornton "Thorntons" had many years of successful timber sales and harvesting and previous positive experiences in land development. In many instances these projects required the borrowing of large sums of money. There is no indication that the Thorntons had ever experienced any difficulties in repaying such prior loans.

At some point in time, the Thorntons borrowed funds from Interstate Bank. The loan was eventually moved to Glacier Bank. In March 2009 Glacier Bank's Vice President Commercial Lending Pete Davis contacted Douglas Johnson, Whitefish's Vice President Member Business Loan Officer, and inquired as to whether Whitefish would be interested in taking over one of their commercial loans. Mr. Davis walked the Glacier Bank's file covering the Thornton's loan to Whitefish. In conversations with Mr. Johnson, Glacier Bank's Pete Davis and Bill Paullin, in charge of Glacier Bank's construction loans, both gave the Thorntons a positive reference regarding their "excellent credit and an excellent relationship with Glacier Bank." In retrospect, for whatever reason(s) Glacier Bank wanted the Thorntons loan off their books and Whitefish was a likely financial institution to take their loan. Whitefish staff was so anxious to make the Thornton's loan that they did not order a new appraisal and did not even interview the Thorntons face to face as required by Whitefish's Lending Policies Version 3.7. It is not known if other requirements of Whitefish's Lending Policies were ignored. Even if Whitefish had followed each and every requirement of their lending

policies there is no indication that there were any reasons for them to not grant the Thornton's loans.

In subsequent conversations with Whitefish, the Thorntons conveyed their strong feelings that they wanted approval of a loan totaling \$7.2 million, an amount that would pay off the Glacier Bank loan and leave sufficient funding to complete the development. Doug Johnson indicated that he wish he had known that Thorntons wanted \$7.2 million approved because he could have gotten the Thornton's the full amount. For whatever reason, Johnson was hesitant to go back to the appropriate committee and satisfied the Thorntons' concerns about financing to complete the project with a verbal commitment to provide sufficient funding to finance the entire project (Deposition of Dennis Thornton pages 223 – 224). With that commitment the Thorntons continued their discussions with Whitefish. Mr. Johnson then indicated he wanted additional collateral in addition To the current development property. The Thorntons then put up 200 acres as additional collateral, but with the stipulation that Whitefish would subordinate their lien up to \$500,000, if the Thorntons needed money for other purposes (Douglas Johnson deposition Page 30). In a letter dated March 21, 2009 printed on Whitefish letterhead and signed by Douglas Johnson, Whitefish's Vice President Member Business Loan Officer, who was empowered to commit Whitefish to the general terms of the financing Arrangement, contained in the letter which included amount other terms, Subordination Agreement: Whitefish Credit Union will subordinate its first lien position on the 200 acre tract up to an amount of \$500,000 without additional committee approval for income producing projects undertaken by the borrower.

Thorntons were granted a MBL on or about March 15, 2009 with the full understanding that additional funds would be provided by Whitefish to complete the project and with a subordination agreement that would allow the Thorntons to borrow up to \$500,000 on that property as needed for income producing projects undertaken by the borrower (Thorntons) without additional committee approval at Whitefish and Whitefish would subrogate their lien to such a transaction.

It is important to note that this loan was disbursed prior to regulatory pressure to cease making such loans (Deposition of Douglas Johnson page 27) and appears to have been prior to the Board's policy not to advance any new funds to Member Business Loans until circumstances were worked out that were causing a problem.

Within months of the Thorntons receiving their loan, the Whitefish Board enacted a policy later in 2009 of not loaning any more money on development loans until circumstances were worked out that were causing a problem. (Deposition of Randy Cogdill Page 20) Newly hired CEO Jim Kenyon adopted perhaps a more restrictive policy of no additional money to Member Business Loans (Deposition of Randy Cogdill deposition Page 24). As mentioned earlier in this report, it is important to note that borrowers with Member Business Loans, including the Thorntons (Deposition of Jim Kenyon Page 14), were not notified by Whitefish that they would not be loaning any more money on development loans, including existing loans (Deposition of Randy Cogdill Page 24.) For whatever reason Whitefish did not want Member Business Loan borrowers to know that they were cutting off their loans! Had Whitefish notified the Thorntons in late 2009 that they would no longer advance any additional money when

their loan that would become due on or around March 15, 2011, the Thorntons could have sought financing from other sources at a time when their loan was current and the property was being actively developed. As late as 2011 Whitefish CEO Jim Kenyon reported that the property, "had great views. Also, as I said, that it was very well-groomed. I mean there wasn't anything out of place. It was a gorgeous piece of property" (Deposition of Jim Kenyon page 42).

As the Thornton's original loan matured on or about March 15, 2011, Whitefish staff never contacted the Thorntons. Not only did Whitefish never contact the Thorntons, but as the maturity date neared the Thorntons were unsuccessful in getting Whitefish staff to return calls or emails requesting a meeting (Deposition of Dennis Thornton page 35). It was also reported that Whitefish staff blocked the Thornton's emails from being received at Whitefish (Deposition of Dennis Thornton page 34). It was only after the Thorntons communicated to Whitefish's CEO Jim Kenyon, on the advice of their Counsel, that they were coming to the Whitefish headquarters and would sit in the office until he met with them, were they successful in meeting with the CEO of Whitefish.

It is important to note that even with a self declared net worth of \$22,980,000 the Thorntons were eventually unable to secure financing (Deposition of Jim Kenyon pages 86 and 87).

The Thorntons had complied with all of their obligations in their dealings with Whitefish, (Deposition of Douglas Johnson Page 18).

Apparently Whitefish had an appraisal done of the development which failed to give any value to the improvements that had been made over the last several years. It was estimated by Dennis Thornton that the development was approximately 85% complete (Deposition of Dennis Thornton page 31).

Not only was Whitefish not notifying Member Business Loan borrowers of its policy not to advance any new money on such projects, but apparently Whitefish's Member Business Loan Department was having additional operational issues as shown by CEO Jim Kenyon and other staff not being aware of the subordination agreement contained in the Letter dated March 11, 2009 from Whitefish Credit Union's Vice President Member Business Loan Officer Doug Johnson to the Thorntons that contained the general terms of the financing arrangements including the Subordination Agreement.(Deposition of Jim Kenyon pages 97 and 98). Mr. Thornton's attorney furnished Whitefish a copy of the subordination agreement. While the subordination agreement called for up to \$500,000 in additional working capital for addition income producing projects without further approval from Whitefish, (underline added for emphasis) the Thorntons went above and beyond the requirements of the subordination agreement and traveled to North Dakota and commenced to explore additional project(s) that could have proven to be extremely profitable. Each and every proposed project was dismissed by Whitefish.

Not only was Whitefish not loaning any additional money, they were not willing to honor their subordination agreement. Whitefish clearly committed not only a verbal agreement to finance the entire project to a total of approximately \$7 million, but also committed a Breach of a Written Contract involving the loaning of \$500,000 and

subordination of their lien as shown in the March 11, 2009 Whitefish letter outlining the general terms of the financing agreement signed by Doug Johnson, Vice President, Member Business Loan Officer. Suddenly Whitefish demanded a Marketing Plan for the development that was at least several years before completion (Deposition of Jim Kenyon page 79). Whitefish is another example of a large credit union getting involved in relatively large member business loans, not knowing what they were doing and then suddenly cutting the borrowers off at the knees by failing to provide agreed upon financing, totally disregarding the disastrous financial impact on commercial loan borrowers, their projects and employees.

The Whitefish Board of Directors, CEO Jim Kenyon and the regulators dictates not to advance any funding to Member Business Loans did NOT allow Whitefish and its staff to violate usual and customary commercial lending procedures and existing legally binding written contracts and agreement and, in some instances, binding verbal commitments and agreements. Whitefish should have sought legal advice from their counsel and worked with the regulators to develop workout plans that would comply with all legal requirements while at the same time eventually leading to the desired reductions in Whitefish's commercial loan portfolio. An orderly planned approach over time could have been developed that met all existing legal obligations and would eventually reduce Whitefish's Member Business Loan portfolio to within the limits desired by Whitefish and the regulators. To hide behind the regulatory dictate is very amateurish. Whitefish is a billion dollar asset credit union and should have conducted their business accordingly.

As time passed the Thorntons, without the ability to obtain additional funding from Whitefish, naturally became "delinquent" on their loan and were unsuccessful in refinancing the loan elsewhere. In a letter dated October 25, 2011 the Thorntons wrote to Mr. Pete Davis, Vice – President of Commercial Loan Department Glacier Bank requesting a working capital line of credit union for \$500,000 secured by the 200 acres on Boon Road that Whitefish was legally bound to subordinate their lien. In a letter dated November 9, 2011 from Pete Davis the Thorntons were informed Glacier Bank was unable to grant the Thornton's request for a \$500,000 line of credit. In the Statement of Credit Denial, Termination, or Change for Business Credit three principal reasons were given for the Credit Denial (Inadequate business sales and/or earnings history, Lack of established earnings record and Uncertainty over situation at WFCU regarding large subdivision loan and how that could impact future debt servicing requirement).

As mention earlier, as late as 2011 Jim Kenyon reported that the property, "had great views. Also, as I said, that it was very well-groomed. I mean there wasn't anything out of place. It was a gorgeous piece of property" (Deposition of Jim Kenyon page 42). In a self fulfilling prophecy, without the funds, the project eventually fell into disrepair and suddenly Whitefish sent experts to the development and reported back that the stone walls and roads were deteriorating and were not built to industry standards.

In summary, it is my professional opinion based on my 48 years in the credit union industry (33 years as a regulator and 15 years as a consultant), that Whitefish clearly committed and violated not only a verbal agreement to finance the entire



Thornton project to a total of approximately \$7 million, but also committed a Breach of a Written Contract involving the loaning of \$500,000 and subordination of their lien as shown in the March 11, 2009 Whitefish letter outlining the general terms of the financing agreement signed by Doug Johnson, Whitefish's Vice President, Member Business Loan Officer to the Thorntons and usual and customary procedures dealing with Member Business Loans. As a large billion dollar asset credit union, the Whitefish Board of Directors and Senior Staff knew or should have known how to reduce their Member Business Loan Portfolio. No doubt their handling of this issue created unnecessary financial hardship for impacted borrowers, such as the Thorntons, their employees and the inability of these borrowers to enjoy the profits that a fully completed development would have provided.

I reserve the right to supplement this opinion as new information may become available.

Allen Carver

## ATTACHMENT A

In addition to drawing on my own professional experience and training, I have reviewed the following documents as related to Whitefish Credit Union (WCU) vs Thorco, Inc. et al:

Defendants' Amended Answer and Counter Claim to Plaintiff's Complaint for Foreclosure

Deposition of Jim Kenyon

Deposition of Randy Cogdill

Deposition of Douglas Johnson

WCU Redacted Board Meetings Minutes 2.18.09, 2.24.09, 4.10.09, 5.19.09, 5.28.09, 6.17.09, 4.20.10, 5.19.10, 6.16.10

Emails to/from Attorneys Rich DeJana and Ryan Purdy: 8.10.11, 8.11.11, 8.17.11, 8.18.11 DeJana (Thornton) and Purdy (WCU). 9.19.11, 9.20.11, 9.29.11, 9.30.11, 10.19.11, 1.4.12, 1.19.12.

WCU Allowance for Loan Loss Policy (Board approved 7.20.11)

WCU Collection Guidelines (Revised 9.20.10)

WCU Collection Guidelines (Revised 2.16.11)

WCU Consumer Lending Policy (Dated 1.20.10)

WCU Consumer Lending Policy (Board approved 6.22.11)

WCU Consumer Lending Program General Guidelines (Dated 1.20.10)

WCU Consumer Lending Program General Guideline modification notes (undated)

WCU Consumer Loan (Non-Real Estate) Procedure (Dated 1.27.10),  
Foreclosure/OREO Procedure (Dated 6.22.10)

WCU Member Business Loan (MBL) Procedures (Version 3.7) WCU MBL Procedures undated

WCU General Statement 1. Loan Application Process.

WCU Member Business Loan Policy (Revised 6.17.09)

WCU Member Business Loan Policy (Board approved 6.22.01)

WCU Loan Modification Guidelines (Dated 3.4.10)

WCU Loan Policy (Revised 4.15.09)

WCU Loan Policy (Revised 5.20.09)

WCU Real Estate Loan Guidelines 2.9.10

WCU Loan Policy (Board approved 12.14.11)

WCU Real Estate Procedure (Dated 9.20.10)

WCU Real Estate Lending Policy (Dated 2.16.11).

WCU Reviewed Google Scholar Recent Delta Community CU Similar Lawsuit.

~~Letter from Attorney Manley to Allen Carver dated June 14, 2013~~

WCU Commitment Letter of March 11, 2009 (Includes Subordination Agreement)

WCU Promissory Note of March 16, 2009 and Real Estate Mortgage on 200 acres March 3.10.2009, Guaranty Agreement March 19, 2009

Deposition of Dennis Thornton

~~James Manley, attorney Thomtons' Motion for Partial Summary Judgment prepared in October 2013.~~

Disclosure List of Defendant's Expert Witnesses

WCU Call Reports sent to the National Credit Union Administration effective dates March 31, 2003, March 31, 2006, March 31, 2009, March 31, 2011 and September 30, 2013.

Letter dated October 25, 2011 from Dennis Thornton in his capacity as President of Thorco, Inc. to Pete Davis, Vice-President, Commercial Loan Department of Glacier Bank.

Letter dated November 9, 2011 from Peter J. Davis, VP/Commercial Loan Department to Thorco, Inc.

Statement of Credit Denial from Glacier Bank dated November 9, 2011 to Thorco, Inc.



## ALLEN CARVER

& Associates Inc.

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### RESUME

Mr. Carver retired after a 34 year career with the National Credit Union Administration. Sixteen years of his career were spent as Regional Director in Atlanta and Chicago. For over 20 years Mr. Carver was NCUA's Task Force Director for all chartering (including community charters), field of membership and merger policy revisions. Allen testified before Congressional committees and spoke at numerous national credit union meetings.

A graduate of Virginia Commonwealth University in Richmond, Virginia, Mr. Carver has a B.S. degree in Accounting. He attended the John F. Kennedy School of Government at Harvard University. Allen was NCUA's most highly decorated staff person having received numerous awards including the Presidential Meritorious Executive Award from President George Bush and is the only recipient of NCUA's Excellence Award

Allen formed his Consulting Firm in 1998 and employs former regulatory chartering and merger experts. His Firm has completed over 300 community proposals. All proposals including charter conversions (Federal to State, State to Federal), single cities and counties or multiple counties involving millions of people and underserved communities were approved by regulators.

Allen also has extensive experience involving credit union mergers. While at NCUA it is estimated that Allen processed and approved over 1,600 mergers. Allen's Firm has completed over 300 mergers. Mr. Carver facilitated the three largest mergers recently. His Firm handles mergers of all size of credit unions including those with relatively small assets.

Allen's firm handles sales and purchases involving branches, shares and loans.

Allen frequently serves as an expert witness in credit union related court cases.



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### **Work Experience**

National Credit Union Administration (1965 – 1998). Last sixteen years  
Regional Director Atlanta and Chicago

Allen Carver and Associates, Inc. (1998 – Present)

### **Awards**

Meritorious Executive Presidential Rank Award presented by President George  
Bush 1989

National Credit Union Administration Meritorious Executive Award 1996. At  
time of Mr. Carver's retirement he was only recipient of that award.

### **Education**

Virginia Commonwealth University Graduated Upper Quarter of Class 1965

Attended John F. Kennedy School of Government at Harvard University 1989

### **Conducted Seminars**

Credit Union National Association – Annual Nationwide Meetings

National Association of Federal Credit Unions – Annual Nationwide Meetings

State Credit Union Trade Associations

Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa,  
Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi,



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### **Trade Associations (Continued)**

Missouri, Montana, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin.

American Institute of Certified Public Accountants – Several Meetings

United States Department of Defense Credit Union Annual Meetings

RSMcGladrey CPA Firm – Several Meetings

Orth, Chakler, Murnance & Company CPA Firm – One Meeting

O'Rourke Sacher & Moulton CPA Firm – Over Ten Meetings

Reinsel, Kuntz & Leshner CPA Firm – One Meeting

Attachment B – Expert Witness

**Case Prepared Expert Witness Report and Testified**

8.6.01

Re: Joseph S. Coey v. Parker. et al.

Second Judicial District Court Cause No. CV-2000-01925

Re: Joseph S. Coey v. New Mexico Educators Federal Credit Union

U. S. District Court Cause No. CIV 00-1613 MV/RLP (ACE)

**Cases Prepared Expert Witness Report**

4.30.04.

Re: Elizabeth Foster and Jerry Foster v. LOCO Credit Union, et al..

U. S. District Court Cause No. CIV-03-1243 LAM/KBM

CUMIS Claim No. 648023

2.15.08

Thirteen Defendants v American Partners Federal Credit Union, Dorinda M.

Simpson, Ann Boone and David Morgan. In the General Court of Justice Superior Court Division 05 CVS 3401 (North Carolina) Prepared Affidavit.

Case related to the National Credit Union Administration Letter to Credit Unions 150

2.28.11

Robert Kross, Mary Kross, Robert Burns, Marcia Burns, and Sharon Dayton v. Belco Community Credit Union, Civil Action 2008-CV-12044-CV

Ronald Benner, Nancy Persuhn and Marjorie L. Bonner v. Belco Community Credit Union, Civil Action 2009-CV-00133-CV

Robert Handley, Holly Handley, Richard Johns, Joan Johns, and Fred Andrew v. Belco Community Credit Union, Civil Action 2006-CV-3217-CV

5.26.11

United States District Court, Southern District of Florida, West Palm Beach

Division, Case No. 09-80973-CIV-RYSKAMP – Claudia Schorrig, and Jolene

Sullivan, on their own behalf and on behalf of those similarly situated Plaintiffs,

vs. IBM Southeast Employees' Federal Credit Union, Southeast Services Organizations, Inc. and Barry Hughes, Defendants.

1.10.13

CoastHills Federal Credit Union, a Federal Corporation, Plaintiff, v. Atul P. Patel, Defendant, Case No. 9:11-bk-10091-RR, Adversary No.:9:11-AP-01129-RR  
Chapter 7

4.8.13

Re: Jay W. Preston and Robert F. Erickson, as Trustees for Ronan Telephone Company, Employee Profit Sharing Trust Plaintiffs, v Whitefish Credit Union Association and DOES 1 – 10, Defendants; Montana Twentieth Judicial District Court, Lake County Dept. No 2002 Cause No. DV-11-146

8.22.13

Re: Ben Heyward Plaintiff, v The Credit Union Times Defendant; United States District Court for the District of New Mexico; Complaint, Case No. 1:12-cv-00258 (D.N.M. 2012)



Whitefish Credit Union

vs

Thorco, Inc. et al

Allen Carver Expert Witness Time Log  
June 11, 2013

Attached to Billing Statement 11.20.13

2013

Date Time

May – June 10 No Chg.

Numerous conversations and emails with attorneys at Manley Law Firm.

June 11 No Chg. – Received signed Expert Witness Proposal.

June 27 1.0 hour – Conference call Joshua + Jim. Overviewed case and Documents he will send me.

Oct. 22 No Chg. – Brief conversation with Joshua “Josh” Morigeau. Jim Manley becoming judge so Josh will be my contact.

Oct. 22 .75 hours – Updated work experience + expert witness information and prepared email to Josh.

Read, carefully studied, and made notes on the following documents for future use in the development of Expert Witness Report:

Fact: Loan made on or around March 15, 2009 Page 11, Due March 15, 2011 Page 18 Deposition of Douglas Johnson, former Whitefish Credit Union Vice President/Senior Loan Officer Page 5.

Oct. 23 1.25 hours

Defendants' Amended Answer and Counter Claim to Plaintiff's Complaint for Foreclosure

Oct. 23 2.50 hours Deposition of Jim Kenyon --

Oct 23 3.50 hours Deposition of Randy Cogdill

Oct. 24 1.00 hours Deposition of Douglas Johnson

Oct. 24 0.50 hours Redacted Board Meetings Minutes 2.18.09, 2.24.09, 4.10.09 (NCUA + SSA staff coming on site 4.27.09), 5.19.09, 5.28.09, 6.17.09, 4.20.10, 5.19.10, 6.16.10, and Emails to/from Attorneys Rich DeJana and Ryan Purdy: 8.10.11, 8.11.11, 8.17.11, 8.18.11 (comprehensive email from DeJana (Thornton) and Purdy (WCU). 8.19.11, 9.20.11, 9.29.11, 9.30.11, 10.19.11, 1.4.12, 1.19.12.

Oct. 24 1.75 hours Allowance for Loan Loss Policy (Board approved 7.20.11), Collection Guidelines (Revised 9.20.10), Collection Guidelines (Revised 2.16.11), Consumer Lending Policy (Dated 1.20.10), Consumer Lending Policy (Board approved 6.22.11) Boiler plate policy.

Oct. 28 3.0 hours Consumer Lending Program General Guidelines (Dated 1.20.10), Consumer Lending Program General Guideline modification notes (undated), Consumer Loan (Non-Real Estate) Procedure (Dated 1.27.10), Foreclosure/OREO Procedure (Dated 6.22.10) Member Business Loan (MBL) Procedures (Version 3.7) WCU MBL Procedures undated, General Statement 1. Loan Application.

Oct. 29 0.25 hours Two telephone calls with Attorney Josh Morigeau

Oct. 30 1.75 hours Loan Policy (Revised 4.15.09) Loan Policy (Revised 5.20.09), Real Estate Loan Guidelines 2.9.10, Loan Policy (Board approved 12.14.11), Real Estate Procedure (Dated 9.20.10), Real Estate Lending Policy (Dated 2.16.11).

Oct. 30 0.50 hours Telephone call and emails to/from Josh regarding Delta Community CU similar lawsuit settled in 2012. Google Scholar re: lawsuit.

Oct. 30 0.25 hours Letter from Attorney Manley to Allen Carver dated June 14, 2013

Nov. 6 4.5 hours Includes letter, commitment letter, promissory note and mortgage (very poor copy), real estate mortgage, Guaranty, Deposition of Dennis Thornton.)

Nov. 7 0.75 hours James Manley, attorney Thorntons' Motion for Partial Summary Judgment prepared in October 2013.

Nov. 7 0.50 hours Email from Josh Morigeau Plaintiff and Counter-Defendant Whitefish Credit Union's Expert Witnesses Disclosure list of defendant's "Expert Witnesses" plus email back to Josh.

Nov. 7 2.00 hours – Researched the following Whitefish Call Reports sent to the National Credit Union Administration showing date and amount of Member Business Loans: \$63 mil. 3.31.03, \$216 mil. 3.31.06, \$295 mil. 3.31.09, \$274 mil. 3.31.11, \$193 mil.+ \$1.2 billion in assets and 56,527 members 9.30.13.

Nov. 7 2.75 hours “thumbed all documents”, developed questions for attorney Josh and made final notes.

Nov. 8 0.25 hours Telephone call with Josh

Nov. 8 1.00 hours (Three Following Documents) Josh sent a Letter dated October 25, 2011 from Dennis Thornton in his capacity as President of Thorco, Inc. to Pete Davis, Vice-President, Commercial Loan Department of Glacier Bank

Josh sent a Letter dated November 9, 2011 from Peter J. Davis, VP/Commercial Loan Department to Thorco, Inc

Accompanying the letter was a Statement of Credit Denial from Glacier Bank dated November 9, 2011 to Thorco, Inc.

11.9.13 (Sat) 2.00 hours – Working on first draft of Expert Witness Report.

11.11.13 3.00 hours – Continued working on first draft of Expert Witness Report.

11.12.13 1.75 hours – Continued working on first draft of Expert Witness Report.

11.13.13 3.50 hours – Continued working on first draft of Expert Witness Report, developed tracked changes regarding research of Federal Credit Union Act, NCUA Rules and Regulations and comparison of Whitefish MBL totals to Federal Credit Union Act and NCUA Rules and Regulations..

11.14.13 3.00 hours – Final acceptance of tracked changes, scan of entire Document Notebook, reviewed report, ran spell check and sent First Draft with Tracked Changes Accepted to Attorney.

11.15.13 – 11.20.13 1.50 hours – At least three telephone conversations with Attorneys Josh and Mike, reviewed first draft of report with Mike, considered his conversation and prepared SECOND DRAFT Expert Witness Report

44.50 hours Total Hours x \$375 = \$16,687.50

Less Previous Paid Retainer - 6,000.00

Balance Due \$10,687.50



## ALLEN CARVER

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### STATEMENT OF SERVICES

McKeon & Morigeau Law, PLLC.  
P. O. Box 1558  
Polson, MT 59860

November 20, 2013

Case: Whitefish Credit Union v. Thorco, Inc., et al

Per Attached Time Log:

44.50 Hours x \$375 Per Hour = \$16,687.50

Less: Paid Retainer - 6,000.00

Balance Due \$10,687.50

Please make your check payable to Allen Carver & Associates, Inc. and mail to the above address.

Please let us know if you have any questions.

Thank you for retaining our Firm to prepare an Expert Witness Report for the above case.

Randy Cogdill  
A.A. Ni. bingon Property

Collateral Analysis							
Expressed in (000's)							
Collateral Description	Loan #	Valuation Date	Value	Prior Liens	Advance Rate	Liquidation Value	Valuation Source
300 Acres + 200 Acres	750	02/23/11	\$ 3,333,000	\$ 3,360,133	70%	\$ 2,333,100	Appraisal
<b>Total</b>			<b>\$ 3,333,000</b>	<b>\$ 3,360,133</b>		<b>\$ 2,333,100</b>	

\*Advance Rates should not exceed 70% for RE  
 Impaired Yes \*If yes, impairment analysis is required

**Summary of Classification**

\*Give detailed explanation for why the credit has been criticized

**Borrower Background and Loan History:**

Loan #750 financed additional development costs for a residential subdivision located near Somers. The subject property is approximately 300 acres in size cut up into 13 parcels of 20 acres each, and one parcel of 40 acres at the time of our loan. The original intent was to complete the improvements to support the 14 lots and market them for not less than \$800,000 each. **It should be noted that the borrowers changed the scope of the project to sub-lot the 14 parcels and create 62 "high-end" residential lots.** Each lot would be serviced by a community water system and on their own or septic. The Credit Union is also secured by an additional 200 acres of undeveloped ground located in the same vicinity, however, not contiguous.

**Action Plan**

\*Action Plans are to be updated with tracked changes.

Attorney Ryan Purdy is working closely on file. Efforts are being made to meet with the debtors new attorney and our attorney to construct a workout discussion, if fails, attorney to proceed with moving forward on foreclosure.

**Quarterly Update of Events**

\*Updates are to be kept as a log

# CERTIFIED

CLERK OF DISTRICT COURT

2016 AUG 12 PM 1:50

FILED

BY SP  
DEPUTY

1 Sean S. Frampton  
 2 Johnna J. Preble  
 3 MORRISON & FRAMPTON, PLLP  
 4 Frank Lloyd Wright Building  
 5 341 Central Avenue  
 6 Whitefish, MT 59937  
 7 Tel: (406) 862-9600  
 8 Fnx: (406) 862-9611  
 9 sean@morrisonframpton.com; johnna@morrisonframpton.com  
 10 Attorneys for Plaintiff Whitefish Credit Union

11 John L. Amsden  
 12 Justin P. Stalpes  
 13 Anthony F. Jackson  
 14 BECK & AMSDEN, pllc  
 15 1946 Stadium Drive, Suite 1  
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 Page: 13 of 28  
 Fees: \$196.00  
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12 John Heenan  
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 17 Fax: (406) 839-9092  
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 17 ELSAESSER JARZABEK ANDERSON  
 18 ELLIOTT & MACDONALD, CHTD.  
 19 123 South Third Avenue, Suite 24, PO Box 1049  
 20 Sandpoint, ID 83864  
 21 Tel: (208) 263-8517  
 22 Fax: (208) 263-0759  
 23 ford@ejame.com

Attorneys for Defendants and Counter-Claimants

## MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

23 WHITEFISH CREDIT UNION,

24 Plaintiff,

25 -vs-

26 THORCO, INC., a Montana Corporation,  
 27 DENNIS THORNTON, DONNA  
 28 THORNTON, and JOHN DOES 1-10.

Defendants.

Cause No. DV-12-174B

Judge: Robert B. Allison

JOINT MOTION TO VACATE  
 FEBRUARY 23, 2016 JUDGMENT OF  
 FORECLOSURE AND ORDER OF  
 SALE

JOINT MOTION TO VACATE FEB. 23, 2016 JUDGMENT OF FORECLOSURE AND ORDER OF SALE  
 Cause No. DV-11-326B

Page 1

STATE OF MONTANA )  
 County of Flathead )

I hereby certify that the instrument to which this certificate  
 is affixed is a true, correct and compared copy of the original on  
 file in the office of the Clerk of the District Court of Flathead  
 County this 2 day of Feb, 2018.

PEG ALLISON, Clerk of the District Court  
 By Richard R. Worde  
 Deputy Clerk



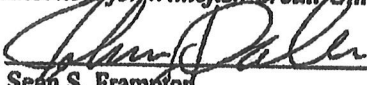
230




1 THORCO INC., a Montana corporation, }  
2 DENNIS THORNTON and }  
3 DONNA THORNTON, }  
4 Counter-Claimants, }  
5 -vs- }  
6 WHITEFISH CREDIT UNION, and }  
7 JOHN DOES 1-10, }  
8 Counter-Defendants. }

9 COME NOW the parties, Whitefish Credit Union, Thorco, Inc., Dennis Thornton, and  
10 Donna Thornton, who jointly move that, in accordance with the settlement reached between the  
11 parties, the Judgment of Foreclosure and Order of Sale entered by this Court on February 23,  
12 2016 be vacated.

13  
14 DATED this 11<sup>th</sup> day of August, 2016

15  
16 MORRISON & FRAMPTON, PLLP  
17 Attorneys for Whitefish Credit Union  
18 By:   
19 Sean S. Frampton  
Johnna J. Preble

20 DATED this 11<sup>th</sup> day of August, 2016

21 BECK & AMSDEN, PLLC  
22 Attorneys for Thorco, Inc., Dennis Thornton,  
23 and Donna Thornton  
24 By:   
25 John L. Amsden  
26 Justin P. Stalpes  
27 Anthony F. Jackson  
28

# CERTIFIED

CLERK OF DISTRICT COURT

2016 AUG 24 PM 4: 08

FILED

BY SA  
DEPUTY

1 Honorable Robert B. Allison  
2 District Judge, Department 2  
3 Flathead County Justice Center  
4 920 South Main Street, Suite 310  
5 Kalispell, MT 59901  
6 Telephone: (406) 758-5906



## MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

11 WHITEFISH CREDIT UNION,

12 Plaintiff,

13 -vs-

14 THORCO, INC., a Montana Corporation,  
15 DENNIS THORNTON, DONNA  
16 THORNTON, and JOHN DOE(s) 1-10.

17 Defendants.

Cause No. DV-12-174 B

Judge: Robert B. Allison

**ORDER OF DISMISSAL WITH  
PREJUDICE**

18 THORCO INC., a Montana corporation,  
19 DENNIS THORNTON and  
20 DONNA THORNTON,

21 Counter-Claimants,

22 -vs-

23 WHITEFISH CREDIT UNION, and  
24 JOHN DOES 1 - 10,

Counter-Defendants.


25 Pursuant to written Stipulation by and between the parties, through their respective  
26 counsel,

27  
28 ORDER OF DISMISSAL WITH PREJUDICE  
Cause No. DV-12-174B

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**IT IS HEREBY ORDERED** that the claims between Whitefish Credit Union, Thorco, Inc., Dennis Thornton, and Donna Thornton are hereby dismissed with prejudice, each party to bear its own costs and attorney fees.

DATED this 24<sup>th</sup> day of August, 2016.

  
Hon. Robert B. Allison  
District Court Judge

cc: Sean S. Frampton/Johnna J. Preble  
John L. Amsden/Justin P. Stalpes  
John Heenan  
Ford Elsaesser  
8/24/16 *SE*

STATE OF MONTANA )  
County of Flathead )  
I hereby certify that the instrument to which this certificate  
is affixed is a true, correct and unaltered copy of the original or  
file in the office of the Clerk of the District Court of Flathead  
County this 2 day of Feb, 2018  
PEG B. ALLISON, Clerk of the District Court  
By Michael B. Woods  
Deputy Clerk



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

**RELEASORS:** Thorco, Inc., Dennis Thornton, Donna Thornton  
(collectively "Thorco").

**RELEASEE:** Whitefish Credit Union ("WCU").

**DESCRIPTION OF CASUALTY:** All counterclaims described in DV-12-174B.

### SETTLEMENT AND RELEASE TERMS:

1. **Cash Component**

WCU shall pay one hundred fifty thousand dollars (\$150,000) to Releasors within three days of the execution of this Settlement Agreement and Mutual Release.

2. **Option to Purchase**

- a. Within 18 months of the date of this Settlement Agreement and Mutual Release, Thorco may exercise an option to purchase the properties described above for one million four hundred thousand dollars (\$1,400,000). The option price is allocated to each parcel as follows: The 300 Acre Tract, legally described in Exhibit A, is priced at \$1,100,000; the 200 Acre Tract, legally described in Exhibit A, is priced at \$300,000. Within the 18 months, Thorco may exercise its option to purchase either the 200 Acre Tract, the 300 Acre Tract, or both.
- b. WCU shall execute releases of its mortgages for the 200 and 300 acre tracts, a copy of which are attached as Exhibit B. At execution of this agreement, the executed releases shall be deposited into escrow with First American Title Company. If Thorco timely exercises its option, First American Title shall record the appropriate release or releases.
- c. Thorco shall execute Non-Merger Warranty Deeds conveying all of Thorco's right, title, and interest in the 200 and 300 acre tracts to WCU along with a Realty Transfer Certificate, a copy of which are attached as Exhibit C. At execution of this agreement, the executed Non-Merger Warranty Deeds shall be deposited into escrow with First American Title Company. If Thorco fails to timely exercise its option(s), First American Title shall record the appropriate deed(s).

3. **Deficiency**

WCU agrees to waive any claim for deficiency under any loan document, note, or guaranty at issue in the above-described civil matter, Cause No. DV-12-174B.

4. **Right of Redemption**

Thorco waives any right of redemption in the 200 or 300 acre tracts.

5. **Stipulation to Vacate Judgment and Dismiss with Prejudice**

The parties agree that they, or their attorneys of record, shall stipulate to vacate the Judgment of Foreclosure and Order of Sale and dismiss with prejudice, as fully settled upon the merits, the above-described civil matter, Cause No. DV-12-174B. Each party shall pay their own respective costs and attorneys' fees.

6. **Release**

Releasers, in consideration of the terms of the Settlement Agreement set forth above, fully and forever release and discharge WCU, its subsidiaries, affiliates, and parent companies, heirs, executors, personal representatives, successors, assigns, employers, employees, agents, attorneys, and any other person, firm or corporation liable or who may be claimed to be liable as a result of the casualty described, from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the described casualty, including any and all claims for attorneys' fees.

7. **Future Damages**

Inasmuch as the injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, Releasers agree, as a further consideration of this agreement, that this Mutual Release applies to any and all injuries, damages and losses resulting from the casualty described herein, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated.

8. **No Admission of Liability**

It is understood that the above-mentioned sum is accepted by each recipient as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither payment of the sum nor the negotiations for settlement shall be considered as an admission of liability. The debt evidenced by Judgment of Foreclosure and Order of Sale in Cause No. DV-12-174B, Flathead County District Court is disputed by Thorco.

**9. No Additional Claims**

The parties mutually represent that no present or future claims are filed or contemplated against any other party potentially liable for the losses, damages and injuries for which this Mutual Release is given. In the event any additional claim is made which directly or indirectly results in additional liability exposure to either party for the losses, injuries, and damages for which this Mutual Release is given, the parties hereto covenant and agree to indemnify and save each other harmless from all such claims and demands, including reasonable attorney fees and all other expenses necessarily incurred.

**10. Further Assurances**

The parties agree to cooperate fully, to execute any and all additional documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement and Mutual Release.

**11. Attorneys' Fees**

In the event suit is brought or claim is made arising out of the breach of any of the provisions of this Settlement Agreement and Mutual Release or to enforce any of the provisions of this Settlement Agreement and Mutual Release, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the other party.

**12. Confidential**

The parties acknowledge that the amount and terms of this settlement are to be confidential and shall not be publicly disclosed by them or their representatives, except a party may disclose such information: (1) as its counsel may advise it is required to disclose under applicable laws and regulations, (2) as otherwise required by an order of a court of competent jurisdiction, or (3) as required for Thorco to disclose terms in connection with efforts related to performance of the above-described Option to Purchase, including without limitation, efforts to secure financing or investors.

**13. Tax Issues**

WCU shall file a Form 1099 in accordance with its standard practices regarding debt reduction. WCU agrees it will report only the principal balance of the loans in question, an amount up to \$3,360,170.62, on the Form 1099. Thorco agrees to bring no claim against WCU regarding the Form 1099. WCU agrees not to formally or voluntarily intervene with any tax-related protest to the IRS by Thorco regarding the Form 1099, and will only participate to the extent it is legally obligated or compelled to do. WCU agrees it will make no negative report to any credit agency in relation to the loan in question.

Prior to the date escrow is established and during the time documents are held in escrow, real estate tax notices were and will be received by Thorco. Thorco may elect not to

pay the real estate taxes, delinquent or to become delinquent, because it may elect not to close the escrow and record the releases of mortgage. WCU understands that it may be obliged to pay delinquent real estate taxes should it close the escrow and have the Warrant Deeds recorded.

**14. Final Agreement**

This Settlement Agreement and Mutual Release represents the parties' entire agreement with respect to the subject matter of this Agreement and supersedes any and all prior agreements, negotiations, and oral understandings. This Settlement Agreement and Mutual Release may not be modified or amended unless done so in writing and executed by the parties.

**15. Disclaimer**

The parties have carefully read the foregoing, discussed its legal effect with their attorneys, understand the contents thereof, and sign the same of their own free will and accord.

This Settlement Agreement and Mutual Release shall be binding upon the parties' heirs, executors, successors, personal representatives and assigns.

DATED, this 8 day of June 2016.

**CAUTION: READ BEFORE SIGNING!**

**PARTIES:**

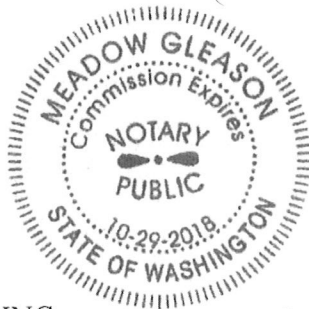
THORCO, INC.

X [Signature]  
By Dennis Thornton As: President

STATE OF Washington )  
: SS  
County of Pend Oreille )

This instrument was acknowledged before me on the 8 day of June 2016, by Dennis Thornton as President of Thorco, Inc.

(SEAL)



[Signature]  
Notary Public for the State of Washington

THORCO, INC.

X [Signature]  
By: Donna Thornton As: Sec/Treas

STATE OF Washington )  
: SS  
County of Pend Oreille )

This instrument was acknowledged before me on the 8 day of June 2016, by Donna Thornton as Sec/Treas of Thorco, Inc.

(SEAL)



[Signature]  
Notary Public for the State of Washington



DENNIS THORNTON

X *Dennis Thornton*

STATE OF Washington )  
: SS  
County of Pend Oreille )

This instrument was acknowledged before me on the 8 day of June 2016, by  
**Dennis Thornton.**

(SEAL)



*Meadow Gleason*  
Notary Public for the State of Washington

DONNA THORNTON

X *Donna Thornton*

STATE OF Washington )  
: SS  
County of Pend Oreille )

This instrument was acknowledged before me on the 8 day of June 2016, by  
**Donna Thornton.**

(SEAL)



*Meadow Gleason*  
Notary Public for the State of Washington

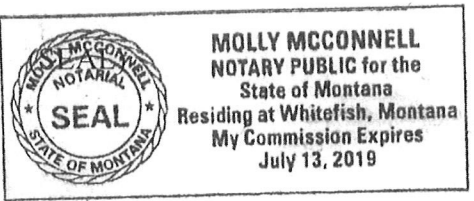
WHITEFISH CREDIT UNION

X [Signature]  
By: Ammon D. Archer As: SAG OFFICER

STATE OF MONTANA     )  
  : SS  
County of Flathead     )

This instrument was acknowledged before me on the 8<sup>th</sup> day of June 2016, by  
AARON ARCHER as SAG OFFICER of Whitefish Credit Union.

[Signature]  
Notary Public for the State of Montana



**ATTORNEYS:**

John L. Amsden  
Justin P. Stalpes  
Anthony F. Jackson  
BECK & AMSDEN, pllc  
1946 Stadium Drive, Suite 1  
Bozeman, MT 59715

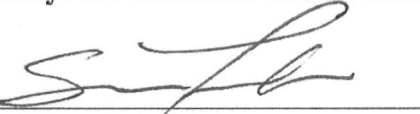
**Attorney for Thorco, Inc., Dennis Thornton, and Donna Thornton**

By: 

Date: 6/7/16

John L. Amsden  
Justin P. Stalpes  
Anthony F. Jackson

Sean S. Frampton  
Johnna J. Preble  
MORRISON & FRAMPTON, PLLP  
Frank Lloyd Wright Building  
341 Central Avenue  
Whitefish, Montana 59937  
**Attorneys for Whitefish Credit Union**

By: 

Date: 6-9-16

Sean S. Frampton  
Johnna J. Preble

# Montana Code Annotated 2021

TITLE 31. CREDIT TRANSACTIONS AND RELATIONSHIPS  
CHAPTER 2. DEBTOR AND CREDITOR RELATIONSHIPS  
Part 2. Assignments for Benefit of Creditors

## Effect Of Failing To Record

**31-2-217. Effect of failing to record.** An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers and encumbrances in good faith and for value unless it is recorded within 20 days after the date of the assignment.

**History:** En. Sec. 4526, Civ. C. 1895; re-en. Sec. 6152, Rev. C. 1907; re-en. Sec. 8628, R.C.M. 1921; Cal. Civ. C. Sec. 3465; Based on Field Civ. C. Sec. 1940; re-en. Sec. 8628, R.C.M. 1935; R.C.M. 1947, 18-317.

# Montana Code Annotated 2021

TITLE 71. MORTGAGES, PLEDGES, AND LIENS

CHAPTER 3. LIENS

Part 1. General Provisions

## Acknowledgment Of Lien Satisfaction -- Penalty

**71-3-131. Acknowledgment of lien satisfaction -- penalty.** (1) Subject to subsection (2), when a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction, the creditors shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, the creditor is liable to any person injured by the failure for a civil penalty of \$100, plus any other damages provided by law.

(2) If the owner of the property against which a lien is filed pays the underlying claim before an action is filed on that claim or to foreclose the lien, the owner of the property against which the lien was filed shall pay the lienholder's costs and attorney fees incurred for filing and recording the lien before the lien may be released.

**History:** En. Sec. 1, Ch. 525, L. 1985; amd. Sec. 2, Ch. 240, L. 1999.

2022-2-14 Transcript of Melanie Hall and Kelly O'Sullivan

2022-2-10-Economic Affairs Interim Committee Capital Room 137 Bank Oversight  
Hearing

Roll Call 8:50 AM

Sen. Ellsworth , Jason	email <a href="mailto:Jason.ellsworth@mtleg.gov">Jason.ellsworth@mtleg.gov</a>	(406) 360-0009	(R)
Sen. Morigeau, Shane	email <a href="mailto:shane@shanefornt.com">shane@shanefornt.com</a>	(406) 546-4290	(D)
Rep. Buckley, Alice	email <a href="mailto:aliceformontana@gmail.com">aliceformontana@gmail.com</a>	(406) 404-0891	(D)
Sen. Boland , Carline	email <a href="mailto:Carline.boland@mtleg.gov">Carline.boland@mtleg.gov</a>	(406) 868-1209	(D)
Rep. Ler, Brandon	email <a href="mailto:lerforrichland@gmail.com">lerforrichland@gmail.com</a>	(406) 480-5687	(R)
Rep. Kassmier, Josh	email <a href="mailto:JKassmier@Live.com">JKassmier@Live.com</a>	(406) 781-5386	(R)
Rep. Noland, Mark	email <a href="mailto:Marknolandhd10@gmail.com">Marknolandhd10@gmail.com</a>	(406) 253-8982	(R)
Sen. Bogner, Kenneth	email not listed	(406) 916-9690	(R)
Rep. Sullivan, Katie	email <a href="mailto:Sullivan89@gmail.com">Sullivan89@gmail.com</a>	(406) 616-3914	(R)

Testimony

10:40 AM Commissioner Melanie Hall  
10:48 AM Nick Ramlow  
10:50 AM Dennis Thornton  
11:06 AM Toni Mitchell  
11:20 AM Joe Clark  
11:35 AM Donna Thornton  
11:47 AM Winston Major  
11:50 AM Rick Breckinridge  
11:59 AM Baking Commissioner Melanie Hall questioned by the Oversight  
Committee.

2022-2-14 Transcript of Melanie Hall and Kelly O'Sullivan

Rep. Noland: Mr. Chairman, are borrowers entitled to their loan files?  
12:06:24 PM

Ms Hall: Yes.  
12:14:10 PM

Rep. Noland: Thank you Mr. Chairman, Commissioner Hall can a recorded mortgage lien be used for any other obligation?

12:14:24 PM  
Ms Hall: Mr. chair, members of the committee. No,

12:14 PM:31  
Rep. Noland: No, Mr. chair Ms. Hall is there only one action for foreclosure?

12:14:39 PM  
Ms Hall: There is a single action for foreclosure. Yes,

12:14:45 PM  
Rep. Noland: Mr. Chair, Ms. Hall, If a judgment in a foreclosure lawsuit is vacated is the judgment still owed?

12:14:56 PM  
Ms Hall: No Mr. chair, members of the committee. No. The judgment is not still owed.

Ms O'Sullivan: Members of the committee, Mr. Chairman my name is Kelly O'Sullivan I am legal counsel for the Division of Banking and Financial Institution.

12:16:39 PM  
Rep. Noland: Thank you so my question Mr. chairman, Miss O'Sullivan that I ask is if a foreclosure lawsuit is dismissed with prejudice is considered adjudicated on the merits? It was a specific question.

12:17:00 PM  
Ms O'Sullivan: If you're talking about the Thornton case and it was a voluntary dismissal with prejudice. Yes.

12:17:52 PM  
Rep. Noland: So If were making, you know it's dismissed with prejudice. It's done, that's what we have heard today. That's what many of the folks here have felt that's what is supposed to have happened. How can it not happen if It's dismissed with prejudice? It's done its discharged.

12:18:10 PM  
Ms O'Sullivan: The lawsuit is done. Yes that is correct. I'm sorry Mr. Chair, members of the committee, it's done.

**Michael Klinkhammer, Esq.**  
 Klinkhammer Law Offices  
 1111 S. Main  
 Kalispell Montana 59901  
 Telephone: (406) 257-7277  
 Facsimile: 888.414.1015

Attorney for Plaintiffs

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT  
 FLATHEAD COUNTY**

DENNIS THORNTON and	)	
DONNA THORTON,	)	<b>Cause No. DV-18-336D</b>
	)	
Plaintiffs,	)	<b>Honorable Dan Wilson</b>
vs.	)	
	)	<b>AFFIDAVIT OF ED</b>
WHITEFISH CREDIT UNION,	)	<b>HARSHBARGER</b>
	)	
Defendant.	)	

\*\*\*\*\*

STATE OF IDAHO )  
 : ss  
 County of FRANKLIN )

I, Ed Harshbarger, being first duly sworn upon oath depose and state:

1. I deal in real property investments.
2. In September 2017, I contacted John Sheldon seeking property in or near Kalispell and Flathead Lake that could be developed for upper scale homes.




3. Apparently, Mr. Sheldon gave my contact information to Dennis Thornton as Mr. Thornton called me regarding an investment opportunity in September of 2017.
4. Mr. Thornton gave me contact information for Gary Baldwin of G.B. Consulting and Jim Kuhlman of Pure West Realty.
5. After speaking with Gary Baldwin, I decided to go Montana to view the Thorco property.
6. Mr. Baldwin had emailed me documents concerning the development such as maps, photos, engineering reports and the appraisal.
7. In October 2017, I went to Montana to meet Dennis and view the tracts of land. I toured the 300-acre tract, 200-acre tract, adjoining property and the adjoining national forest.
8. While in Montana, I met with the Surveyor and the Engineer who were responsible for the surveying and engineering of the project.
9. After viewing the property and meeting with the Surveyor and Engineer, I met Dennis Thornton and Gary Baldwin at a restaurant. At that meeting, Dennis Thornton told me that he would sell me the 300-acre tract of land for 15 million dollars if I would contract with him to complete the development work. It was estimated the completed development work would cost 7 million dollars.
10. At that meeting, I said to write it up. It was my intent to accept the offer.
11. Gary Baldwin began work on the agreement to purchase.
12. After that meeting, I went to the Courthouse to do my due diligence to confirm what I had been told.
13. At the Clerk and Recorder Office, I found a mortgage for approximately 3.5 million dollars owed on the property.
14. After that, I went to First American Title and they had no record of any agreement.

15. After that, I drove to Whitefish Montana to speak with representatives of the Whitefish Credit Union.
16. I spoke with a representative and provided him a copy of the Settlement Agreement that Mr. Thornton had provided me.
17. The Whitefish Credit Union representative left for a while and then came back and stated that he had spoken with the attorney that had been involved in the matter. According to that attorney, the property was in foreclosure and approximately 4.5 million was owed on it.
18. After the meeting at Whitefish Credit Union, I walked away from the deal and did not speak with Mr. Thornton for quite some time.
19. It was not until August 2, 2018 that I called Dennis Thornton. I asked Dennis if he still had the property. I said, if I was to write a check for 4.5 million dollars tomorrow and put it in front of the nose of that credit union, would that get you out of the foreclosure and could we get clear title. I said I would do that for 25% interest. .
20. Dennis asked where I got the impression he was in foreclosure.
21. I told Dennis how I had checked at the Clerk and Records office and First American Title and after speaking with them felt that Dennis had been deceitful with me.
22. I had to walk away from the project because I did not want to get involved in litigation.
23. I also walked away from the project at that time because the Agreement Mr. Thornton provided only had his signature and his wife's. He did not have a fully signed agreement for me to review.
24. I recently told Dennis that if he could get the foreclosure matter dealt with for 4.5


million dollars, I would write the check in exchange for a 25% ownership in the property.

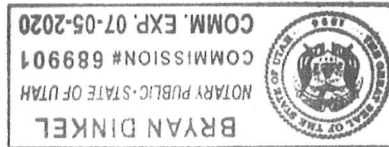
Dated this 26<sup>th</sup> day of August, 2018.

  
Ed Harshberger, Affiant

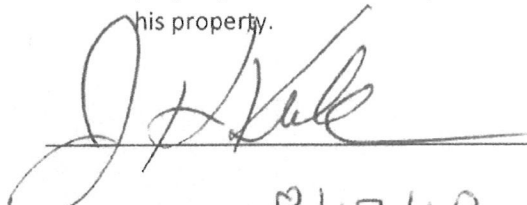
**SUBSCRIBED AND SWORN TO** before me this 26 day of August, 2018,

by Ed Harshberger.

  
Notary Public, State of Utah  
Residing at: Payson  
My Commission Expires: 7-05-2020



- 1) My name is Jim Kuhlman, I am a Montana licensed realtor with Pure West Real Estate in Bigfork, Montana
- 2) I have worked with and represented Dennis and Donna Thorton in real estate transactions for approximately 10 years.
- 3) In October, Dennis requested me to represent him on the sale of land to Jeff Cameron valued at \$2.1 million, said land that was not listed.
- 4) Dennis informed me that he had a settlement agreement with Whitefish Credit Union for a \$1.4 million payoff on this property.
- 5) After reviewing the settlement agreement, there appeared to be no issues and the amount was confirmed.
- 6) In November, I learned from Alliance Title that there was a lien of \$3.36 million, which was very surprising.
- 7) The title report was in conflict with the settlement agreement with WCU showing ownership of the property and mortgage.
- 8) As part of the lot sale agreement, Dennis was to provide Flathead Lake access, we placed under contract the purchase of a lake front property for \$850,000 contingent upon the sale and close of the lots to Jeff Cameron.
- 9) Due to the conflicting information on the lien held by WCU, the sale was cancelled and never closed.
- 10) As this property has since sold, Dennis has lost the opportunity to own lake front access property for future development sales. Said loss will have a negative impact on future values of his property.

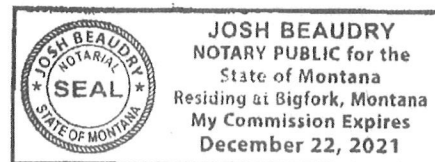
  
 \_\_\_\_\_  
 8/17/18

Jim Kuhlman, Realtor

STATE OF MONTANA  
 COUNTY OF FLATHEAD

This Instrument was ACK before me on  
(signed, sworn, acknowledged)  
 this 17 day of August, 2018,  
 by Jim Kuhlman  
print name of signer(s)

  
 \_\_\_\_\_  
 Notary Signature



**Michael Klinkhammer, Esq.**  
 Klinkhammer Law Offices  
 1111 S. Main  
 Kalispell Montana 59901  
 Telephone: (406) 257-7277  
 Facsimile: 888.414.1015

Attorney for Plaintiffs

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT  
 FLATHEAD COUNTY**

DENNIS THORNTON and	)	
DONNA THORTON,	)	<b>Cause No. DV-18-336D</b>
	)	
Plaintiffs,	)	<b>Honorable Dan Wilson</b>
vs.	)	<b>AFFIDAVIT OF KIM</b>
	)	<b>BARSTOW</b>
WHITEFISH CREDIT UNION,	)	
	)	
Defendant.	)	

\*\*\*\*\*

STATE OF Montana )  
 : ss  
 County of Flathead )

I, Kim Barstow, being first duly sworn upon oath depose and state:

1. My name is Kim Barstow. I am a Realtor with Flathead Valley Brokers in Kalispell, Montana.
2. I met Gary Baldwin I August of 2017. Gary told me about a land development on Boone Road near Somers, Montana, that he was working on for Thorco Inc. I went to the property with Gary and he showed it to me and introduced me to one of the owners of Thorco, Dennis Thornton. I toured the property with Dennis and Gary.

3. In October, Gary and Dennis introduced me to Jeff Cameron. Jeff was interested in purchasing some of the Thorco property. Dennis told me that the property was not listed, but that he was going to retain Jim Kuhlman as Thorco's Realtor for the Cameron sale and that Cameron also needed a Realtor.
4. I agreed to write up the buy sell and represent Jeff Cameron in the transaction. Dennis informed me that he was also working with a loan broker who had ordered a title report on the property with Alliance Title in Kalispell and requested that we use Alliance as well.
5. I wrote up the buy sell for \$2,100,000, (see attached), Jeff informed me that he intended to use First Interstate Bank for his financing and the loan officer was Brian Pelc. I contacted Brian and informed him of my involvement with the transaction. Jeff, I and Brian met regarding the sale, and I assisted in getting the paper work that Brian needed to get the transaction done.
6. Dennis told me that he had a settlement agreement with WCU and that the payoff was \$1,400,000. I read through the documentation that Dennis provided me and there did not appear to be any problems with the agreement he provided which verified the amount.
7. Jeff, Dennis, and Gary then introduced me to a buyer for some of the property that Jeff was purchasing from Thorco, John Sheldon. We made several trips to the property with John, and we also looked at lake access that Thorco had a buy sell agreement on for all of the lots in the Thorco development.
8. I negotiated with Jeff and John Sheldon, a buy sell was drafted between Jeff and John for John to purchase 3 of the 12 lots that Cameron was purchasing from Thorco for \$900,000.
9. Dennis and Gary also introduced me to several other individuals that they had been working with on the development. Several meetings took place in my office and the goal was to put together an amenity package for the development and a strategy for acquisition of all available contiguous properties. Several conference calls took place in my office. CCR's and HOA's were being drafted and an equestrian package was being put together that was to include an easement for trails, barns, etc...
10. In late November I received the title report from Alliance Title. The report showed a mortgage of \$3,360,000. This was alarming to me because the way I read the settlement agreement, the property had or was to have been conveyed to WCU in June of 2016, and a reconveyance to Thorco was to take place if or when Thorco exercised its option for \$1,400,000.

11. I contacted Dennis and he came into my office. I showed him the title report. We went over the report and the settlement agreement. The agreement clearly states that the property was to be held in escrow, conveyed to WCU with an option to purchase by Thorco or Thornton's. I could not understand how WCU was to have ownership of the property and a mortgage on record. It also clearly states that there is to be no mortgage, and that the lawsuit was to be dismissed.
12. I asked Dennis if the lawsuit had been dismissed and he said he did not know. He said it should have been. I also asked him if the escrow had been opened and he said it also should have been. I suggested to Dennis that he go to the Clerk of Court and see if the case had been dismissed and to go to First American Title and see if they had the escrow.
13. Dennis left my office and came back about an hour later with copies of the dismissal of the lawsuit. He told me that First American Title had no record of any escrow and that they were checking with their other offices to see if any of them had the escrow. Dennis told me that he was going to go to Alliance Title and see what more he could find out. A while later, that same day, Dennis came back and told me that he had spoken with Debbie Pierce at Alliance Title, and that she had told him that she spoke with WCU's attorney, Sean Frampton and she was unable to get a payoff. I also called First American Title to see if the escrow had been opened. They told me they had never gotten any instruction to do so. I asked if Dennis could open the escrow, and they told me no. I then called First American Title and Alliance Title both saying they have never received instructions from WCU to open anything for the Thorco property.
14. I told Dennis that I was going to have to notify all parties involved that there were some big problems with WCU. Dennis said he was going to get a hold of his attorney and left my office. I contacted everyone involved with the transactions and informed them that there were problems that needed to be worked through.
15. Jeff Cameron and John Sheldon had each given me a check for \$40,000. One from Cameron in his purchase from Thorco and Sheldon had also given me \$40,000 for his purchase from Cameron. I had not deposited these checks with Alliance Title at this time. After I notified Cameron and Sheldon of Thorco's problems with WCU, they both said that they were still interested in the property, but neither one of them wanted to get tangled up in litigation.
16. Jeff and Dennis came into my office. Jeff stated again that he did not want to have \$40,000 tied up if this ended up in litigation. Jeff and Dennis agreed to a reduction in the earnest money from \$40,000 to \$10,000. John Sheldon reduced his earnest money from \$40,000 to \$3,000 after this.

17. After all of the problems with Thorco's escrow and the payoff amounts surfaced, Brian Pelc at First Interstate Bank stopped working on Cameron's loan application until the matter could be resolved.
18. On December 22, 2017, a telephone conference call was held in my office. Present on the call were Thorco's attorney, Mike Black, Dennis and Donna Thornton, Jeff Cameron and myself. We tried to work through some of the problems with the settlement agreement through Mike Black. We explained how the escrow not being set up and the title report showing a mortgage of \$3,360,000 and nothing to verify the \$1,400,000 payoff amount was holding up Cameron's transaction.
19. Mike Black indicated that unless Thorco could come up with \$1,400,000 by noon on the 27<sup>th</sup> of December, 2017, Sean Frampton had indicated to Mike that WCU was going to transfer ownership of the Thorco property to WCU.
20. I was contacted by Dennis Thornton on December 27, 2017. Dennis stated that his company Thorco had filed for Chapter 11 that morning in order to stop the fraudulent transfer of the Thorco properties to WCU.
21. Dennis later came in to my office and told me that he and his wife, Donna, owned 31 acres personally in Lakeside, Montana on Birney Creek Road. He said that he had done much of the work already on the property and that he had a preliminary plan for subdividing that included 60 lots. Dennis said that he would sell the property for \$750,000 if he could retain the construction work for his company, Thorco. Dennis supplied an estimate for the work that needed to be done to the property. I ordered a title report from Alliance Title and it did not show any liens on the property.
22. On February 7, 2018, Dennis, Jeff Cameron, Hershel Walker and I looked at the Lakeside property. Rick Breckenridge, surveyor, showed up and explained to everyone what would be required in order to subdivide the property.
23. I then set up a meeting with a group that was willing to invest in a development in Lakeside. Dennis and I met with the group. They were very interested as they were all familiar with the property and the area. They asked me to set up a meeting with a lender to inquire about it.
24. I set up a meeting with Brian Pelc at First Interstate Bank. Brian stated that First Interstate was interested and credit applications were given to the group. After the meeting, I contacted Rick Breckenridge and asked him if he could do an ALTA survey on the Birney Creek property. Rick contacted me and stated that the title was clouded because of the personal guarantees signed by Dennis and Donna Thornton on the loan that Thorco took out in 2009 with WCU.



25. At this time I contacted Dennis Thornton and explained to him that I could not be involved any further because of the potential problems with the title. I then contacted the investor group and explained the same.

Kim Barstow

Kim Barstow, Affiant

SUBSCRIBED AND SWORN TO before me this 17 day of August, 2018,

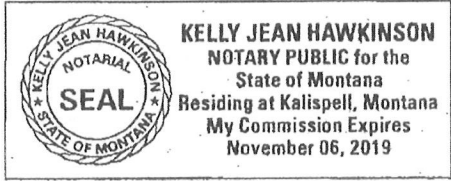
by Kim Barstow.

Kelly Jean Hawkinson

Notary Public, State of MT

Residing at: KALISPELL

My Commission Expires: 11-06-2019



**Michael Klinkhammer, Esq.**  
 Klinkhammer Law Offices  
 1111 S. Main  
 Kalispell Montana 59901  
 Telephone: (406) 257-7277  
 Facsimile: 888.414.1015

Attorney for Plaintiffs

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT  
 FLATHEAD COUNTY**

DENNIS THORNTON and	)	
DONNA THORTON,	)	<b>Cause No. DV-18-336D</b>
	)	
Plaintiffs,	)	<b>Honorable Dan Wilson</b>
vs.	)	<b>AFFIDAVIT OF JEFF</b>
	)	<b>CAMERON</b>
WHITEFISH CREDIT UNION,	)	
	)	
Defendant.	)	
*****		
STATE OF Montana	)	
	)	: ss
County of Flathead	)	

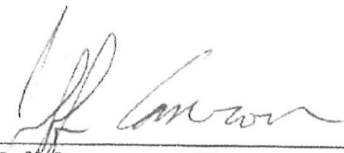
I, Jeff Cameron, being first duly sworn upon oath depose and state:

1. I entered into a buy sell agreement with Thorco Inc. on November 10, 2017, to purchase 12 lots on Boon Road in Somers, Montana.
2. Kim Barstow was my realtor for this transaction.
3. I entered into a buy sell agreement to sell three of the lots I was purchasing from Thorco to John Sheldon.

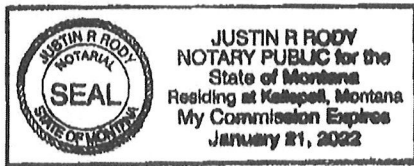
4. In early December 2017, I was made aware of issues with the payoff amounts needed to get clear title on the Thorco lots by Kim Barstow and Dennis Thornton.
5. Dennis Thornton told me that Sean Frampton, the attorney for WCU had claimed 4.5 or 4.6 million was due to WCU.
6. Dennis had shown me a settlement agreement that showed that only \$1,400,000 was needed to be paid to WCU by Thorco in order to obtain clear title to the Thorco lots. The agreement stated that upon payment the reconveyences would be recorded by First American Title. It appeared to me that WCU actually owned the lots, which were being held in escrow, and that Thorco had only to exercise its option of \$1,400,000 to have the lots released.
7. It was my understanding that a mortgage release for the 200 acres was being held at First American Title and the 200 acres was to be released upon payment of \$300,000. It was also my understanding that a mortgage release for the 300 acres was being held at First American Title and the 300 acres was to be released upon payment of \$1,100,000.
8. Dennis Thornton explained to me that the original mortgage had not been released and that the title company could not verify the amount of \$1,400,000. That didn't make sense to me. Why would someone sign over their property and allow the mortgage to stay in place? Also, why would WCU need a mortgage if WCU had ownership?
9. Upon hearing of the problems, I decided that I may want to pull my offer. I did not pull the offer at this time, but I did reduce the earnest money from \$40,000 to \$10,000 because of the problems. I did not want \$40,000 tied up in litigation.
10. Brian Pelc, my loan officer at First Interstate Bank, asked me to have Dennis Thornton come into his office with me. Brian had a copy of the title report. Brian asked Dennis how First Interstate was going to get first lien position on the 12 lots. Brian asked where the rest of the money was coming from.
11. Dennis told Brian that Thorco only owed WCU \$1,400,000 and showed Brian a copy of the settlement agreement he had with WCU. Brian held up the title report in one hand and the settlement agreement in the other hand and he said to Dennis, "until these match no deal".
12. After the meeting I had with Dennis Thornton and Brian Pelc, First Interstate stopped processing my loan application.
13. I was present in Kim Barstow's office along with Kim Barstow and Dennis and Donna Thornton. A conference call to Mike Black, Thorco's attorney was made to see if the problems with WCU could be worked out.

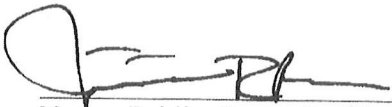
14. On December 27, 2017, Dennis Thornton called me and told me that Thorco had filed Chapter 11 bankruptcy to stop the transfer of the property.
15. In January, 2018, I met with Dennis to get an update on Thorco's problems with WCU.
16. After meeting with Dennis, I thought it over and called Dennis to tell him I was pulling my offer to purchase property from Thorco.
17. I then called Kim Barstow and informed her that I wanted to pull my offer and wanted the \$10,000 earnest money returned to me. I also asked Kim to inform John Sheldon and cancel the transaction between myself and John.
18. In late January or early February 2018, I was invited to look at a 31 acre project in Lakeside, Montana that was owned by Dennis and Donna Thornton.
19. I looked at the project with Dennis Thornton, Kim Barstow, and Hershel Walker on February 7, 2018.
20. The purchase price was to be \$750,000 and Thorco wanted to retain over \$2,000,000 in construction costs for the project. My business was to contract some of the construction work as well.
21. I attended an investor meeting on this project at Kim Barstow's office. At this meeting, I offered Dennis Thornton the funds which I had available so that engineering work and surveying work could start immediately.
22. Kim Barstow was going to draft the buy sell agreement for the Lakeside project.
23. Kim Barstow ordered a title report and it did not show any liens on the property. Kim then ordered an ALTA report. The ALTA report stated that Dennis and Donna Thornton had signed personal guarantees with WCU on the Thorco property in Somers and this was a cloud on the Lakeside property which Dennis and Donna Thornton personally owned.
24. Kim Barstow contacted me and stated that she could not move forward on the Lakeside project until the matters with WCU were cleared up and because of this, no buy sell was done. The project was put on hold.

Dated this 17 day of August, 2018.

  
\_\_\_\_\_  
Jeff Cameron, Affiant

SUBSCRIBED AND SWORN TO before me this 17<sup>th</sup> day of August, 2018,  
by Jeff Cameron.



  
\_\_\_\_\_  
Notary Public, State of Montana  
Residing at: Kalispell, MT  
My Commission Expires: 1/21/2022

*FundingEdge & Power2Fund*  
Commercial Real Estate & Business Finance

---

Page 1 of 3

November 17, 2017

**Dennis Thornton**  
**Thorco, Inc.**  
151 Amatasia Ln  
Kalispell, MT 59901

RE: Introductory Letter (Letter of Intent)

We have processed your request for Commercial Real Estate Financing and have issued a Letter of Intent based on a private money option. Enclosed is the LOI for your review.

To move forward we request an original signature on Letter of Intent and Due Diligence Fee returned to our office within date of expiration. Upon receipt, you're assigned a processor that will make immediate contact and assist through to closing along with a loan coordinator.

Contact us with any questions you may have in moving forward.

Thank you,

Processing Department

**LETTER OF INTENT**

November 17, 2017

**Dennis Thornton**  
**Thorco, Inc.**  
151 Amatasia Ln  
Kalispell, MT 59901

We have received your financing request and based on the review of documentation provided we are issuing a letter of intent for financing which is subject to final receipt, review and approval of documents and information described below, the terms of this transaction are estimated as follows:

**Collateral (First Lien):** +/- 300 Acres – Land Development – Boon Road, Somers, MT 59932  
**Type of Financing:** Refinance \*Private Money Program – Bridge Loan  
**Est. Finance Amount:** \$2,000,000  
**Amortization:** Interest Only  
**Term:** 3 Year Note  
**Rate:** 12%  
**Points:** 8  
**LTV 'As Is':** 25% of the 'As Is' Value  
**Conditions:** Final approval is subject to:

- Acceptable Value Review and Potential Site Visit
- Acceptable Debt Servicing Capability, Exit Strategy and/or Interest Reserve
- Acceptable Title Report, Environmental Questionnaire and Survey
- Provide any additional documentation requested in a timely manner

**Due Diligence Fee:** \$1,850<sup>00</sup> fee is required upon signing of Letter of Intent, to cover expenses incurred with processing the loan. In the event client elects, not to close the Loan after acceptance of this term sheet we will apply fee towards costs incurred. In the event financing is not approved any unused portion may be credited to client. Borrower is responsible for additional third-party fees, expenses and closing costs. This is not a commitment to finance and is to be construed only as intent to define terms of financing subject to conditions outlined. Multiple factors such as income, assets and cash flow are considered in determining a final credit tiering at underwriters' discretion. This agreement is on a best efforts basis.

*This Letter of Intent Expires Tuesday, November 28<sup>th</sup>, 2017.*

Initials DT Date 11-20-17

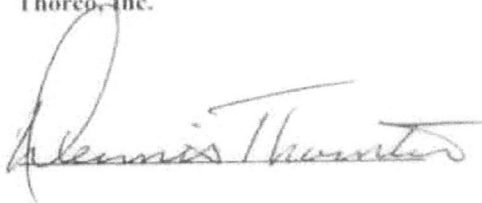
*FundingEdge & Power2Fund*  
Commercial Real Estate & Business Finance

Page 3 of 3

Upon acceptance of these terms, please sign the signature block provided. Upon receipt of signed LOI and fee our processing team and closing coordinator will make immediate contact

**Acceptance of terms outlined in Letter of Intent. Agreed and Acknowledged:**

Dennis Thornton  
Thoreco, Inc.



Sincerely,

*R. Hubbard*

Managing Director  
Funding Edge / Power2Fund

For payment, the following options are available:

- o Company and/or Personal Checks, Cashier Checks & Money Orders are made payable to FundingEdge.
- o For Wire Transfers – request instructions.
- o ACH or credit card payments – we invoice through QuickBooks & will email upon request.

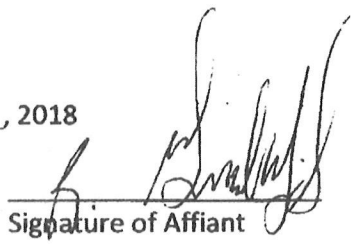


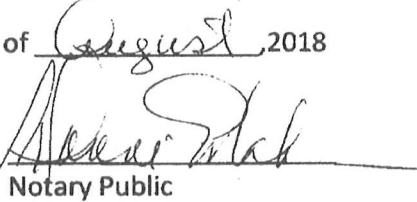
**Affidavit of Randy Giddings**

I am a loan broker with **excellcommercialfundinggroup**. I was contacted by Dennis Thornton of Thorco Inc., in October of 2017. Dennis was looking for funding for a development project in Montana.

I put Dennis in direct contact with Leon Hubbard at Funding Edge & Power 2 Fund. On November 20, 2017, Funding Edge & Power 2 Fund issued a Letter of Intent to fund Thorco's request. This Letter of Intent was signed and returned along with a wire transfer of \$1850.00. The loan was to close on or before December 5, 2017.

In early December Funding Edge & Power 2 Fund, Leon Hubbard, contacted me and told me the Letter of Intent had been rescinded, because of suspected fraud, the documentation and loan balances they researched did not match what Thorco had provided them.

Dated this 16<sup>th</sup> day of August, 2018  
  
Signature of Affiant

Sworn to subscribed before me this 16<sup>th</sup> day of August, 2018  
  
Notary Public

My Commission Expires:  
6-3-2020



**Michael Klinkhammer, Esq.**  
 Klinkhammer Law Offices  
 1111 S. Main  
 Kalispell Montana 59901  
 Telephone: (406) 257-7277  
 Facsimile: 888.414.1015


Attorney for Plaintiffs

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT  
 FLATHEAD COUNTY**

DENNIS THORNTON and	)	
DONNA THORTON,	)	Cause No. DV-18-336D
	)	
Plaintiffs,	)	Honorable Dan Wilson
vs.	)	<b>AFFIDAVIT OF DEBBIE</b>
	)	<b>PIERCE</b>
WHITEFISH CREDIT UNION,	)	
	)	
Defendant.	)	

\*\*\*\*\*  
 STATE OF MONTANA     )  
   : ss  
 County of Flathead     )


I, Debbie Pierce, being first duly sworn upon oath depose and state:

1. I am Vice President of Alliance Title <sup>and</sup> ~~Company, an~~ Escrow Corporation . 
2. On November 20, 2017 Jedi White, a mortgage lender, ordered a title report from me on land owned by Thorco, Inc. for a lender who was to be determined.

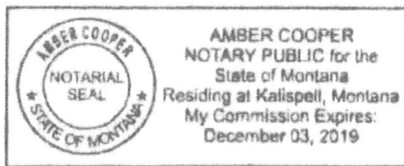
3. Alliance Title did the report and found a recorded mortgage in the amount of three million three hundred and sixty thousand dollars.
4. I contacted Whitefish Credit Union for a payoff. I was referred to Sean Frampton, the attorney for Whitefish Credit Union.
5. When I contacted Mr. Frampton in November of 2017, Mr. Frampton told me that Thorco had been in foreclosure, but that a settlement agreement had been completed.
6. After this investigation, I could not say how much was actually owed as based on the conversation with Mr. Frampton, the amount owed was disputed.
7. Mr. Jeff Cameron had entered into a Buy-Sell agreement dated November 10, 2017 on some of this property with Realtor Kim Barstow. Mr. Cameron had placed earnest money in escrow received by Alliance Title on December 1, 2017 pursuant to the Buy-Sell Agreement. Alliance Title provided the title search information to Ms. Barstow as to the possible sale to Jeff Cameron.
8. John Sheldon had entered into a Buy-Sell Agreement with Jeff Cameron to purchase 3 lots from Jeff Cameron. The purchase was dependent on the sale from Thorco to Mr. Cameron.
9. In about early December, Dennis Thornton came to my office with a partially signed copy of the Settlement Agreement and the Court Order dismissing the foreclosure.
10. As Mr. Thornton did not have a fully signed copy of the Settlement Agreement, I informed him that Mr. Frampton had stated he had a fully signed copy.
11. Mr. Thornton asked me if I would obtain a fully signed copy from Mr. Frampton for him and I did on December 2, 2017.

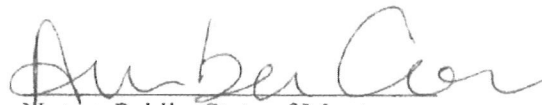
12. As Mr. Frampton had sent me a copy of the Settlement Agreement, but had represented that Thorco owed Whitefish Credit Union an amount that was to be determined, I could not provide a statement of final amount owed on the property

Dated this 16 day of August, 2018.

  
Debbie Pierce, Affiant

**SUBSCRIBED AND SWORN TO** before me this 16 day of August, 2018,  
by Debbie Pierce.



  
Notary Public, State of Montana  
Residing at: Kalispell  
My Commission Expires: 12.3.19

1 Michael Klinkhammer  
Klinkhammer Law Offices  
2 1111 S. Main  
Kalispell, MT 59901  
3 Phone: (406) 257-7277  
Fax: (888) 414-1015  
4 Email: mlinkhammer@montanadsl.net  
*Attorney for Plaintiffs*  
5  
6  
7

8 ELEVENTH JUDICIAL DISTRICT COURT,  
9 FLATHEAD COUNTY

10  
11 DENNIS THORNTON and DONNA  
THORNTON,  
12  
13 Plaintiffs,

14 vs.

15 WHITEFISH CREDIT UNION,  
16  
17 Defendant.

Cause No. DV-18-336D

Judge Dan Wilson

**DECLARATION OF  
MICHAEL G. BLACK**

18  
19 I, MCHAEAL G. BLACK, hereby declare as follows:

- 20 1. I am an attorney licensed to practice in Montana and I joined the Bozeman  
21 firm Beck, Amsden & Stalpes, PLLC several months ago.  
22  
23 2. On or about December 21, 2017, I first became aware of the Settlement  
24 Agreement and Mutual Release between the parties in a previous action filed in this  
25 Court under Cause No. DV-12-174B. I also learned of the letter to the attorney for  
26 Whitefish Credit Union confirming that the deadline for exercising the option under  
27

1 Section 2 of the Settlement Agreement and Mutual Release had been extended to  
2 December 22, 2017. I called the attorney for Whitefish Credit Union (Sean S.  
3 Frampton, Esq.) and left a message at his office late in the afternoon on December  
4 21, 2017.  
5

6 3. I spoke with Mr. Frampton by phone three times on December 22, 2017. My  
7 purpose in calling the attorney for Whitefish Credit Union was to request and obtain  
8 an extension of the deadline for exercising the option under Section 2 of the  
9 Settlement Agreement and Mutual Release beyond December 22, 2017.  
10

11 4. In my first phone call with Mr. Frampton in the morning that day, he began  
12 with the statement that Mr. Thornton has been the "biggest pain in the a\*\*" to  
13 Whitefish Credit Union. Mr. Frampton requested more information before  
14 Whitefish Credit Union would agree to an additional extension.  
15  
16

17 5. Over the next few hours, I talked with several persons with knowledge of  
18 attempts to exercise the option. Realtor Kim Barstow informed me that the escrow  
19 specified in Section 2 of the Settlement Agreement and Mutual Release had not  
20 been established at First American Title.  
21

22 6. In my second phone call with Mr. Frampton early in the afternoon that day, I  
23 specifically asked whether Whitefish Credit Union had established the escrow and  
24 Mr. Frampton responded "I don't know." After this second phone call and further  
25 communications with Ms. Barstow, I sent an email to Mr. Frampton stating that the  
26  
27

1 escrow had not been set up at First American Title. A true and correct copy of this  
2 email is attached as Exhibit 1.

3  
4 7. My third and last phone call with Mr. Frampton that day occurred after 4:30  
5 p.m. and lasted approximately three minutes. Mr. Frampton informed me he was on  
6 his way out of town for the holidays. He did not address the escrow issue in this  
7 conversation. He informed me he had spoken with Aaron Archer and Whitefish  
8 Credit Union would agree to leave open the time to exercise the option until at least  
9 Noon on December 27, 2017. I confirmed the discussion by email at 4:55 p.m. that  
10 day, true and correct copy of which is attached as Exhibit 2.

11  
12  
13 8. I later learned that Mr. Frampton admitted in a letter to Michael Klinkhammer  
14 (dated March 22, 2018) that all original documents that were to be placed in escrow  
15 have been in the possession of Whitefish Credit Union, which was "holding them in  
16 trust," since delivery of original documents to Mr. Frampton's office and the escrow  
17 had not been opened by Whitefish Credit Union.

18  
19  
20 9. I hereby declare under penalty of perjury that the foregoing is true and  
21 correct.

22 DATED this 15<sup>th</sup> day of August, 2018.

23  
24 By:   
25 \_\_\_\_\_  
26 Michael G. Black  
27

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**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_ day of August, 2018, I served a true and correct copy of the foregoing upon opposing party through his attorney or record by mailing the same through the U.S. Mail, first class postage prepaid thereon, and addressed as follows:

Sean S. Frampton  
FRAMPTON PURDY LAW FIRM  
530 West 19<sup>th</sup> Street #301  
Whitefish, MT 59937

---



## Mike Black

---

**From:** Mike Black  
**Sent:** Friday, December 22, 2017 1:59 PM  
**To:** sean@framptonpurdy.com  
**Subject:** RE: Exceptions on Thorco property

Sean:

Ex. B to SA appears to take care of Exception 24 on Schedule B on the Preliminary Title Report.

It seems the escrow was not established, unless I am mistaken. The \$3.36MM mortgage on record and lack of escrow have been an impediment, to my understanding, to closing by 1/3/2018 under the 11/10/2017 buy-sell. Given where we are today, provided WCU receives the assurances from the buyer you requested in your email this morning, what can we do to push back the closing date and allow exercise of the option? It is my understanding WCU is amenable to pushing back the date if adequate assurances are received today, but I would like confirmation.

Thanks.

Mike

---

**From:** Mike Black  
**Sent:** Friday, December 22, 2017 1:40 PM  
**To:** Coachkim@FVBMT.com  
**Cc:** sean@framptonpurdy.com  
**Subject:** RE: Exceptions on Thorco property

Forgot the attachment. My apologies.

---

**From:** Mike Black  
**Sent:** Friday, December 22, 2017 1:38 PM  
**To:** Coachkim@FVBMT.com  
**Cc:** sean@framptonpurdy.com  
**Subject:** RE: Exceptions on Thorco property

Kim:

I have attached the two exhibits to the settlement agreement that Whitefish Credit Union has consented to disclose. These are the documents that were to be escrowed at FATCO. If Thorco exercises its option, the release(s) in Ex. B are to be recorded; if Thorco does not exercise its option, the deed(s) in Ex. C are to be recorded.

Mike

---

**From:** Coachkim@FVBMT.com [Coachkim@FVBMT.com]  
**Sent:** Friday, December 22, 2017 1:13 PM  
**To:** Mike Black  
**Subject:** Exceptions on Thorco property

Mike

Here are the exceptions showing up on title.

Let me know if you have any questions. Kim

*Kim Barstow "Coach Kim"*  
*Commercial and Residential Realtor*

431 1st Ave W | Kalispell MT 59901

Office: 406.752.8883 | Mobile: 406.250.2560 | Direct: 406.407.9030

Website: [www.FlatheadValleyBrokers.com](http://www.FlatheadValleyBrokers.com) | Email: [CoachKim@Outlook.com](mailto:CoachKim@Outlook.com)



## Mike Black

---

**From:** Mike Black  
**Sent:** Friday, December 22, 2017 4:56 PM  
**To:** John Amsden  
**Cc:** sean@framptonpurdy.com  
**Subject:** FW: Exceptions on Thorco property

I just spoke with Sean Frampton. Thorco now has until Wednesday 12/27/2017 at Noon to have lending commitment letter from FIB for Mr. Cameron (the buyer) in order exercise the option. I will be receiving a confirmation letter or email from Sean Frampton shortly.

---

**From:** Mike Black  
**Sent:** Friday, December 22, 2017 3:18 PM  
**To:** Sean Frampton  
**Cc:** Sean2  
**Subject:** RE: Exceptions on Thorco property

406-546-0017. I still have not heard from Mr. Pelc.

---

**From:** Sean Frampton [sean@framptonpurdy.com]  
**Sent:** Friday, December 22, 2017 3:00 PM  
**To:** Mike Black  
**Cc:** Sean2  
**Subject:** RE: Exceptions on Thorco property

Mike,

I'll call you shortly after 4:30. At what number shall I reach you? Please reply to all.

**From:** Mike Black [mailto:mike@becklawyers.com]  
**Sent:** Friday, December 22, 2017 2:47 PM  
**To:** Sean Frampton <sean@framptonpurdy.com>  
**Subject:** RE: Exceptions on Thorco property

I talked with the realtor and left a voicemail for the loan officer.

On item no. 1, there is a lender. It is my understanding that the borrower and project qualify for financing, but the \$3.36MM WCU mortgage on the title report has held up a formal written commitment. I have attached a letter dated yesterday stating there has been an application made. I spoke with Mr. Pelc yesterday and the title issues seemed predominant. The realtor is going to send Ex. B from the SA to FIB loan officer.

On item no. 2, the realtor informs me that it is an impediment for the title company and the lender. I would like to propose a closing date of 2/15/2018 in order to allow the title company and lender to conclude due diligence but I do not have confirmation from the lender on the date yet.

---

**From:** Mike Black  
**Sent:** Friday, December 22, 2017 2:21 PM  
**To:** Sean Frampton  
**Subject:** RE: Exceptions on Thorco property

I think I can address this issues promptly. I forwarded the email and will get on the phone. Thank you.

---

**From:** Sean Frampton [sean@framptonpurdy.com]  
**Sent:** Friday, December 22, 2017 2:17 PM  
**To:** Mike Black  
**Cc:** AArcher@whitefishcu.com  
**Subject:** RE: Exceptions on Thorco property

Mike,

Again, the WCU is seeking to know to nearly 100% that this deal is going forward. All we know is that an unknown buyer is interested. I will speak with my client but will need the following information as a basis for my discussion, which is in addition to the information from my earlier email:

1. Does the buyer have a lender? If so, will the lender send a commitment letter given the releases?
2. Is the impediment you mentioned affecting closing because of the lender or title company? Either way, what is the new proposed closing date?

Please provide answers to this as soon as you can so I can call my client to discuss. I will actually be in the office until about 2:50.

Sean

**From:** Mike Black [mailto:mike@becklawyers.com]  
**Sent:** Friday, December 22, 2017 1:59 PM  
**To:** Sean Frampton <sean@framptonpurdy.com>  
**Subject:** RE: Exceptions on Thorco property

Sean:

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Thanks.

Mike

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Mike

---

**From:** [Coachkim@FVBMT.com](mailto:Coachkim@FVBMT.com) [[Coachkim@FVBMT.com](mailto:Coachkim@FVBMT.com)]  
**Sent:** Friday, December 22, 2017 1:13 PM  
**To:** Mike Black  
**Subject:** Exceptions on Thorco property

Mike

Here are the exceptions showing up on title.

Let me know if you have any questions. Kim

*Kim Barstow "Coach Kim"*  
*Commercial and Residential Realtor*

431 1st Ave W | Kalispell MT 59901

Office: 406.752.8883 | Mobile: 406.250.2560 | Direct: 406.407.9030

Website: [www.FlatheadValleyBrokers.com](http://www.FlatheadValleyBrokers.com) | Email: [CoachKim@Outlook.com](mailto:CoachKim@Outlook.com)



1 Michael Klinkhammer  
Klinkhammer Law Offices  
2 1111 S. Main  
Kalispell, MT 59901  
3 Phone: (406) 257-7277  
Fax: (888) 414-1015  
4 Email: mklinkhammer@montanadsl.net  
Attorney for Plaintiffs  
5  
6  
7

8 ELEVENTH JUDICIAL DISTRICT COURT,  
FLATHEAD COUNTY  
9

<p>10 DENNIS THORNTON and DONNA THORNTON, 11 12 Plaintiffs, 13 14 vs. 15 16 WHITEFISH CREDIT UNION, 17 Defendant.</p>	<p>Cause No. DV-18-336D Judge Dan Wilson <b>DECLARATION OF JOHN L. AMSDEN</b></p>
---	---

18  
19 I, JOHN L. AMSDEN, hereby declare as follows:

- 20 1. I am an attorney licensed to practice in Montana. I represented Plaintiffs in a  
21 previous action filed in this Court under Cause No. DV-12-174B. Defendant was  
22 also the adverse party in that previous action.  
23  
24 2. In the previous action referenced above, the parties engaged in a mediation on  
25 or about April 4, 2016. On that date, the parties executed a Settlement Term Sheet,  
26 a true and correct copy of which is attached hereto as Exhibit 1.  
27

- 1 3. On or about June 8, 2016, the parties entered into a Settlement Agreement and  
2 Mutual Release, a true and correct copy of which is attached hereto as Exhibit 2.
- 3
- 4 4. The attorney for Whitefish Credit Union (Sean S. Frampton, Esq.) required  
5 delivery of the original signed Non-Merger Warranty Deeds and Realty Transfer  
6 Certificate (to be attached as Exhibit C to the Settlement Agreement and Mutual  
7 Release, as provided in Section 2.c) to his office prior to disbursing settlement funds  
8 (as required by Section 1) to Plaintiffs.
- 9
- 10 5. The original signed Non-Merger Warranty Deeds and Realty Transfer  
11 Certificate were not delivered back to our office after they were delivered to Mr.  
12 Frampton. Whitefish Credit Union did not deliver the original releases of its  
13 mortgages (executed pursuant to Section 2.b) to my office. None of the original  
14 documents that were required to be placed in escrow have been in in the possession  
15 of me or my office after June 8, 2016.
- 16
- 17 6. After delivery of the original signed Non-Merger Warranty Deeds and Realty  
18 Transfer Certificate to the attorney for Whitefish Credit Union, we did not receive  
19 any request to execute any additional documents or take any additional actions (as  
20 provided for in the Settlement Term Sheet on page 2 and in the Settlement  
21 Agreement and Mutual Release in Section 10) regarding the requirement of the  
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Settlement Agreement and Mutual Release in Section 2.b-c that the original documents shall be deposited into escrow with First American Title Company.

7. It was my understanding that Whitefish Credit Union would set up the escrow upon funding the settlement. Whitefish Credit Union tendered the \$150,000 settlement payment to my office in June 2016. At that point, it was my understanding that the settlement was concluded.

8. Whitefish Credit Union or its counsel possessed all original instruments to be placed in escrow after June 8, 2016 and did not inform me or my office that these instruments had not been placed in escrow.

9. I hereby declare under penalty of perjury that the foregoing is true and correct.



Fill in this information to identify the case:

Debtor 1 Thorco, Inc.

Debtor 2 (Spouse, if filing) \_\_\_\_\_

United States Bankruptcy Court for the: District of Montana

Case number 17-61219-11

Official Form 410

**Proof of Claim**

04/18

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 300) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor? Whitefish Credit Union  
Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor uses with the debtor \_\_\_\_\_

2. Has this claim been acquired from someone else?  
 No  
 Yes From whom? \_\_\_\_\_

3. Where should notices and payments to the creditor be sent?  
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent? <u>Daan A. Stensland</u> <small>Name</small> <u>P.O. Box 9199</u> <small>Number Street</small> <u>Missoula MT 59807</u> <small>City State ZIP Code</small> Contact phone <u>406-543-8846</u> Contact email <u>dstensland@boonekayborg.com</u>	Where should payments to the creditor be sent? (if different) <small>Name</small> _____ <small>Number Street</small> _____ <small>City State ZIP Code</small> _____ Contact phone _____ Contact email _____
---	---

Uniform claim (entitled for electronic payments to chapter 13 (if you use one))  
 \_\_\_\_\_

4. Does this claim amend one already filed?  
 No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
Mo / Do / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?  
 No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 1,400,000.00 Does this amount include interest or other charges?  
 expired option to purchase 200 & 300 acre tracts of real property pursuant to 06/08/16 agreement  No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3061(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3061(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
06/08/16 Settlement Agreement and Mutual Release (Dkt. #20- Exh. B)

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
 Nature of property:  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
 Basis for perfection: Recorded mortgages  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded).  
 Value of property: \$ 1,780,000.00  
 Amount of the claim that is secured: \$ 1,400,000.00  
 Amount of the claim that is unsecured: \$ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)  
 Amount necessary to cure any default as of the date of the petition: \$ N.A.  
 Annual Interest Rate (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition: \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

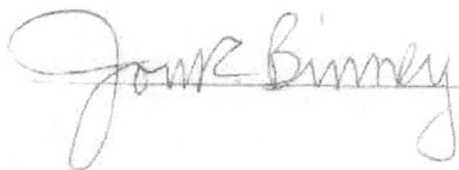
## Declaration of Jon Binney

I, Jon Binney, hereby declare as follows:

1. I am an attorney licensed to practice in Montana. I represented Thorco Inc. in two Chapter 11 bankruptcy cases. Both cases involved real estate transactions between Thorco Inc. and Whitefish Credit Union hereafter (WCU)
2. The first case number 14-60633RBK was filed on 5/27/2014 . In that case (WCU) filed a proof of claim for (\$8,790,000) stating Thorco Inc. was a over secured creditor and that (WCU) should be allowed interest and attorney fees, a true and correct copy is attached hereto as Exhibit 1.
3. Cause number case number 14-60633RBK was dismissed on 3/3/2015 . It was my understanding, new counsel, for Thorco Inc. John Amsden, John Heenan and Ford Elsaesser were going to complete the litigation in Cause No. DV - 12 - 174B. The parties mutually agreed to dismiss the Chapter 11 bankruptcy.
4. It's my understanding that Thorco Inc. and WCU entered in to a Settlement Agreement whereby WCU dismissed its foreclosure action against Thorco Inc. Thorco Inc. dismissed its counterclaims against WCU. I was not a party and had no involvement in The Settlement Agreement.
5. I was contacted by Dennis Thornton, Pres. of Thorco Inc. on December 23, 2017. Dennis explained to me that Thorco Inc. had entered into a Settlement Agreement with WCU whereby WCU was to cancel all interest and \$1,900,000 in debt on Thorco Inc.'s 2009 mortgage with WCU that there was to be a Escrow set up at First American Title and that WCU had all of the necessary documents to do so and the escrow had not been set up.
6. Dennis Thornton came to my office in Missoula, Montana on December 26 with documentation showing that First American Title had no record of any Escrow and a title report from Alliance Title showing \$3,360,000 owed by Thorco Inc. and personally guaranteed by Dennis and Donna Thornton. Dennis also provided documentation showing a letter of intent to fund dated November 27, 2017 from Funding Edge in excess of \$2 million.

7. Dennis had emails from Thorco Inc.'s attorney's John Amsden and Mike Black with WCU's attorney Sean Frampton. Sean Frampton states in email dated December 23, 2017 that WCU would record the deeds provided in the Settlement Agreement and Mutual Release if WCU did not receive \$1,400,000 by noon on December 28, 2017.
8. Dennis explained that Thorco Inc. had several sources of funding to complete the transaction set forth in the Settlement Agreement and Mutual Release but because the cancellation of debt did not show on the public record no lender or investor was willing to move forward with such a large transaction without being able to verify that only \$1,400,000 was owed.
9. After interviewing Dennis Thornton and reviewing documents provided I believed it was proper to file a Emergency Chapter 11.
10. On December 27, 2017 my office filed a Chapter 11 bankruptcy case number 17-61219-BPH for Thorco Inc.
11. On January 29, 2018 I was present at Thorco Inc.'s first creditor meeting along with US Trustee Aaron Graham York. Also present was attorney Dean Stensland representing WCU and Aaron Archer SAG agent representing WCU. Dennis Thornton explained that no lender or investor was willing to move forward unless Thorco Inc. could provide a title report showing that only \$1.4 million was owed and that WCU needed to turn over the documents and open escrow so that Thorco could obtain the funding to complete the transaction with WCU.
12. On February 20, 2018 WCU proposed a new Settlement Agreement with different terms. This was presented to Thorco Inc. Thorco Inc. rejected the new proposed Settlement Agreement stating it would only agree to extend the original Agreement.
13. On March 21, 2018 both parties agreed to lift the confidentiality clause in the Settlement Agreement and Mutual Release
14. On April 26, 2018 WCU filed a Proof of Claim case 17-61219BPH claim 10 on page 2, item 7 proof of claim is for \$1,400,000 item 8 references Settlement Agreement and Mutual Release item 9 basis for perfection: recorded mortgages, value of property \$1,780,000 amount of the claim that is secured \$1,400,000. A true and correct copy of which is attached hereto as Exhibit 2

15. In May 2018. The parties agreed that if Thorco Inc. dismissed the Chapter 11 bankruptcy WCU would deposit and open the Escrow at First American Title.
16. After receiving verification from Dennis and Donna Thornton's personal attorney Michael Klinkhammer and Dennis Thornton, president of Thorco Inc. that all documents were at First American Title Thorco Inc. accepted WCU's offer.
17. Neither I or my office was involved in setting up the escrow but the dismissal of the Chapter 11 case number 17-61219-BPH was conditioned on setting up Escrow at First American Title
18. Thorco Inc. agreed by joint resolution of all creditors to dismiss the Chapter 11 bankruptcy on date May 11, 2018.
19. I was informed by Dennis Thornton that after the Chapter 11 was dismissed WCU went to First American Title and retrieved all necessary documents to open Escrow

A handwritten signature in cursive script, reading "James Binney", written over a horizontal line.

## Dennis and Donna

---

**From:** "Jon Binney" <jon@binneylaw.com>  
**Date:** Sunday, May 6, 2018 7:24 AM  
**To:** "Michael Klinkhammer" <mklinkhammer@montanadsl.net>  
**Cc:** "Dennis and Donna" <thorco@centurytel.net>; "Scott Allen" <scott@binneylaw.com>; "Jon Binney" <jon@binneylaw.com>  
**Subject:** RE: WCU info

Mike:

Thanks for the update. I will not tell WFCU counsel anything about this. Since the hearing is on May 17, the case should be dismissed this coming week. I will talk to the US Trustee about a stipulation to dismiss as soon as I hear from Dennis.

Jon

**From:** Michael Klinkhammer [mailto:mklinkhammer@montanadsl.net]  
**Sent:** Saturday, May 05, 2018 10:45 PM  
**To:** 'Jon Binney'  
**Subject:** RE: WCU info

Jon

Whitefish Credit Union did not make an appearance. The clerk entered the Default. I have filed a motion for judgement upon entry of default. I also provided a judgement seeking 106,000,209.35 including attorney's fees of 26,000,000. I did not have to serve the motion or the request for default on Whitefish Credit Union as they did not make any appearance. So, do not tell them anything in the bankruptcy.

I have recommended to Dennis that he direct you to dismiss the bankruptcy. Most likely, WCU will claim that they did not respond based on the automatic stay. As the case was filed by Dennis and Donna personally, the motion will not have merit, but they will likely file it as their excuse.

In my last email to Sean Frampton, I offered to recommend that the Thornton's dismiss the bankruptcy but conditioned it on their agreeing to open the escrow and giving the Thornton's 18 months to exercise the option to purchase. I told him this would mitigate the damages to the Thornton's personally.

Mikw

**From:** Jon Binney <jon@binneylaw.com>  
**Sent:** Saturday, May 05, 2018 12:59 PM  
**To:** 'Michael Klinkhammer' <mklinkhammer@montanadsl.net>  
**Cc:** 'Jon Binney' <jon@binneylaw.com>  
**Subject:** FW: WCU info

Mike:

Did the judge sign and enter the default judgment?

Jon

**From:** Dennis and Donna [mailto:thorco@centurytel.net]

11/27/2019

Jon R. Binney, Esq.  
I.D. #2895  
BINNEY LAW FIRM, P.C.  
P.O. Box 2253  
Missoula, Montana 59806-2253  
Telephone: (406) 541-8020  
Fax: (406) 541-8006  
E-Mail Address: [jon@binneylaw.com](mailto:jon@binneylaw.com)  
Attorneys for Debtor-in-Possession


UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

IN RE: THORCO, INC.,  Debtor-in-Possession.	Case No. 17-60031-13  <b>MOTION TO DISMISS; AND NOTICE</b>
--	--

Pursuant to Rule 1017, Fed R. Bankr. P., and Mont. LBR 1017-1(b), the undersigned respectfully moves the Court to dismiss the above-entitled case. Counsel for the Debtor has conferred with Aaron G. York of the United States Trustee's Office who confirmed United States Trustee, Gregory M. Garvin, does not object to this Motion as set forth below:

1. This case was commenced voluntarily by the Debtor-in-Possession on December 27, 2017, and has not been previously converted.
2. Debtor-in-Possession believes it will be able to pay its creditors outside of the bankruptcy.
3. Debtor-in-Possession will be barred from filing a bankruptcy case under and chapter for a period of one (1) year following the dismissal of the instant case.

DATED this 8th day of May, 2018.

 /s/ Jon R. Binney  
Jon R. Binney  
Attorney for Debtor-in-Possession

**Dennis and Donna**

---

**From:** "Jon Binney" <jon@binneylaw.com>  
**Date:** Tuesday, February 20, 2018 3:26 PM  
**To:** "Dennis and Donna" <thorco@centurytel.net>  
**Cc:** "Scott Allen" <scott@binneylaw.com>; "Jon Binney" <jon@binneylaw.com>  
**Subject:** FW: Thorco

Dennis & Donna:

I just saw this response. We can discuss tomorrow.

Jon

**From:** Dean Stensland [mailto:dstensland@boonekarlberg.com]  
**Sent:** Tuesday, February 20, 2018 1:52 PM  
**To:** Jon Binney  
**Cc:** AArcher@whitefishcu.com  
**Subject:** Thorco

Jon:

In follow-up to our telephone conversation, Whitefish Credit Union ("WCU") will agree, on the following terms and conditions, to give Thorco, Inc., Dennis Thornton and Donna Thornton (collectively "Thorco") 120 days from February 9, 2018, to close the purchase of the 200 and 300 acre tracts of land ("land"):

1. Thorco dismisses its current bankruptcy and agrees not to re-file for bankruptcy for 12 months;
2. Thorco authorizes WCU to record the two Warranty Deeds previously executed by Thorco, wherein it granted the land to WCU;
3. Thorco agrees that during the time of WCU's ownership and exclusive control of the land, Thorco agrees not to trespass on the land, or allow any of its personal property or assets to be located on the land, without written permission from WCU;
4. Thorco executes a comprehensive release of all claims against WCU and its agents/representatives;
5. Once these conditions are satisfied, WCU and Thorco agree to execute and make effective an option for Thorco to purchase the land for \$1.4 M, with the closing date and expiration of the option no later than June 9, 2018. WCU will agree to execute deeds to Thorco for the land, deposit the deeds in escrow, and instruct the escrow agent to record the deeds upon deposit of \$1.4M of good funds with WCU, or return the deeds to WCU on June 10, 2018 if Thorco has not closed the purchase of the land.

Jon – please advise if there is anything not consistent with our conversations. I think that the last remaining term we were negotiating was the time period. Please contact me once you have final approval from your client.



Dean A. Stensland  
**BOONE**  **KARLBERG**  
201 West Main St., PO Box 9199  
Missoula, MT 59807  
406.543.6646

**Dennis and Donna**

---

**From:** "Jon Binney" <jon@binneylaw.com>  
**Date:** Friday, March 23, 2018 3:05 PM  
**To:** "'Dennis and Donna'" <thorco@centurytel.net>  
**Cc:** "'Jon Binney'" <jon@binneylaw.com>  
**Subject:** FW: Thorco/Whitefish Credit Union

Dennis:

This is the exchange of emails this week between Dean Stensland and I. I did also forward this to Mike Klinkhammer so he will have seen it before your meeting Monday.

Jon

**From:** Jon Binney [mailto:jon@binneylaw.com]  
**Sent:** Wednesday, March 21, 2018 2:42 PM  
**To:** 'Dean Stensland'  
**Cc:** 'Jon Binney'  
**Subject:** RE: Thorco/Whitefish Credit Union

Dean:

Thorco & the Thorntons consent to filing the settlement agreement and mutual release with the Bankruptcy Court. This will make it public record from that point on for other filings etc. The consent would only be effective from the date of this filing on and not retroactive if there were any previous breaches of the confidentiality agreement.

Jon Binney

**From:** Dean Stensland [mailto:dstensland@boonekarlberg.com]  
**Sent:** Tuesday, March 20, 2018 2:16 PM  
**To:** Jon Binney  
**Subject:** RE: Thorco/Whitefish Credit Union

Jon:

When Whitefish Credit Union files for relief from the bankruptcy court, it intends to attach the Settlement Agreement and Mutual Release as an exhibit to its motion. Given Thorco's and Thornton's agreement with Whitefish Credit Union below, I wanted to follow-up with you to make sure the procedure for disclosure is approved by Thorco and Thorntons.

We could go through the process of separately submitting the Settlement Agreement and Mutual Release under seal to the court. However, given that the parties have stipulated and are in agreement that the document and its contents can be disclosed to allow the parties to present evidence surrounding the document and to allow the bankruptcy court to review prior to rendering a decision, that would seem to be unnecessary, along with avoiding the time and expense of a separate submission.


So that there is no misunderstanding, please provide Thorco's and Thornton's consent for Whitefish Credit Union to attach the Settlement Agreement and Mutual Release to its

11/27/2019

motion.

I look forward to receiving your response.

Dean A. Stensland

**BOONE**  **KARLBERG**  
ATTORNEYS AT LAW

201 West Main St., PO Box 9199

Missoula, MT 59807

406.543.6646

**From:** Dean Stensland

**Sent:** Friday, March 16, 2018 11:17 AM

**To:** Jon Binney

**Subject:** Thorco/Whitefish Credit Union

Jon:


After our telephone call yesterday, I was to follow-up our conversation with an email and memorialize our agreement. At issue is the June 8, 2016 Settlement Agreement and Mutual Release executed by our respective clients, specifically paragraph 12 of that document, the Confidential provision. As we discussed, our clients are not in agreement as to the import of all terms contained therein, or at least the interpretation of some of the specific provisions of the Settlement Agreement and Mutual Release.

Given that Thorco has filed for bankruptcy protection, the bankruptcy court could to engaged to sort out issues presented to it, which will require review of the Settlement Agreement and Mutual Release. We have both discussed this matter with our clients and both Thorco and Whitefish Credit Union have agreed to waive the "confidential" provision of the Settlement Agreement and Mutual Release and allow it to be filed with the bankruptcy court, so to allow the parties the opportunity to present evidence surrounding it and the court the opportunity to review prior to rendering a decision.

If I have incorrectly stated our understanding and agreement, please immediately advise.

Have a great weekend.

Dean A. Stensland

**BOONE**  **KARLBERG**  
ATTORNEYS AT LAW

201 West Main St., PO Box 9199


Missoula, MT 59807

406.543.6646

11/27/2019

1 Sean S. Frampton  
2 FRAMPTON PURDY LAW FIRM  
3 530 West 19<sup>th</sup> Street #301  
4 Whitefish, Montana 59937  
5 Telephone: (406) 862-9600  
6 Facsimile: (406) 862-9611  
7 E-mail: [sean@framptonpurdy.com](mailto:sean@framptonpurdy.com)

8 *Attorneys for Defendant*

CLERK OF DISTRICT COURT  
2018 AUG 31 PM 12:45  
FILED  
BY \_\_\_\_\_ DEPUTY 

9 **MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

10 DENNIS THORNTON and DONNA  
11 THORNTON,

12 Plaintiffs,

13 -vs-

14 WHITEFISH CREDIT UNION,

15 Defendant.

10 ||  
11 ||  
12 ||  
13 ||  
14 ||  
15 ||

Cause No. DV-18-336D

Judge Dan Wilson

**THIRD AFFIDAVIT OF  
AARON ARCHER**

16 Aaron Archer, being first duly sworn, deposes and states as follows:

- 17
- 18 1. I did not speak to Dennis Thornton or any of his representatives about the option. My  
19 office is located at the business building in south Kalispell and it is not a retail branch  
20 of Whitefish Credit Union. I never spoke with a person named Harshbarger.
- 21
- 22 2. The total indebtedness on the Thorco loan is currently over \$4 million. Since the  
23 option was not exercised, the total indebtedness remains.
- 24
- 25
- 26

27 Further, affiant sayeth not.

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**CERTIFICATE OF MAILING**

The undersigned does hereby certify that on the 31<sup>st</sup> day of August, 2018, a true and correct copy of the foregoing document was served upon the persons named below, at the addresses set out below their names, as indicated below.

Michael Klinkhammer  
Klinkhammer Law Offices  
1111 S. Main  
Kalispell, MT 59901  
*Attorney for Plaintiffs*

U.S. Mail (first class postage)  
 Hand Delivery  
 Telecopy (facsimile)  
 Other email

  
\_\_\_\_\_  
Kelly Kracker  
Frampton Purdy Law Firm

October 4, 2018, the following are excerpts from Dan Wilson ruling, 2018:

**Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.**

On Page 2

**Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.**

In February 2012, WCU commenced a foreclosure action against Thorco Inc. and the Thorntons. The action involved two tracts of land-a 300 acre tract and a 200 acre tract ("the Property") Pursuant to Mont.R. Evid. 202(6), the Court takes judicial notice of the proceedings in *Whitefish Credit Union V Thorco Inc. Dennis Thornton, Donna Thornton and John Doe(s)*

On Page 3

**Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.**

In late February 2016, the court in DV-12-174, having granted summary judgment to WCU on its claims for foreclosure, enter judgment of foreclosure in favor of WCU and against Thorco Inc. and the Thorntons and decreed that the total indebtedness, including accrued interest, due and owing by Thorco Inc. and the Thorntons was \$4,348,880.01, said amount to accrue interest at the statutory rate of 10% per annum until paid in full DV-12-174 Dkt. No. 217, J. of Foreclosure and Or. of Sale (Feb. 23, 2016).

On Page 12

**Order Granting WCU's Motion for Summary Judgment and Order Denying Thorntons' Untimely Motion to Amend Complaint.**

The Thorntons cannot show that continuing to own the Property-presently free of the recording of the Non-Merger Warranty Deeds conveying all of *Thorco's* right, title, and interest in the Property to WCU-has caused them any compensable damages.

On Page 14

**Order Granting WCU's Motion for Summary Judgment and  
Order Denying Thorntons' Untimely Motion to Amend  
Complaint.**

WCU's loan to Thorco, Inc. guaranteed by the Thorntons  
remains in default and owing.

On Page 16

**Order Granting WCU's Motion for Summary Judgment and  
Order Denying Thorntons' Untimely Motion to Amend  
Complaint.**

Further, it is not disputed that the underlying loan  
is in default and that the mortgages on the Property  
merely secures payment of the loan.

**Exhibit (74)**

**October 10, 2018 District Court Judge Dan Wilson in DV-18-336D  
enters a Judgment that states the following:**

Judgment Is Hereby Entered in favor of defendant  
Whitefish Credit Union and against the Plaintiff's  
Dennis and Donna Thornton.

**Exhibit (75)**



October 25, 2018

VIA US MAIL AND EMAIL. [mklinkhammer@montanadsl.net](mailto:mklinkhammer@montanadsl.net)

Mr. Michael Klinkhammer  
Klinkhammer Law Offices  
1111 S Main St  
Kalispell, MT 59901

RE: Recording of Warranty Deeds per Agreement

Dear Mike:

Please be advised that WCU recorded the attached deeds to the property today. Judgment was entered on October 9, 2018 and the 14-day automatic stay on execution of the judgment passed on October 23, 2018. Also, Thornton's complaint never contained a cause of action for preliminary or permanent injunction and thus neither the judgment nor the automatic stay provision would apply.

With the assistance of the Flathead County Sheriff's office, the locks at the entrance of the property have been changed. We understand that your client has machinery and personal property located on the property and WCU will grant supervised access for the Thorntons to remove their personal property so long as this office receives 48 hours of advanced notice and the Flathead County Sheriff's office is available to accompany and supervise the removal.

Finally, please be advised that your client does not have permission to be on the property and that any attempt to access the property without the advance written consent of WCU will be considered a trespass for which WCU will report to the Flathead County Sheriff.

Frampton Purdy Law Firm



Sean S. Frampton

SSF/kk  
Enclosures



## MONTANA SECRETARY OF STATE

### Business Entity Report

February 22, 2023 3:08 PM

**Entity Name:** MO Somers LLC

**Entity Number:** C1266825

**Formation Date:** February 11, 2022

**Status:** Active-Good Standing

**Entity Type:** Domestic Limited Liability Company

*Entity Sub-Type:* Limited Liability Company

**Term:** Perpetual

**Purpose:** real estate holding company

**LLC Managed By:** Manager Managed

**Registered Agent Info:** Ryan D Purdy , 530 W 19TH STREET, SUITE 301, WHITEFISH, MT 59937,  
UNITED STATES

**State of Jurisdiction:** Montana

**Associated Business Names:**

- NONE

**Trademarks:**

- NONE

**Managers / Members**

- Manager, Mary Olivo, PO BOX 2478, COLUMBIA FALLS, MT 59912, UNITED STATES

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Mo SoI 

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### Form Info

### Status

MO Somers LLC (C1266825)   
Domestic Limited Liability Company

Active-Good Standin

## MO Somers LLC (C1266825) Domestic Limited Liability Company



### Request Information

<i>Filing Number</i>	C1266825
<i>Entity Type</i>	Domestic Limited Liability Company
<i>Entity SubType</i>	Limited Liability Company
<i>Status</i>	Active-Good Standing
<i>Managed By</i>	Manager
<i>Formed In</i>	Montana
<i>Principal Address</i>	1022 E. 8TH ST. UNIT B MARY OLIVO WHITEFISH, MT 59937
<i>Mailing Address</i>	P. O. BOX 2478 MARY OLIVO COLUMBIA FALLS, MT 59912
<i>Registration Date</i>	02/11/2022
<i>AR Due Date</i>	04/15/2024
<i>Registered Agent</i>	Noncommercial RA00077640 Ryan D Purdy 530 W 19TH STREET, SUITE 301 WHITEFISH, MT 59937



View History

17-61219-BPH Doc#: 20 Filed: 03/30/18 Entered: 03/30/18 14:21:35 Page 1 of 9

Dean A. Stensland  
Boone Karlberg P.C.  
201 West Main, Suite 300  
P.O. Box 9199  
Missoula MT 59807-9199  
Telephone: (406) 543-6646  
Facsimile: (406) 549-6804  
E-mail: dstensland@boonekarlberg.com  
Montana State Bar ID No. 3447

*Attorneys for Whitefish Credit Union*

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

IN RE:

Case No. 17-61219-11

THORCO, INC

MOTION TO MODIFY STAY

Debtor.

The Motion of Whitefish Credit Union (hereinafter "Creditor" or "WCU")  
respectfully represents:

1. The Debtor filed a Petition in this Court under Chapter 11 of the  
Bankruptcy Code on the 27<sup>th</sup> day of December, 2017.
2. According to Debtor's bankruptcy schedules, Creditor is the holder of  
a secured claim against the Debtor, and pursuant to Mont. LBR 4000-1, provides  
the following information:

(a) According to Debtor's bankruptcy schedules, the amount of  
claim owing to Creditor is: \$3,360,000.00.



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(b) The date upon which the subject debt was incurred is: Loan was provided March 19, 2009.

(c) According to Debtor's bankruptcy schedules, Creditor holds a security interest or lien upon the following described real property of the estate: Tracts 1B, 1BN, 1BF, 1BFG, 1BM, 1BL, 1BFF, 1BFE, 1BFD, 1BJ, 1BFF, 1BFA, 1BG, 1BGA of Section 27, T27N, R21W (300 Acres), located in Flathead County, Montana;

Tracts 1, 1A, 1B, 1C, 1D, 1E, 3BA, 3BB, 3BC, and 3BD of Section 28, T27N, R21W (200 Acres), located in Flathead County, Montana;

(d) The nature of Creditor's claim, the date upon which the security interest was obtained, the date upon which the security interest was perfected are as follows: On March 19, 2009, to secure its Loan, Debtor executed a Mortgage on the real property described in subparagraph 2 (c), which was recorded March 24, 2009 under Document No. 200900007830. The Mortgage is attached as Exhibit A. On March 10, 2014, the Flathead County District Court granted WCU's motion for summary judgment to foreclose on the above-referenced collateral. Thorco, Inc., Dennis Thornton and Donna Thornton (collectively "Thorco") and WCU entered into a Settlement Agreement and Mutual Release dated June 9, 2016. The Settlement Agreement and Mutual Release is attached as Exhibit B. Thorco and WCU have agreed to waive the confidential provisions

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contained in the Settlement Agreement and Mutual Release, to allow the parties to present evidence surrounding the agreement and to allow the court the opportunity to review the agreement;

(e) A description of Creditor's collateral, including its location, is as follows: See paragraph 2 (c).

(f) Debtor's bankruptcy schedules value WCU's collateral at \$8,790,000.00. However, according to an appraisal obtained by WCU, the fair market value of Creditor's collateral as of June 15, 2017 was \$1,780,000.00.

(g) A description of, and the amounts due upon, any other security interests which have priority over that of Creditor are as follows: None.

(h) If the Debtor is in default, the number of defaulted installments and the total amount in default are as follows: The loan has matured, summary judgment was obtained, and a Settlement Agreement and Mutual Release was executed.

(i) This Motion is made under and pursuant to the following subsections of 11 U.S.C. § 362 (d)(1) and (2).

(j) Other facts which are relevant in determining whether relief should be granted are as follows:

1. On March 19, 2009, Debtor borrowed \$3,360,000.00 from WCU. Dennis Thornton and Donna Thornton each executed a

personal guarantee for the loan;

2. Debtor agreed to pay the loan amount back to WCU within two years;
3. Debtor failed to pay the amount due when the loan matured on March 15, 2011;
4. WCU initiated foreclosure proceedings in February, 2012. Thorco filed numerous counterclaims against WCU;
5. On March 10, 2015, WCU was awarded summary judgment against Thorco on each of its counterclaims except the negligence count. The State District Court awarded WCU \$115,000.00 of attorney's fees against Thorco;
6. After trial was scheduled for May 27, 2015, Debtor filed for bankruptcy protection. The bankruptcy was dismissed less than one year later;
7. After WCU sought a judgment of foreclosure and order of sale from the State District Court, Thorco appealed the State District Court's earlier summary judgment decision. The Montana Supreme Court dismissed the appeal March 22, 2016;
8. Mediation was held, which resulted in the Settlement Agreement and Mutual Release;

9. As part of the Settlement Agreement and Mutual Release, WCU executed Releases of Mortgage and Debtor executed Warranty Deeds. Another provision of the settlement was that Whitefish Credit Union granted Thorco an option, for eighteen months, to purchase the property subject to the deeds and releases;

10. The parties to the Settlement Agreement and Mutual Release agreed that if the option was timely exercised by Thorco, the Releases of Mortgage would be recorded. The parties also agreed that if the option was not timely exercised by Thorco, the Warranty Deeds would be recorded;

11. The settlement envisioned that the parties would establish an escrow at First American Title Company to hold the original Releases of Mortgage executed by WCU and the original Warranty Deeds executed by Debtor. Neither party established the escrow at First American Title Company. Instead, Debtor provided its fully executed Warranty Deeds to WCU's counsel to hold the documents in trust together with the Releases of Mortgage, pending Thorco's performance or non-performance of the option to purchase.



12. The deadline contained in the Settlement Agreement and Mutual Release for Thorco to exercise the option was December 8, 2017. At the request of Thorco, the deadline was extended to December 22, 2017;
13. Thorco's option to purchase was not exercised on or before December 22, 2017;
14. Thorco requested additional time for a transaction to close;
15. Before WCU would consider an additional extension, WCU requested specific written assurances the transaction would timely close if an additional extension was granted;
16. Thorco failed to provide WCU with the requested written assurances, as a result no additional time to exercise the option to purchase was granted by WCU;
17. In accordance with the Settlement Agreement and Mutual Release, the Warranty Deeds were then authorized to be recorded. The Warranty Deeds did not get recorded before Debtor filed again for bankruptcy protection on December 27, 2017;
18. WCU seeks relief from the automatic stay to allow the Warranty Deeds to be recorded.

WHEREFORE, the Creditor Whitefish Credit Union moves the Court to grant this Motion to Modify Stay, including waiver of the fourteen day period set forth in F.R.B.P. 4001(a)(3), to allow it to record the Warranty Deeds, in accord with the Settlement Agreement and Mutual Release, and to grant such other relief as the Court may deem appropriate.

DATED this 30th day of March, 2018.

Boone Karlberg P.C.

By: /s/ Dean A. Stensland  
Dean A. Stensland  
*Attorneys for Whitefish Credit Union*



After recording, please return Deed to:  
MO SOMERS LLC  
PO BOX 2478  
Columbia Falls, MT 59912

0213950

Approved 02/14/2022 tg

## SPECIAL WARRANTY DEED

FOR VALUABLE CONSIDERATION, WHITEFISH CREDIT UNION (hereinafter "Grantor"), of P.O. Box 37, Whitefish, MT 59937, hereby grants unto MO SOMERS LLC, a Montana limited liability company (hereinafter "Grantee"), of PO BOX 2478, Columbia Falls, MT 59912, and to its successors and assigns forever, the following property in Flathead County, Montana:

*SEE ATTACHEHD EXHIBIT A, WHICH IS INCORPORATED HEREIN BY THIS REFERENCE.*

TO HAVE AND TO HOLD unto Grantee, and to his successors and assigns, forever, SUBJECT TO AND TOGETHER WITH THE FOLLOWING:

- (a) Reservations and exceptions in patents from the United States or the State of Montana;
- (b) Visible easements, easements and rights of way of record and/or shown on plats and surveys of the property;
- (c) All building, use, zoning, sanitary and environmental restrictions;
- (d) Taxes and assessments for current tax year and subsequent years;
- (e) Restrictions, covenants, conditions, limitations, agreements and reservations of record; and
- (f) Encumbrances and exceptions apparent or of record on the date this deed is executed by Grantor.

TO HAVE AND TO HOLD, all and singular the above-mentioned and described property, together with all appurtenances including water rights appurtenant to the property, unto the Grantee, and to the Grantee's successors and assigns, FOREVER. And Grantor hereby covenants to forever WARRANT and DEFEND all right, title and interest in and to the said property and the quiet and peaceable possession thereof, unto the Grantee and the Grantee's successors and assigns, against all acts and deeds of the Grantor and all and every person or persons whomsoever lawfully claiming or to claim the same by, through, or under Grantor, BUT NOT OTHERWISE. Grantee, by acceptance of this Special Warranty Deed understands that Grantor acquired this property through foreclosure and therefore makes no warranty not particularly described herein.





EXHIBIT A-LEGAL DESCRIPTION

The North Half Northwest Quarter Northwest Quarter (N1/2NW1/4NW1/4);  
The South Half Northwest Quarter Northwest Quarter (S1/2NW1/4NW1/4);  
The North Half Northeast Quarter Northwest Quarter (N1/2NE1/4NW1/4);  
The South Half Northeast Quarter Northwest Quarter (S1/2NE1/4NW1/4);  
The North Half Southeast Quarter Northwest Quarter (N1/2SE1/4NW1/4);  
The South Half Southeast Quarter Northwest Quarter (S1/2SE1/4NW1/4);  
The North Half Southwest Quarter Northwest Quarter (N1/2SW1/4NW1/4);  
The South Half Southwest Quarter Northwest Quarter (S1/2SW1/4NW1/4);  
The North Half Northwest Quarter Southwest Quarter (N1/2NW1/4SW1/4); and  
The South Half Northwest Quarter Southwest Quarter (S1/2NW1/4SW1/4);  
ALL in Section 28, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

AND

The North Half Southwest Quarter Northwest Quarter (N1/2SW1/4NW1/4);  
The South Half Southwest Quarter Northwest Quarter (S1/2SW1/4NW1/4);  
The North Half Northwest Quarter Southwest Quarter (N1/2NW1/4SW1/4);  
The South Half Northwest Quarter Southwest Quarter (S1/2NW1/4SW1/4);  
The North Half Southwest Quarter Southwest Quarter (N1/2SW1/4SW1/4);  
The North Half Northeast Quarter Southwest Quarter (N1/2NE1/4SW1/4);  
The South Half Northeast Quarter Southwest Quarter (S1/2NE1/4SW1/4);  
The North Half Southeast Quarter Southwest Quarter (N1/2SE1/4SW1/4);  
The South Half Southeast Quarter Southwest Quarter (S1/2SE1/4SW1/4);  
The North Half Northwest Quarter Southeast Quarter (N1/2NW1/4SE1/4);  
The South Half Northwest Quarter Southeast Quarter (S1/2NW1/4SE1/4);  
The North Half Southwest Quarter Southeast Quarter (N1/2SW1/4SE1/4);  
The South Half Southwest Quarter Southeast Quarter (S1/2SW1/4SE1/4); and  
The Southeast Quarter Northwest Quarter (SE1/4NW1/4),  
EXCEPTING THEREFROM that portion deeded to Flathead County for road purposes by Deed  
recorded June 26, 1937 in Book 223, Page 614, records of Flathead County, Montana.  
ALL in Section 27, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.



## MONTANA SECRETARY OF STATE

### Business Entity Report

November 15, 2022 1:55 PM

**Entity Name:** Ruis Glacier, LLC

**Entity Number:** C1284569

**Formation Date:** April 29, 2022

**Status:** Active-Good Standing

**Entity Type:** Domestic Limited Liability Company

*Entity Sub-Type:* Limited Liability Company

**Term:** Perpetual

**Purpose:** All Lawful Business

**LLC Managed By:** Manager Managed

**Registered Agent Info:** Ryan D Purdy , 530 W 19TH STREET, SUITE 301, WHITEFISH, MT 59937,  
UNITED STATES

**State of Jurisdiction:** Montana

**Associated Business Names:**

- Glacier Inn Motel - A1285843 - Active-Good Standing

**Trademarks:**

- NONE

**Managers / Members**

- Manager, Ryan D. Purdy, 530 W 19TH ST STE 301, WHITEFISH, MT 59937, UNITED STATES

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# Business Search

Ruis gl. 

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### Form Info

### Status

Ruis Glacier, LLC (C1284569) >  
Domestic Limited Liability Company

Active-Good Standin

## Ruis Glacier, LLC (C1284569)

Domestic Limited Liability Company



### Request Information

<i>Filing Number</i>	C1284569
<i>Entity Type</i>	Domestic Limited Liability Company
<i>Entity SubType</i>	Limited Liability Company
<i>Status</i>	Active-Good Standing
<i>Managed By</i>	Manager
<i>Formed In</i>	Montana
<i>Principal Address</i>	519 NUCLEUS AVENUE COLUMBIA FALLS, MT 59912-4009
<i>Mailing Address</i>	PO BOX 1928 COLUMBIA FALLS, MT 59912-1928
<i>Registration Date</i>	04/29/2022
<i>AR Due Date</i>	04/15/2024
<i>Registered Agent</i>	Noncommercial RA00077640 Ryan D Purdy 530 W 19TH STREET, SUITE 301 WHITEFISH, MT 59937

### Active ABNs & TMs

Glacier Inn Motel (A1285843)

### Inactive ABNs & TMs



View History

WHEN RECORDED RETURN TO:  
Ruis Glacier, LLC  
PO Box 1928  
Columbia Falls MT 59912



Debbie Pierson, Flathead County MT by SM

202200011434

Page: 1 of 2

Fees: \$16.00

5/3/2022 3:38 PM

File number: 4790FPT

0213950 ptn  
Approved 5/3/2022 tg/sa

# QUITCLAIM DEED

For Value Received

MO Somers LLC, Grantor, does hereby grant, bargain, sell and quitclaim unto

Ruis Glacier, LLC

The Grantee(s) the following described premises in Flathead County, Montana, to wit:

**SEE ATTACHED EXHIBIT "A"**

TO HAVE AND TO HOLD the said premises, together with appurtenances unto the said Grantee(s) and to such survivors, heirs and assigns forever.

Dated this 3rd day of May, 2022.

MO Somers LLC

By Mary Olivo, Sole Member

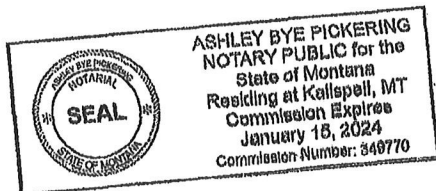
STATE OF: **Montana**

COUNTY OF: **Flathead**

This instrument was subscribed, sworn to and acknowledged before me on this 3rd day of May, 2022, by **Mary Olivo, Sole Member**.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for the State of \_\_\_\_\_  
Notary Resides: \_\_\_\_\_  
My commission expires: \_\_\_\_\_







**EXHIBIT "A"**

**The North Half of the Northwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ );  
The South Half of the Northwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ );  
The North Half of the Northeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ );  
The South Half of the Northeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ );  
The North Half of the Southeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ );  
The South Half of the Southeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ );  
The North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ );  
The South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ),  
AND  
The North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ )  
The South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ )**

**ALL in Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.**

1 Sean S. Frampton  
2 FRAMPTON PURDY LAW FIRM  
3 530 West 19<sup>th</sup> Street #301  
4 Whitefish, MT 59937  
5 Telephone: (406) 862-9600  
6 Facsimile: (406) 862-9611  
7 E-mail: [sean@framptonpurdy.com](mailto:sean@framptonpurdy.com)

8 *Attorneys for Plaintiff*

9 **MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

10	MO SOMERS LLC,	]]	Cause No. DV-22-_____
		]]	
11	Plaintiff,	]]	Judge _____
	-vs-	]]	
		]]	
12	THORCO, INC., DENNIS THORNTON,	]]	
13	DONNA THORNTON, and JOHN DOES 1-	]]	<b>COMPLAINT</b>
	20	]]	
		]]	
14	Defendants.	]]	

15 COMES NOW Plaintiff, through counsel, and for its claims states and alleges as follows:

- 16 1. MO Somers LLC is a Montana limited liability company that owns 500 acres of property
- 17 in Somers (the Property).
- 18 2. Defendants Dennis and Donna Thornton (collectively, "Thornton") are husband and wife,
- 19 reside in Flathead County, and are principals of the entity that previously owned the
- 20 Property. Dennis and Donna Thornton were previously designated as Vexatious Litigants
- 21 over the number of lawsuits they filed concerning the Property.
- 22 3. Defendant Thorco, Inc. ("Thorco") is a Montana Corporation that previously owned the
- 23 Property. Thorco has been designated as a Vexatious Litigant over the number of
- 24 lawsuits it filed concerning the Property.
- 25 4. The Court has jurisdiction over this matter and venue is proper in this Court.
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**COUNT 1  
INJUNCTIVE RELIEF**

Plaintiff restates and realleges the allegations set forth above.

5. Thorco was foreclosed upon from 2013 until 2021.
6. After being declared Vexatious Litigants, Dennis Thornton cut the locks that Whitefish Credit Union had placed on the property to secure it, occupied the Property, and declared that he would continue to occupy the property until he recovered it.
7. After Plaintiff's purchase, it secured the property with a locked gate. However, on March 21, 2022, Defendants Thorntons and/or Thorco cut the locks.
8. Also on or about March 21, 2022, Defendants Thorntons and/or Thorco placed a large excavator in the middle of the main road leading into the Property, blocking access by Plaintiff.
9. Plaintiff plans to develop its property but the excavator and Defendants' conduct is denying Plaintiff access to the Property.
10. Plaintiff is entitled to a preliminary and permanent injunction enjoining Defendants from interfering with Plaintiff's plans to develop and improve its Property.

**COUNT 2  
QUIET TITLE OF PERSONAL PROPERTY**

Plaintiff restates and realleges the allegations set forth above.

11. At the time of foreclosure, either Thornton or Thorco had personal property, including heavy equipment (collectively, the "Equipment") located on the Property.
12. The Equipment consists of the following:
  - a. Steam Roller/Gallon (T05-80-36266)
  - b. Transport Bus/'Eagle transit' (IFDKE30G5KHA75673)
  - c. Front end scope, rock mover (65V3781)
  - d. 1983 Ford 3/4 PU (1FTHF2610DPA57597)
  - e. various implements for various machines

- 1 f. Washer Truck/Ford F800 '86 (1FDPK84N5GVA14708)
  - 2 g. 1960's Ford PU with cargo bed
  - 3 h. totaled snowmobile/Polaris
  - 4 i. 3 Shipping Containers full of parts and tools
  - 5 j. various trash piles of parts and accessories
  - 6 k. 1960's Ford truck with H2O accessories (Red)
  - 7 l. Fuel Transport trailer
  - 8 m. Front end loader/John Deere (U7931)
  - 9 n. Rock Sorter Conveyer (Green)
  - 10 o. Rock Crusher (yellow)
  - 11 p. Grater/Champion (715A-13-225-0961-2)
  - 12 q. 1990's Fuel Truck/White ("Valcon")
  - 13 r. Logging Truck with folding trailer/"Thorco Inc"
  - 14 s. Front End Loader/Caterpillar
- 15 13. John Does 1-20 are fictitious companies and/or persons that may have a security interest
- 16 in the Equipment (as hereinafter defined) identified below.
- 17 14. At no time during Whitefish Credit Union's foreclosure had Thornton or Thorco removed
- 18 the Equipment from the Property.
- 19 15. Upon information and belief, either Thornton or Thorco claim an ownership interest in
- 20 the Equipment.
- 21 16. MO Somers LLC seeks a declaratory ruling quieting title to the Equipment. If Thornton
- 22 or Thorco claim an ownership interest in the Equipment, this Court should so declare and
- 23 have them immediately remove the Equipment, and if not removed in the time set by the
- 24 Court, have it declared abandoned. Alternatively, if neither Thornton nor Thorco claim
- 25 any interest in the Equipment, this Court should declare it abandoned and quiet title to the
- 26 Equipment in the name of MO Somers LLC.

27 WHEREFORE, MO Somers LLC prays for judgment against Defendants as follows:

- 28 1. Issuing a preliminary and permanent injunction enjoining Defendants from blocking Plaintiff's access to its property or otherwise interfering with its development effort;

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2. Quieting title to the Equipment, ordering its removal, and awarding any expenses for reimbursement of expenses, if necessary; and
3. For such other relief as the Court deems just and equitable.

DATED this 28<sup>th</sup> day of March, 2022.

FRAMPTON PURDY LAW FIRM  
*Attorneys for Plaintiff*

By:   
Sean S. Frampton

1 Sean S. Frampton  
2 FRAMPTON PURDY LAW FIRM  
3 530 West 19<sup>th</sup> Street #301  
4 Whitefish, MT 59937  
5 Telephone: (406) 862-9600  
6 Facsimile: (406) 862-9611  
7 E-mail: [sean@framptonpurdy.com](mailto:sean@framptonpurdy.com)

8 *Attorneys for Plaintiff*

9 **MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

10	WHITEFISH CREDIT UNION,		Cause No. DV-22- <u>37B</u>
11			
12	Plaintiff,		Judge <u>Robert B Allison</u>
13	-vs-		
14			
15	THORCO, INC., DENNIS THORNTON,		<b>SUMMONS</b>
16	DONNA THORNTON, and JOHN DOES 1-		
17	20		
18			
19	Defendants.		

20 THE STATE OF MONTANA sends greetings to the Defendant: DENNIS THORNTON:

21 YOU ARE HEREBY SUMMONED to answer the Complaint to Quiet Title to Personal Property in this action, which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you in the County wherein you reside, and to file your answer and serve a copy thereof upon the Plaintiff's Attorney, pursuant to Rule 12, M.R.Civ.P., within twenty-one (21) days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you, by default, for the relief demanded in the Complaint to Quiet Title to Personal Property.

22 WITNESS MY HAND AND THE SEAL OF SAID COURT THIS day 10th of  
23 JANUARY, 2022.

24 Peg L. Allison  
25 Clerk of Court

26 By: *Crica Bf*  
27 Deputy Clerk





1 Sean S. Frampton  
2 FRAMPTON PURDY LAW FIRM  
3 530 West 19<sup>th</sup> Street #301  
4 Whitefish, MT 59937  
5 Telephone: (406) 862-9600  
6 Facsimile: (406) 862-9611  
7 E-mail: sean@framptonpurdy.com

8 *Attorneys for Plaintiff*

9 **MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

9	WHITEFISH CREDIT UNION,		Cause No. DV-22-_____
10			
11	Plaintiff,		Judge _____
12	-vs-		
13			
14	THORCO, INC., DENNIS THORNTON,		<b>COMPLAINT TO QUIET TITLE TO</b>
15	DONNA THORNTON, and JOHN DOES 1-		<b>PERSONAL PROPERTY</b>
16	20		
17			
18	Defendants.		

19 COMES NOW Plaintiff, through counsel, and for its claims state and allege as follows:

20 1. This is a quiet title action involving personal property located in Flathead County,

21 Montana.

22 2. The Court has jurisdiction over this matter and venue is proper in this Court.

23 3. Whitefish Credit Union (“WCU”) is a financial institution organized and existing under

24 the laws of the State of Montana, headquartered in Whitefish, Montana.

25 4. Defendant Thorco, Inc. (“Thorco”) is a Montana Corporation with its principal office in

26 Kalispell, Montana.

27 5. Defendants Dennis and Donna Thornton (collectively, “Thornton”) are husband and wife

28 and reside in Flathead County, Montana.



- 1 6. John Does 1-20 are fictitious companies and/or persons that may have a security interest  
2 in the Equipment (as hereinafter defined) identified below.
- 3 7. Thorco formerly owned real property located on Boon Road in Somers, Montana (the  
4 “Property”) and WCU foreclosed on the Property and now holds legal title.
- 5 8. At the time of foreclosure, either Thornton or Thorco had personal property, including  
6 heavy equipment (collectively, the “Equipment”) located on the Property.
- 7 9. The Equipment consists of the following:
- 8 a. Steam Roller/Gallon (T05-80-36266)  
9 b. Transport Bus/‘Eagle transit’ (IFDKE30G5KHA75673)  
10 c. Front end scope, rock mover (65V3781)  
11 d. 1983 Ford 3/4 PU (1FTHF2610DPA57597)  
12 e. various implements for various machines  
13 f. Washer Truck/Ford F800 ‘86 (1FDPK84N5GVA14708)  
14 g. 1960’s Ford PU with cargo bed  
15 h. totaled snowmobile/Polaris  
16 i. 3 Shipping Containers full of parts and tools  
17 j. various trash piles of parts and accessories  
18 k. 1960’s Ford truck with H2O accessories (Red)  
19 l. Fuel Transport trailer  
20 m. Front end loader/John Deere (U7931)  
21 n. Rock Sorter Conveyer (Green)  
22 o. Rock Crusher (yellow)  
23 p. Grater/Champion (715A-13-225-0961-2)  
24 q. 1990’s Fuel Truck/White (“Valcon”)  
25 r. Logging Truck with folding trailer/“Thorco Inc”  
26 s. Front End Loader/Caterpillar
- 27 10. At no time has Thornton or Thorco removed or attempted to remove the Equipment from  
28 the Property.
11. Upon information and belief, either Thornton or Thorco claim an ownership interest in  
the Equipment.
12. Neither Thornton nor Thorco will remove the Equipment from the Property.

**COUNT 1  
QUIET TITLE**

Plaintiff restates and re-alleges all paragraphs above as if set forth herein.

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13. WCU seeks a declaratory ruling quieting title to the Equipment.
14. If Thornton or Thorco claim an ownership interest in the Equipment, this Court should so declare and have them immediately remove the Equipment, and if not removed in the time set by the Court, have it declared abandoned.
15. Alternatively, if neither Thornton nor Thorco claim any interest in the Equipment, this Court should declare it abandoned and quiet title to the Equipment in the name of WCU.

WHEREFORE, WCU prays for judgment against Defendants as follows:

1. Quieting title to the ownership of the Equipment;
2. Making provisions for its timely removal from the Property and the reimbursement of expenses, if necessary, and
3. For such other relief as the Court deems just and equitable.

DATED this 7<sup>th</sup> day of January, 2022.

FRAMPTON PURDY LAW FIRM  
*Attorneys for Plaintiff*

By:   
Sean S. Frampton

# TFSS

TITLE  
FINANCIAL  
SPECIALTY  
SERVICES

May 12, 2022

THORCO INCORPORATED  
PO BOX 1557  
KALISPELL, MT 59903-1557

Dear Valued Customer:

CONGRATULATIONS! Your lien with Whitefish Credit Union has been released.

Enclosed please find the original recorded Satisfaction of Mortgage. This document releases the lien from your property.

We would like to take this opportunity to say "Thank You" for allowing Whitefish Credit Union and Title Financial Specialty Services to assist you in this transaction. Please let us know if we can be of service to you in the future.

Sincerely,

Title Financial Specialty Services  
Central Release Department  
1-208-785-2515

0213950 tg  
★  
★

Return to: Title Financial Specialty Services  
P.O. Box 339  
Blackfoot, Idaho 83221  
1-208-785-2515

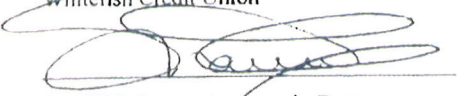
Loan Number: 9669428-0750/12 Client Name: Whitefish Credit Union

**SATISFACTION OF MORTGAGE**

KNOW ALL MEN BY THESE PRESENTS, that Whitefish Credit Union, does hereby certify that a certain mortgage, dated , made and executed by THORCO INCORPORATED, as Mortgagor, to Whitefish Credit Union, Mortgagee, conveying certain real estate therein mentioned as security for the payment of \$\$3,360,000.00 as therein stated, which mortgage was recorded in the office of the County Clerk and Ex-Officio Register of Deeds of Flathead County, Montana, on the 03/24/2009, as Instrument No. 200900007830/in Book and Page , and mortgaging certain described real estate in said County, including the following portion:

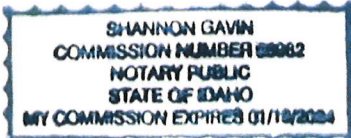
is, with the note secured thereby, and the aforementioned debt, fully paid, satisfied, released and discharged, and in consideration thereof the said Mortgagee does hereby release and quitclaim unto the said Mortgagor the premises thereby conveyed and mortgaged.

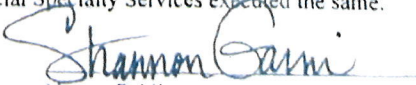
WITNESS the due execution and delivery of this Satisfaction of Mortgage this 12 day of May, in the year 2022.

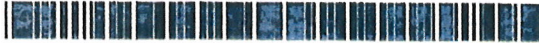
Whitefish Credit Union  
  
By TFSS, Inc, as Attorney in Fact  
Dated 7/23/2014  
Shauna Romrell, President

State of Idaho, County of Bingham: SS

On this 12 day of May, in the year 2022, before me a Notary Public of said State, personally appeared Shauna Romrell, known to me to be the President of Title Financial Specialty Services, Inc., as the attorney in fact of Whitefish Credit Union, and acknowledged that she executed the same within the instrument on behalf of Title Financial Specialty Services and that Title Financial Specialty Services expected the same.



  
Notary Public  
Residing at: Blackfoot, Idaho



Paula Robinson, Flathead County, MT by MC

SCHEDULE C  
PROPERTY DESCRIPTION

The land referred to in this Commitment is described as follows:

The North Half of the Northwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South-Half of the Northwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the North Half of the Northeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Northeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ); the North Half of the Southeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Southeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ); the North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ), all in Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1A  
1B  
3BA  
3BB  
3BC  
3B  
1C  
1D

AND

The North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) and the South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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1

AND

The North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ); the South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ); the North Half of the Southwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1BGA  
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1BFA  
1BFB  
1BJS

AND

The North Half of the Northeast Quarter of the Southwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ); the South Half of the Northeast Quarter of the Southwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ); the North Half of the Southeast Quarter of the Southwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ); the South Half of the Southeast Quarter of the Southwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ); the North Half of the Northwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ); the South Half of the Northwest Quarter of the Southeast Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ); the North Half of the Southwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) and the South Half of the Southwest Quarter of the Southeast Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1BFE  
1BFF  
1BN  
1BM

AND

The Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1BFD

EXCEPTING THEREFROM that portion deeded to Flathead County for road purposes, by instrument recorded June 26, 1937 under Recorder's Fee #2028, in Book 223, page 614, records of Flathead County, Montana

1BFE  
1BF



**SPECIAL POWER OF ATTORNEY**

THESE PRESENTS that Whitefish Credit Union, a Montana Corporation with a principal place of business located at 300 Baker Ave., Whitefish, MT 59937 ("Principal"), does hereby make, constitute, and appoint TITLE FINANCIAL SPECIALTY SERVICES, having a principal place of business at 580 Jensen Grove Dr., P.O. Box 339, Blackfoot, Idaho 83221 ("Agent"), its true and lawful attorney-in-fact and agent to do any or all the acts listed herein.

2. 1. Enumeration of Agent's Powers. The powers granted to my Agent are:

c. To sign on Principal's behalf and in its place all documents and to do all acts necessary to substitute FIRST AMERICAN TITLE COMPANY OF MONTANA, INC., a Montana Corporation whose address is 1006 West Sussex, 59801 Missoula, MT 59806, as the successor trustee under trust indentures under which Principal is the beneficiary (or servicer, if applicable) or successor beneficiary (or servicer, if applicable) through assignment; and

d. To sign on Principal's behalf and in its place any Satisfactions or Partial Satisfactions of Mortgage as requested from time to time by Principal.

2. Full Faith and Credit. All parties associated with the substitution of trustee and/or any satisfaction of mortgage contemplated herein are authorized to give such actions taken, documents signed, and writings submitted by Agent full faith and credit.

3. Duration. This Power of Attorney will remain in force until terminated by Lender.

IN WITNESS WHEREOF, I have executed this Special Power of Attorney on the date and year noted below.

✓  
\*\*\*

By: Jenna Kyle-Krantz  
Jenna Kyle-Krantz  
Quality Assurance Supervisor

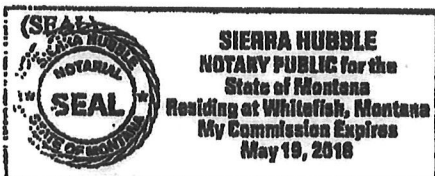
Date: 7-23-14

STATE OF MONTANA )  
                                  ) : ss  
County of Flathead )

On this 23<sup>rd</sup> day of July, 2014 before me, the undersigned Notary Public, in and for said State and County, personally appeared Jenna Kyle-Krantz, known or identified to me to be the Quality Assurance Supervisor of Corporation, whose name is subscribed to the within instrument and acknowledged to me that he is authorized and instructed to execute and has executed the same on behalf of said Corporation, and further acknowledged to me that said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this Certificate first above written.

Sierra Hubble  
NOTARY PUBLIC FOR Montana  
Residing at: Whitefish  
Commission expires: May 19<sup>th</sup> 2018





RETURN AFTER RECORDING TO:  
Whitefish Credit Union  
PO BOX 37  
Whitefish, MT 59937  
Loan # 9664280750-0750

[Above this line is for recording purposes only.]

**CORRECTED RELEASE OF MORTGAGE**

This Corrected Release of Mortgage supersedes and replaces the Satisfaction of Mortgage ("Satisfaction") recorded 05-12-2022 as Document No. 202200012228 in the records of the office of the Clerk and Recorder of Flathead County, Montana, as said Satisfaction was erroneously filed by TFSS INC, Whitefish Credit Union's, attorney in fact, but without review and approval of Whitefish Credit Union.

The then-Mortgagor's property, as legally described in the Mortgage ("Mortgaged Property"), and associated Mortgage has been the subject of litigation in Causes DV-12-174, DV-18-336, and DV-19-534, Eleventh Judicial District, Flathead County, and Supreme Court cases DA-18-0595 (2019 MT 138N) and DA-20-179 (2021 MT 207N). The Warranty Deeds recorded as Flathead County Records 201800026290 and 201800026291 were recorded pursuant to a Settlement Agreement and in lieu of foreclosure of the Mortgage. Based on the rulings identified herein in favor of Whitefish Credit Union on matters related to the title of Mortgaged Property,

NOW THEREFORE, Whitefish Credit Union, does hereby certify that the mortgage ("Mortgage") executed by THORCO INCORPORATED, as "Mortgagor", to Whitefish Credit Union, as "Mortgagee", conveying certain real estate therein mentioned as security for the payment of \$3,360,000.00 as therein stated, recorded with the Clerk and Recorder of Flathead County, Montana, on the 03/24/2009, as Document No.200900007830, and mortgaging certain described real estate on Exhibit A, is released pursuant to the terms of the Settlement Agreement as satisfied by the recording of the Warranty Deeds mentioned above.

FURTHER, Whitefish Credit Union corrects the record to clarify that at no time has the Mortgagor paid or satisfied the Mortgage other than as described above.

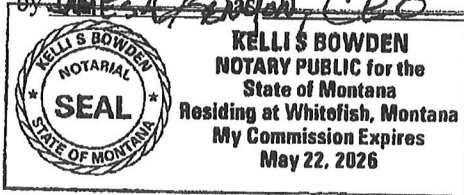
FURTHER, Whitefish Credit Union corrects the record to clarify that the Mortgagor had no ownership or other interest in the Mortgaged Property since the Warranty Deeds described above were recorded.

X [Signature]  
James Kenyas / CEO / of Whitefish Credit Union  
/ President

Dated June 6<sup>th</sup>, 2022

STATE OF MT ; COUNTY OF Flathead

This instrument was acknowledged before me on the 6<sup>th</sup> day of JUNE 20 22  
by James Kenyas, CEO of Whitefish Credit Union.



[Signature]  
Kelli S Bowden  
Notary Public

★ ★ 0213950 tg



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

The land referred to in this Commitment is described as follows:

The North Half of the Northwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Northwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the North Half of the Northeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Northeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ); the North Half of the Southeast Quarter of the Northwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Southeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ); the North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ), all in Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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 3BB  
 3BC  
 3B  
 1C  
 1D

AND

The North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) and the South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 28, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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AND

The North Half of the Southwest Quarter of the Northwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the South Half of the Southwest Quarter of the Northwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ); the North Half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ); the South Half of the Northwest Quarter of the Southwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ); the North Half of the Southwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1BEA  
 1BB  
 1BS  
 1BEA  
 1BFB

AND

The North Half of the Northeast Quarter of the Southwest Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ); the South Half of the Northeast Quarter of the Southwest Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ); the North Half of the Southeast Quarter of the Southwest Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ); the South Half of the Southeast Quarter of the Southwest Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ); the North Half of the Northwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ); the South Half of the Northwest Quarter of the Southeast Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ); the North Half of the Southwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) and the South Half of the Southwest Quarter of the Southeast Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) all in Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

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 1BFF  
 1B  
 1Bm

AND

The Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 27, Township 27 North, Range 21 West, M.P.M., Flathead County, Montana.

1BFD

EXCEPTING THEREFROM that portion deeded to Flathead County for road purposes, by instrument recorded June 26, 1937 under Recorder's Fee #2028, in Book 223, page 614, records of Flathead County, Montana.

1BFG  
 1BF





Kathy Wilson &lt;cogburnenterprises@gmail.com&gt;

---

**Satisfaction of Mortgage questions**

7 messages

---

**Kathy Wilson** <cogburnenterprises@gmail.com>  
To: "smatthews@mt.gov" <smatthews@mt.gov>

Fri, Jan 20, 2023 at 1:08 PM

Hi Steve,

Thank you for taking the time to talk with Dennis and I today. In our conversation you said that you might be able to answer some questions for us.

What we are trying to determine is if Title Financial Specialty Services, a company out of Blackfoot Idaho, is licensed or registered to do business with the state of Montana Security and Insurance Commission?

We would like to know if Title Financial Specialty Services is authorized to make transfers of real property like the one included? We did find a recorded special power of attorney that was recorded with the Flathead County Clerk and Recorder's Office that we have included and it appears they were authorized with the county.

We would like to know if anyone transferring documents for a financial institution is required to have such documents or is there any type of required statements that your office may have when transferring documents?

The person that appears to have signed the Satisfaction of Mortgage as an attorney-in-fact is Shauna Romrell. Does Shauna Romrell have any type of securities license or insurance that is registered with the Montana Securities and Insurance Commission?

The Special Power of Attorney states in section 2, "Full Faith In Credit", states that they are authorized to give such actions taken, documents signed, and writing submitted by the agent full faith and credit. Do you know what Full Faith and Credit means or where we can find that legal definition?

Thank you so much for taking the time to answer our questions.

Kathy

--

Katherine Wilson  
Cogburn Enterprises, LLC.  
Cell 406-471-3341

---

**2 attachments** **6-24-2022 Lt from TFSS (1) (2).pdf**  
320K **Recorded POA TFSS (1).pdf**  
1221K

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**Matthews, Steve** <smatthews@mt.gov>  
To: Kathy Wilson <cogburnenterprises@gmail.com>

Fri, Jan 20, 2023 at 1:57 PM

Kathy:

Both Title Financial Specialty Services and Shauna Romrell are licensed as Title Insurance Producers in Montana. I've attached a link to Montana Code Annotated, Title 33, Chapter 25, Part 2, which discusses the powers and duties of title insurers and title producers. I believe your answers may be found therein.

[https://leg.mt.gov/bills/mca/title\\_0330/chapter\\_0250/part\\_0020/section\\_0010/0330-0250-0020-0010.html](https://leg.mt.gov/bills/mca/title_0330/chapter_0250/part_0020/section_0010/0330-0250-0020-0010.html)

Steve



**Steve Matthews | Chief Financial Examiner**

Office of the Montana State Auditor

Commissioner of Securities and Insurance

406.444.4372

840 Helena Ave. | Helena, MT 59601



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[Quoted text hidden]



**image001.png**  
116K

**Kathy Wilson** <cogburnenterprises@gmail.com>  
To: dennis thornton <thorcoinc@outlook.com>

Fri, Jan 20, 2023 at 2:14 PM

[Quoted text hidden]

**11 attachments**



**image001.png**  
116K



**image002.png**  
12K



**image003.png**  
1K



**image004.png**  
2K



**image005.png**  
2K



**image006.png**  
1K



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**Kathy Wilson** <cogburnenterprises@gmail.com>  
To: "Matthews, Steve" <smatthews@mt.gov>

Fri, Jan 20, 2023 at 3:11 PM

Hi Steve,

Thank you for your response and the information.

I did look through that and didn't find exactly what I was looking for, so if you wouldn't mind, could I ask just a couple more questions?

We have a Corrected Release of Mortgage that was filed by James Kenyon of Whitefish Credit Union. Can you tell me if James Kenyon is authorized to make real property transfers in Montana? Or if Whitefish Credit Union is licensed to make these types of transactions?

If someone is not licensed in Montana to make transactions like this, is there anything that they can file with the documents that would authorize them to make the transactions?

Thanks again for your help and have a great weekend.

Kathy  
[Quoted text hidden]

---

**Matthews, Steve** <smatthews@mt.gov>  
To: Kathy Wilson <cogburnenterprises@gmail.com>

Mon, Jan 23, 2023 at 11:58 AM

Kathy:

Sorry, but don't think I can be of any help. The powers/authorities of Credit Unions related to filing property transfer documents and/or release of mortgage documents is outside the purview of this Office. You may be best served by consulting with an attorney experienced in the transfer of property.

Steve

---

**From:** Kathy Wilson <cogburnenterprises@gmail.com>  
**Sent:** Friday, January 20, 2023 3:11 PM  
**To:** Matthews, Steve <smatthews@mt.gov>  
**Subject:** Re: [EXTERNAL] Satisfaction of Mortgage questions

Hi Steve,

Thank you for your response and the information.

I did look through that and didn't find exactly what I was looking for, so if you wouldn't mind, could I ask just a couple more questions?

We have a Corrected Release of Mortgage that was filed by James Kenyon of Whitefish Credit Union. Can you tell me if James Kenyon is authorized to make real property transfers in Montana? Or if Whitefish Credit Union is licensed to make these types of transactions?

If someone is not licensed in Montana to make transactions like this, is there anything that they can file with the documents that would authorize them to make the transactions?

Thanks again for your help and have a great weekend.

Kathy

On Fri, Jan 20, 2023 at 1:57 PM Matthews, Steve <[smatthews@mt.gov](mailto:smatthews@mt.gov)> wrote:

Kathy:

Both Title Financial Specialty Services and Shauna Romrell are licensed as Title Insurance Producers in Montana. I've attached a link to Montana Code Annotated, Title 33, Chapter 25, Part 2, which discusses the powers and duties of title insurers and title producers. I believe your answers may be found therein.

[https://leg.mt.gov/bills/mca/title\\_0330/chapter\\_0250/part\\_0020/section\\_0010/0330-0250-0020-0010.html](https://leg.mt.gov/bills/mca/title_0330/chapter_0250/part_0020/section_0010/0330-0250-0020-0010.html)

Steve

 A picture containing text, sign Description automatically generated by Google Photos  
**Steve Matthews | Chief Financial Examiner**  
 Office of the Montana State Auditor  
 Commissioner of Securities and Insurance  
 406.444.4372

840 Helena Ave. | Helena, MT 59601

 See the source image [facebook.com]  [instagram.com]  See the source image [twitter.com]  See the source image [csimt.gov]

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**From:** Kathy Wilson <[cogburnenterprises@gmail.com](mailto:cogburnenterprises@gmail.com)>  
**Sent:** Friday, January 20, 2023 1:09 PM  
**To:** Matthews, Steve <[smatthews@mt.gov](mailto:smatthews@mt.gov)>  
**Subject:** [EXTERNAL] Satisfaction of Mortgage questions

Hi Steve,

Thank you for taking the time to talk with Dennis and I today. In our conversation you said that you might be able to answer some questions for us.

What we are trying to determine is if Title Financial Specialty Services, a company out of Blackfoot Idaho, is licensed or registered to do business with the state of Montana Security and Insurance Commission?

We would like to know if Title Financial Specialty Services is authorized to make transfers of real property like the one included? We did find a recorded special power of attorney that was recorded with the Flathead County Clerk and Recorder's Office that we have included and it appears they were authorized with the county.

We would like to know if anyone transferring documents for a financial institution is required to have such documents or is there any type of required statements that your office may have when transferring documents?

The person that appears to have signed the Satisfaction of Mortgage as an attorney-in-fact is Shauna Romrell. Does Shauna Romrell have any type of securities license or insurance that is registered with the Montana Securities and Insurance Commission?

The Special Power of Attorney states in section 2, "Full Faith In Credit", states that they are authorized to give such actions taken, documents signed, and writing submitted by the agent full faith and credit. Do you know what Full Faith and Credit means or where we can find that legal definition?

Thank you so much for taking the time to answer our questions.

Kathy

--

Katherine Wilson

Cogburn Enterprises, LLC.

Cell 406-471-3341

[Quoted text hidden]

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**Kathy Wilson** <cogburnenterprises@gmail.com>  
To: "Matthews, Steve" <smatthews@mt.gov>

Tue, Jan 24, 2023 at 7:13 PM

Hi Steve,

Thank you for the information.

For clarification, what I am trying to determine is if James Kenyon or Whitfish Credit Union are licensed with the State Montana to transfer titles.

Whether they hold a license should be in your purview.

Thank you for your time,  
Kathy

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**5 attachments**



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 **image002.png**  
1K

 **image003.png**  
2K

 **image004.png**  
2K

 **image005.png**  
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**Kathy Wilson** <cogburnenterprises@gmail.com>  
To: marknoland50@gmail.com

Tue, May 23, 2023 at 11:24 AM

Hi Senator Noland,

This is the email from the state when I was trying to determine whether or not James Kenyon was licensed to transfer property. It was Steve Matthews that I corresponded with and as you can see, as soon as I mentioned James Kenyon and WCU, the state was not able to help me any further.

Let me know if you have any questions.

Kathy

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**5 attachments**

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