

## **BRECKENRIDGE BOOKS AND MAPS, INC.**

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**Executive Summary:** On October 18, 2018, Sean Frampton acting as the agent for Whitefish Credit Union (WCU), took deeds and realty transfers signed as part of a settlement agreement dated June 6, 2016, and electronically transferred ownership of the Thorco Somers property into the name of Whitefish Credit Union. In citing his authority to do so, Frampton is reported to have relied on a decision from the 4<sup>th</sup> Department of the 11<sup>th</sup> Judicial District Court, Hon. Dan Wilson, from relief sought by Dennis and Donna Thornton, as signatories to the Settlement Agreement, had petitioned the court for relief to enforce the terms of that Settlement Agreement, to wit: Complete the agreement by setting up the required escrow account at First American Title as stipulated in the agreement and file the necessary documents with the Flathead County Clerk and Recorder. Deeds, with the **original mortgage file number on the documents** that assigned ownership of the property to WCU by Thorco, Inc., were signed by Thorco, Inc. as part of the Settlement Agreement.

At no time was Thorco, Inc. ever a party to the lawsuit in the 4th Department of the 11th Judicial District, Flathead County, Montana. The decision by Judge Wilson dismissed the action brought by the Thornton's. The decision to grant summary judgement to Defendant WCU had no effect on Thorco because Thorco was not a party to this action.

In a foreclosure action filed by Plaintiff WCU against Defendants Thorco, Inc., and Dennis Thornton and Donna Thornton, WCU was awarded \$4,348,880.01 under the terms of a 2009 mortgage by the court. Plaintiff WCU was awarded the right to foreclose on the property by the 2nd Department of the 11th Judicial District (Judge Robert Allison) which had jurisdiction over the case. Defendants Thorco, Inc., Dennis Thornton and Donna Thornton, appealed to the Montana Supreme Court. The Supreme Court remanded it back down to the District court and ordered that appeal was premature. A counter claim against Plaintiff WCU for \$60,000,000 still had to be litigated.

This posed a problem for Plaintiff WCU. Because this was a potential liability, they were required by banking law and regulations to place the amount of the claim in another financial institution. This would have had to come from their capital reserves. WCU needed to settle to stay in business and avoid the \$60,000,000 capital outlay that would have to stay on the books until the case was fully litigated. It would have been unavailable to them for years.

In return for Defendants dismissing their counter suit, Plaintiff WCU vacated the Judgment of Foreclosure and Order of Sale and filed a Stipulation To **Dismiss With Prejudice**. These actions were agreed to by the 2<sup>nd</sup> Department and Judge Allison signed the Stipulation to vacate the \$4,348,880.01 awarded to WCU. This vacated the original mortgage and any legal questions regarding the 2009 mortgage.

The Settlement Agreement is referenced in the Stipulation to Dismiss. By law, this would have created a new mortgage. Since this was a new mortgage, WCU had 20 days to record the Settlement Agreement and Mutual Release, Abstract of the Agreement or a Financing Statement on the property. Because there was a confidentiality clause in the Agreement, the last two documents were the only legal avenues available to WCU. By not filing a lien with the Clerk and Recorder within the statutory timeframe, WCU has no legal claim.

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WCU went further and retained possession of the deeds and Realty Transfer Certificates and then, following Judge Wilson's decision, WCU attorney Frampton took it upon himself to record the deeds. This transfer was theft of documents and hypothecation of property received. The only way that those deeds could be recorded according to the agreement was for First American Title to order their recordation. For Frampton or WCU to use any of the documents generated by the Agreement, they were required to fulfill the Agreement through the escrow account because of the trust issues between the two parties.

Absent the escrow account, WCU would have to follow the legal foreclosure process. However, they were barred by the Stipulation to Dismiss with Prejudice from using this process.

### **Background:**

1. A Real Estate Mortgage from Whitefish Credit Union (WCU) to Thorco, Inc., filed under document no. 200900007830 dated March 24, 2009 @3:48 pm for the amount of \$3,360,000.00.
2. WCU filed a complaint for foreclosure in the 2<sup>nd</sup> Department of the 11th Judicial District under Cause No. DV-12-174B in the court of Robert Allison. Thorco filed a counter claim for damages with an amount of loss at \$60,000,000.
3. On February 23, 2016, Judge Allison found in favor of WCU and ordered a Judgment of Foreclosure and Order of Sale of the properties.
4. Thorco, Inc. appealed to the Montana Supreme Court. The Court upheld Allison's decision but dismissed the appeal without prejudice because there was still the matter of the counter claim damages by Thorco that had yet to litigate. The Court held that the proper remedy would be a stay as this appeal was premature.
5. WCU and Thorco enter into a settlement agreement and mutual release that was signed by all parties to the litigation. The dated signatures are from June 7th thru June 9th, 2016. The original signed and notarized settlement agreement, the Mortgage Releases and the Thorco deeds were all sent to the office of Sean Frampton, attorney for WCU.
6. WCU files a Joint Motion to Vacate February 23, 2016 Judgment of Foreclosure and Order of Sale on August 12, 2016 at 1:50pm the Cause No. DV-12-174B.
7. WCU files Order Vacating Judgment of Foreclosure and Order of Sale on August 16, 2016 at 4:29pm for Cause No. DV-12-174B.
8. WCU files Stipulation To Dismiss With Prejudice on August 22, 2016 at 1:58pm for Cause No. DV-12-174B.
9. WCU files Order of Dismissal With Prejudice on August 24, 2016 at 4:08pm for Cause No. DV-12-174B.
10. A Title Policy, issued by Alliance Title, Dated November 29, 2017, File No. 376906, Exception #25, reported a Mortgage to secure an indebtedness in the amount of \$3,360,000 to Whitefish Credit Union, Instrument Number 2009-000-07830.

### **Discussion:**

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The subject properties are located in sections 27 and 28, Township 27 North, Range 21 West, in Flathead County, Montana. The cloud on the title is obvious. The dismissal with prejudice by Judge Robert Allison vacated the previous award and extinguished all claims and liens related to the WCU loan from 2009. Montana law is settled on the meaning of "dismissed with prejudice". From the Montana Supreme Court :

"The Stotts were given the opportunity to litigate the issues raised in their complaint, but agreed to stipulate for a dismissal with prejudice. The effect of a stipulation is the same as a judgment on the merits. Accordingly, a dismissal with prejudice is res judicata as to every issue raised in the pleadings. City of Havre v. District Court (1980), 187 Mont. 181, 609 P.2d 275; cert. denied Boucher v. City of Havre (1980), 449 U.S. 875, 101 S.Ct. 219, 66 L.Ed.2d 97; Schillinger v. Brewer (Mont. 1985), [ 215 Mont. 333,] 697 P.2d 919, 42 St.Rep. 408. " (excerpt from *First Bank Missoula v. District Court*, 226 Mont. 515, 519-20 (Mont. 1987) No. 86-431, Justice Sheehy's opinion for the court).

The dismissal with prejudice in the Thorco case, as stated above, is the same as judgment on the merits and res judicata as to every issue raised in the pleadings. This dismissal satisfied all claims by WCU against the property. Yet the title report issued by Alliance Title, still showed a lien. This, in my opinion as a title expert, has clouded the title.

I directed Thorco to get certified copies of all the actions that dismissed the case from the Clerk of Court. I then directed to record those certified copies with the Clerk and Recorder. This would clear the title and show that no lien nor claim was no on the property since Alliance Title had neglected to search the records of the District Court. This was done on October 23, 2018. In the Summary Judgment issued by Judge Dan Wilson in the Settlement Relief, he ordered that the judgments granted by Judge Allison and filed by Thorco be removed from the public record. This is not only out of order since Thorco was not a litigant in this case, but he reached into a case that was settle two years previously and ordered those documents deleted from the record. The title is once again clouded.

Judge Allison then took the egregious step and ordered a Notice, in the title record, that Thorco, Inc., Dennis Thornton or Donna Thornton, could not file any documents related to this property without his permission.

The court had dismissed the case with prejudice. No one can take judicial notice and look back upon this case. No one. No litigant. No judge. No one. As the Supreme Court has ruled that a dismissal with prejudice is res judicata as to every issue raised in the pleadings. Now this 11<sup>th</sup> Judicial District has turned case law on its ear. Not only did two judges from two departments order their own decision to be struck from the title record, Judge Allison defied his own Stipulation Order while Judge Wilson conspired with Allison to order a notice in a case that Wilson had no jurisdiction in. There is no other way to explain how Judged Allison would cause to file an action fully three years after he had ordered a dismissal with prejudice. This is judicial abuse of power.

The title is further clouded now that WCU had their attorney, Sean Frampton, record deeds that were part of a Settlement Agreement that never went of record. The deeds are defective in and of

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themselves. A deed can only be used to convey real property. In the deeds filed by Frampton, WCU and the file and loan number from the case dismissed and satisfied on the face of the deeds. They also had contract language included in the body of the conveyance. This then creates two title problems: 1). How can a lien that was satisfied by the Stipulation and Dismissal be referenced as a satisfaction of a lien to a mortgage that no longer exists? 2). How does a Title Company reference a title exception to a contract that doesn't exist?

These two court departments have made a clear title on these properties impossible. Under res judicata, no one can now petition the court clear these ambiguities up. Thorco, Inc., Dennis and Donna Thornton are on judicial notice by Judge Allison that they cannot file any documents on these properties without his permission.

### **Conclusions:**

In my opinion, title has not been lawfully conveyed for three reasons:

1. Deeds filed by WCU were stolen from an agreement that never went into effect.
2. Deeds filed by WCU reference a lien that was satisfied by the Stipulation to Dismiss with prejudice order.
3. Judge Dan Wilson ordered the removal of records from the chain of title that clearly and without any ambiguity, showed that the WCU 2009 mortgage was satisfied.

Judge Allison further muddied the waters by forbidding the only people who have an interest in clearing the title from recording any documentation that would clear the cloud.

### **Disclosure:**

As of June, 2018, I Darren R. Breckenridge am a shareholder in Thorco, Inc. The shares came into my possession as a result of the American Land and Title Association (ALTA) survey that I had done on the Thorco property in Somers in November, 2017. I had completed the investigation into the title as required by ALTA Standards and was given shares in lieu of payment for that work. The evidence that I collected for the ALTA survey and the opinions that I formed based upon that research were done before I received shares in Thorco. The only addition to this report after I had shares in Thorco was the investigation into the title record after the Wilson decision in October, 2018 and the insertion into the title record of Judge Allison forbidding anything to be recorded by the Clerk and Recorder.

*Darren R. Breckenridge*  
*DARREN R. BRECKENRIDGE*  
*8/9/2021*