

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 22-0741

THOMAS F. MIETZEL, LLC, a/k/a THOMAS F. MIETZEL, LLC and THOMAS
F. MIETZEL,

Plaintiffs/Appellees,

v.

CREATIVE WEALTH ACQUISITIONS & HOLDINGS, LLC, BRAD
QUINTANA, and CHAD MCCALL,

Defendants/Appellants.

**REPLY BRIEF OF APPELLANTS CREATIVE WEALTH ACQUISITIONS
& HOLDINGS, LLC, BRAD QUINTANA, AND CHAD MCCALL**

On Appeal from the Montana Eighth Judicial District Court, Cascade County
The Honorable John A. Kutzman, Presiding
Case No. CDV-21-0413

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ARGUMENT

I. THE RULE 60(B) MOTION IS TIMELY.

In their response brief, Mietzel and Thomas Mietzel, LLC argue the Rule 60(b) motion is not timely. However, contrary to their assertions, the Rule 60(b) motion is timely and should have been decided by the district court.

Under Rule 60(c)(1), a motion under Rule 60(b) must be made “within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or date of the proceeding.” However, “this limitation does not apply to a motion [made] under clause (4) attacking a judgment as void.” 11 Fed. Prac. & Proc. § 2866 (3rd ed.). What is a reasonable time will depend on the particular facts of the case. In re Marriage of Waters, 223 Mont. 183, 189, 724 P.2d 726, 730 (1986). “Relevant to the determination of timeliness is prejudice to the party opposing the motion and the basis for the moving party's delay.” Id.

Creative Wealth, Quintana, and McCall filed their motion within a reasonable time. First, Creative Wealth, Quintana, and McCall filed their Rule 60(b) motion within one year of the date of the judgment. Thus, the motion is well within the time frame set forth in Rule 60(c)(1).

Second, Mietzel and Thomas Mietzel, LLC have not demonstrated how they will be prejudiced if the judgment is set aside. There is nothing in their brief

explaining how they will suffer any prejudice if the judgment is set aside.

Although Mietzel and Thomas Mietzel, LLC argue otherwise, Creative Wealth, Quintana, and McCall have shown a reasonable basis for any delays in filing this motion. As noted in the opening brief, Creative Wealth, Quintana, and McCall worked to resolve the matter and complete construction of the properties.

Moreover, Creative Wealth, Quintana, and McCall attempted to hire counsel and had difficulty obtaining counsel. Thus, Creative Wealth, Quintana, and McCall have a reasonable basis for any delays in filing this motion.

Third, Mietzel and Thomas Mietzel, LLC, at the time the 60(b) motion was filed, were still litigating various elements of the claim. At the time this motion was filed, Mietzel and Thomas Mietzel, LLC had an outstanding motion for a deficiency judgment pending and were seeking to claim additional sums under the terms of the judgment. Given these facts, the litigation is not even complete and the same issues with respect to a deficiency judgment could arise in a subsequent appeal.¹ Thus, the Rule 60(b) motion is timely.

Finally, a large portion of the Rule 60(b) motion has been made under Rule 60(b)(4). As noted above, the reasonable time limitation set forth in Rule 60(c)(1) does not apply to a motion made under Rule 60(b)(4). Therefore, the Court cannot

¹ Although Mietzel and Thomas Mietzel, LLC are seeking a deficiency judgment, there is authority holding a judgment and decree of foreclosure with a right to claim a deficiency judgment is considered a final judgment. See First W. Fed. Sav. Bank v. Lence, 255 Mont. 7, 10, 839 P.2d 1277, 1279 (1992).

reject this motion simply because the Court feels the motion is untimely. Instead, the Court must consider the Rule 60(b) motion and at a very minimum consider whether the judgment is void.

II. THE DISTRICT COURT ERRED BY FAILING TO SET ASIDE THE DEFAULT JUDGMENT UNDER RULE 60(b)(4).

Under Montana law, “if an examination of the complaint negatives conclusively the existence of a cause of action then of course the judgment is void.” In re Hofmann's Estate, 132 Mont. 387, 396, 318 P.2d 230, 236 (1957); see also Lindsey v. Drs. Keenan, Andrews, & Allred, 118 Mont. 312, 322, 165 P.2d 804, 809 (1946) (stating that if a complaint fails to establish a cause of action, a plaintiff is not entitled to recover any damages). “The court cannot redress a particular wrong unless the facts constituting the wrong are made manifest to it in a written complaint It is only by this means that its general power can be brought into activity in a given case. If the pleading is not sufficient to put the defendant in the wrong, the court cannot grant redress. A judgment based upon such a pleading is invalid.” Hoffmann’s Estate, 132 Mont. at 396, 318 P.2d at 236-237 (quoting Crawford v. Pierse, 56 Mont. 371, ___, 185 P. 315, 318 (1919)).

1. Creative Wealth, Quintana, and McCall Did Not Breach the Contract.

In opposition to this motion, Mietzel and Thomas Mietzel, LLC argue the terms of the promissory notes mean payment is due within three or four months from the date of the execution of the promissory notes, not when the individual

properties are sold. According to Mietzel and Thomas Mietzel, LLC, the phrase “from property closing date starting on 8th day of April 2019” means payment is due within four months from April 8, 2019. With respect to the June 2019 promissory note, Mietzel and Thomas Mietzel, LLC claim the “course of conduct” implies the closing date means the date when the promissory note was executed.

However, contrary to Mietzel and Thomas Mietzel, LLC’s assertions, the plain language of the promissory notes does not support the assertion payment is due within three or four months from the date the parties signed the promissory notes.

When construing a contract, contractual provisions must be interpreted according to their plain, ordinary meaning. Bradley v. Crow Tribe of Indians, 2005 MT 309, ¶ 28, 329 Mont. 448, 124 P.3d 1143. According to the plain language of both promissory notes, payment is only due after the property is sold, not when the promissory notes were executed. In paragraph one of both promissory notes, the agreements plainly state payment is due after the “property closing date.” (emphasis added). Likewise, in paragraph three of both promissory notes, the agreements state repayment is due after the “property closes.” (emphasis added).

Given the use of the word “property” in both promissory notes, the most reasonable conclusion is the closing date described in the promissory note is the

closing date of the property sale and not the date of the execution of the promissory note. If the parties had intended to refer to the closing date of the promissory note, there would be no reason to refer to a “property closing date.” Instead, the parties would have used different language.

In the response brief, Mietzel and Thomas Mietzel, LLC put particular emphasis on the phrase “starting on the 8th day of April 2019” contained in the April 2019 promissory note. According to Mietzel and Thomas Mietzel, LLC, this language supposedly expresses an intent to require payment four months after the execution of the contract. However, as noted above, that sentence also contains the words “property closing date.” Thus, the interpretation suggested by Mietzel and Thomas Mietzel, LLC is inconsistent with the other language of the contract.

Although the April 2019 promissory note contains the language “starting on the 8th day of April 2019,” that language should not be relied upon to interpret the promissory notes. Under Montana law, the Court should not isolate tracts, clauses, or words in a contract, but rather, examine the entire instrument to ascertain the parties' intent. K&R Partnership v. City of Whitefish, 2008 MT 228, ¶ 26, 334 Mont. 336, 189 P.3d 593. “Particular clauses of a contract are subordinate to its general intent.” Krajacich v. Great Falls Clinic, LLC, 2012 MT 82, ¶ 13, 364 Mont. 455, 276 P.3d 922; § 28-3-307, MCA. “[C]ontract terms that are

inconsistent with the general nature of the contract or the primary intention of the parties are to be rejected.” Krajacich, ¶ 13; § 28-3-503, MCA.

In this case, the phrase “starting on the 8th day of April 2019” is inconsistent with the remaining provisions of the April 2019 promissory note. The plain language of the contract uses the words “property” in at least two sections of the April 2019 promissory note and never refers to the contract execution date in any part of the contract. In fact, April 8, 2019 is not even the promissory note execution date. Instead, the parties executed the contract on the 2nd and 3rd of April. Thus, there is no reason to infer the date April 8, 2019 refers to the contract execution date. But more importantly, there is no similar language in the June 2019 promissory note. Under Montana law, several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, may be taken together for the purpose of interpreting the scope of the contractual relationship between the parties. Tin Cup County Water and/or Sewer Dist. v. Garden City Plumbing & Heating, Inc., 2008 MT 434, ¶ 32, 347 Mont. 468, 200 P.3d 60. The June 2019 promissory note is completely devoid of any language suggesting payment is due within three months of the execution of the contract. Instead, the June 2019 promissory note makes it absolutely clear payment is only due after the property is sold. Thus, the most reasonable conclusion is that the language “starting on the 8th day of April 2019” was

mistakenly included in the promissory note and should be not used in the interpretation of the contract language.

Moreover, the “property closing date” does not refer to the date when Creative Wealth purchased the properties. In this situation, Quintana purchased the 7th Street North property on April 11, 2019, several days after the April 2019 promissory note was signed. With respect to the 16th Street South property subject to the June 2019 promissory note, Creative Wealth purchased the property on February 25, 2019, nearly four months before the June 2019 promissory note was executed. If Creative Wealth, Quintana, and McCall were subject to a three month repayment period from the time of the purchase of the property, the payment under the June 2019 promissory note would be due in May 2019, a month before the promissory note was executed.

When construing a contract, the Court may not interpret the contract in a manner which would lead to an absurd result. First Nat. Properties, LLC v. Joel D. Hilstead Trust, 2020 MT 211, ¶ 30, 401 Mont. 59, 472 P.3d 134. Given the plain language of the promissory notes, the term “property closing date” refers to the date when the property is sold. If a person is making a \$125,000 investment in a piece of property, the most logical time to recoup that investment would be after the property is sold and when the seller has received the proceeds from the sale of the property. It makes no sense to require a person to return the entire principal

balance of a loan prior to the date the property is sold. Thus, the most reasonable interpretation of the promissory notes is that each loan is not required to be repaid until after the property is sold.

Finally, there is no ambiguity in the promissory notes. Under Montana law, an ambiguity only exists in a contract when a provision is subject to at least two reasonable, but conflicting meanings. Mary J. Baker Revocable Trust v. Cenex Harvest States, Cooperatives, Inc., 2007 MT 159, ¶ 20, 338 Mont. 41, 164 P.3d 851. In this case, when the promissory notes are read as a whole, the promissory notes show an intent to allow the borrower to repay the loans after the property is sold. Although there may be some conflicting language contained in the April 2019 promissory note, the language of the promissory notes, the execution dates of the promissory notes, and language of the June 2019 promissory note clearly suggest the parties intended to only require payment after each property had been sold.

Because neither property had sold when Mietzel and Thomas Mietzel, LLC filed suit, there was no breach of the contract by Creative Wealth, Quintana, and McCall. As a consequence, Mietzel and Thomas Mietzel, LLC had no basis for bringing this action. Therefore, the judgment against Creative Wealth, Quintana, and McCall is void and should be set aside.

2. Thomas Mietzel Lacks Standing in His Individual Capacity.

In the response brief, Mietzel argues he possesses the ability to assert claims against Creative Wealth, Quintana, and McCall in his individual capacity because he brought tort claims for things such as fraud and negligent misrepresentation. Although he may have asserted tort claims, Mietzel does not possess any standing to assert tort claims against any party in his individual capacity.

In this situation, Mietzel did not loan any money to any party, nor has he suffered any losses in his personal capacity. All of the alleged losses have been sustained by his limited liability company, not him. Thus, Mietzel lacks standing to assert any claims against any party in his personal capacity.

In their brief, Mietzel and Thomas Mietzel, LLC have failed to cite a single authority which stands for the proposition a member of a limited liability company has standing to assert claims for damages sustained by a limited liability company. That is because no such authority exists. A limited liability company is “a legal entity, distinct from its members.” Sagorin v. Sunrise Heating & Cooling, LLC, 2022 MT 58, ¶ 11, 408 Mont. 119, 506 P.3d 1028. As a legally distinct entity, a limited liability company may be sued and bring suit “in its own name.” Section 35-8-1101, MCA. A member of a limited liability company has no right to bring claims in his individual capacity for damages sustained by a limited liability company.

Since the limited liability company is the entity which loaned the money, Mietzel lacks standing to bring suit against any party. All of the claims, even the tort claims, are claims possessed by limited liability company, not Mietzel in his individual capacity. Therefore, Mietzel is not entitled to bring suit against any party in his individual capacity and the judgment in favor of Mietzel should be vacated.

3. Quintana and McCall Are Not Proper Parties.

In the response brief, Mietzel and Thomas Mietzel, LLC argue they are entitled to bring suit against Quintana and McCall in their individual capacity because Mietzel and Thomas Mietzel, LLC have asserted tort claims against Quintana and McCall for constructive fraud, fraud, negligent misrepresentation, deceit, and malice. However, the mere assertion of a claim in a complaint does not give Mietzel and Thomas Mietzel, LLC the right to have a judgment entered against McCall and Quintana in their individual capacity.

Under Montana law, limited liability companies provide members with a corporate styled liability shield. Weaver v. Tri-County Implement, Inc., 2013 MT 309, ¶ 12, 372 Mont. 267, 311 P.3d 808. The corporate shield doctrine protects employees and agents of a corporation “from personal liability for acts taken on behalf of the corporation.” Sherner v. Nat. Loss Control Serv. Corp., 2005 MT 284, ¶ 26, 329 Mont. 247, 124 P.3d 150 (quotations omitted). When a party acts within the scope of employment and in furtherance of the corporate interest, a

person is entitled to the protection of the corporate shield. Bottrell v. Am. Bank, 237 Mont. 1, 25, 773 P.2d 694, 708 (1989).

In this case, there are no pleaded facts in the Complaint showing that either Quintana or McCall acted outside the scope and course of an agency relationship or in an individual capacity. Instead, Mietzel and Thomas Mietzel, LLC allege Quintana and McCall made misrepresentations and false statements while attempting to procure loans for Creative Wealth. However, this is not enough to impose personal liability on an individual defendant. In order to establish personal liability, Mietzel and Thomas Mietzel, LLC must establish Quintana and McCall acted outside the scope and course of the individual's agency. See Bottrell at 24-25, 773 P.2d at 708.

In Bottrell, a plaintiff made similar allegations to the situation presented here. In that case, a plaintiff alleged individual employees of a bank made false statements and engaged in negligent misrepresentation, constructive fraud, bad faith, and punitive damages while loaning money to plaintiffs. See id. at 24, 773 P.2d at 708. However, the Montana Supreme Court disagreed and ruled the claims against the loan officers were barred because the loan officers were acting within the scope of course of their employment. Id. at 24-25, 773 P.2d at 708.

In Krohne Fund, LP v. Simonsen, 2017 WL 3105839, the federal district court reached a similar conclusion. In that case, the court dismissed claims for

fraud, constructive fraud, and negligent misrepresentation against an agent of a limited liability company because the individual acted within the scope of the individual's agency. Id. at 3.

Like Bottrell and Simonsen, the claims against Quintana and McCall lack a factual basis. There is nothing in the Complaint to suggest Quintana and McCall acted outside the scope and course of their duties when they obtained loans for Creative Wealth. Instead, the undisputed facts show Creative Wealth entered into two loan agreements after conversations occurred with Mietzel. There is no evidence and nothing in the pleaded facts showing any party made a loan to Quintana or McCall personally or that Quintana or McCall attempted to do anything other than secure a loan for the benefit of Creative Wealth. Because the Complaint fails to demonstrate how Quintana and McCall acted in the "wrong," there is no basis for allowing a judgment to stand against Quintana or McCall.

III. THE DISTRICT COURT ERRED BY FAILING TO SET THE DEFAULT JUDGMENT ASIDE UNDER RULE 60(b)(1).

In opposition to this motion, Mietzel and Thomas Mietzel, LLC argue Creative Wealth, Quintana, and McCall have failed to demonstrate any mistake or excusable neglect because Quintana and McCall are "successful and sophisticated businessmen." (Resp. Br. at 19). While Quintana and McCall may be sophisticated businessmen in the area of home construction and sales, there is nothing in the record indicating Quintana and McCall are sophisticated or

knowledgeable about the law or litigation. Instead, Creative Wealth, Quintana, and McCall were pro se parties with little experience with the legal system.

In the response brief, Mietzel and Thomas Mietzel, LLC have cited Whitefish Credit Union v. Sherman, 2012 MT 267, 367 Mont. 103, 289 P.3d 174 for the proposition that service of the Complaint does not justify a motion to set aside. However, Sherman is distinguishable from this case. In Sherman, the defendant was actually represented by an attorney at the time he received service of process. See id., ¶ 18. After being served with a complaint, the defendant failed to notify his attorney he had been served. Id. Unlike Sherman, Creative Wealth, Quintana, and McCall were not represented by counsel at the time the Complaint was served upon them. Instead, Creative Wealth, Quintana, and McCall were pro se parties who did not understand the gravity of the situation. When Creative Wealth, Quintana, and McCall attempted to find counsel, they had difficulty obtaining counsel and struggled to hire counsel until months after the judgment was entered against them.

On several occasions, the Montana Supreme Court “has set aside default judgments on grounds of excusable neglect in cases where pro se defendants have either misunderstood communications from the opposing attorney . . . or where pro se defendants made errors that would not typically have been made by counsel.” Sun Mountain Sports, Inc. v. Gore, 2004 MT 56, ¶ 19, 320 Mont. 196, 85 P.3d

1286, overruled on other grounds by, Essex Ins. Co. v. Jaycie, Inc., 2004 MT 278, 323 Mont. 231, 99 P.3d 651. In this case, Creative Wealth, Quintana, and McCall clearly misunderstood the nature of the situation and made errors that would not typically have been made by counsel. This is evidenced by the fact that work continued on the properties after default had been taken. See (Quintana Aff. ¶ 22). Given these facts, Creative Wealth, Quintana, and McCall have demonstrated mistake and excusable neglect. Therefore, the district court erred when it failed to set the default judgment aside.

IV. THE COURT ERRED BY FAILING TO SET JUDGMENT ASIDE UNDER RULES 60(b)(1) AND 60(b)(5).

1. The Interest Rate is 9% or 10%.

In the response brief, Mietzel and Thomas Mietzel, LLC argue they are entitled to recover interest at a rate greater than 10% under the terms of paragraph one of the promissory notes. According to Mietzel and Thomas Mietzel, LLC, the use of the phrases “3 months (or earlier)” or “4 months (or earlier)” means that interest is to be calculated in three or four month intervals. However, this argument ignores the plain language of the contract. The key language is the use of the words “or earlier.” Those words imply a time for repaying the loan, not a time period for calculating the interest rate. In other words, the Borrower has up to three or four months to repay the loan, but can make the payment sooner if desired. There would be no reason to include the words “or earlier” if the three or four

month time period referred to the time period for calculating the rate of interest. Interest is not calculated on a three month “or earlier” basis.

In paragraph four of the promissory notes, the promissory notes explicitly state Thomas Mietzel, LLC is entitled to recover the “principal plus agreed upon interest [ex: principal+10%+legal fees” in the event of a default. There is nothing in the plain language of paragraph four that states Mietzel and Thomas Mietzel, LLC are entitled to recover a rate of interest in excess of 10% annually. Since the promissory notes do not contain any language specifying the period of time by which the rate of interest is to be calculated, the appropriate time period for calculating interest is annually. Under Montana law, “when a rate of interest is prescribed by a law or contract without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.” Section 31-1-105, MCA. Therefore, the appropriate interest rate in the event of a default is 9% or 10% annually.

2. Mietzel and Thomas Mietzel, LLC are Seeking Usurious Rates.

As the text of the response brief shows, Mietzel and Thomas Mietzel, LLC believe they entered into contracts which allow them to recover interest at rates of 30% to 36%. Under Montana law, when a party loans interest at such obscene rates, the party loaning the money must be penalized. Section 31-1-108(1), MCA. There are no exceptions. See id.

Moreover, it does not matter if Creative Wealth, Quintana, or McCall drafted the promissory notes. The Montana Supreme Court has never held the penalty provisions in § 31-1-108, MCA are unenforceable because the person who obtained the loan drafted the loan documents. Nor has the Montana Supreme Court ever ruled the penalty provisions in § 31-1-108, MCA are unenforceable under the doctrines of estoppel or unclean hands. The cases cited by Mietzel and Thomas Mietzel, LLC have absolutely nothing to do with § 31-1-108, MCA. Moreover, Mietzel and Thomas Mietzel, LLC have failed to even demonstrate the basic elements of estoppel or unclean hands in their brief.

Finally, there is no law which says a person who loans money at a usurious rate can issue such loans and then get away with making usurious loans simply by agreeing to reduce the rate of interest. Instead, when a party loans money at usurious rates, the party must be penalized. See § 31-1-108, MCA (stating an interest rate above the permitted limit “must be considered a forfeiture of a sum”) (emphasis added). As a consequence, if the Court is going to agree the interest rate is greater than 9% or 10%, the Court must impose a penalty under § 31-1-108, MCA and reduce the judgment accordingly.

V. THE COURT ERRED BY FAILING TO SET THE DEFAULT JUDGMENT ASIDE UNDER RULE 60(b)(6).

Lastly, if the Court does not believe any of the exceptions under the first five parts of Rule 60(b) apply to this case, the Court should set the judgment aside

under Rule 60(b)(6). In opposition to this motion, Mietzel and Thomas Mietzel, LLC argue Creative Wealth, Quintana, and McCall are sophisticated businessmen. However, as noted in the affidavits of both Quintana and McCall, Quintana and McCall are not residents of Montana and have never been parties to any litigation before besides minor traffic enforcement matters. Moreover, contrary to Mietzel and Thomas Mietzel, LLC's assertions, the motion is timely. Finally, Creative Wealth, Quintana, and McCall worked to mitigate any damages and to finish the construction work. Thus, Creative Wealth, Quintana, and McCall should be considered blameless. As a consequence, the district court erred by failing to set the judgment aside.

CONCLUSION

For these reasons, and the reasons set forth in Appellants' original Opening Brief, the Court should set the default judgment aside.

DATED this 31st day of May, 2023.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/ Steve J. Fitzpatrick
Steve J. Fitzpatrick, Esq.
Michael S. Rausch, Esq.
Megan E. Wampler, Esq.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4), Mont.R.App.P., I certify that Appellant's Reply Brief is double spaced, is a proportionately spaced 14 point Times New Roman typeface, and contains 4,123 words.

/s/ Steve J. Fitzpatrick
BROWNING, KALECZYC, BERRY & HOVEN, P.C.

**AND WHEN RECORDED MAIL TO:
GRANTEE**

Filed for Record at Request of:
First American Title Company

Space Above This Line for Recorder's Use Only

Order No.: 717267-GF
Parcel No.: 1506900

CORPORATION DEED

FOR VALUE RECEIVED,

Creative Wealth Acquisitions & Holdings, LLC

a corporation duly organized and existing under the laws of the State of Montana, grantor, does hereby Grant, Bargain, Sell and Convey unto

Chad McCall

whose address is: 12401 South 450 East D1, Draper, UT 84020

hereinafter called grantee, the following described property located in Cascade county, Montana to-wit:

LOT 16, BLOCK 9, SUNNYSIDE HEIGHTS ADDITION, CASCADE COUNTY, MONTANA, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY.

SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of record.

TO HAVE AND TO HOLD, the said premises, with its appurtenances unto the said Grantee, his heirs and assigns forever. Grantor does hereby covenant to and with Grantee, that it is the owner in fee simple of said premises; that it will warrant and defend same from all lawful claims whatsoever excepting current year taxes.

IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed.

R0367405 DE

Total Pages: 2 R 14 00 By: bhanson 02/28/2019 01:13:05 PM
Cascade County, Rina Ft Moore - Clerk & Recorder



**RECORDED AT THE
REQUEST OF
FIRST AMERICAN TITLE**

**AND WHEN RECORDED MAIL TO:
GRANTEE**

Filed for Record at Request of:
First American Title Company

Space Above This Line for Recorder's Use Only

Order No.: 717267-GF
Parcel No.: 1506900

WARRANTY DEED

FOR VALUE RECEIVED,

**Penny M. Huntsberger, Trustee of the Frances A. Walton Revocable Living Trust dated
October 31, 1995**

hereinafter called Grantor(s), do(es) hereby grant, bargain, sell and convey unto

Creative Wealth Acquisitions & Holdings, LLC

whose address is: **12401 South 450 East D1, Draper, UT 84020**

Hereinafter called the Grantee, the following described premises situated in **Cascade County, Montana**,
to-wit:

**LOT 16, BLOCK 9, SUNNYSIDE HEIGHTS ADDITION, CASCADE COUNTY, MONTANA, ACCORDING TO
THE OFFICIAL MAP OR PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK
AND RECORDER OF SAID COUNTY.**

SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of
record.

TO HAVE AND TO HOLD the said premises, with its appurtenances unto the said Grantees and to
the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said
Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all
encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations,
restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

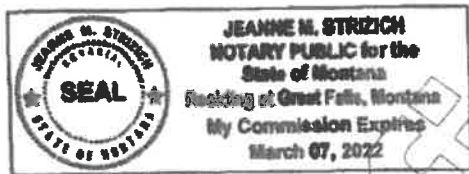
Dated: February 25, 2019


Penny M. Huntsberger, Trustee of the Frances
A. Walton Revocable Living Trust dated October
31, 1995


Penny M. Huntsberger, Trustee

STATE OF Montana)
) ss.
COUNTY OF Cascade)

This instrument was acknowledged before me on February 21, 2019, by Penny M. Huntsberger
Trustee of the Frances A. Walton Revocable Living Trust.




Jeanne M. Strizich
Notary Public for the State of Montana
Residing at: Great Falls
My Commission Expires: 3/7/2022

**AND WHEN RECORDED MAIL TO:
GRANTEE**

RECORDED AT THE
REQUEST OF
FIRST AMERICAN TITLE

Filed for Record at Request of:
First American Title Company

Space Above This Line for Recorder's Use Only

Order No.: 717253-GF
Parcel No.: 123050

WARRANTY DEED

FOR VALUE RECEIVED,

**Penny M. Huntsberger, Trustee of the Frances A. Walton Revocable Living Trust dated
October 31, 1995**

hereinafter called Grantor(s), do(es) hereby grant, bargain, sell and convey unto

Brad Quintana

whose address is: **12401 South 450 East D1, Draper, UT 84020**

Hereinafter called the Grantee, the following described premises situated in **Cascade County, Montana,**
to-wit:

**THE SOUTH 50' OF LOT 1 AND THE SOUTH 50' FEET OF THE WEST HALF OF LOT 2, BLOCK 256,
TOWN OF GREAT FALLS, CASCADE COUNTY, MONTANA, ACCORDING TO THE OFFICIAL MAP OR
PLAT THEREOF ON FILE AND OF RECORDED OF SAID COUNTY.**

DEED REFERENCE: R0099332

**SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of
record.**

TO HAVE AND TO HOLD the said premises, with its appurtenances unto the said Grantees and to
the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said
Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all
encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations,
restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

Dated: April 11, 2019

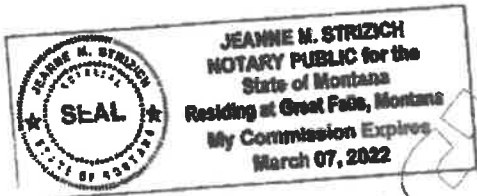
Penny M. Huntsberger, Trustee of the Frances
A. Walton Revocable Living Trust dated October
31, 1995

Penny M. Huntsberger, Trustee
Penny M. Huntsberger, Trustee

STATE OF Montana)
) ss.
COUNTY OF Cascade)

April 11, 2019

This instrument was acknowledged before me on ~~February 22, 2019~~, by **Penny M. Huntsberger**
Trustee of the Frances A. Walton Revocable Living Trust.



Jeanne M. Strizich

Jeanne M. Strizich
Notary Public for the State of Montana
Residing at: Great Falls
My Commission Expires: 3/7/2022

CERTIFICATE OF SERVICE

I, Steven J. Fitzpatrick, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 05-31-2023:

Joshua Ian Campbell (Attorney)
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Service Method: eService

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P.O. Box 2269
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Representing: Thomas F. Mietzel, Thomas F. Mietzel, LLC
Service Method: eService

Electronically signed by Francine Polacek on behalf of Steven J. Fitzpatrick

Dated: 05-31-2023