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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re

**HUNTER ANTON OLSON,**

Debtor.

Case No. **19-60465-12**

**HUNTER ANTON OLSON,**

Plaintiff.

-vs-

Adv. No. **19-00032-BPH**

**PRO CO-OP, WESTERN BANK OF  
WOLF POINT and FARM  
SERVICE AGENCY,**

Defendants.

**ORDER**

At Butte in said District this 23<sup>rd</sup> day of April, 2020.

This Adversary Proceeding was commenced by Debtor. However, the issues involve a priority lien dispute between the Defendants. On January 8, 2020, all parties participated in a pretrial scheduling conference. At the scheduling conference, the parties agreed that the issues are primarily legal and requested time to file a statement of stipulated facts followed by an agreed briefing schedule. Based upon the dates suggested by the parties, the Court entered the Scheduling Order at ECF No. 15. The Scheduling Order granted the parties through January 24,

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2020, to file their stipulated facts, with briefs to follow thereafter.

On January 24, 2020, the parties filed a Joint Motion and Stipulated Facts. ECF No. 18. After the deadline for filing stipulated facts expired, the parties filed a Joint Motion and Additional Stipulated Facts on February 7, 2020, at ECF No. 21. Although not discussed at the pretrial scheduling conference or permitted by the Court's Scheduling Order, Opportunity Bank, formerly known as Western Bank of Wolf Point ("Bank") filed a Statement of Uncontroverted Facts. ECF No. 24. The United States Farm Service Agency ("FSA") and Pro Co-Op filed Statements of Genuine Issues in response to the Bank's Statement of Uncontroverted Facts. ECF Nos. 30 and 35. Pro Co-Op argued that the Bank's Statement of Uncontroverted Facts was neither contemplated nor necessary by the Court's Scheduling Order entered at ECF No. 15. Pro Co-Op also argued that the Bank's Statement of Uncontroverted Facts "reworks" or "spins" the parties' agreed facts. Pro Co-Op provided numerous examples where it believed the Bank had reworked or spun the facts to its benefit. The following are two examples:

**Bank's Statement of Uncontroverted Fact 16:** Pro Co-op filed a statutory lien for providing seed or grain pursuant to Mont. Code Ann. §71-3-702. (SOF 12 & 13 & Exhibit 5). Pro Co-op's lien filing was void because Pro Co-op never provided any seed or grain to Debtor. (SOF 10 & 20).

**Pro Co-Op Response:** Pro Co-Op filed a statutory agricultural lien statement that identified the goods and services which it provided to Debtor as "fertilizer, chemicals, fuel, materials, labor and services for crop year 2018." Office staff of Pro Co-Op checked the wrong box on the agricultural lien form in error. Staff checked the box for Crop Lien for Seed or Grain and should have checked the box for Crop Lien for Spraying or Dusting. Pro Co-Op's lien filing was valid and effective and in substantial compliance with Title 71 and the UCC.

\* \* \*

**Bank's Statement of Uncontroverted Fact 21:** The Stipulated Facts (Doc. Nos. 18 & 21) do not contained any evidence that demonstrates that Pro Co-Op complied with the statutory requirements of § 71-3-902, MCA, to perfect a statutory lien for providing chemical or fertilizer. There is no lien filing under § 71-3-902(1), MCA, and there is no certified mail reflecting notice to Debtor, as required by § 71-3-902(2), MCA. Pro Co-Op

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relies exclusively upon its lien filing for seed or grain under § 71-3-703, Exhibit 5. (SOF 11). There is no evidence before the Court that Pro Co-Op complied with Mont. Code Ann. § 71-3-902.

**Pro Co-Op Response:** Pro Co-Op is not required to establish that there is no genuine issue of material fact for Bank. Pro Co-Op timely filed a statutory agricultural lien statement that identified the goods and services which it provided to Debtor as “fertilizer, chemicals, fuel, materials, labor and services for crop year 2018.” Office staff of Pro Co-Op checked the wrong box on the agricultural lien statement form in error. Staff checked the box for Crop Lien for Seed or Grain and should have checked the box for Crop Lien for Spraying or Dusting. Pro Co-Op’s lien filing was valid and effective and in substantial compliance with Title 71 and the UCC.

Pro Co-Op served a notice of intent to file a lien on Debtor Hunter Olson on June 19, 2018 by certified mail. Debtor refused to accept the certified mail notice. A true and correct copy of the letter and certified mail notice are attached as Exhibit “13”.

In support of its latter response, Pro Co-Op filed Exhibit 13, which is the notice of intent to file lien Pro Co-Op sent to Debtor on June 19, 2018. The Bank promptly argued that the Court should strike Exhibit 13 as it was not a stipulated exhibit or part of the stipulated facts and that Pro Co-Op had not provided any authentication for Exhibit 13. Pro Co-Op responded with a Motion for Leave to File Declaration of Tanya J. Renner. ECF No. 37. The Bank filed opposition to Pro Co-Op’s Motion for Leave to File Declaration and set the matter for hearing. ECF No. 39. The Bank and Pro Co-Op have now filed a Joint Motion to Vacate Hearing, requesting that the Court vacate the hearing scheduled by the Bank for April 28, 2020, agreeing “that the issues presented in the Parties briefs are clearly presented and ripe for the Court’s consideration without further oral argument.”

In its Motion for Summary Judgment, the Bank seeks judgment as a matter of law that it has a first position perfected lien on Debtor’s 2018 crops. FSA and Debtor concur. Pro Co-Op counters that as a matter of law its lien filing constituted a valid spraying and dusting lien under Montana law and was in substantial compliance with the Montana statutory requirements. As a consequence, Pro Co-Op maintains that it holds a valid agricultural lien on Debtor’s 2018 grain

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and proceeds that is enforceable and prior in right to the Bank and FSA.

This situation is frustrating. At the pretrial scheduling conference held January 8, 2020, the parties agreed that the issues are primarily legal and requested time to file a statement of stipulated facts. The Court agreed and instead of setting this matter for trial, the Court entered its Order at ECF No. 15, which set the parties' agreed deadline for filing the stipulated facts as January 24, 2020. The parties filed stipulated facts on January 24, 2020, but also proceeded to file, without prior permission from this Court, additional facts on February 7, 2020. The Bank then proceeded to file its statement of uncontroverted facts at ECF No. 24, which statement of uncontroverted facts was not contemplated by any of the parties at the January 8, 2020, pretrial scheduling conference. Pro Co-Op seeks to contradict the Bank's statement of uncontroverted facts with its Exhibit 13, to which the Bank cries foul.

What the pleadings show is that the parties were overly optimistic in their deadline for filing agreed facts because additional facts were filed after January 24, 2020. The Bank then proceeded to file a statement of uncontroverted facts, which was not contemplated by the Court's agreed scheduling order and which the Farm Service Agency and Pro Co-Op have sought to clarify. In filing its statement of uncontroverted facts, and arguably taking some liberty with those facts, the Bank opened the door and invited responses and clarifications, including a clarification from the FSA who joins in the Bank's Motion for Summary Judgment.

The parties agree that in the spring of 2018, Pro Co-Op sold fertilizer, pesticides and other chemicals to Debtor. In July of 2018, Pro Co-Op completed and filed with the Montana Secretary of State a Montana Title 71 Agricultural Lien Form ("Lien Form"). When completing the Lien Form, a creditor is required to identify the type of lien as: Farm Laborer's Lien (71-3-402); Crop Lien for Seed or Grain (71-3-703); Crop Lien for Spraying or Dusting (71-3-902);

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Thresher's Lien (71-3-802); and Crop Lien for Hail Insurance (71-3-712). On its Lien Form, Pro Co-Op mistakenly identified its lien as Crop Lien for Seed or Grain under Mont. Code Ann. § 71-3-701, *et seq.* instead of a Crop Lien for Spraying or Dusting under Mont. Code Ann. § 71-3-901, *et seq.* In the description box of the Lien Form, Pro Co-Op describes the service or product furnished as "Fertilizer, chemicals, fuel, materials, labor and services for crop year 2018."

Based upon the agreed facts, the Bank proceeds to argue that the Stipulated Facts do not contain "any evidence that demonstrates that Pro Co-Op complied with the statutory requirements of § 71-3-902, MCA, to perfect a statutory lien for providing chemical or fertilizer. There is no lien filing under § 71-3-902(1), MCA, and there is no certified mail reflecting notice to Debtor, as required by § 71-3-902(2), MCA." The Court agrees that the stipulated facts do not show that Pro Co-Op complied with Mont. Code Ann. § 71-3-902(2), by giving Debtor notice of its intent to file a lien under § 71-3-901, *et seq.* However, the stipulated facts similarly do not show that Pro Co-Op did not comply with Mont. Code Ann. § 71-3-902(2).

When Pro Co-Op attempts to clarify the Bank's conclusion, the Bank takes offense. This is not a game of gotcha. As the Court noted earlier, the Bank opened the door when it filed its statement of uncontroverted facts. Public policy favors resolution on the merits. The instant dispute between the Bank and Pro Co-Op suggests that there is at least one material issue of fact that precludes summary judgment. The appropriate course of action in such situation is denial of the Bank's motion for summary judgment so the parties can proceed to a trial on the merits. However, before the Court proceeds with such course of action,

**IT IS ORDERED** that a further pretrial scheduling conference shall be held in conjunction with the hearing on Pro Co-Op's Motion for Leave to File Declaration. The further pretrial scheduling conference and the hearing on Pro Co-Op's Motion for Leave to File

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Declaration will be held telephonically on **Tuesday, April 28, 2020, at 10:00 a.m.** To participate in the telephonic conference/hearing, the parties shall, on the aforementioned date and time, dial into the Court's telephonic conferencing system at 858-812-0972; the Numeric Access Code for the conference is 3000000# followed by 3100566#.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "B. Hursh", written over a horizontal line.

Hon. Benjamin P. Hursh  
United States Bankruptcy Court  
District of Montana