

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.

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**RECEIVER'S UNOPPOSED VERIFIED MOTION TO
APPROVE THE SALE OF 2009 BMW 535I**

Pursuant to 28 U.S.C. §§ 754, 2001 and 2004, Fed. R. Civ. P. 66, and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the “Receiver”), respectfully moves the Court for an order, in substantially the form attached as

Exhibit 1, (i) authorizing him to sell Quest Energy Management Group, Inc.'s 2009 BMW 535i and (ii) relieving him from the requirements of 28 U.S.C. §§ 2001 and 2004.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission ("**Commission**") initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC and Scoop Management, Inc. and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the "**Order Appointing Receiver**"). (*See generally* Order Appointing Receiver (Doc. 8).) The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel ("**Nadel**"). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454, 911, 916, 1024). All of the entities in receivership are hereinafter collectively referred to as the "**Receivership Entities.**"

Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to: "administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors." (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to

or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court

(Id. at 2.)

On May 24, 2013, the Court granted the Receiver's motion to expand the scope of the Receivership to include Quest Energy Management Group, Inc. ("**Quest**") (Doc. 1024). Quest is a Texas oil and gas production company that was initially funded with millions of dollars in proceeds from Nadel's scheme. The Receiver discovered that Quest is the owner of a 2009 BMW 535i (bearing VIN# WBANW13599C163319) (the "**Automobile**"). The vehicle was utilized by Paul Downey, Quest's pre-receivership chief executive officer, and in his possession in Naples, Florida at the time the Receivership was expanded to include Quest. Possession of the Automobile was relinquished to the Receiver on or about June 5, 2013. The Receiver learned that the Automobile was financed through BMW Financial Services, had a monthly loan payment of \$1,217.73, had a payoff balance of \$13,433.88, and cost approximately \$1,370 for annual insurance. The Automobile is not necessary for Quest's operations and will incur costs to the Receivership to insure, house, and maintain.

VALUE OF THE AUTOMOBILE AND RECEIVER'S MARKETING EFFORTS

To determine the market price of the Automobile, the Receiver obtained quotes on the Automobile's value from Edmonds.com and Kelly Blue Book – two internet websites routinely used as a benchmark in the valuation of automobiles. Edmonds.com estimated the

value of the Automobile as between \$16,202 and \$19,016, while Kelly Blue Book valued the Automobile at between \$18,401 and \$20,501. Based on these initial valuations, the Receiver listed the Automobile for sale on online marketplace eBay for \$18,000. The Receiver did not receive any bids on the eBay listing for the Automobile.

The Receiver also contacted two automobile dealerships, Reeves Import Motorcars (“**Reeves**”) and Dimmitt Automotive Group (“**Dimmitt**”), to obtain an estimation of the Automobile’s value. Both Reeves and Dimmitt informed the Receiver they believed an accurate valuation of the Automobile would be \$17,000. In subsequent negotiations with the dealerships, Dimmitt offered to purchase the Automobile for \$17,000. The Receiver believes that accepting the offer of \$17,000 is in the best interest of the Receivership Estate as he believes that \$17,000 fairly represents the current value of the Automobile. Furthermore, Dimmitt is in a position to complete the sale and purchase of the Automobile contingent upon this Court’s approval. Accordingly, the Receiver has entered into an agreement to sell the Automobile to Dimmitt for \$17,000 contingent upon this Court’s approval. Dimmitt has agreed to remit the \$13,433.88 payoff balance directly to BMW Financial Services and remit payment of the balance of the purchase price (\$3,566.12) to the Receiver upon this Court’s approval and receipt and transfer of the Automobile’s title.

The Receiver believes selling the Automobile for \$17,000 is in the best interests of the Receivership, as it will eliminate the Receiver’s obligation to insure, maintain, and store the Automobile. Accordingly, the Receiver respectfully requests that this Court enter an order approving the transaction.

MEMORANDUM OF LAW

I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP'S ADMINISTRATION AND THE SALE OF THE AUTOMOBILE IS IN THE RECEIVERSHIP ESTATE'S BEST INTEREST

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers. The Receiver believes that the proposed sale of the Automobile, which will result in the recovery of \$3,566.12 and the satisfaction of the loan obligation, is in the best interests of and represents the best possible realistic recovery for the Receivership Estate. The relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

A court imposing a receivership assumes custody and control of all assets and property of the receivership and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g. Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). The goal of a receiver charged with liquidating assets is to obtain the best value

available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996) (citations omitted). Further, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See e.g. Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

The relief sought by the Receiver falls squarely within those powers. In light of the considerations discussed above, sale of the Automobile is in the best interest of the Receivership estate, and would result in the recovery of \$3,566.12. As a result, the Receiver respectfully requests that the Court grant the relief requested in this motion and enter the proposed order attached as Exhibit 1.

II. TO THE EXTENT 28 U.S.C. §§ 2001 AND 2004 GOVERN THIS MATTER, THE COURT HAS THE AUTHORITY TO WAIVE THOSE REQUIREMENTS, AND THE CIRCUMSTANCES HERE WARRANT SUCH WAIVER

28 U.S.C. §§ 2001 and 2004 governs the “sale” of property. However, these statutory requirements can be and are often waived by courts. 28 U.S.C. § 2004 (“**Section 2004**”) governs the sale of personal property and provides as follows:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with Section 2001 of this Title, unless the court orders otherwise.

28 U.S.C. § 2004 (emphasis added). 28 U.S.C. § 2001(b) (“**Section 2001(b)**”) addresses private sales and provides as follows:

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each

to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b)

Thus, “unless the Court orders otherwise” pursuant to Section 2004, Section 2001(b) requires a court to appoint three disinterested persons as appraisers and to direct in which newspaper a notice of proposed sale be published prior to confirmation of a sale. Here, using the discretion afforded by Section 2004, the Court should “order otherwise” in this instance with regard to (i) the need for three appraisals and (ii) the publication in newspapers of notice of any sale. The Court’s authority to deviate from the requirements of Section 2004 is supported by caselaw and is in the best interests of the Receivership Estate.

The Receiver believes he is in a position to adequately evaluate the value of the Automobile, and that full compliance with Section 2004 and Section 2001(b) would result in the unwarranted expenditure of funds and resources of the Receivership Estate. Indeed, compliance with the statutory requirements would likely entirely offset the expected net sale proceeds. Thus, the Receiver requests that the Court authorize deviation from the statutory appraisal and notice requirement associated with the proposed sale of the Automobile.

Courts have recognized the discretion afforded to them by Section 2004 in approving a discretionary deviation from the requirements of Section 2001. *See, e.g., Tanzer United States v. Stonehill*, 83 F.3d 1156, 1160 (9th Cir. 1996) (emphasizing statutory language, “unless the court orders otherwise,” and concluding that “it is at the district court’s discretion

whether to obtain appraisals [in sales of] personal property”); *see also SEC v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. 2008) (approving sale of personalty without appraisals or publication where costs of compliance would significantly offset the purchase offer); *United States v. Kerner*, 2003 WL 22905202, *2 (E.D. Mich. 2003) (“Under...28 U.S.C. § 2004, which states that the requirements of section 2001 must be followed ‘unless the court orders otherwise,’ the Court clearly has the discretionary authority to confirm the private sale [made without strict adherence to the requirements in Section 2001].”).

Further, Courts have specifically exercised their authority to deviate from the requirements of Section 2001 when faced with the proposed sale of personal property by a receiver under Section 2004. *See Wells Fargo Capital Finance, Inc. v. North Pacific Group*, No. CV10-65-KI, Order on Receiver’s Motion for Order Authorizing Sale of Accounts Receivable (D. Ore. Jan. 24, 2012) (excusing receiver from “compliance with 28 U.S.C. § 2004 concerning sales of personal property through federal court proceedings”); *SEC v. Billion Coupons, Inc.*, 2009 WL 2143531, *4 (D. Hawai’i 2009) (finding good cause to exercise discretion and permit receiver to sell personal and real property in manner other than as provided by federal statute, including 28 U.S.C. §§ 2001, 2004); *Federal Trade Commission v. Jeremy Johnson et. al.*, No. 2:10-cv-02203-RLH-GWF, Order (D. Nev. August 25, 2011) (allowing receiver to liquidate private limited liability membership interest and authorizing deviation from sale and publication procedures of 28 U.S.C. §§ 2001 and 2004); *SEC v. Lydia Capital, LLC, et al.*, No. 1:07-cv-10712-RGS, Order Granting Receiver’s Motion for Authorization to Sell Asset of the Receivership Estate (D. Mass. March 16, 2011) (“Given the Receiver’s efforts in marketing the portfolio of policies,

including the Sale Policy, the third-party offers the Receiver obtained from disinterested bidders in the marketplace, and the notices provided to all interested parties, neither an independent appraisal or publication is necessary under 28 U.S.C. §§ 2001 and 2004”) (emphasis added). Copies of these orders are attached hereto as **Exhibit 2**.

III. THERE EXIST NO OTHER KNOWN CLAIMS OR INTERESTS IN THE AUTOMOBILE

Deviation from the requirements of Section 2001(b) is not only warranted by the circumstances, but also by the absence of any known outstanding claims, liens, or encumbrances relating to the Automobile other than the loan made by BMW Financial Services which will be paid off. While the Receiver is not aware of any other claims, liens, or encumbrances relating to the Automobile, nevertheless to eliminate any risk whatsoever, the Receiver seeks an Order allowing him to transfer the Automobile free and clear of any and all liens, encumbrances, and claims. This Court’s broad authority over the Receivership Estate includes the equitable power to “sell property free of liens, transferring the liens to the proceeds.” *Seaboard Nat’l Bank v. Rogers Milk Products Co.*, 21 F.2d 414, 416 (2d Cir. 1927); *see also Quilling v. Trade Partners, Inc.*, 2007 WL 296211 (W.D. Mich. 2007) (approving receiver’s sale of property free and clear of all liens and encumbrances and ordering that any liens or claims associated with the property would attach to the proceeds of the sale).

Finally, because no known claim, lien, or encumbrance affecting the Receivership Estate’s interests in the Automobile will remain outstanding, no hearing on this Motion is necessary. Instead, aside from filing this Motion in the public docket, the Motion and supporting papers will be posted and easily accessible to any interested party on the

Receivership's website (www.nadelreceivership.com) promptly after they are filed. This procedure will provide any interested party with sufficient notice and opportunity to be heard in accordance with Section 2001(b). *See, e.g., North Pacific Group, Inc.*, No. CV10-65-KI (D. Ore. Jan. 24, 2012) ("no other or further notice of the Motion or the entry of this sale order is required"); *Lydia Capital, LLC, et al.*, No. 1:07-cv-10712-RGS (D. Mass. March 16, 2011) (provision of motion and proposed order to parties, investors, and creditors of receivership, along with posting copy on receiver's website, was sufficient and reasonable where time was of the essence); *Albert Fase Kaleta et al.*, No. 4:09-cv-3674 (S.D. Tex. August 10, 2010) (granting emergency motion waiving receiver's compliance with Section 2004, including notice requirements).

CONCLUSION

WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 (i) approving the sale of the Automobile and, (ii) to the extent 28 U.S.C. §§ 2001 and 2004 govern the sale of the Automobile, waiving any appraisal and publication requirements and allowing the Receiver to transfer the Automobile free and clear of any and all claims, liens, and encumbrances.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.


Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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