

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.

**RECEIVER'S UNOPPOSED VERIFIED MOTION FOR
APPROVAL OF PRIVATE SALE OF THE ASSETS OF TRADEWIND, LLC**

Pursuant to 28 U.S.C. §§ 754 and 2001; 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 the assets of Receivership Entity Tradewind, LLC

(“**Tradewind**”) pursuant to the Asset Purchase Agreement attached as **Exhibit 2**; and (ii) relieving him from certain requirements of 28 U.S.C. §§ 2001.

INTRODUCTION

Shortly after his appointment, the Receiver discovered that scheme proceeds were used to purchase Tradewind. Tradewind is a fully operational business located in Newnan, Coweta County, Georgia that owns and controls five 40’ x 230’ buildings that contain a total of thirty aircraft T-hangars and one 80’ x 80’ aircraft box hangar, all of which are leased to various tenants. In addition, Tradewind also has a leasehold interest in five aircraft box hangars which are leased to various tenants, and is also the lessee of the ground lease with the Newnan-Coweta County Airport Authority. On the Receiver’s motion, the Court granted the Receiver’s Motion to Expand the Scope of the Receivership to include Tradewind on January 27, 2009 (Doc. 17.)

The Receiver has since taken control of Tradewind and engaged in marketing efforts to sell the entity or its assets at the best possible value for the Receivership. These efforts recently resulted in the receipt of an offer to purchase Tradewind for \$1,200,000.00. This offer is significantly higher than a recent valuation obtained by the Receiver. The Receiver believes the current offer of \$1,200,000.00 represents a current fair and reasonable price for the following assets of Tradewind: 1) the five 40’ x 230’ buildings containing the thirty T-Hangars and the corresponding hangar leases; 2) the 80’ x 80’ box hangar and its corresponding hangar lease; 3) the leasehold interests in the five box hangars and the corresponding hangar leases; and 4) the ground lease with the Newnan-Coweta County Airport Authority. The Receiver also believes it is in the Receivership Estate’s best interests

to proceed with the sale of Tradewind without being obligated to obtain any further appraisals under 28 U.S.C. § 2001(b) and requests that the Court exercise its discretion and waive certain procedures set forth in 28 U.S.C. § 2001(b).

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**”) (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 was directed to, *inter alia*, administer and manage the business affairs, funds, assets, choses in action, and any other property of the Receivership Entities.

Shortly after his appointment, the Receiver learned that proceeds of Nadel’s fraud had been used to establish Tradewind and purchase various assets. The Receiver successfully sought to expand the scope of the Receivership Entities to include Tradewind. (Doc. 15.)

TRADEWIND'S VALUE AND THE RECEIVER'S MARKETING EFFORTS

Background

After assuming control of Tradewind, the Receiver began investigating the hangar operation and determined that it was a viable business operation with potential to generate income for the Receivership Estate. Tradewind has the following current assets:¹ 1) five 40' x 230' buildings consisting of thirty airplane T-hangars and the corresponding tenant leases; 2) an 80' x 80' box hangar and the tenant lease associated with that hangar; 3) a leasehold interest in five box hangars and the tenant leases associated with those five box hangars; and 4) the ground lease with the Newnan-Coweta County Airport Authority. These items are hereinafter referred to as the “**Assets**” of Tradewind.²

Since the Receiver assumed control, Tradewind has continued to collect approximately \$20,000.00 per month in rental income from its hangar leases. Tradewind also is the lessee of a ground lease with the Newnan-Coweta County Airport Authority and pays \$3,079.89 per month in land rent. The ground lease with the Newnan-Coweta County Airport Authority is valid through 2029. Tradewind does not currently hold title to any real property, aircraft, or vehicles.

¹ Tradewind also owned five planes, one helicopter, and other miscellaneous assets collectively valued at less than \$5,000.00 at the time it was placed into Receivership. The Receiver sold or otherwise disposed of the five planes, the helicopter, and the miscellaneous assets since assuming control of Tradewind and pursuant to various orders of this court. (*See* Docs. 97, 108, 119, 432, 490, 580.)

² In 2013, the Coweta County Tax Commissioner assigned a fair market value of \$934,124.00 on the hangar buildings.

Tradewind's Encumbrance

Before Receivership, Tradewind obtained a \$1,000,000.00 loan (the “**Loan**”) from the Bank of Coweta³ (the “**Bank**”). The Loan is secured by Tradewind’s Assets pursuant to a Universal Note and Security Agreement and a Commercial Deed to Secure Debt and Security Agreement. The Loan matured on June 25, 2012, and was not renewed. Nevertheless, the Receiver has only made monthly interest-only payments (of approximately \$5,500 per month) since the Loan’s maturity. The principal balance of the Loan is \$874,501.21. As of February 26, 2014, the balance of the Loan including interest is \$876,505.30 and interest continues to accrue at \$182.19 per diem. The Bank filed a timely Proof of Claim, Claim No. 481, in the Court-approved claims process for the unpaid balance of the Loan. The Receiver recommended that the Bank’s claim should be allowed in the amount of the principal amount of the loan outstanding at the time of the eventual sale of the hangars, not to exceed \$891,628.04, but that the claim should only be paid from the proceeds of the eventual sale of the hangars, less fees and costs incurred by the Receivership to maintain and sell the hangars. (Doc. 675.) The Court approved the Receiver’s recommendation. (Doc. 776.) With the exception of the Bank’s loan, there are no other known existing encumbrances on the Assets of Tradewind.

The Receiver has engaged in discussions with the Bank’s counsel relating to the payment of the Receiver’s reasonable fees and costs incurred to maintain and sell the hangars and to satisfy the loan balance in full and resolve the Bank’s claim. The result of those discussions is memorialized in an Agreement Regarding Claims and Obligations between the

³ The Bank of Coweta is now known as Synovus Bank a/k/a Bank of North Georgia.

Receiver and the Bank (“**Bank Agreement**”), which is attached hereto as **Exhibit 3**. Pursuant to the Bank Agreement, the Bank will receive \$869,501.21 – the principal balance of the loan less \$5,000.00 for fees and costs incurred by the Receiver to maintain and sell the hangars – plus interest of \$182.19 per diem from February 26, 2014, through the date of the closing from the net proceeds of the sale of the Assets of Tradewind. The payment to the Bank is for the full and final satisfaction of the loan and release or withdrawal of the Bank’s claim. The remaining proceeds of the sale, which are estimated to be approximately \$325,000.00, will go to the Receivership Estate.

With the exception of the Bank’s interest, the Receiver is unaware of any other interest in the Assets of Tradewind and no other claim has been filed relating to Tradewind or its Assets.

The Receiver’s Marketing Efforts and Offer to Purchase Tradewind and its Assets

The Receiver has continuously listed Tradewind for sale through his website, www.nadelreceivership.com, in a specific “Assets for Sale” section since 2009. The Receiver also engaged the services of a broker between April 2011 and May 2012 to market and attempt to sell Tradewind, but those efforts were unsuccessful in generating any offers which reasonably reflected the value of Tradewind. Tradewind is not currently listed with a broker, and thus no broker commission will be paid from the proceeds of the sale.

The Receiver recently obtained a valuation report for Tradewind by Shán O’Keeffe, BE, CSBA, MCMEA, Senior Business Consultant and Executive Vice President of Murphy Valuation Services, Inc. (the “**Appraisal**”). A copy of the Appraisal is attached hereto as **Exhibit 4**. The Appraisal concluded that an appropriate valuation of Tradewind’s assets was approximately \$830,000.00. The Receiver has received an offer from E4 Holdings, LLC (the

“**Purchaser**”), to purchase the Assets of Tradewind for \$1,200,000.00. The Receiver has accepted this offer, subject to the Court’s approval. As such, the Receiver entered into an Asset Purchase Agreement (the “**Agreement**”) with Purchaser, a copy of which is attached hereto as **Exhibit 2**. Subject to the Court’s Approval of the Agreement, the Receiver intends to transfer the Assets and assign the corresponding hangar leases, as well as the ground lease with the Newnan-Coweta County Airport Authority, to the Purchaser free and clear of all claims, liens, and encumbrances as more fully described in the Agreement. The Newnan-Coweta County Airport Authority has consented to the assignment of the ground lease to the Purchaser.

The Receiver believes that the proposed offer is reasonable in light of the current market conditions and the valuation recently obtained by the Receiver which valued Tradewind at approximately \$830,000. In the five-year period since the Receiver began marketing Tradewind, he has received several offers, but each of them was significantly less than the current sale price and the Receiver’s estimated fair market value. Indeed, the last offer received by the Receiver in October 2012 sought to purchase Tradewind for only \$530,000. The Receiver believes the fact that the current offer significantly exceeds the previous offers and the appraisal value demonstrates the offer is at or above fair market value, and thus also believes that obtaining additional appraisals would result in the unwarranted expenditure of funds of the Receivership Estate. The Receivership Estate will net approximately \$325,000.00 from the sale.

MEMORANDUM OF LAW

I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP'S ADMINISTRATION

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 Assets of Tradewind, which is expected to result in the recovery of approximately \$325,000.00 for the benefit of defrauded investors, is in the best interests of and represents the best possible 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).

II. THE COURT HAS THE POWER TO DEVIATE FROM THE REQUIREMENTS OF 28 U.S.C. § 2001 AND THAT IS WARRANTED UNDER THE CIRCUMSTANCES HERE

Pursuant to 28 U.S.C. § 2001, property in the possession of a receiver may be sold by private or public sale. 28 U.S.C. § 2001. Specifically, subsection (b) establishes the following procedures for a private sale of real property:

(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) (“**Section 2001(b)**”). Notwithstanding the language of Section 2001(b), district courts are afforded wide discretion in overseeing the sale of real and personal property in equity receiverships. Any actions taken by the district court in the exercise of this discretion are subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver’s appointment is to provide a method of gathering,

preserving, and ultimately liquidating assets to return funds to defrauded investors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys “wide discretionary power” related to its “concern for orderly administration”) (citations omitted).

A. Waiver Of The Statutory Appraisal Requirements Under Section 2001(b) Is Warranted

Consistent with this discretion, courts have allowed deviations from the requirements of Section 2001(b) to approve sales of real property in equity receiverships. *See S.E.C. v. Global Online Direct, Inc.*, Case No. 1:07-CV-0767-WSD, Order Granting Receiver’s Mot. For Order Authorizing the Sale of Certain Property (N.D. Ga. 2009) (“The Court hereby relieves the Receiver from the provisions of 28 U.S.C. §§2001-2002”); *S.E.C. v. Stanley J. Kowalewski et. al.*, Case No. 1:11-cv-0056-TCB, Order Granting Receiver’s Motion for Approval of Private Sale of Real Property (N.D. Ga. 2012) (finding compliance with 28 U.S.C. §2001(b) despite receiver not obtaining three appraisals for each property). These orders are attached hereto as **Composite Exhibit 5**. Furthermore, this Court has previously waived strict adherence to the requirements of 28 U.S.C. § 2001 when presented with motions to approve the sale of various assets. (Docs. 892, 902, 1043, 1044, 1050, 1075.)

At least one court authorized a receiver’s private sale of real property under 28 U.S.C. § 2001 without requiring *any* appraisals. In *S.E.C. v. Billion Coupons, Inc.*, the receiver proposed that the court deviate from the appraisal requirements of 28 U.S.C. § 2001(b) and instead authorize the receiver to retain a licensed real estate broker to market and sell the property for the highest and best price obtained. 2009 WL 2143531, *3 (D. Hawaii 2009). Concluding that the proposed plan contained sufficient safeguards for maximizing the sale

price, as well as an efficient process to minimize carrying costs and other expenses, the court granted the receiver's request to deviate from 28 U.S.C. § 2001. 2009 WL 2143531 at *4. Further, this Court has authorized the sale of real property in an equity receivership despite the receiver obtaining less than the three appraisals required under Section 2001(b). In *S.E.C. v. Patrick Kirkland et. al.*, the receiver requested that the court find substantial compliance with the appraisal requirements in Section 2001 based on a single appraisal and the uniqueness of the subject property. 2009 WL 1439087 (M.D. Fla. 2009). Citing the receiver's belief that the proposed sale was in the best interest of the receivership estate and that no benefit would be realized in obtaining additional appraisals, the court granted – over the defendant's objection – the waiver of the requirements of Section 2001(b). *Id.* at *3.

Here, full compliance with the statutory procedures enumerated in Section 2001(b) would result in the unwarranted depletion of funds and resources of the Receivership Estate. Given the (1) uniqueness of Tradewind and the Assets, (2) existence of a ready and willing buyer, and (3) existence of an appraisal supporting the proposed sales price, The Receiver believes that obtaining additional appraisals would be unnecessary. Indeed, the sale price of \$1,200,000.00 significantly exceeds the valuation contained in the Appraisal and previous offers. Additionally, the Receiver is unaware of any claims to the Assets of Tradewind other than the Bank's claim, and he has not received any indication that any interested party plans to object to the proposed sale. Thus, the Receiver requests that the Court authorize deviation from the statutory appraisal requirements enumerated in Section 2001(b) and find that the Receiver has substantially complied with 28 U.S.C. § 2001(b).

B. Waiver Of The Statutory Notice Requirements Under Section 2001(b) Is Warranted

Section 2001(b) also requires that the terms of a proposed sale must be advertised in such newspaper(s) of general circulation as directed by the court. 28 U.S.C. § 2001(b). Here, the Receiver caused notice of the sale to be published in the Newnan Times Herald on January 23, 2014. The proof of publication is attached hereto as **Exhibit 6**. The Receiver believes that full statutory compliance with the statutory notice requirement of Section 2001(b) would be unnecessary in light of the substantial marketing and advertising efforts undertaken by the Receiver and his listing agents over the past two-plus years which have resulted in minimal interest in Tradewind. Additionally, the Receiver has not received any bona fide offer as described in 28 U.S.C. § 2001(b) as of the date of the filing of this Motion. The Receiver will also be posting a copy of this motion on his website, www.nadelreceivership.com, immediately after filing, which will be publicly available. Thus, the Receiver requests that the Court either waive Section 2001(b)'s notice provision, or in the alternative find that the Receiver's efforts in marketing and listing Tradewind are in compliance with Section 2001(b).

WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 (1) authorizing the sale of the Assets of Tradewind by private sale in accordance with the terms and conditions set forth in the Asset Purchase Agreement attached hereto as Exhibit 2 and free and clear of all claims, liens, and encumbrances; (2) approving the Agreement Regarding Claims and Obligations with Bank of Coweta regarding the payoff of the loan as provided in Exhibit 3 attached hereto; (3) approving the appointment *nunc pro tunc* of appraiser Shán O'Keeffe, BE, CSBA, MCMEA,

Senior Business Consultant and Executive Vice President of Murphy Valuation Services, Inc. as appraiser under 28 U.S.C. § 2001(b); (4) assigning Tradewind's interests, rights, and obligations as landlord under the hangar leases described in Exhibit A of the Asset Purchase Agreement attached hereto as Exhibit 2 to E4 Holdings, LLC.; (5) assigning Tradewind's interests, rights, and obligations as tenant under the Ground Lease with the Newnan-Coweta Airport Authority to E4 Holdings, LLC; and (6) finding the Receiver's efforts are in substantial compliance with the notice and appraisal requirements of 28 U.S.C. § 2001(b).

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 March 13, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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