

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

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

Defendants,

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

Relief Defendants.

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**BB&T'S MOTION FOR LEAVE TO FILE REPLY**  
**IN SUPPORT OF MOTION FOR TURNOVER**

Secured Creditor, Branch Banking & Trust Company (“BB&T”), pursuant to Middle District Local Rule 3.01(d), seeks leave to submit a reply memorandum in support of its Motion for Turnover of Sale Proceeds of Fairview Property Subject to Mortgage Interest (“Motion”) (Doc. Nos. 1159-1160), not to exceed 10 pages to address the issues identified below. The Court granted such leave to Wells Fargo Bank, N.A. (“WFB”) on its similar motion for relief with respect to its belatedly-submitted secured proofs of claim—relief to which the Receiver did not object. The Court should grant the same leave to BB&T despite the Receiver’s objection.

**MEMORANDUM OF LAW**

Local Rule 3.01(d) permits a party to request leave to submit a reply in support of a motion. BB&T's reply, not to exceed 10 pages, will address the following in response to his opposition to the Motion (Doc. No.1163):

(a) The Receiver's failure to address BB&T's primary position that the Receiver's knowledge and reporting of BB&T's secured claim prior to the deadline obviated the need to submit a formal claim;

(b) The Receiver's contention that BB&T has not satisfied his burden of proof on the Motion;

(c) The Receiver's contention that the order dated March 2, 2012 precludes relief sought in the Motion;

(d) The Receiver's contention that the Court's prior rulings denying the Elendow and Fulcrum claims is dispositive of the issues;

(e) The Receiver's contention that the Court may not consider bankruptcy cases holding that a secured creditor need not file a claim to preserve its lien interest;

(f) The Receiver's contention that the one-year limit in Rule 60(c) precludes relief for excusable neglect and should be calculated from the date of the March 2, 2012 order;

(g) The Receiver's contention that the estate would be prejudiced if the Court honors the secured claim because the Receiver would not be able to use the segregated proceeds to pay unsecured creditors;

(h) BB&T's agreement with the Receiver that if the Court honors the claim, it should order turnover of \$248,941.73, the principal balance of the Fairview Loan as of the date of the Receivership, and not the full amount held by the Receiver (\$267,720.59).

On February 8, 2012, WFB filed a similar motion seeking relief with respect to late-submitted secured claims. *See* Doc. No. 740. The Receiver opposed the relief, Doc. No. 755, but did not oppose WFB's motion for leave to file a reply. Doc. No. 759. The Court granted leave to WFB to submit a reply limited to 10 pages. Doc. No. 760. BB&T requests the same relief here.

**CONCLUSION**

The Court should grant BB&T leave to file a reply not to exceed 10 pages in support of the Motion.

**LOCAL RULE 3.01(g) CERTIFICATION**

Counsel to BB&T has conferred with counsel to Receiver, who opposes the relief sought.

GARBETT, STIPHANY, ALLEN & ROZA, P.A.  
Counsel to BB&T  
80 S.W. 8th Street – Suite 3100  
Miami, Florida 33130  
Telephone: (305) 536-8861  
Fax: (305) 579-4722  
David S. Garbett, FBN 356425  
Elizabeth B. Dombovary, FBN 891711  
Email: [dgarbett@gsarlaw.com](mailto:dgarbett@gsarlaw.com)  
Email: [edombovary@gsarlaw.com](mailto:edombovary@gsarlaw.com)

By: /s/ David S. Garbett  
David S. Garbett

**CERTIFICATE OF SERVICE**

I certify that on March 25, 2015 , I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all

counsel of record identified on the below Service List authorized to receive electronic notice via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ David S. Garbett

**SERVICE LIST**

Arthur G. Nadel  
FCI BUTNER LOW  
Federal Correctional Institution  
P.O. Box 999  
Butner, NC 27509

Gianluca Morello, Esq.  
Wiand Guerra King, P.L.  
3000 Bayport Drive  
Suite 600  
Tampa, FL 33607  
Counsel for Receiver, Burton W. Wiand

Terry A. Smiljanich, Esq.  
James, Hoyer, Newcomer & Smiljanich,  
P.A.  
One Urban Centre, Suite 550  
4830 W. Kennedy Blvd.  
Tampa, FL 33609  
Counsel to Receiver, Burton W. Wiand

Scott A. Masel, Esq.  
Andre J. Zamorano, Esq.  
Securities & Exchange Commission  
Miami Branch Office, SERO  
801 Brickell Ave., Suite 1800  
Miami, FL 33131