

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

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

Defendants,

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,

Relief Defendants.

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RECEIVER'S UNOPPOSED MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver, moves the Court for an order approving a settlement relating to the Court's order (Doc. 1174) denying the motion for turnover of sale proceeds filed by Branch Banking and Trust Company ("BB&T") in this action on March 5, 2015 (Doc. 1159) and BB&T's subsequent appeal (Doc. 1178) on the basis of the Agreement attached hereto as Exhibit A.

MEMORANDUM IN SUPPORT

The Securities and Exchange Commission (the “**Commission**” or “**SEC**”) instituted this action to “halt [an] ongoing fraud, maintain the status quo, and preserve investor assets” (Dkt. 1, Compl., ¶ 7.) Burton W. Wiand was appointed by this Court as the Receiver for Defendants other than Arthur Nadel and for Relief Defendants. (*See* Order Reappointing Receiver (Dkt. 140).) Additionally, the Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Dkt. 17); Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. (Dkt. 44); The Guy-Nadel Foundation, Inc. (Dkt. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Dkt. 81); Viking Oil & Gas, LLC (Dkt. 153); Home Front Homes, LLC (Dkt. 172); Traders Investment Club (Dkt. 454); Summer Place Development Corp. (Dkt. 911); Respiro, Inc. (Dkt. 916); and Quest Energy Management Group, Inc. (Dkt. 1024). All of the entities in receivership are collectively identified herein as the Receivership Entities.

Pursuant to the Order Reappointing Receiver (Dkt. 984), the Receiver has the duty and authority to:

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement or profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Further, the Order Reappointing Receiver (at paragraph 6) authorizes the Receiver to “[d]efend, compromise or settle legal actions . . . in which the Receivership Entities or the Receiver is a party . . . with authorization of this Court”

By a motion filed November 17, 2014 (Doc. 1150), the Receiver asked the Court to approve the sale of residential real property located at 131 Garren Creek Road, Fairview, Buncombe County, North Carolina (the “**Fairview Property**”), which was part of the Receivership Estate pursuant to an order of this Court dated March 30, 2009 (Doc. 146). BB&T ostensibly held a lien on the Fairview Property in connection with a mortgage it issued to Nadel, but the Receiver asked the Court to transfer it to the sale proceeds and to resolve the parties’ respective claimed entitlements to those proceeds after granting the motion to approve the sale to ensure a timely closing. On November 18, 2014, the Court granted the Receiver’s motion (Doc. 1151), and the sale of the Fairview Property promptly closed, which resulted in net sale proceeds of **\$267,270.59**. On March 5, 2015, BB&T filed a motion for turnover of the sale proceeds. Doc. 1159. The Receiver opposed the motion on the ground that BB&T had failed to file a claim for the Fairview Property in this proceeding’s claims process. *See* Doc. 1163. On April 15, 2015, the Court denied BB&T’s motion for turnover. Doc. 1174. On May 12, 2015, BB&T filed a notice of appeal. Doc. 1178.

As shown by the attached Agreement, the Receiver and BB&T, subject to the approval of this Court, have agreed to the Receiver paying BB&T a total of **\$10,000.00** to resolve BB&T’s pending appeal and its claim to any other portion of the sale proceeds for the Fairview Property. The remainder of the sale proceeds – **\$257,270.59** – will be contributed

to the Receivership Estate. As noted in paragraph 9 of the Agreement, this settlement does not affect BB&T's Claim No. 482, which was timely submitted and allowed in part and which pertains to a different parcel of real property that is still part of the Receivership Estate. In reaching the Agreement, the Receiver's primary considerations involved conservation of legal fees and avoidance of doubt. The settlement amount represents an amount that is lower than the Receiver's estimate of the legal fees he would incur defending BB&T's appeal, and while the Receiver assigns a high probability to prevailing on appeal, this settlement with BB&T will eliminate any uncertainty and ensure the remainder of the sale proceeds can be immediately contributed to the Receivership Estate. The Receiver believes that the settlement provides a practical solution which results in the maximum benefit to the Receivership. Further, the settlement reflected by the Agreement is in the best interests of the Receivership, the investors in the Receivership Entities, and BB&T, because resolution of BB&T's appeal and purported claim conserves Receivership assets and judicial resources.

WHEREFORE, the Receiver moves the Court to approve the settlement reflected by the attached Agreement.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

Counsel for the Receiver is authorized to represent to the Court that the SEC has no objection to the Court's granting this motion.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on July 28, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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