

**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.

**DECLARATION OF BURTON W. WIAND IN SUPPORT OF THE RECEIVER'S
MOTION FOR (I) FOR DETERMINATION THAT WELLS FARGO BANK, N.A.'S
FAILURE TO COMPLY WITH THIS COURT'S CLAIMS ADMINISTRATION
PROCESS EXTINGUISHED ITS PURPORTED INTERESTS
IN RECEIVERSHIP PROPERTIES, AND (II) FOR RELEASE OF
PROCEEDS OF SALE OF SARASOTA PROPERTY.**

Burton W. Wiand declares as follows:

1. I am an attorney with Wiand Guerra King P.A. in Tampa, Florida.
2. I make this declaration in support of the Receiver's Motion (I) For Determination that Wells Fargo Bank, N.A.'s Failure to Comply with this Court's Claims Administration Process Extinguished Its Purported Interests in Receivership Properties, and (II) For Release of Proceeds of Sale of Sarasota Property.
3. I make this declaration based on information personally known to me or gathered and investigated by others at my request and under my direction.
4. By orders dated January 21, 2009, June 3, 2009, January 19, 2010, and September 23, 2010, the Court in *Securities & Exch. Comm 'n v. Arthur Nadel, et al.*, Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the "**SEC Action**"), appointed me as Receiver for, among other entities, Valhalla Investment Partners, L.P. ("**Valhalla Investment**"); Viking Fund, LLC ("**Viking Fund**"); Viking IRA Fund, LLC ("**Viking IRA Fund**"); Victory Fund, Ltd. ("**Victory Fund**"); Victory IRA Fund, Ltd. ("**Victory IRA Fund**"); and Scoop Real Estate, L.P. ("**Scoop Real Estate**") (collectively, the "**Hedge Funds**").
5. I was also appointed Receiver over the purported managers and investment advisors of the Hedge Funds, including Scoop Capital, LLC ("**Scoop Capital**"); Scoop Management, Inc. ("**Scoop Management**"); Valhalla Management, Inc. ("**Valhalla Management**"); and Viking Management, LLC ("**Viking Management**") (collectively, the "**Fund Managers**").
6. By order dated February 11, 2009, this Receivership was expanded to include Laurel Preserve, LLC, which was the entity holding title to approximately 420 acres near

Asheville, North Carolina in Buncombe and McDowell counties (“**Laurel Mountain**”) (Doc. 44). Accordingly, Laurel Mountain is a Receivership asset. Public records reflect that Laurel Mountain is encumbered by a May 2, 2008 loan made by Wells Fargo Bank, N.A.¹ (“**Wells Fargo**”) to Laurel Preserve, LLC in the amount of \$1.9 million.

7. Similarly, by order dated January 28, 2010, I was granted possession of, and title, to property located at 464 Golden Gate Point, Unit 703, Sarasota, Florida (the “**Sarasota Property**”) (Doc. 327). The Sarasota Property was encumbered by two loans secured by mortgages, both dated May 24, 2006; those encumbrances shifted to the Sarasota Property sale proceeds after the Property was finally sold in April 2015. The first was in the amount of \$956,000 and is currently held by Bank of America, N.A. (“**BoA**”) and is serviced by Wells Fargo. The second was a home equity line of credit in the amount of \$880,000 originated by Wells Fargo. Both Laurel Mountain and Sarasota Property are collectively referred to as “**the Properties.**”

8. Wells Fargo refused to file claims with this Receivership for any of the three loans associated with the Properties. These outstanding encumbrances, and Wells Fargo’s failure to comply with the claims process procedures, have both impeded my attempts to dispose of the Properties and delayed resolution of this Receivership and distribution of funds.

9. I began marketing Laurel Mountain in 2009. As early as May 2009, Wells Fargo had full and complete knowledge that Laurel Mountain was part of this Receivership Estate and that I was marketing the Property. (Exhibit A). As Receiver, I reached out to

¹ Wells Fargo Bank, N.A. is successor-in-interest to Wachovia Bank, N.A.

Wells Fargo regarding the potential marketing of the Property and negotiation of an allocation of the proceeds of any sale. After an initial communication with officials of Wells Fargo and its counsel, I received no further input or cooperation from the Bank.

10. Wells Fargo began sending me loan statements for the Laurel Mountain mortgage beginning May 19, 2009, demonstrating that it was aware that Laurel Mountain was part of the Receivership Estate. (Exhibit A). Additionally, on June 9, 2009, counsel for Wells Fargo contacted one of my representatives to determine whether there was “[a]ny news on marketing the Laurel Preserve lots” and to advise that Laurel Mountain was “subject to another Wachovia mortgage.” (Doc. 713-7, p.5). On June 26, 2009, Wells Fargo further advised that it wanted to perform an appraisal of Laurel Mountain and inquired as to whether I had retained any brokers to sell the Property. (*Id.* at p.9).

11. On April 21, 2010, the Court entered an Order (Doc. 391) granting the Receiver’s motion to, in relevant part, approve a procedure to administer claims and proof of claim forms (“POCs”) and to establish a deadline for filing POCs. This Order established a Claim Bar Date Notice of September 2, 2010.

12. In March of 2011, counsel for Wells Fargo contacted me demanding full payment on its loan secured by Laurel Mountain and threatened to take action for failure to pay the loan. On April 5, 2011, I provided Wells Fargo’s counsel with a letter explaining that the deadline for submission of POCs was September 2, 2010, but that if Wells Fargo “believes there are circumstances that justify its failure to file a Proof of Claim, it remains free to submit one and an explanation for the delay and any other materials or information which it deems appropriate.” (Doc. 713-8). Wells Fargo never responded to this letter.

13. My attempts to sell Laurel Mountain have remained unsuccessful because Wells Fargo's mortgage may exceed Laurel Mountain's current value and the mortgage impedes my ability to market that Property. I have not been able to sell Laurel Mountain.

14. I began marketing the Sarasota Property in 2010. In December of 2010, my marketing efforts resulted in an offer to purchase the Sarasota Property in the amount of \$2,260,000.00. I entered into a contract to sell the Sarasota Property. On several occasions, I attempted to negotiate with Wells Fargo a fair and equitable resolution of its outstanding mortgage fees and costs associated with the Sarasota Property loans, but it refused to enter into any negotiations whatsoever. (Exhibit B).

15. As a result, the title insurance company would not issue a policy. Because Wells Fargo was unwilling to resolve the encumbrances so that the sale could go through, the buyer withdrew from the 2010 transaction. I was not able to finally sell the Sarasota Property until April 2015. (*See* Dkt. 1177).

I declare under the penalty of perjury that the foregoing is true and correct and is executed this 7th day of December, 2015.



Burton W. Wiand, as Receiver

Email: bwiaand@wiandlaw.com

WIAND GUERRA KING P.A.

5505 W. Gray Street

Tampa, FL 33609

Tel.: (813) 347-5100

Fax: (813) 347-5155