

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, LLC

Relief Defendants.

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**RECEIVER'S OPPOSITION TO RENEWED MOTION TO ALLOW  
THE FIRST NATIONAL BANK OF ALBANY/BRECKENRIDGE  
TO GO FREE OF THE STAY TO ENFORCE ITS SECURITY INTEREST  
IN ASSETS OF QUEST ENERGY MANAGEMENT GROUP, INC.**

Burton W. Wiand, as Receiver (the "**Receiver**") for *inter alia* Quest Energy Management Group, Inc. ("**Quest**"), opposes the renewed motion for relief from stay (Doc. 1244) (the "**Renewed Motion**") filed by First National Bank of Albany/Breckenridge ("**First National**") to enforce security interests it claims to have in a parcel of real property and certain oil and gas leases owned or controlled by Quest because (1) First National has already

submitted to this Court's exclusive jurisdiction by filing a claim in the Court-established claims process and (2) that claims process will fully protect any interests First National may have.

### BACKGROUND

On May 24, 2013, the Court expanded this Receivership to include Quest "within the ambit of the Court's previous orders appointing and reappointing Burton W. Wiand as the Receiver in this case." Doc. 1024 at 8. Those previous orders enjoin creditors and others "from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property" of the Receivership entities. *See, e.g.*, Doc. 8 ¶ 15.

First National contends Quest owes it approximately \$200,000, and that the debt is secured by liens it holds on an office building and certain oil and gas leases. Renewed Mot. ¶¶ 4-5. First National initially moved to intervene in this case and for relief from the Court's stay to enforce its liens on September 5, 2013. Doc. 1065. The Receiver opposed the motion, arguing First National had not established its right to intervene under relevant procedural rules. Doc. 1070. On September 27, 2013, consistent with its treatment of other creditors that requested similar relief, the Court denied First National's motion. Doc. 1073.

On June 15, 2016, the Receiver filed a motion to establish a claims process for Quest (Doc. 1240) (the "**Claims Motion**"), which the Court granted on June 17, 2016 (Doc. 1241). On September 12, 2016, First National timely filed a proof of claim form in the claims process, seeking \$198,250.14 (plus additional interest) based on the same purported

indebtedness underlying its Renewed Motion. A copy of First National's proof of claim form is attached as **Exhibit A**. The first page of that form states:

**IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING THIS FORM**

ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA FOR ALL PURPOSES, INCLUDING, WITHOUT LIMITATION, AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS THAT COULD BE OR HAVE BEEN ASSERTED BY THE RECEIVER AGAINST SUCH CLAIMANT OR THE HOLDER OF SUCH CLAIM IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANSACTED BY OR WITH QUEST OR (2) ANY DEALING OR BUSINESS TRANSACTED THAT RELATES IN ANY WAY TO ANY RECEIVERSHIP PROPERTY. FURTHER, CLAIMANTS WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO SUCH CLAIMS, OBJECTIONS, DEFENSES, AND COUNTERCLAIMS. IF THIS COMPLETED FORM, SIGNED UNDER PENALTY OF PERJURY, IS NOT RECEIVED BY THE RECEIVER AT THE ABOVE-REFERENCED ADDRESS BY OCTOBER 12, 2016, YOU WILL BE FOREVER BARRED FROM ASSERTING ANY CLAIM AGAINST QUEST AND ITS ASSETS AND YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTIONS FROM THE RECEIVER.

Ex. A (original emphasis and capitalization).

The Receiver is in the process of evaluating First National's claim along with numerous others from investors and creditors. Pursuant to the procedures set forth in the Claims Motion, "[a]fter the Claim Bar Date and the Receiver has evaluated all submitted claims, he will seek approval from this Court regarding: (1) allowed claim amounts; (2) priority of claims; (3) a process for the determination of objections to claim determinations and priorities reached by the Receiver; and (4) if needed, the establishment of reserves for administration of the Receivership, for litigation, and for disputed claims and

priorities (until such time as such disputes are resolved). Doc. 1240 at 10. First National's claim will be resolved in accordance with this Court-approved process.

### ARGUMENT

In its Renewed Motion, First National argues it is entitled to intervene under Federal Rule of Civil Procedure 24 because the Receiver is not adequately protecting First National's interests in its purported collateral and because it objects to the manner in which the Receiver is attempting to liquidate Quest's assets. *See* Renewed Mot. ¶¶ 21, 22. First National also argues, "at minimum," it should be excused from the stay so that it can file a foreclosure action against Quest in Texas regarding the office building collateralizing its loans. *Id.* ¶¶ 11, 29. As an initial matter, the Renewed Motion should be denied because, as this Court again ruled in the Order on First National's first motion to lift the stay, Section 21(g) of the Securities Exchange Act of 1934 precludes intervention. *See* Doc. 1073.

The Renewed Motion also should be denied because First National's arguments ignore that First National submitted to the exclusive jurisdiction of this Court regarding all of its claims against Quest and its assets, including Quest's office building and oil and gas leases, by filing a proof of claim form in the claims process. *See* Ex. A. As explained below, the entire point of establishing a claims process is to consolidate disputes regarding Receivership property into a single forum where creditors can effectively "intervene" and assert their rights and interests by filing a claim, and thus avoid piecemeal adjudications by different courts.

Courts have "broad powers and wide discretion to determine relief in an equity receivership." *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The purpose of

appointing a receiver in an SEC enforcement action is to effect an “orderly and efficient administration of the estate.” *FTC v. 3R Bancorp*, 2005 WL 497784, \*3 (N.D. Ill. Feb. 23, 2005) (citing *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986)); *S.E.C. v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1035 (C.D. Cal. 2001) (“[A] primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors”). “The court may properly draw to itself all disputes as to other rights pertaining to such property because ‘every court has inherent equitable power to prevent its own process from working injustice to anyone.’” *Consolidated Rail Corp. v. Fore River Ry. Co.*, 861 F.2d 322, 327 (1st Cir. 1988) (quoting R. Clark, *Law & Practice of Receivers* § 280(a), at 446 (1959)). Actions that confer on one creditor “a priority and preference over other creditors” are “contrary to receivership law, which places receivership property under the [c]ourt’s control for the equal benefit of all creditors.” *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Col. 1995).

“Every person who has any claim or demand against the estate or property in the custody of the court through the receiver ... must assert such claim or demand in the court in which such receiver was appointed.” Ralph E. Clark, *Clark on Receivers* § 646, at 1132 (3rd ed. 1992). Although there are many ways in which a claimant can assert a claim, one such way is for claimants to be authorized “under a general order of the appointing court [to file their] claim with the receiver.” *Id.* The receiver may agree or disagree with the claim, which claim is ultimately approved or disapproved by the court. *Id.* “The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any.” *Id.* § 651 at 1142.

Here, the Court approved procedures establishing a claims process for Quest's creditors. As part of that process, First National timely filed a proof of claim form with the Receiver. *See* Ex. A. By filing that form, First National submitted "TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA FOR ALL PURPOSES, INCLUDING, WITHOUT LIMITATION, AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS THAT COULD BE OR HAVE BEEN ASSERTED BY THE RECEIVER AGAINST SUCH CLAIMANT OR THE HOLDER OF SUCH CLAIM IN CONNECTION WITH THIS RECEIVERSHIP."<sup>1</sup> *Id.* (original emphasis). This necessarily includes the loans and security interests underlying the Renewed Motion. Indeed, the pertinent loan and security documents are attached to First National's proof of claim form. *See* Ex. A.

Put simply, First National has already effectively intervened to the extent necessary to protect its interests by filing a claim in the claims process. Although it asserts the Receiver has not "maintained" or "preserved" the value of pertinent Receivership property (*see*

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<sup>1</sup> There is no question the Court has the power to obtain exclusive jurisdiction over Receivership assets and claims to them. *See S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980) ("The power of a receivership court to prevent the commencement, prosecution, continuation, or enforcement of such [competing] actions has been recognized specifically in the context of securities fraud cases."); *Becker v. Greene*, 2009 WL 2948463, \*4 (M.D. La. 2009) ("The Receiver and the Receivership Court's power to protect and marshal assets would be severely diminished if every court in the nation, state or federal, could make its own determination of what constitutes an asset of the 'Receivership Estate.'"); *S.E.C. v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475, 476-77 (S.D.N.Y. 2000) ("[W]here a court has appointed a receiver and obtained jurisdiction over the receivership estate, as here, the power to stay competing actions falls within the court's inherent power to prevent interference with the administration of that estate.").

Renewed Mot. ¶¶ 9, 12, 17), it provides no specifics, and the Receiver has been taking appropriate steps to maintain those assets. Similarly, expiration of the statute of limitation for foreclosing on Receivership property is not an appropriate basis to lift the stay since all of First National's rights and interests in Quest's property will be fully adjudicated in the claims process and will not be impacted by the expiration of that limitations period. *Id.* ¶¶ 11, 14. After the Claim Bar Date, the Receiver will recommend the Court either approve or deny the claim. If First National objects to the Receiver's recommendation, it can file an objection with the Receiver, and if the parties are unable to resolve the matter, the objection will be referred to the Court for determination. This procedure has worked efficiently with respect to the claims process for the Nadel hedge funds, and to date, no party has successfully intervened in this action. Allowing First National to formally intervene or to prosecute a separate foreclosure action against Quest in Texas would defeat the entire purpose of the claims process, require the Receiver to unnecessarily expend resources to retain Texas counsel, and raise the possibility of inconsistent judgments. *S.E.C. v. Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir. 1985) (refusing to lift receivership stay when it would disturb the status quo and when lifting the stay "would result in a multiplicity of actions in different forums, and would increase litigation costs for all parties while diminishing the size of the receivership estate"); *S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) ("[I]n a case involving a Ponzi scheme, the interests of the [r]eceiver are very broad and include not only protection of the receivership *res*, but also protection of defrauded investors and considerations of judicial economy.").

As such, First National's claim to Quest's assets should only be resolved through this Court's claims process.<sup>2</sup> *Link v. Powell*, 57 F.2d 591, 593 (W.D.S.C. 1932) ("No law is more firmly settled than that the court having jurisdiction, both of the receivers and of the subject matter, has exclusive power to administer the entire estate and property."); *S.E.C. v. Homa*, 17 Fed. App'x 441, 446 (7th Cir. 2001) (holding intervenor's claim "would not be impaired, because a forum is available under the Receiver's proposed claims procedure").

### **CONCLUSION**

For the foregoing reasons, the Court should deny the Renewed Motion. First National's interests should be adjudicated exclusively through the claims process.

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on 26th day of September, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**s/ Gianluca Morello**

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<sup>2</sup> As the Court has twice held, the fact that First National is a secured creditor does not change this analysis. *See* Doc. 1174 at 7 ("The claims process procedure did not contain any language exempting secured creditors from filing a proof of claim."); Doc. 1222 ("Wells Fargo is not excused as a secured creditor from filing a proof of claim in this federal equitable receivership under the conduct of the proceedings established in this Court.").