

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.: 8:09-0087-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.

WELLS FARGO BANK N.A.'S REQUEST FOR JUDICIAL NOTICE

Wells Fargo Bank, N.A. (“**Wells Fargo**” or “**Bank**”),¹ pursuant to Rule 201 of the Federal Rules of Evidence, respectfully requests that this Court take judicial notice of a certified transcript of the December 8, 2016 oral argument before the United States Court of Appeals for the Eleventh Circuit in the related proceeding captioned *SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017) (the “**Certified Hearing Transcript**”),² for use as

¹ Wells Fargo is successor by merger to Wachovia Bank, N.A. (“**Wachovia**”).

² A copy of the Certified Hearing Transcript is attached hereto as **Exhibit A**.

evidence in the pending disputes between the Bank and the Receiver in this case. In addition, if the Court would prefer to listen to the oral argument, Wells Fargo requests entry of an order permitting Wells Fargo to file a copy of an audio recording of the oral argument (the "**Oral Argument Recording**") with the Clerk.³

MEMORANDUM OF LAW IN SUPPORT OF REQUEST

The Court may take judicial notice of “a fact that is not subject to reasonable dispute if it is either: (1) generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Judicial notice is mandatory “if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c). As the Eleventh Circuit has explained, “[j]udicial notice is a means by which adjudicative facts not seriously open to dispute are established as true without the normal requirement of proof by evidence.” *Dippin’ Dots, Inc. v. Frosty Bites Distrib., LLC*, 369 F.3d 1197, 1204 (11th Cir. 2004) (citing Fed. R. Evid. 201(a) & (b)). “The court may take judicial notice at any stage of the proceeding.” Fed. R. Evid. 201(d).

A court may take judicial notice of matters of public record. *See Univ. Express, Inc. v. S.E.C.*, 177 Fed.Appx 52, 53 (11th Cir. 2006) (per curiam) (“Public records are among the permissible facts that a district court may consider.”) A court may also take notice of proceedings in other courts, both within and without the federal judicial system. *See U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994) (“It [is] recognized that a court may take judicial notice

³ The Oral Argument Recording is matter of public record and was obtained by request to the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit, 56 Forsyth St., NW, Atlanta, GA 30303. A copy of the Oral Argument Recording will be provided to the Court and/or the Receiver upon request to Wells Fargo.

of a document filed in another court" (quotation and citation omitted)). Judicial notice of other judicial proceedings is proper to recognize judicial acts taken, the subject matter of the litigation, the issues decided, and to clarify the meaning of court orders. *See In re Dynamic Tours & Transp., Inc.*, 359 B.R. 336, 342 (Bankr. M.D. Fla. 2006); *see also Martin K. Eby Const. Co., Inc. v. Jacobs Civil, Inc.*, 3:05-CV-394-J-32TEM, 2006 WL 1881359, at *1 (M.D. Fla. July 6, 2006) (taking judicial notice of records of two related cases in ruling on motion to dismiss and stating the court may consider the record in previous cases to clarify the meaning of court orders in those cases).

“Courts routinely take judicial notice of publicly available records, including hearing transcripts, from other court proceedings.” *Foster Poultry Farms v. Alkar-Rapidpak-MP Equip., Inc.*, 868 F. Supp. 2d 983, 990 (E.D. Cal. 2012); *Pickup v. Brown*, No. 2:12-CV-02497-KJM, 2012 WL 6024387, at *3 (E.D. Cal. Dec. 4, 2012) (transcripts from other court proceedings are proper subjects of judicial notice). Because transcripts of oral arguments are matters of public record and their accuracy is not reasonably subject to debate, judicial notice is proper. *See Barnes v. Routh Crabtree Olsen, PC*, 3:15-CV-01001-BR, 2016 WL 81799, at *3 (D. Or. Jan. 7, 2016).

Here, Wells Fargo has satisfied the requirements for judicial notice because the records consist of a Certified Hearing Transcript of a federal appellate court proceeding, is a public record, and all other requirements of Rule 201 of the Federal Rules of Evidence have been met. The Certified Hearing Transcript will elaborate on the Eleventh Circuit's reasoning set forth in its decision in *SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017), document the Eleventh Circuit's judicial acts taken, and clarify the meaning of its decision and its relevancy

to two pending motions before this Court (*i.e.*, the *Motion for Order Directing Receiver to Turnover Rents from Rite Aid Property* [Doc. 1332], and the *Motion for Payment of Certain Fees and Costs as Administrative Expenses* [Doc. 1334]). As noted above, courts around the country have recognized these as proper bases upon which a district court may take judicial notice of court records from related proceedings. Now that the Receiver has filed his "objections" to the pending motions, it is imperative that the Court have an opportunity to review the transcript, as the Receiver has mischaracterized and misconstrued the Eleventh Circuit's decision. A review of the transcript will show that the Eleventh Circuit was clearly troubled by the Receiver's actions, which it did not believe were either fair or equitable.

Finally, Wells Fargo understands that the Clerk's office requires entry of a specific order before a party can file a copy of an audio recording. So, if the Court would prefer to listen to "Oral Argument Recording," rather than read the transcript, Wells Fargo requests entry of such an order.

WHEREFORE, Wells Fargo respectfully requests that the Court take judicial notice of the Certified Hearing Transcript as evidence for use in the pending disputes between the Bank and the Receiver in this case, permit Wells Fargo to file the audio recording itself, or both.

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for Well Fargo has conferred with counsel for the SEC and counsel for the Receiver. The SEC's counsel indicated that it would adopt the Receiver's position, whatever it is; and the Receiver's counsel indicated that the Receiver cannot agree to the request because they "don't understand what the purpose or how the transcript is to be used."

Respectfully submitted,

/s/ Steven R. Wirth

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Counsel for Wells Fargo, N.A

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Steven R. Wirth