

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'S MOTION FOR LEAVE TO FILE A REPLY
AND INCORPORATED MEMORANDUM OF LAW**

Wells Fargo Bank, N.A., pursuant to Local Rules 3.01(c)-(d), respectfully requests leave to file a reply in support of its Motion for Order Directing Receiver to Turnover Rents from Rite Aid Property [Doc. 1332] (the "**Rents Motion**") and states:

1. Wells Fargo seeks leave to file a reply to address various issues raised in the Receiver's December 22, 2017 Response [Doc. 1342] because Wells Fargo believes that additional briefing will assist the Court in resolving the Rents Motion. Specifically, Defendants would like the opportunity to address the following non-exclusive issues:

- The Receiver's erroneous argument regarding the Eleventh Circuit's decision in *SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017), which held that a District Court cannot modify or extinguish a secured creditor's state-law property rights, and reversed the very rulings upon which the Receiver is relying;
- The Receiver's refusal to acknowledge the Assignment of Rents; North Carolina law; and the application of North Carolina law to the Assignment of Rents, which requires a finding that the Rite Aid Rents became the exclusive property of Wells Fargo upon default, not merely receivership property subject to a lien;
- The Receiver's erroneous position that Wells Fargo, a secured creditor, was required to file a proof of claim at all, much less several amended claims periodically as interest, attorneys' fees, and costs accrued during the Receivership Proceedings;
- The fact that even if the Receiver is correct that Wells Fargo's claim should be limited to the value of the collateral, Wells Fargo's claim is or was secured by over \$3.5 million in collateral (i.e., the value of the real property plus the value of the Rite Aid Rents); and
- The Receiver's misrepresentations of fact and misstatements of law regarding the applicability of the March 2, 2012 Order granting his motion to approve determination and priority of claims, etc. [Doc. No. 776], which actually states, "the granting of this motion does not in any way affect any claims or their priority asserted by Wells Fargo Bank, N.A.").

2. In addition, Wells Fargo would like an opportunity to brief the Court regarding a recent intervening Eleventh Circuit decision in *Title Max v. Northington* (In

re Wilber), no. 16-17467 (11th Cir. December 11, 2017), which confirms the Rents at issue here (i) automatically became the exclusive property of Wells Fargo by operation of state law before this receivership commenced, (ii) are not property of the receivership estate, and (iii) are not subject to the jurisdiction of this Court.¹

3. Wells Fargo is prepared to address these issues in a reply of no more than ten (10) pages, which will be filed and served no later than ten (10) days after the Court enters an Order granting this motion, or January 12, 2018, whichever comes first.

4. No prejudice will occur to any party by allowing a complete briefing of all issues to the Court.

5. Pursuant to Local Rules 3.01(c)-(d), a movant may request leave to file a reply in support of its motion. Leave should be granted where the response raises new questions of fact or law. See, e.g., *Ottaviano v. Nautilus Ins. Co.*, 8:08-cv-2204-VMC-TGW, Doc. 27 (finding sufficient grounds and granting leave to file a reply because, according to the movant, the respondent had “misstated the facts” and “defendant’s case law should not be applied to the facts of the present case”). Here, the issues raised in the response warrant a short reply.

COMPLIANCE WITH LOCAL RULE 3.01(g)

Well Fargo's counsel has conferred with the Receiver's counsel who indicated that she cannot agree to the relief sought in this Motion because she has not heard back from the Receiver. Well Fargo's counsel has attempted to confer with the SEC's counsel, but Well Fargo's counsel understands that the SEC's counsel is unavailable.

¹ A copy of *Title Max v. Northington (In re Wilber)*, no. 16-17467 (11th Cir. December 11, 2017) has been filed with the Court under the Notice of Supplemental Authority (Doc. 1344).

WHEREFORE, Wells Fargo Bank, N.A. respectfully requests leave to file a ten-page reply on or before January 12, 2018.

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