

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 Dec. 1, 2017 Motion for Payment of Certain Fees and Costs as Administrative Expenses [Doc. 1334] (the "**Fees 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. 1343] because Wells Fargo believes that additional briefing will assist the Court with resolving the Fees Motion. Specifically, Defendants would like the opportunity to address the following non-exclusive issues:

- The Receiver’s erroneous argument regarding the “American Rule” and the exceptions to it, including the contract exception and the common fund exception, which are both applicable in this case;
- The Receiver's interpretation of and reliance upon Magistrate Judge Jenkins's Report and Recommendation in *Wiand v. Wells Fargo Bank, N.A.*, 8:12-cv-00557-JDW-EAJ, 2015 WL 12839237 (M.D. Fla. June 10, 2015), which, along with the District Court's decision adopting that recommendation,¹ actually supports Wells Fargo’s request for fees; and
- The Eleventh Circuit's observations regarding the unreasonableness of the Receiver's actions as to Wells Fargo, and how that unreasonableness pertains to the fundamental fairness of Wells Fargo’s request for fees.²

2. Wells Fargo is prepared to address these issues in a reply of no more than five (5) 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.

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

4. 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-

¹ See Case No. 8:12-cv-00557-JDW-EAJ; Doc. No. 340, p. 7.

² The Eleventh Circuit's observations are contained in the transcript of the December 8, 2016 oral argument in the appellate proceeding captioned *SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017), a copy of which is attached to Wells Fargo's Request for Judicial Notice [Doc. No. 1345].

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.

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

Respectfully submitted,

/s/ Steven R. Wirth

AKERMAN LLP

L. Joseph Shaheen, Jr.

Florida Bar No.: 212385

Email: joseph.shaheen@akerman.com

Steven R. Wirth

Florida Bar No.: 170380

Email: steven.wirth@akerman.com

401 East Jackson Street, Suite 1700

Tampa, Florida 33602

Telephone: (813) 223-7333

Facsimile: (813) 223-2837

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