

**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.

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**RECEIVER AND BRANCH BANKING & TRUST'S  
UNOPPOSED, JOINT MOTION FOR RELIEF FROM INJUNCTION**

Burton W. Wiand, as Receiver (the “**Receiver**”), and Branch Banking & Trust (“**BB&T**”) respectfully move the Court for an order, in substantially the form attached as **Exhibit 1**, permitting relief from the injunction imposed in this matter pursuant to the Court’s Order Appointing Receiver (Doc. 8) and the Orders Reappointing Receiver (Docs. 140, 316, 493, 935, and 984), which orders enjoin all persons from prosecuting any action that disturbs the assets or affects the property of the Receivership, so that BB&T can enforce

its secured interest through a state court foreclosure action on the real property titled in the name of Laurel Preserve, LLC located in Buncombe County, North Carolina. The relief requested in this motion is unopposed by the Securities and Exchange Commission (the “**Commission**”).

### **BACKGROUND**

On January 21, 2009, the Commission filed this case to prevent the defendants from further defrauding investors in hedge funds operated by them. That same day, the Court entered an order appointing Mr. Wiand as Receiver for Defendants Scoop Capital, LLC, and Scoop Management, Inc., and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (Doc. 8). The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“**Nadel**”), including Laurel Preserve, LLC. (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454, 911, 916, 1024.) The Court subsequently entered several Orders Reappointing Receiver (Docs. 140, 316, 493, 935, and 984), reaffirming the Receiver’s authority over various entities and assets.

The orders appointing and reappointing the Receiver clearly 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. However, after careful consideration, the Receiver has determined that there is no benefit to continuing to hold the

real property located in Buncombe County, North Carolina because the encumbrance and secured claim of BB&T on such real property greatly outweighs its fair market value.

### **THE PROPERTY AND BB&T'S SECURED CLAIM**

The encumbered real property that is the subject of this joint motion is a 2.38-acre lot located in Buncombe County, North Carolina, which is part of the Laurel Mountain Property<sup>1</sup> and is more commonly referred to as Lot A of Bird Creek Estates, 10 Laurel Cottage Lane (Parcel Number 063689982100000) (hereinafter the “**Property**”). The Property was purchased by Nadel in 2003 through Laurel Mountain Preserve, LLC and was subsequently transferred to Laurel Preserve, LLC in 2006. A 1,705 square foot cabin home was built on the Property. In 2007, Laurel Preserve, LLC obtained a \$395,000 loan secured by a Deed of Trust and Security Agreement in favor of BB&T, recorded in Book 4400 at Page 1534 of the Buncombe County Registry. The Property secures a purchase money obligation in the amount of \$2,900,000 secured by a Purchase Money Deed of Trust in favor of Laurel Mountain Preserve, LLC, recorded in Book 4263 at Page 1447 of the Buncombe County Registry. The Purchase Money Deed of Trust was subordinated to BB&T's Deed of Trust by a Deed of Subordination, dated May 1, 2007, and recorded in Book 4400 at Page 1543 of the Buncombe County Registry.

The scope of the Receivership was expanded to include Laurel Preserve, LLC and Laurel Mountain Preserve, LLC, pursuant to an order of this Court, dated February 11, 2009. (*See* Doc. 44.) By virtue of this order, title to all property of Laurel Preserve, LLC

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<sup>1</sup> The Laurel Mountain Property is defined in Receiver's Interim Reports as the 420+/- acres near Asheville, North Carolina, intended for development as home-sites. (*See, e.g.*, Doc. 1361.)

immediately vested by operation of law in the Receiver, and as such, the Receiver is the record owner of the Property. In addition, all rights and interests under the Purchase Money Deed of Trust in favor of Laurel Mountain Preserve, LLC immediately vested by operation of law in the Receiver.

The Receiver has listed the Property for sale along with other Laurel Mountain properties through various real estate brokers during the past eight years but has been unsuccessful in securing a sale price that exceeds BB&T's encumbrance.

BB&T filed a timely proof of claim form in the claims process here, and its claim was approved in the amount of \$360,157.37, which was the principal amount outstanding on the loan at the time of the Receiver's appointment. (*See Docs. 675, 76*).

In 2012, an appraisal completed by Charles D. Howell of Skyline Properties, Inc. valued the Property at \$312,300. In 2015, an appraisal completed by Richard J. Jacobs, MAI of Duckworth, Jacobs, Naeger, Swicegood & Thrash, LLC valued the Property at \$340,000. Furthermore, the County of Buncombe, North Carolina has currently assessed the Property's value at \$325,200.

The Receiver does not believe that the value of the Property exceeds the amount of BB&T's encumbrance and approved claim. In light of the current state of the real estate market in Buncombe County, North Carolina, and the fact that the Property has been marketed for sale since 2009 with minimal interest, the Receiver believes the best course is to allow BB&T relief from the injunction to proceed with a state court foreclosure action. BB&T will not seek a deficiency judgment against the Receiver or the Receivership estate in

the foreclosure action. Upon completion of the foreclosure action, BB&T's claim in the Receivership will be withdrawn and extinguished.

The Receiver, on behalf of himself, Laurel Preserve, LLC, and Laurel Mountain Preserve, LLC, agrees to accept service of process of the necessary pleadings and notices in BB&T's state court foreclosure action. All pleadings and notices intended for the Receiver shall be mailed to him at the following address: Wiand Guerra King P.A., 5505 W. Gray Street, Tampa, FL 33609.

#### **MEMORANDUM OF LAW**

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in its administration is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980).

The relief sought in this motion falls squarely within the Court's powers and is in the best interests of the Receivership estate. Allowing BB&T to foreclose on the Property will satisfy its claim, thus eliminating a liability of the Receivership estate. It will also conserve Receivership assets because the Receiver will not be required to expend any additional funds

maintaining and marketing a property that ultimately will not return surplus value to the Receivership estate.

### **CONCLUSION**

The Receiver and BB&T jointly request the entry of an order in substantially the form of the proposed order attached as Exhibit 1 allowing BB&T relief from the injunction imposed by the orders appointing and reappointing the Receiver to enforce its secured interest through a state court foreclosure action on the real property titled in the name of Laurel Preserve, LLC located in Buncombe County, North Carolina, as described above.

### **CERTIFICATE UNDER LOCAL RULE 3.01(g)**

Undersigned counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that the Commission does not oppose the relief requested in this motion.

Furthermore, Counsel for the Receiver and BB&T have communicated in an effort to determine the best course of action to allow BB&T to take control of the Property and resolve its claim. The parties have determined that the relief sought by this motion is the best means to accomplish this.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on October 1, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**Jared J. Perez**

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