

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.

**RECEIVER'S UNOPPOSED, VERIFIED MOTION FOR APPROVAL OF PRIVATE
SALE OF SIX PARCELS OF UNDEVELOPED LAND LOCATED IN
BUNCOMBE COUNTY, NORTH CAROLINA**

Burton W. Wiand, as Receiver (the “**Receiver**”), respectfully moves the Court for an order, in substantially the form attached as **Exhibit 1**, (a) authorizing him to sell six parcels of undeveloped land located in Buncombe County, North Carolina (the “**Properties**”), free and clear of all claims, liens, and encumbrances and (b) relieving him from complying with certain provisions of 28 U.S.C. § 2001(b) (“**Section 2001(b)**”).

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (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 Burton W. 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 “**Order Appointing Receiver**”). The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“**Nadel**”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454, 911, 916, 1024.) All of the entities in receivership are collectively referred to as the “**Receivership Entities.**” Pursuant to the Order Appointing Receiver, the Receiver was directed to, *inter alia*, administer and manage the business affairs, funds, assets, choses in action, and any other property of the Receivership Entities.

THE PROPERTIES

The Properties are six separate parcels of approximately 17 acres of undeveloped land located in the Black Mountain vicinity of Buncombe County, North Carolina within the Laurel Mountain Property¹ and are more commonly referred to as follows:

¹ The Laurel Mountain Property is defined in the Receiver’s Interim Reports as the 420+/- acres near Asheville, North Carolina intended for development as home-sites. (*See, e.g.*, Doc. 1289).

- Lot B, Bird Creek Estates located in Buncombe County, North Carolina / 20 Laurel Cottage Lane (Parcel Identification Number: 0637-90-0133-00000) – Titled in the name of The Guy-Nadel Foundation, Inc.; 2.05 acres.
- Lot C, Bird Creek Estates located in Buncombe County, North Carolina / 26 Laurel Cottage Lane (Parcel Identification Number: 0637-90-1306-00000) – Titled in the name of The Guy-Nadel Foundation, Inc.; 1.43 acres.
- Lot D, Bird Creek Estates located in Buncombe County, North Carolina / 30 Laurel Cottage Lane (Parcel Identification Number: 0637-90-3386-00000) – Titled in the name of The Guy-Nadel Foundation, Inc.; 1.13 acres
- Lot E, Bird Creek Estates located in Buncombe County, North Carolina / 15 Laurel Cottage Lane (Parcel Identification Number: 0637-90-3019-00000) – Titled in the name of The Guy-Nadel Foundation, Inc.; 2.06 acres
- Lot F/G, Bird Creek Estates located in Buncombe County, North Carolina / 9 Laurel Cottage Lane (Parcel Identification Number: 0636-99-2659-00000) – Titled in the name of Laurel Preserve, LLC.; 5.18 acres
- HOA Lot, Bird Creek Estates located in Buncombe County, North Carolina / 94 Laurel Cottage Lane (Parcel Identification Number: 0637-90-0585-00000) – Titled in the name of Laurel Preserve Homeowners Association, Inc.; 5.44 acres.²

See Composite Exhibit 2.

The Properties were purchased by Nadel through one of his various entities before 2006 and subsequently titled in the name of Laurel Preserve, LLC; Laurel Preserve Homeowners Association, Inc.; and/or The Guy-Nadel Foundation, Inc. The scope of the Receivership was expanded to include Laurel Preserve, LLC and Laurel Preserve Homeowners Association, Inc. on February 11, 2009 (*see* Doc. 44) and The Guy-Nadel Foundation, Inc. on March 9, 2009 (*see* Doc. 68). There are no structures on the Properties, and there are no known encumbrances.

² This parcel is undevelopable greenspace with an assessed value of zero according to the County of Buncombe, North Carolina.

The Receiver listed the Properties for sale along with the other Laurel Mountain properties through various real estate brokers during the past eight years. He recently received a fair and reasonable offer to purchase all six parcels (17+/- acres) collectively for \$212,500. At that offer price, each acre has a value of approximately \$12,500. The County of Buncombe, North Carolina assessed the value of the individual parcels between \$23,500 and \$50,900 (not including the 5.44 acre HOA parcel, which has a zero taxable value). At those assessed values, each acre (including the 5.44 acre HOA parcel) has a value of approximately \$13,900 (or \$236,300 for all 17 acres).

In light of the current state of the real estate market in Buncombe County, North Carolina and the fact that the Properties have been marketed for sale since 2009 with minimal interest, the Receiver believes the current offer represents a fair and reasonable price and that it is in the Receivership estate's best interests to proceed with the sale without the expense of obtaining any appraisals or advertising the terms of the sale as contemplated by Section 2001(b). Thus, the Receiver requests that the Court waive, or find that the Receiver has substantially complied with, the procedures in Section 2001(b) governing the private sale of real property by a receiver. The Receiver also requests the Court grant this motion and allow him to transfer title free and clear of all claims, liens, and encumbrances.

The Receiver's Marketing Efforts and the Offer to Purchase the Properties

The Receiver began marketing the Properties along with the other Laurel Mountain properties soon after they were included in the Receivership estate by listing the Properties for sale through his website, www.nadelreceivership.com, in an "Assets for Sale" section. The Receiver also retained several real estate agents since 2009 to market the Properties.

The Properties are not currently listed for sale with a real estate broker. While the Receiver has received several insufficient offers to purchase all of the acreage within the Laurel Mountain Property (420+/- acres), he has not previously received an independent offer to purchase the Properties that are the subject of this motion.

The Receiver has entered into the Purchase and Sale Agreement attached as **Exhibit 3** with Spanish Oaks Properties LLC (the “**Purchaser**”). The Purchaser recently purchased the twenty-three, 10-acre undeveloped residential lots located within the Laurel Mountain Property that were encumbered by Wells Fargo Bank, N.A. Those twenty-three, 10-acre undeveloped residential lots were subsequently transferred to Wells Fargo Bank, N.A. through a state-court foreclosure sale. Those twenty-three lots, totaling approximately 235 acres, were sold in August 2018 for approximately \$3,800 per acre. Don Bell, a licensed commercial associate and land sales specialist with Beverly-Hanks & Associates in Asheville, North Carolina, brokered that sale for Wells Fargo Bank, N.A. Mr. Bell has opined that the per acre value of the instant sale is fair and reasonable based upon recent sales in the area. *See* **Exhibit 4**. Mr. Bell is also assisting the Receiver in selling the remaining 168 acre conservancy parcel and several other lots located within the Laurel Mountain Property that will remain in the Receiver’s control following this sale.

The Receiver seeks to convey title, free and clear of all claims, liens, and encumbrances, by Receiver’s Deed in substantially the form attached as **Exhibit 5** (allowing for changes necessary to allow the Purchasers to obtain title insurance). The Receiver believes the Purchaser’s offer is reasonable in light of the assessed value of the Properties, recent sales of similar acreage in the vicinity, the current real estate market conditions in the

area, and the length of time the Properties have been listed for sale. The Receivership estate will net approximately \$210,000 from the sale after paying standard closing costs.

ARGUMENT

I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP'S ADMINISTRATION, INCLUDING TO CONVEY REAL PROPERTY FREE AND CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES

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 court may enter such orders as may be appropriate and necessary for a receiver to fulfill the duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). The goal of a receiver charged with liquidating assets is to obtain the best value available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996) (citations omitted). Further, the paramount goal in any proposed sale of property of the estate is to maximize the sale proceeds. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

The relief sought in this motion falls squarely within the Court’s powers and is in the best interest of defrauded investors and the Receivership estate. That relief is also consistent with precedent, which establishes that a court of equity – like this one in these proceedings – may authorize the sale of property free and clear of all claims, liens, and encumbrances. *See, e.g., Miners’ Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (3d Cir. 1933); *People’s-Pittsburgh Trust Co. v. Hirsch*, 65 F.2d 972, 973 (3d Cir. 1933). In part, a court has this authority because when a court of competent jurisdiction takes possession of property through its officers – like this Court has done with the Properties through the Receiver – it has jurisdiction and authority to determine all questions about title, possession, and control of the property. *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737-38 (1931). Indeed, in this Receivership, the Court has previously entered at least six orders approving sales that convey title free and clear of all claims, liens, and encumbrances. (*See* Docs. 1043, 1044, 1075, 1110, 1151, 1177, 1301.) This is particularly appropriate here because there are no known liens or encumbrances on the Properties.

III. THE COURT HAS THE POWER TO DEVIATE FROM 28 U.S.C. § 2001, AND THAT IS WARRANTED UNDER THE CIRCUMSTANCES HERE

Pursuant to Section 2001, property in the possession of a receiver may be sold by private or public sale. Specifically, subsection (b) establishes the following procedures for a private sale of real property:

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each

to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b).

Notwithstanding the language of Section 2001, district courts are afforded wide discretion in overseeing the sale of real and personal property in equity receiverships. Any action taken by district courts in the exercise of this discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to defrauded investors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

A. The Statutory Appraisal Requirements Under Section 2001(b)

Pursuant to Section 2001(b), a court may order the sale of real estate after (i) the completion of three appraisals, of which the proposed sale price may not be less than two-thirds of the average appraised value, and (ii) the advertisement of the terms of the proposed sale in such newspaper(s) of general circulation as directed by the court. 28 U.S.C. § 2001(b). Here, the Receiver has obtained an opinion of value letter from Don Bell, a licensed commercial associate and land sales specialist with Beverly-Hanks & Associates in Asheville, North Carolina. Mr. Bell has opined that a per acre price of \$4,900 or better is a

good value for the Receiver in light of the current state of the real estate market and recent sales in Buncombe County, North Carolina. Furthermore, the sale price of \$212,500 (based upon a per acre value of \$12,500) is significantly more than the per acre value (\$3,800) of the recently sold Wells Fargo Bank, N.A. lots and is very close to the per acre assessed value (\$13,900) of the County of Buncombe, North Carolina. As such, the Receiver believes that obtaining formal appraisals is unnecessary and would only deplete the funds available to the Receivership estate.

B. Waiver Of The Statutory Notice Provisions Under Section 2001(b) Is Warranted

Section 2001(b) also contemplates that the terms of a proposed sale will be advertised in a newspaper of general circulation. However, the Receiver believes that full compliance with the statutory notice procedure set forth in Section 2001(b) would create an unnecessary expense and could derail the sale of the Properties. Given the existence of a ready and willing buyer; the lack of any actual or potential claims to the Property; and the listing of the Properties for sale by the Receiver for more than eight years, the Receiver requests that the Court either waive Section 2001(b)'s notice provision, or in the alternative, find that the Receiver's efforts in marketing and listing the Properties are in compliance with Section 2001(b). *See Billion Coupons, Inc.*, 2009 WL 2143531 at *3 (relieving receiver of compliance with statutory provisions of 28 U.S.C. § 2001 where sufficient safeguards existed and proposed procedure would maximize net sales proceeds). The Receiver will post a copy of this motion on his website, www.nadelreceivership.com, immediately after filing, which will be publicly available.

CONCLUSION

The Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 to (a) sell the Properties by private sale in accordance with the terms and conditions set forth in the Purchase and Sale Agreement attached hereto as Exhibit 3, such sale being free and clear of all claims, liens, and encumbrances and (b) relieve him from complying with the provisions of 28 U.S.C. § 2001.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

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

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.

s/ Burton W. Wiand

Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 2, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Jared J. Perez

Jared J. Perez, FBN 0085192

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