

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.

Defendants,

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,

Relief Defendants.

RECEIVER'S UNOPPOSED MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as receiver (the “**Receiver**”), moves the Court for an order approving the settlement of all litigation between the Receiver and Manon Sommers-Lee and Vernon M. Lee, individually and as trustee of his eponymous trust (“**Lee**,” and collectively with Manon Sommers-Lee, the “**Lees**”), including:

- The Receiver’s \$6,477.30 judgment against Lee, obtained in this action on July 21, 2014 (Doc. 1132);

- *Burton W. Wiand, as Receiver v. Vernon Lee*, Case No. 8:10-cv-210-T-17MAP (M.D. Fla) (the “**Clawback Action**”) and the Receiver’s associated \$935,631.51 judgment (Clawback Doc. 170);
- *In re Vernon M. Lee*, Case No. 8:15-bk-01038-KRM (Bankr. M.D. Fla.) (the “**Bankruptcy Action**”) and the Receiver’s objection to Lee’s discharge;
- *Wiand, as Receiver v. Vernon M. Lee et al.*, Adv. Pro. No. 8:15-ap-00464-KRM (Bankr. M.D. Fla.) (the “**Adversary Proceeding**”) and the equitable lien and constructive trust the Receiver obtained on the Lee’s real property, located at 4018 Via Mirada, Sarasota, Florida 34238 (the “**Property**”), in the principal amount of \$227,126.78 plus pre-judgment interest (Adv. Doc. 29); and
- *Vernon Lee et al. v. Burton Wiand*, Case No. 18-13156 (11th Cir.) (the “**Property Appeal**”), which is currently pending before the Eleventh Circuit.

The terms of the settlement are set forth in **Exhibit A** to this motion (the “**Settlement Agreement**”). The Securities and Exchange Commission (the “**Commission**” or “**SEC**”) has no objection to the requested relief.

MEMORANDUM IN SUPPORT

The Commission instituted this action to “halt [an] ongoing fraud, maintain the status quo, and preserve investor assets....” (Doc. 1, Compl. ¶ 7.) Burton W. Wiand was appointed by this Court as the Receiver for Defendants other than Arthur Nadel and for Relief Defendants. (*See* Order Reappointing Receiver (Doc. 140).) Additionally, the Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Doc. 17); Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. (Doc. 44); The Guy-Nadel Foundation, Inc. (Doc. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Doc. 81); Viking Oil & Gas, LLC (Doc. 153); Home Front Homes, LLC (Doc. 172); Traders Investment Club (Doc. 454); Summer Place Development Corp.

(Doc. 911); Respiro, Inc. (Doc. 916); and Quest Energy Management Group, Inc. (Doc. 1024). All of the entities in receivership are collectively identified herein as the “**Receivership Entities.**”

Pursuant to the Orders Reappointing Receiver (*see, e.g.*, Doc. 984), the Receiver has the duty and authority to:

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement or profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Further, the Orders Reappointing Receiver (at paragraph 6) authorize the Receiver to “[d]efend, compromise or settle legal actions . . . in which the Receivership Entities or the Receiver is a party . . . with authorization of this Court”

Pursuant to this mandate, the Receiver identified every investor who received more money from Nadel’s Ponzi scheme than he or she invested – *i.e.*, “false profits.” This included Lee and his trust.¹ The Receiver then offered each such investor the opportunity to settle the Receiver’s pre-suit clawback claims for 90% of the investor’s false profits. This procedure resulted in numerous settlements, but Lee did not accept the Receiver’s offer. As a result, the Receiver filed the Clawback Action against Lee in 2010 (along with more than

¹ Lee was one of Nadel’s earliest investors and a close associate. At least one of Lee’s children received compensation from the scheme. Lee refused to concede Nadel operated a Ponzi scheme even after Nadel died in prison, which at least in part, resulted in the \$6,477.30 sanction/judgment referenced above (Doc. 1132).

100 similar lawsuits against other profiteers). The court overseeing those actions ordered early mediation, which also resulted in numerous settlements, but Lee and the Receiver were once again unable to reach an agreement. The Clawback Action involved extensive litigation over many years, but the Receiver ultimately obtained summary judgment against Lee and his trust in the principal amount of \$935,631.51.² The court denied the Receiver's request for prejudgment interest.

Lee appealed the court's decision to the Eleventh Circuit, and the Receiver cross-appealed the denial of prejudgment interest. The Receiver ultimately prevailed on both issues. *See Wiand v. Lee*, 753 F.3d 1194 (11th Cir. 2014) (affirming grant of summary judgment but finding District Court abused its discretion with respect to prejudgment interest).³ Meanwhile, the Receiver engaged in post-judgment discovery and collection efforts, including the issuance of writs of garnishment, the institution of proceedings supplementary pursuant to Fla. Stats. § 52.69, and the impleader of Lee's wife as a relief

² The Receiver initially sought the recovery of \$1,268,073.33 in false profits, but shortly after the Receiver filed the Clawback Action, Lee transferred a large portion of his liquid assets to his adult children. The Receiver then filed actions against them as subsequent transferees. Lee's son resolved the Receiver's claims by paying \$133,371.09. Lee's other children transferred the money they received back to Lee. *See Wiand v. Kelvin Lee & Barbara Lee*, Case No. 8:10-cv-251-T-17MAP (M.D. Fla.) (Docs 1 (complaint), 19 (motion to dismiss due to settlement), 20 (order granting motion)); *Wiand v. Kelvin Lee, as Trustee of the Nancy E. Lee Trust*, Case No. 8:10-cv-211-T-17MAP (M.D. Fla.) (Docs. 1 (complaint), 17 (motion to dismiss due to settlement), 18 (order granting motion)); *Wiand v. Lee*, 753 F.3d 1194, 1198 n.2 (11th Cir. 2014) (recognizing \$133,371.09 deduction from total amount sought by Receiver due to settlements with Kelvin Lee); *but cf. Wiand, as Receiver v. Dianne Pezick*, Case No. 8:10-cv-237-T-17MAP (M.D. Fla.) (Docs. 1 (complaint), 10 (notice of voluntary dismissal due to Ms. Pezick's transfer of funds back to Lee).

³ The parties engaged in additional litigation over prejudgment interest (which was a substantial amount because Lee invested in Nadel's scheme at its inception), including an additional appeal to the Eleventh Circuit, in which the Receiver again prevailed.

defendant. Documents obtained by the Receiver indicated that Lee had liquid assets worth hundreds of thousands of dollars when the Receiver filed the Clawback Action, but during a post-judgment deposition, Lee claimed to have dissipated them through, among other things, gambling losses at casinos in Atlantic City, New Jersey; Biloxi, Mississippi; and Las Vegas, Nevada. *Cf. In re Lee*, Case No. 8:13-bk-01055-KRM, Summary of Schedules (Bankr. M.D. Fla.) (Doc. 17 at 21) (listing “casino gambling” losses in bankruptcy schedule).

The Receiver was skeptical of Lee’s testimony and continued to engage in post-judgment discovery and collection efforts.⁴ The Receiver ultimately determined that Lee used a substantial portion of his false profits to purchase and improve the Property, where he and his wife live today, but on February 2, 2015, Lee filed the Bankruptcy Action before the Receiver could recover against the Property.⁵ In the Bankruptcy Action, Lee asserted a Florida “homestead exemption” from collection by creditors. He also transferred the Property into a “tenancy by the entireties” with his wife to capture another protection from

⁴ The Receiver’s skepticism was bolstered by Lee’s testimony that he withdrew cash through structuring transactions designed to evade IRS and other money laundering detection protocols. *See* Lee Dep. Tr. 58:20-59:6 (available upon request):

Q. Now, there’s three transactions in -- two in this month and one last month for \$9,800, which is kind of a specific and unusual dollar amount. Do you remember why you were taking things out in that amount?

A. It’s probably less than \$10,000 I guess.

Q. Why were you trying to keep it under \$10,000?

A. I didn’t want any whatever they call it, stuff going to the IRS. I don’t know. Somebody told me you should probably take out less than \$10,000 in cash or it gets reported to somebody. So I used that number. The best of my recall.

⁵ Lee filed bankruptcy twice, but his first petition was dismissed because it was not filed in good faith. Specifically, Lee initiated a Chapter 13 proceeding (Case No. 8:13-bk-01055-KRM (Bankr. M.D. Fla.)) on January 29, 2013, despite knowing he was ineligible for Chapter 13 because of the nature of the judgment against him. The proceeding was dismissed on April 18, 2013.

creditors recognized in Florida. The Receiver (1) filed a proof of claim in the amount of \$1,391,269.41, which included both pre-judgment interest (as approved by the Eleventh Circuit) and post-judgment interest; (2) objected to Lee's discharge from bankruptcy due, among other reasons, to his purported gambling losses; and (3) instituted the Adversary Proceeding to obtain an equitable lien and constructive trust on the Property.

After several hearings, the Bankruptcy Court ruled that the funds that Lee contributed from his false profits were not entitled to homestead or any other protection. The Bankruptcy Court thus granted the Receiver's motion for summary judgment and imposed an equitable lien and constructive trust on the Property in the principal amount of \$227,126.78. After additional briefing, the Bankruptcy Court also determined the Receiver was entitled to prejudgment interest. Lee appealed that ruling to the District Court, which affirmed the Bankruptcy Court. Lee then appealed to the Eleventh Circuit, and that matter – the Property Appeal – is partially briefed and currently pending.

As shown by the attached Settlement Agreement, the Receiver and the Lees, subject to the approval of this Court (and the Bankruptcy Court), have agreed to settle all litigation between them. The Receiver has agreed to accept a total of \$132,500 in full settlement of the Settled Claims (as defined in Exhibit A), to be paid in one lump sum within 60 days of the requisite approvals. The Receiver believes that the settlement provides a practical solution that benefits the Receivership Entities. In reaching that conclusion, the Receiver has considered the following factors and risks:

- The Receiver has proposed similar settlements in the past, and this is the first the Lees have formally accepted.

- Despite the size of the judgment in the Clawback Action, the Receiver is reasonably satisfied that the Lees have no material assets other than the Property. As such, a majority of the judgment is uncollectable.
- Even if the judgment was collectable, Lee is seeking to discharge it in the Bankruptcy Action, and the Receiver might not prevail on his objection to discharge, which in any event, would require the expenditure of additional fees and costs.
- The Lees intend to pay the settlement amount by obtaining a mortgage on the Property, and the Receiver will obtain the full mortgage amount.
- The Lees are elderly, and this settlement will allow them to remain in the Property.
- The Receiver might not prevail on the Property Appeal.
- Even if the Receiver prevails on the Property Appeal, additional litigation would be necessary to obtain turnover or foreclosure of the equitable lien and constructive trust on the Property.
- The Receiver would then have to sell the Property, which would expose the Receivership Entities to additional costs and market risks.
- The parties' disputes have been mediated unsuccessfully numerous times, including before a federal magistrate judge.
- The parties reached the present settlement with the assistance of the Eleventh Circuit's Kinnard Mediation Center after no less than three telephonic sessions spanning several months.
- The Clawback Action is the last of approximately 150 similar cases filed by the Receiver, and (aside from Quest Energy Management Group, Inc.) it is one of the final matters in this Receivership subject to active litigation.
- Settlement of these matters will thus facilitate the closure of this Receivership and a final distribution to claimants.

As such, the settlement reflected by the Settlement Agreement is in the best interests of the Receivership, the investors in the Receivership Entities, and the Lees because resolution of the claims avoids protracted litigation and conserves Receivership assets and judicial resources.

WHEREFORE, the Receiver moves the Court to approve the settlement reflected by the attached Settlement Agreement.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

The undersigned counsel for the Receiver is authorized to represent to the Court that the SEC has no objection to the Court's granting this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Jared J. Perez

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