

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CASE NO.: 8:09-cv-0087-T-33CPT

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.

**DECLARATION OF BURTON W. WIAND IN SUPPORT OF THE
RECEIVER'S REPLY IN SUPPORT OF (DOC. 1419) HIS MOTION TO
AUTHORIZE THE RETENTION OF \$100,000 EARNEST MONEY DEPOSIT AND
IN RESPONSE TO (DOC. 1423) ARCHER'S RESPONSE IN OPPOSITION**

Burton W. Wiand declares as follows:

1. I am the Court-appointed Receiver in the above-captioned matter and over the assets of Quest Energy Management Group, Inc. (“Quest”).

2. I make this declaration in support of the Receiver's Reply in Support of (Doc. 1419) His Motion to Authorize the Retention of \$100,000 Earnest Money Deposit and in Response to (Doc. 1423) Archer's Response in Opposition.

3. I make this declaration based on information personally known to me or gathered and investigated by others at my request and under my direction.

4. In my verified motion (Doc. 1419) to retain the \$100,000 earnest money deposit (the "**Deposit**"), I stated that I believed Archer's reasons for attempting to cancel the Asset Purchase Agreement ("**APA**") were pretextual and that the APA does not provide for cancellation under these circumstances, which appear to involve Archer's issues with its investors. Archer's response to my motion demonstrates that my belief was correct.

5. First, Drew Hudson claims that he "was not aware that preparing the assets for sale with clean title would require such additional significant negotiations with the tax authorities and with significant additional creditors with complex claims as to delay [my] timely filing of the Motion to approve the transaction." Doc. 1423-6 (the "**Hudson Aff.**") ¶ 8. Archer's purported ignorance does not excuse his failure to perform under the APA because all documents relevant to the claims process were publicly-filed in the Court's docket and many were available on my website: www.nadelreceivership.com/quest-claims-process.html.

6. For example, on June 15, 2016, I filed an Unopposed Motion to (1) Approve Procedure to Administer Claims and Proof of Claim Form, (2) Establish Deadline for Filing Proofs of Claim, and (3) Permit Notice by Mail and Publication. *See* Doc. 1240 (the "**Quest Claims Motion**"). The Court granted the motion on June 17, 2016, thus establishing the

“**Quest Claims Process.**” Doc. 1241. Investors and other creditors then submitted 93 claims, which my professionals and I reviewed and evaluated.

7. On March 7, 2019, I filed a Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure. *See* Doc. 1383 (the “**Quest Determination Motion**”). The motion disclosed and extensively discussed claims against Quest’s assets, including from several Texas-based taxing authorities and the Bank of Albany. *See* Doc. 1383 at 12-21.

8. Hudson asserts that he “was told prior to executing the APA that the legal issues with the Albany bank were related to a residential property, which was not relevant to my proposed acquisition” (Hudson Aff. ¶ 9), but the Claims Determination Motion (which was filed two months before Hudson and Archer executed the APA) clearly disclosed that the “Bank of Albany loaned Quest \$700,000 ... which was secured by certain oil and gas leases, personal property, and equipment” (Doc. 1383 at 16). Approximately, \$150,000 of the bank’s \$198,000 claim related to this secured loan. *Id.* at 17. I recommended denial of this portion of the bank’s claim, which resulted in brief litigation that the parties ultimately resolved. *Id.* at 17-18; *see also* Docs. 1387 (motion filed by Bank of Albany on March 26, 2019 – *i.e.*, more than a month before Hudson’s and Archer’s execution of the APA); 1388-90 (orders directing me to respond and scheduling a hearing); 1391 (my response); 1395 (notice of objections to claim determinations); 1397 (the Court’s post-hearing order); 1402 (my motion to approve a settlement with the bank, which was filed the same day my counsel received an executed settlement agreement); 1406 (the Court’s order approving the settlement). Again, all of these documents were available to Hudson and other members of the public from the Court’s docket

and/or from my website. I never mislead him (or anyone else) about the complexities of the transaction. Hudson's claimed ignorance of the complicated issues surrounding Quest and the APA is pretextual and not credible. It is also belied by the repeated conversations I had with him explaining the process of resolving claims so that we could complete the transaction. Emails with him make this clear. While resolution of the bank's claim involved a house, the bank agreed to waive its asserted secured claim against the oil and gas leases that Archer sought to purchase because I agreed to transfer the house to the bank in full satisfaction of its claim against both the house and the leases. Archer ignores this fact.

9. Second, Hudson claims my professionals and I were too busy to file the APA because this Court appointed me as Receiver in another matter – *C.F.T.C. v. Oasis International Group, Limited et al.*, Case No. 8:19-cv-00886-VMC-SPF (M.D. Fla.) (the “**Oasis Receivership**”). That appointment occurred on April 15, 2019 (*id.* Doc. 7) – *i.e.*, several weeks before Archer even executed the APA. That appointment had nothing to do with the timing of the motion and did not prevent me or my professionals from addressing any of the matters discussed in the preceding paragraphs.

10. Hudson's reference to the Oasis Receivership is noteworthy because it relates to a discussion that I had with him regarding the closing of the Quest transaction. I recall this discussion specifically because I was traveling to Sarasota to inspect several properties at issue in the Oasis Receivership when I spoke to Mr. Hudson on the telephone. He informed me that his investors were in Scotland, and he thus wanted to delay closing until August or September 2019 so that the investors could attend in person. In his affidavit, Hudson ignores this crucial request, which is contrary to his arguments to the Court.

11. My counsel and counsel for the secured creditors exchanged at least 50 emails and engaged in several phone calls to resolve the creditors' objections between approximately the date Archer executed the APA and the date I filed my motion to approve the claim settlements. As previously noted, I filed that motion and the motion to approve the sale of Quest's assets to Archer on the exact day my counsel received an executed settlement agreement from the Bank of Albany – July 24, 2019. *See* Doc. 1403. As such, Hudson's suggestion that the Oasis Receivership delayed the filing of the motion is false.

12. Third, on July 23, 2019, Jeffrey Rizzo informed Hudson about the ongoing negotiations with the Bank of Albany, the status of the motion, and the statutory publication requirements. Instead of raising any concerns, Hudson only responded: "Thank you for the update." A true and correct copy of the pertinent correspondence is attached as **Exhibit A**.

13. As noted above, my counsel received the bank's executed settlement agreement the next day – July 24, 2019 – and filed the motion to approve the sale of Quest's assets that afternoon. Mr. Rizzo promptly informed Hudson of that fact. A true and correct copy of the pertinent correspondence is attached as **Exhibit B**. Given this, Archer's attempt to cancel the transaction for failing to file the motion approximately two weeks after the motion had already been filed is nonsensical, inequitable, and clear evidence of pretext.

14. Fourth, Hudson discusses a decline in production during June 2019 (Hudson Aff. ¶ 10), but he does not link that issue to his decision to attempt to cancel the APA (presumably because he cannot truthfully do so). Production did decline in June 2019, but the decline was temporary and due to a clerical error by the Texas Railroad Commission, which caused the severance of several wells (during a severance, no production can occur). The issue

was promptly resolved, and normal production resumed in July 2019. True and correct copies of relevant documents are attached as **Composite Exhibit C**. Because Archer was not buying the cash in Quest's bank accounts, this one-month decline in production had no effect on the APA's terms or the economic implications of those terms. Indeed, as late as August 6, 2019, Hudson was still requesting information about Quest with no indication he intended to cancel the transaction. A true and correct copy of the pertinent correspondence is attached as **Exhibit D**. Ironically, if Archer had owned Quest's assets in June 2019, he would have had to resolve these issues; instead, I had to resolve them, which is further evidence that Hudson's testimony is entirely pretextual.

15. Put simply, my professionals and I worked hard to obtain Court approval and close this transaction. In contrast, Hudson and Archer offer no equitable or legal justification for their cancellation or articulate any form of prejudice. Archer's agreement to purchase Quest's assets was a lynchpin to the closing of this Receivership. The claims process and the negotiations with secured creditors were conducted, in large part, for Archer's benefit. Archer's conduct has caused and will continue to cause the Receivership to incur expenses in the tens of thousands of dollars as well as delaying payment to secured creditors. Archer's conduct has clearly damaged the Receivership and is inexcusable. As the Court is aware, Quest has limited assets, and the entire point of the Deposit was to establish Archer's "good faith" (in Hudson's own words) and to avoid exactly this type of costly litigation. A true and correct copy of the pertinent correspondence is attached as **Exhibit E**.

I DECLARE under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: November 4, 2019

s/ Burton W. Wiand
Burton W. Wiand, as Receiver
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