

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.

PLAINTIFF'S MOTION FOR LEAVE TO DEPOSE INCARCERATED DEFENDANT

Plaintiff Securities and Exchange Commission, pursuant to Rule 30(a)(2)(B), moves the Court for leave to depose Defendant Arthur Nadel, who is presently incarcerated in New York at the facility listed in the Certificate of Service below. Because Mr. Nadel is incarcerated, Rule 30(a)(2)(B) requires the Commission to seek leave to depose him. The Commission is entitled to depose Mr. Nadel, who is a defendant in this case, and Mr. Nadel will suffer no prejudice in giving this routine discovery. The deposition is necessary and relevant to the Commission's action. The Commission will arrange with the prison staff to depose Mr. Nadel at his corrections facility, so he will not need to be transferred or otherwise travel.

The Plaintiff is entitled to depose the defendant in a civil action. *Leve v. General Motors Corp.*, 43 F.R.D. 508, 511 (S.D.N.Y. 1967) (“[p]laintiff does have the right, however, to take the oral deposition of a party or witness before trial.”) (citing Rule 26, Fed.R.Civ.P.). Depositions of opposing parties are so routine that courts have permitted them even when the party seeking to depose an incarcerated party or witness has neglected to request leave under Rule 30(a). *See Kendrick v. Schnorbus*, 655 F.2d 727, 729 (6th Cir. 1981) (refusing to suppress evidence acquired in deposition of prisoner when no showing of real injury for failure to obtain prior leave of court); *Miller v. Bluff*, 131 F.R.D. 698, 700 (M.D. Pa. 1990) (approving deposition of incarcerated plaintiff scheduled without motion for leave of court because party entitled to depose opponent and no real injury to incarcerated deponent) (citing *Kendrick v. Schnorbus*). Nadel will suffer no injury or other prejudice by giving deposition testimony like any other party to civil litigation.¹

The Receiver does not object to this motion. The Commission attempted to speak with Nadel regarding this motion, but because of Nadel’s incarceration, the Commission has not been able to communicate with him.

WHEREFORE, the Commission respectfully requests the Court grant it leave to depose Defendant Nadel.

July 6, 2010

Respectfully submitted,

By: s/ Scott A. Masel
Scott A. Masel
Senior Trial Counsel
Florida Bar No. 0007110

¹ If the Court grants the requested leave to depose Nadel, the Commission will as a courtesy notify Nadel’s criminal defense counsel of the deposition date and time. Nadel is representing himself in this instant civil case.

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Lead and Trial Counsel

Attorney for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Burton W. Wiand, Esq.
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3000 Bayport Drive, Suite 600
Tampa, FL 33607
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*Court-appointed Receiver for Corporate Defendants
and Relief Defendants*

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Co-counsel for Receiver Burton W. Wiand

I further certify that on the same date I mailed the foregoing document and the notice of electronic filing by U.S. Mail or as indicated below to the following non-CM/ECF participant:

Arthur G. Nadel
Register No. 50690-018
MCC New York
Metropolitan Correctional Center
150 Park Row
New York, NY 10007
Via U.S. Mail

s/ Scott A. Masel
Scott A. Masel, Esq.