

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.

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**RECEIVER'S UNOPPOSED MOTION FOR LEAVE TO RESPOND
TO WELLS FARGO BANK, N.A.'S OBJECTION TO RECEIVER'S 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**

Burton W. Wiand, as Receiver (the “**Receiver**”), recently filed a motion relating to claims determinations and the claims process (the “**Motion**”) (Doc. 675). Among the claims addressed in that motion was one submitted by Wells Fargo Bank, N.A. (“**Wells Fargo**”) as successor to Wachovia Bank, N.A. (“**Wachovia**”), relating to real estate located at 841 South Main Street, Graham, North Carolina, which houses a Rite Aid drugstore (the “**Rite Aid**

Property”). As the Motion details, this claim relates to a loan Wachovia made to Receivership Entity Scoop Real Estate, L.P., and it should be denied for several reasons. *See Mot.* at 55-59.

Wells Fargo filed an objection to the Motion (the “**Objection**”) (Doc. 689).¹ It objected to various items, only one of which, although lacking any merit, was properly lodged at this time. That objection is to the Proposed Objection Procedure. The rest of its objections target the merits of the Receiver’s (i) claim determination and (ii) claim priorities, and thus should be made as part of the objection procedure ultimately adopted by the Court, and not now in piecemeal fashion. Indeed, addressing these two objection categories in an efficient manner is part of the very reason for a formal objection process like the Receiver’s Proposed Objection Procedure.

The Receiver seeks leave to file a reply to address various issues raised by the Objection because he believes additional briefing will assist the Court with resolving it. The issues he seeks to address include Wells Fargo’s:

¹ Despite ample notice and opportunities to file claims, Wells Fargo concedes it never filed a claim relating to loans it made on (1) land near Asheville, North Carolina (the “**Laurel Mountain Property**”); (2) 30393 Upper Bear Creek Road, Evergreen, Colorado; and (3) 464 Golden Gate Point, Unit 703, Sarasota, Florida, all of which are under the Receiver’s control. *See Obj.* n.2. Despite failing to file claims, Wells Fargo improperly tries to reserve its rights with respect to those properties. The Receiver intends to address this issue in the reply that is the subject of this motion for leave.

Separately, Wells Fargo’s contention regarding purported forfeiture of the Laurel Mountain Property ignores the law and the facts, including an arrangement between federal prosecutors and the Receiver. Because Wells Fargo is represented by a different law firm with respect to that property, and that firm has also filed an objection (*see Doc.* 690), the Receiver is seeking leave to address this issue (as well as others) in a reply to that objection.

- (1) misunderstanding of the Proposed Objection Procedure, its efficiency, and that if the Receiver and a claimant cannot resolve an objection, it will be submitted to the Court, and the Court can then set tailor-made procedures before adjudicating it;
- (2) incorrect contention that the Proposed Objections Procedure violates due process;
- (3) incorrect contention that the priority of payments is “illogical, unfair, and inequitable,” and the fact that it improperly relies on bankruptcy law rather than receivership law;
- (4) incorrect contention that the Receiver’s claims against it relating to the “shadow accounts” are asserted on behalf of investors, when, in reality, they are plainly asserted on behalf of Receivership Entities, and caselaw establishes the Receiver has standing to assert those claims;
- (5) incorrect representations about the law governing the *in pari delicto* defense for claims asserted by equity receivers, and that, in reality, applicable law precludes application of that doctrine here for several reasons; and
- (6) incorrect representations that it has no liability for the Receiver’s claims relating to the “shadow accounts”, and its failure to recognize caselaw establishing the viability of those claims.

WHEREFORE, the Receiver respectfully seeks leave to file a ten-page reply within seven days of an order on this motion.

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for the Receiver has conferred with counsel for Wells Fargo. Wells Fargo does not object to the Receiver having leave to reply.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on December 23, 2011, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF

participants:

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