

**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 TRSTE, INC.'S AND WELLS FARGO BANK, N.A.'S  
OBJECTION AND OPPOSITION TO RECEIVER'S MOTION  
TO APPROVE DETERMINATION AND PRIORITY OF CLAIMS**

Burton W. Wiand, as Receiver (the “**Receiver**”), recently filed a motion relating to claims determinations and the claims process (the “**Motion**”) (Doc. 675). TRSTE, Inc. (“**TRSTE**”) and Wells Fargo Bank, N.A. (“**Wells Fargo**”), as successor to Wachovia Bank, N.A. (“**Wachovia**”),<sup>1</sup> subsequently filed an objection and opposition (the “**Objection**”) to

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<sup>1</sup> TRSTE and Wells Fargo are collectively referred to as Wells Fargo because TRSTE is simply a Wells Fargo “straw” that holds property in trust pending a mortgagor’s

the Motion (Doc. 690). The Objection relates to a loan made by Wachovia to Receivership Entity Laurel Preserve, LLC, and secured by land in North Carolina commonly referred to in this Receivership as the “**Laurel Mountain Property.**” Notably, the circumstances of this Objection are very different from those of other objections filed to date (*see* Docs. 683, 689) because no claim has ever been filed with respect to the loan and security interest underlying this matter. As such, the Court can dispose of this Objection and Wells Fargo’s interest in the Laurel Mountain Property in their entirety at this time as they are not part of the claims process.

Recognizing that its failure to file a claim is fatal for its interests in the Laurel Mountain Property, Wells Fargo now claims there are several reasons why it did not do so and why its interests should not be adversely affected. In essence, Wells Fargo claims the Court and the Receiver lack jurisdiction over the Laurel Mountain Property and it complains that it did not receive notice of the Receiver’s efforts to include the Laurel Mountain Property in this Receivership. The Receiver respectfully seeks leave to file a reply to address several issues raised by the Objection, including:

(1) its misplaced focus on notice of inclusion of the Laurel Mountain Property in this Receivership, rather than on notice of relevant matters, which are the receivership’s control of that property and the claims process. The reply will show Wells Fargo’s focus is misplaced and that it ignores the fact that the Receiver provided many instances of relevant notice to Wells Fargo regarding this Receivership from early in 2009, including through communications with Wells Fargo directly relating to the Laurel Mountain Property, Proof of Claim Forms sent to Wells Fargo, and even a letter eight months ago from the Receiver’s counsel to the same counsel for Wells Fargo and TRSTE that filed

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satisfaction of its Wells Fargo loan in certain states. Wells Fargo’s own Deed of Trust demonstrates the inconsequential nature of TRSTE (for example, it requires notice to Wachovia but none to TRSTE, *see* Obj. Ex. 1 to Ex. A at 13 (Doc. 690-1)).

the Objection specifically informing her of the claims process and the effect of Wells Fargo's failure to file a claim;

(2) Wells Fargo's incorrect assertion that the Receiver did not file appropriate papers in the U.S. District Court for the Western District of North Carolina to trigger the Court's "complete control and jurisdiction" under 28 U.S.C. § 754 – the reply will show that he did (*see, e.g.*, Case No. 1:09-mc-27-LHT (W.D.N.C.)); and

(3) Wells Fargo's factually and legally wrong assertion that the Laurel Mountain Property (and other receivership properties) is under the jurisdiction of the Southern District of New York instead of this Court because of claimed forfeiture proceedings – the reply will show no such proceedings have been initiated per an arrangement between the Receiver and federal prosecutors, and that the Laurel Mountain Property always has been and remains under this Court's jurisdiction.

The Motion addresses submitted claims and the claims process, but the Objection does not address either item – instead, it addresses purported rights despite a failure to file a claim. As such, the Receiver has not had an opportunity to address the issues raised in the Objection.

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

**LOCAL RULE 3.01(g) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for TRSTE and Wells Fargo. TRSTE and Wells Fargo do 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:

Arthur G. Nadel  
Register No. 50690-018  
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**s/Gianluca Morello**

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