

**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.

**DECLARATION OF GIANLUCA MORELLO IN SUPPORT OF THE
RECEIVER'S REPLY 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 (DOC. 690)**

Gianluca Morello declares as follows:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida, and am counsel for Burton W. Wiand in his capacity as court-appointed Receiver in this matter (the “Receiver”). I make this declaration in support of the Receiver’s Reply 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. I make this declaration based on information personally known to me or gathered by others at my request.

2. On December 21, 2011, TRSTE, Inc. (“**TRSTE**”) and Wells Fargo Bank, N.A., as successor to Wachovia Bank, N.A. (collectively, “**Wachovia**”) filed their Objection And Opposition To Receiver’s Motion To Approve Determination And Priority Of Claims, (D.E. 675) And Supporting Memorandum Of Law (Doc. 690) (the “**Objection**”). The Objection relates to a loan made by Wachovia to Receivership Entity Laurel Preserve, LLC, secured by a mountain in North Carolina commonly referred to in this Receivership as the “**Laurel Mountain Property.**”

3. The Laurel Mountain Property is situated in both Buncombe and McDowell Counties, North Carolina. Both counties are within the territory of the United States District Court for the Western District of North Carolina.

4. On June 3, 2009, the Court entered an Order Reappointing Receiver, and a certified copy of that order and of the Complaint in this action were filed in the United States District Court for the Western District of North Carolina on June 10, 2009. The filings occurred in miscellaneous case *SEC v. Arthur Nadel et al.*, Case No. 1:09-mc-00027-LHT (W.D.N.C.). Attached as **Composite Exhibit 1** are true and correct copies of the Complaint and Order Reappointing Receiver filed in the Western District of North Carolina on June 10, 2009.

5. In an affidavit filed with the Objection, a paralegal employed by Wachovia’s counsel stated that she could not find any record of the Receiver’s filings in the United States District Court for the Western District of North Carolina. (*See* Doc. 690-3.) I asked my

assistant to search the record of that court through PACER for the miscellaneous case initiated for the filing of the Order Reappointing Receiver and the Complaint, and she readily found the docket for the case and the filings by searching for the term “Nadel.”

6. Arthur Nadel was criminally prosecuted for the same activities underlying this case in the United States District Court for the Southern District of New York in *United States v. A. Nadel*, Case No. 1:09-cr-00433-JGK (S.D.N.Y.). Before that case was fully resolved, I had communications with a representative of the United States Attorney’s Office for the Southern District of New York about the property and funds previously controlled by Nadel. The understanding reached between me and the Receiver on the one hand and the United States Attorney’s Office on the other was that all such property and funds would be administered, liquidated, and distributed through this Receivership and the claims process in this case.

7. To my knowledge, no representative of the U.S. Government has ever acted in a manner that is inconsistent with that understanding, and I am unaware of any efforts by the U.S. Marshals Service to take possession, custody, or control of any funds or other property that was controlled by Nadel.

8. On February 13, 2009, a copy of (a) the Court’s January 21, 2009, Order Appointing Receiver and (b) the Court’s February 11, 2009, Order expanding the Receivership to include, in relevant part, Laurel Preserve, LLC, were filed in the public records of Buncombe County, North Carolina. In relevant part, that order expanded the Receivership to include the entity which holds title to the Laurel Mountain Property, Laurel Preserve, LLC.

9. On April 8, 2009, a copy of the Court's January 21, 2009, Order of Preliminary Injunction and Other Relief as to Defendants Scoop Capital, LLC and Scoop Management, Inc. and Relief Defendants was filed in the public records of Buncombe County, North Carolina.

10. On July 21, 2011, a copy of the Court's May 24, 2011, Findings of Fact and Conclusions of Law and Order Vacating Easement entered in *Wiand, as Receiver v. Carolina Mtn. Land Conservancy*, Case No. 8:09-cv-2443-T-27TBM (M.D. Fla.), was filed in the public records of Buncombe County, North Carolina. In relevant part, that order was directed at vacating a conservation easement on the Laurel Mountain Property.

11. Attached as **Composite Exhibit 2** are true and correct copies of each of the recorded documents itemized in paragraphs eight through ten of this declaration.

12. On March 25, 2009, a copy of (a) the Court's January 21, 2009, Order Appointing Receiver, (b) the Court's January 21, 2009, Order of Preliminary Injunction and Other Relief as to Defendants Scoop Capital, LLC and Scoop Management, Inc. and Relief Defendants, and (c) the Court's February 11, 2009, Order expanding the Receivership to include, in relevant part, Laurel Preserve, LLC, were filed in the public records of McDowell County, North Carolina.

13. On July 22, 2011, a copy of the Court's May 24, 2011, Findings of Fact and Conclusions of Law and Order Vacating Easement entered in *Wiand, as Receiver v. Carolina Mtn. Land Conservancy*, Case No. 8:09-cv-2443-T-27TBM (M.D. Fla.), was filed in the public records of McDowell County, North Carolina.

14. Attached as **Composite Exhibit 3** are true and correct copies of each of the recorded documents itemized in paragraphs 12 and 13 of this declaration.

15. This Receivership was commenced on January 21, 2009 (Doc. 8), and very early on we learned that Nadel controlled numerous bank accounts at Wachovia. As such, almost immediately the Receiver and other attorneys and staff at my former firm (Fowler White Boggs, P.A.) began having communications with Wachovia employees in an effort to obtain control of Nadel's accounts, obtain information relating to those accounts, and investigate other relationships between Nadel and Wachovia in an effort to track down additional assets.

16. On or about February 9, 2009, Aaron Despain, a Wachovia employee at the time, accepted service of a subpoena from the Receiver directed at Wachovia. Attached as **Exhibit 4** is a true and correct copy of that subpoena.

17. On or about March 9, 2009, the Receiver sent a letter to Charles Stafford of the Wells Fargo Legal Group to request that certain bank accounts held at Wachovia in the name of Receivership Entities be cashed out. The letter identified Laurel Preserve, LLC, as a Receivership Entity and included a copy of the Court's February 11, 2009, Order expanding the Receivership to include that entity. Attached as **Exhibit 5** is a true and correct copy of that letter.

18. On March 17, 2009, the Receiver received a letter from Jeffrey Kucera, Esq., of K&L Gates LLP. Attached as **Exhibit 6** is a true and correct copy of that letter.

19. Over time, representatives of the Receiver had various communications with Wachovia employees and other representatives of Wachovia, including Mr. Kucera, relating

to Laurel Preserve, LLC, and the Laurel Mountain Property. Attached as **Composite Exhibit 7** are true and correct copies of examples of such communications which occurred during the approximately first year of this Receivership. Those communications continued to occur following the first year.

20. At some point, Wachovia apparently changed counsel with respect to the Laurel Mountain Property, and in March 2011, the Receiver received correspondence from Ana T. Barnett, Esq. and Jose G. Sepulveda, Esq. of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., relating to the Laurel Mountain Property. I responded on April 5, 2011, with a letter to Ms. Barnett and Mr. Sepulveda. Attached as **Exhibit 8** is a true and correct copy of that letter.

21. According to the 2011 annual report filed by TRSTE and available on the North Carolina Secretary of State's website, the nature of TRSTE's business is to serve as "Trustee of Deeds," and TRSTE's "Principal Officers" are Carol Dubie, Robert J. Mcgee, and Hollye Sammons. Attached as **Exhibit 9** is a true and correct of TRSTE's 2011 annual report as obtained from the North Carolina Secretary of State's website.

22. A search on the internet revealed that Ms. Dubie is an in-house counsel with a Wells Fargo entity; Mr. Mcgee is an officer of a Wells Fargo entity; and Ms. Sammons is a paralegal for a Wells Fargo entity.

23. On June 4, 2010, a claims packet was mailed by U.S. First Class Mail to Wachovia to Wachovia Commercial Loan Services, P.O. Box 740502, Atlanta, GA 30374-0502. Attached as **Exhibit 10** is a true and correct copy of that packet.

24. Included in this claims packet was a Proof of Claim form which included the following pre-printed language on the first page: “Wachovia Commercial Loan Services, P.O. Box 740502, Atlanta, GA 30374-0502. Wachovia completed that Proof of Claim form and returned it to the Receiver before the deadline for filing claims. Attached as **Exhibit 11** is a true and correct copy of this completed Proof of Claim Form.

25. As the Proof of Claim form shows, it was completed only for the purpose of filing a claim relating to Wachovia’s loan to receivership entity Scoop Real Estate, L.P. secured by an interest in real property in Graham, North Carolina – real property which is different from the Laurel Mountain Property (the loan secured by the Laurel Mountain Property was made to receivership entity Laurel Preserve, LLC, and not to Scoop Real Estate, L.P.). The Receiver commonly refers to the Graham, North Carolina property as the “**Rite Aid Property.**”

26. Attached as **Exhibit 12** is the Deed of Trust and Security Agreement for the loan and real property underlying the claim filed by Wachovia and discussed in the previous paragraph. Under that Deed of Trust and Security Agreement, TRSTE acted as the trustee which held the pertinent deed in trust pending satisfaction of the loan.

27. Wachovia was invested in Receivership hedge funds Scoop Real Estate, L.P., and Viking Fund, Ltd., and its investments were held by its affiliate, Wachovia Securities Int’l, Inc. As part of the claims process, on June 4, 2010, a claims packet relating to each of those investments was mailed by U.S. First Class Mail to Joel T. Brighton, Managing Counsel, Wells Fargo Law Dept., MAC: D1053-300, One Wachovia Center, 301 S. College

St., Charlotte, N.C. 28288. Attached as **Composite Exhibit 13** are true and correct copies of those claims packets.

28. In accordance with the Court's April 21, 2010, Order (Doc. 391), the Receiver also provided notice of the claims process and the claims bar date by publishing it in the The Wall Street Journal global edition, in the Sarasota Herald Tribune, and on the Receiver's website at www.nadelreceivership.com.

I declare under the penalty of perjury that the foregoing is true and correct and is executed this 17th day of January, 2012.

s/Gianluca Morello

Gianluca Morello, FBN 034997

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Attorney for the Receiver, Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 17, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on January 18, 2012, I will mail 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
FCI BUTNER LOW
Federal Correctional Institution
P.O. Box 999
Butner, NC 27509

s/ Gianluca Morello
Gianluca Morello, FBN 034997