


COMPOSITE EXHIBIT 2

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02/13/09

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Prepared by and Return to:
Ashley Bruce Trehan
Fowler, White, Boggs
501 E. Kennedy Blvd., Suite 1700
Tampa, FL


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Fee Amt: \$18.00 Page 1 of 3
Workflow# 2669171
Buncombe County, NC
Otto W. DeBruhl Register of Deeds
BK 4648 PG 708-710

ORDER

MADE AND ENTERED IN THE MATTER OF:

**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, LLC,**
Defendants

COPY

**SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUNDS, LTD.,
VICTORY FUND, LTD.,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT,**
Relief Defendants

DATED: FEBRUARY 11, 2009.

{12310621}

✓

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.

COPY

ORDER

UPON DUE CONSIDERATION of the declaration and supporting exhibits filed on February 10, 2009, at docket 36, by Burton W. Wiand, the receiver previously appointed by the Court in this case in the Order Appointing Receiver entered January 21, 2009, at docket 8, it is **ORDERED AND ADJUDGED** that his Second Unopposed Motion to Expand the Scope of Receivership (Dkt. 36) is **granted**. The scope of Mr.

3

Wiand's receivership is expanded to include the entities known as Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. These entities are specifically included within the ambit of the Court's Order Appointing Receiver.

DONE AND ORDERED in Chambers at Tampa, Florida, on February 11, 2009.

/s/ Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

CONFORMED COPIES TO:
Counsel/Parties of Record

I certify the foregoing to be a true and correct copy of the original.
SHERYL L. KOPSON, Clerk
United States District Court
Middle District of Florida
By: _____
Deputy Clerk

COPY



Doc ID: 021724030008 Type: GRP
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Workflow# 2669167
Buncombe County, NC
Otto W. DeBruhl Register of Deeds
BK 4648 PG 697-704

Prepared by and Return to:
Ashley Bruce Trehan
✓ Fowler, White, Boggs
501 E. Kennedy Blvd., Suite 1700
Tampa, FL

ORDER APPOINTING RECEIVER

MADE AND ENTERED IN THE MATTER OF:

**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, LLC,**
Defendants

**SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUNDS, LTD.,
VICTORY FUND, LTD.,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT,**
Relief Defendants

DATED: JANUARY 21, 2009.

{12310621}

**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.

ORDER APPOINTING RECEIVER

WHEREAS, Plaintiff Securities and Exchange Commission has filed an emergency motion for the appointment of a Receiver over Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and Relief 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"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of

the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors;

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by the Defendants;

WHEREAS, the Commission has submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of the Defendants and Relief Defendants, including any properties, assets and other items held in the names of the Defendants and Relief Defendants, and the Commission has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Hurton Wiand is hereby appointed the Receiver over the Defendants and Relief Defendants, their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Defendants and Relief Defendants, wherever and wheresoever located belonging to or in the possession of the Defendants and Relief Defendants, including but not limited to all offices maintained by the Defendants and Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Defendants and Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. Investigate the manner in which the affairs of the Defendants and Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the

Defendants and Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Defendants or Relief Defendants, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Defendants or Relief Defendants; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of the Defendants and Relief and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Defendants and Relief Defendants;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Defendants and Relief Defendants, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which the Defendants, Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where the Defendants or Relief Defendants are a nominal party, where the action does not effect a claim against or adversely affect the assets of the Defendants or Relief Defendants, the Receiver may file appropriate pleadings in the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by the Defendants or Relief Defendants;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Defendants or Relief Defendants and, upon, order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of the Defendants or Relief Defendants (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of the Defendants or Relief Defendants.

IT IS FURTHER ORDERED AND ADJUDGED that, in connection with the appointment of the Receiver provided for above:

10. The Defendants and Relief Defendants and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Defendants or Relief Defendants shall deliver forthwith upon demand such property, monies, books and records to the

Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Defendants or Relief Defendants;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, the Defendants or Relief Defendants shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, the Defendants and Relief Defendants and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Defendants or Relief Defendants;

13. The Defendants and Relief Defendants, and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The Defendants and Relief Defendants and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by the Defendants and Relief Defendants; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief

under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Defendants or Relief Defendants;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to the Defendants or Relief Defendants;

17. Title to all property, real or personal, all contracts, rights of action and all books and records of the Defendants or Relief Defendants and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

18. Upon request by the Receiver, any company providing telephone services to the Defendants or Relief Defendants shall provide a reference of calls from any number presently assigned to any of the Defendants or Relief Defendants to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Defendants or Relief Defendants shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Defendants or Relief Defendants, and to handle future deliveries of the mail of the Defendants or Relief Defendants as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by the Defendants or Relief Defendants or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. Service of this Order shall be sufficient if made upon the Defendants and Relief Defendants and their principals by facsimile or overnight courier;

24. In the event that the Receiver discovers that funds of persons who have invested in the Defendants or Relief Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds; and

25. This Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED in Chambers at Tampa, Florida, on January 21, 2009.

COPY

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

I certify this is a true and correct copy of the original.
SHERYL L. O'LEARY, Clerk
United States District Court
Middle District of Florida
By: _____
Deputy Clerk

Copies to:
Scott Masel, Esq.
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Counsel for Securities and Exchange Commission
Phone: (305) 982-6386
Fax: (305) 536-4154
E-mail: masels@sec.gov

Workflow No. 2679044

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Buncombe County, NC
Otto W. DeBruhl Register of Deeds

BK 4668 PG 269-275

Fed Ex
Return to:
Fowler White Boggs, P.A.
501 E. Kennedy Blvd. Suite 1700
Tampa, Florida 33602

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

Case No. 8:09-cv-00087-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.

COPY

**ORDER OF PRELIMINARY INJUNCTION AND OTHER RELIEF AS TO
DEFENDANTS SCOOP CAPITAL, LLC AND SCOOP MANAGEMENT, INC. AND
ALL RELIEF DEFENDANTS**

2

**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.

COPY

**ORDER OF PRELIMINARY INJUNCTION AND OTHER RELIEF
AS TO DEFENDANTS SCOOP CAPITAL, LLC AND
SCOOP MANAGEMENT, INC., AND ALL RELIEF DEFENDANTS**

Defendants Scoop Capital LLC and Scoop Management Inc., ("Defendants") and Relief Defendants Scoop Real Estate L.P., Valhalla Investment Partners L.P., Valhalla Management Inc., Victory IRA Fund Ltd., Victory Fund Ltd., Viking IRA Funds LLC, Viking Fund LLC and Viking Management ("Relief Defendants") by the attached Consents, without admitting or denying any of the allegations in the Complaint filed by the Securities and Exchange Commission, except that they admit the allegations as to the jurisdiction of this Court over them and over the subject matter of this action, have agreed to the entry of this Order of Preliminary

3

Injunction and Other Relief ("Preliminary Injunction"). This Court, having accepted the Consents and having jurisdiction over the Defendants and the Relief Defendants and the subject matter of this action, and being fully advised in the premises, orders as follows:

I.

PRELIMINARY INJUNCTION

IT IS ORDERED AND ADJUDGED that, pending further Order of this Court, Defendants Scoop Management Inc. and Scoop Capital LLC, their directors, officers, agents, trustees, servants, employees, attorneys, accountants and representatives, and any person in active concert or participation with them, and each of them, are hereby restrained and enjoined from:

Section 17(a)(1) of the Securities Act of 1933

A. Directly or indirectly, by use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, in the offer or sale of securities, knowingly or recklessly employing devices, schemes or artifices to defraud, in violation of Section 17(a)(1) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a)(1);

Section 17(a)(2) & (3) of the Securities Act of 1933

B. Directly or indirectly, by use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of securities, (i) obtaining money or property by means of untrue statements of material facts or omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (ii) engaging in acts, practices and courses of business which have operated and will operate as a fraud or deceit upon

4

purchasers and prospective purchasers of such securities, in violation of Sections 17(a)(2) & (3) of the Securities Act, 15 U.S.C. §§ 77q (a)(2) & 77q(a)(3); and

Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934

C. Directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any securities, knowingly or recklessly: (i) employing devices, schemes or artifices to defraud; (ii) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (iii) engaging in acts, practices and courses of business which have operated, are now operating or will operate as a fraud upon the purchasers of such securities in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5 thereunder.

II.

ASSET FREEZE

IT IS FURTHER ORDERED AND ADJUDGED that, pending resolution of this case on the merits and further Order of this Court:

A. The Defendants and Relief Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this order by personal service, mail, facsimile transmission or otherwise, except for the Receiver this Court has appointed, be and hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully

5

paid for securities, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of any Defendant or Relief Defendant.

B. That any financial or brokerage institution or other person or entity located within the jurisdiction of the United States Courts and holding any such funds or other assets, in the name, for the benefit or under the control of the Defendants or Relief Defendants, directly or indirectly, held jointly or singly, and which receives actual notice of this order by personal service, facsimile, or otherwise, except the Court appointed Receiver, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

C. Notwithstanding this Court's Asset Freeze, Marguerite "Peg" Nadel shall be entitled to receive \$10,000 for legal fees and \$10,000 for reasonable living expenses from accounts Marguerite Nadel discloses to the Court-Appointed Receiver and the Commission. If Marguerite Nadel has not received these funds already, the Receiver shall coordinate and oversee disbursement of the aforementioned funds within five days of the issuance of this Order. There shall be no additional release of funds to Marguerite Nadel without an Order from this Court.

III.

RECORDS PRESERVATION

IT IS FURTHER ORDERED AND ADJUDGED that, pending further Order of this Court, the Defendants and Relief Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation

6

with any one or more of them, and each of them, be and they hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible or inaccessible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to the Defendants and Relief Defendants, wherever located.

IV.

REPATRIATION ORDER

IT IS FURTHER ORDERED AND ADJUDGED that the Defendants and Relief Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, shall:

- (a) take such steps as are necessary to repatriate to the territory of the United States all funds and assets of investors described in the Commission's Complaint in this action which are held by them or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of the United States District Court, Middle District of Florida; and
- (b) provide the Commission and the Court a written description of the funds and assets so repatriated.

V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter, the Defendants, and the Relief Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any

suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

DONE AND ORDERED in Chambers at Tampa, Florida, on January 21, 2009


RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

Copies to:

Scott Masel
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Counsel for Securities and Exchange Commission
Phone: (305) 982-6398
Fax: (305) 536-4154
Email: masels@sec.gov

Defendants' attorneys

COPY





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Buncombe County, NC
Drew Reisinger Register of Deeds

BK 4900 Pg 1799-1804

**PREPARED BY AND
RETURN TO:
GOOSMANN ROSE COLVARD & CRAMER, P.A.
P.O. BOX 7436 (11-1319 GFG Tr)
ASHEVILLE, NC 28802
BOX 81**

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

**NAME ON INSTRUMENT: Findings of Fact and Conclusions of Law and
Order Vacating Easement**

**GRANTOR: Byron W. Wiand, as Receiver for Valhalla Investment
Partners, L.P.; Viking Fund, LLC; Viking IRA Fund,
LLC, Victory Fund, Ltd., Victory IRA Fund, LTD.,
Scoop Real Estate, L.P.; Laurel Mountain Preserve,
LLC; Laurel Preserve, LLC; Guy-Nadel Foundation,
Inc., and Carolina Mountain Conservancy, A North
Carolina Non-Profit Corporation**

GRANTEE: To whom it may concern

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
VALHALLA INVESTMENT PARTNERS,
L.P.; VIKING FUND, LLC; VIKING IRA
FUND, LLC; VICTORY FUND, LTD.;
VICTORY IRA FUND, LTD.; SCOOP REAL
ESTATE, L.P.; LAUREL MOUNTAIN
PRESERVE, LLC; LAUREL PRESERVE,
LLC; and GUY-NADEL FOUNDATION,
INC.,

Plaintiff,

Case No.: 8:09-cv-2443-T-27TBM

v.

CAROLINA MOUNTAIN LAND
CONSERVANCY, a North Carolina Nonprofit
Corporation,

Defendant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND ORDER VACATING EASEMENT**

THIS CAUSE came before the Court on the parties' Joint Motion for Entry of Orders Dismissing the Case with Prejudice and Vacating Easement (D.E. 27) ("Motion"), and the Court, having considered the Motion and being advised of the settlement between the parties, hereby finds and orders as follows:

1. In January of 2009, the Securities and Exchange Commission (the "SEC") filed an action against Arthur Nadel and entities associated with him in the United States District Court for the Middle District of Florida, Tampa Division, styled *SEC v. Arthur*

Nadel, et al, Case No. 8:09-cv-87-T-26TBM (the "SEC Action"). In that action, the SEC alleged that Arthur Nadel ("Nadel") and entities associated with him had defrauded investors in hedge funds managed by him ("Nadel's Scheme").

2. The Court in the SEC Action appointed Burton Wiand the Receiver over various entities tied to Nadel's Scheme for, among other reasons, gathering and protecting the assets of those entities for the benefit of defrauded investors. The Receivership was later expanded to include additional entities, including Laurel Mountain Preserve, LLC, based on Nadel's control of that entity, his role as its manager and member, and its receipt of proceeds of Nadel's Scheme.

3. In 2003, Nadel, through Laurel Mountain Preserve, LLC, purchased approximately 426 acres of land in North Carolina (the "Property"), with funds derived from Nadel's Scheme. In 2005, Nadel, through Laurel Mountain Preserve, LLC, granted a conservation easement over 169 acres of the Property to Carolina Mountain Land Conservancy, Defendant in this action. The conservation easement is recorded in the public records of Buncombe County at Official Records Book 4151 and Page 1686 and in the public records of McDowell County at Official Records Book 849 and Page 808, as re-recorded at Book 857 and Page 485 (the "Conservation Easement").

4. The Receiver brought this action in December 2009, pursuant to North Carolina General Statutes § 39.23.1-.12 ("NCUFTA") and Florida Statutes § 726.101 *et seq.* ("FUFTA"), those states' respective version of the Uniform Fraudulent Transfer Act.

5. In February of 2010, Arthur Nadel pled guilty to all counts in the indictment in the related criminal case, *United States v. Nadel*, Case No. 1:09-cr-00433-JGK (S.D.N.Y.),

which consisted of fifteen federal fraud counts, and admitted perpetrating the scheme to defraud his investors from 1999 through January 2009 (Indictment ¶8). The Court may take judicial notice of Nadel's guilty plea and indictment. *See Scholes v. Lehmann*, 56 F.3d 750, 762 (7th Cir. 1995) (District court properly took judicial notice of Ponzi scheme principal's plea agreement in fraudulent conveyance action against recipients of funds).

6. In pleading guilty, Nadel admitted all of the allegations in the indictment, including allegations establishing the following: Nadel misappropriated investor funds and converted them for his, his family's, and his businesses' personal use (Indictment ¶ 10); Nadel fraudulently received tens of millions of dollars of "fees" based on his false representations of the performance and net asset values of the pertinent hedge funds (*id.* ¶ 15); Nadel transferred and caused to be transferred millions of dollars of investor money to accounts and entities that he owned and/or controlled (*id.* ¶ 16); and the Property and all of Nadel's right, title, and interest in Laurel Mountain Preserve, LLC, are derived from proceeds traceable from Nadel's Scheme (*id.* ¶ 22.i).

7. On the basis of Arthur Nadel's guilty plea and the sworn statements in the Settlement Agreement, the Court finds: (1) Nadel made the transfers of assets to the Carolina Mountain Land Conservancy through Laurel Mountain Preserve, LLC, with "intent to hinder, delay, or defraud" creditors under N.C. Gen. Stat. § 39-23.4(a)(1); and (2) Nadel's grant of the Conservation Easement to Carolina Mountain Land Conservancy, through Laurel Mountain Preserve, LLC, constitutes a voidable fraudulent transfer under N.C. Gen. Stat. § 39-23.4(a)(1) and § 39-23.7. *See In re Slatkin*, 310 B.R. 740, 745 (C.D. Cal. 2004) (guilty plea to mail and wire fraud conclusively established intent to defraud investors), *aff'd*, 525

5

F.3d 805 815 (9th Cir. 2008) (“[g]uilty plea and plea agreement conclusively establish that [debtor] operated a Ponzi scheme . . . with intent to defraud his creditors; and the transfers to the [Defendants] . . . are therefore deemed fraudulent as a matter of law.”); *In re McCarn's Allstate Finance, Inc.*, 326 B.R. 843 851-52 (M.D. Fla. 2005) (guilty plea to securities fraud and mail fraud had preclusive effect in case brought pursuant to FUFTA); N.C. Gen. Stat. § 39-23.1(12) (“transfer” under NCUFTA includes “creation of a lien or other encumbrance”).

8. On the basis of the Parties’ stipulations in the Motion, the Court hereby finds that, while the grant of the Conservation Easement was an arm’s length transaction, and the Carolina Mountain Land Conservancy had no knowledge of Arthur Nadel’s illegal activities or of the insolvency of Laurel Mountain Preserve, LLC, the grant of the Conservation Easement to Carolina Mountain Land Conservancy is subject to being set aside pursuant to N.C. Gen. Stat. § 39-23.7.

Upon consideration of the Motion, and the foregoing findings of fact and conclusions of law, it is hereby

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ORDERED, ADJUDGED, and DECREED:

(a) The Motion is **GRANTED** to the extent it seeks entry of an order vacating the Conservation Easement; and


(b) The Conservation Easement granted by **LAUREL MOUNTAIN PRESERVE, LLC** to **CAROLINA MOUNTAIN LAND CONSERVANCY** dated December 1, 2005, and recorded in the public records of Buncombe County at Official Records Book 4151 and Page 1686 and in the public records of McDowell County at Official

Records Book 849 and Page 808, as re-recorded at Book 857 and Page 485 is hereby

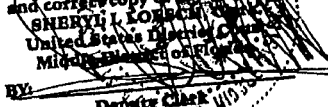
VACATED pursuant to N.C. Gen. Stat. § 39-23.7.

DONE AND ORDERED in Tampa, Florida, this 23rd day of May

2011.


JAMES D. WHITTEMORE
UNITED STATES DISTRICT JUDGE

Copies furnished to:
All Counsel of record

UNITED STATES DISTRICT COURT
I certify the foregoing to be a true and correct copy of the original.
SHERRY L. LOPEZ
United States District Court
Middle District of Florida
BY: 
Deputy Clerk

COPY