

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

ORAL ARGUMENT
REQUESTED

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants,

CASE NO.: 8:09-0087-T-26TBM

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, LLC.

Relief Defendants.

**OBJECTION AND MEMORANDUM OF LAW OF WELLS FARGO
BANK, N.A. IN OPPOSITION TO RECEIVER'S VERIFIED MOTION
TO APPROVE SALE OF REAL PROPERTY LOCATED IN
GRAHAM, ALAMANCE COUNTY, NORTH CAROLINA**

Wells Fargo Bank, N.A. ("Wells Fargo"),¹ a valid secured creditor and party in interest herein, hereby files this objection (the "Objection") and memorandum of law in opposition to *Receiver's Verified Motion to Approve Sale of Real Property Located in Graham, Alamance County, North Carolina* (the "Motion") (Doc. No. 706), and in support thereof, states as follows:

¹ Wells Fargo is successor by merger to Wachovia Bank, N.A.

SUMMARY OF ARGUMENT

As a preliminary matter, the Motion should be denied because the Receiver's contemplated private sale does not comply with the mandated procedural safeguards set forth in 28 U.S.C. § 2001(b), which require the Court to appoint three disinterested persons to appraise the property prior to any such sale. The Receiver's Motion should also be denied because it attempts to sell the Rite Aid Property at a price significantly below market value (\$2.4 Million) and well below the total amount of Wells Fargo's secured claim, which currently aggregates approximately \$3,147,427.00.² Significantly, just as the Receiver's claims determination motion lacked any evidence to support the abrogation of Wells Fargo's valid state law property rights (Doc. No. 675), so does his current Motion to sell the Rite Aid Property. At bottom, the Receiver's Motion seeks to effectuate an impermissible taking of Wells Fargo's state law property rights in contravention of the due process clause of the Fifth Amendment. The Receiver's continued conduct in this regard should not be condoned by this Court. For these

² Wells Fargo has a valid security interest in and against the real property located at 841 South Main Street, Graham, North Carolina, which houses a Rite Aid Pharmacy (the "Rite Aid Property"). As of January 10, 2012, Wells Fargo's secured claim against the property aggregated approximately \$3,147,427.00 (the "Wells Fargo Claim"), calculated as follows: Principal - \$2,655,000.00; Contract Interest - \$143,243.76; Default Interest - \$178,991.25; Legal Fees Trenam - \$20,047.29; Legal Fees KL Gates - \$15,144.90; and Legal Fees - Akerman (Est.) - \$135,000. The Wells Fargo Claim is also secured by, among other things, the rents generated from the operation of a Rite-Aid Pharmacy on the property. Wells Fargo timely filed a proof of claim in this case with respect to the Rite Aid Property, which claim has been designated No. 502 by the Receiver.

Wells Fargo also has valid secured claims against the following properties: (1) approximately 420 acres near Asheville, North Carolina in Buncombe and McDowell counties (the "Laurel Mountain Property"); (2) 30393 Upper Bear Creek Road, Evergreen, Colorado (the "Evergreen Property"); and (3) 464 Golden Gate Point, Unit 703, Sarasota, Florida (the "Sarasota Property"). In fact, more than a century ago, the Supreme Court held that a bankruptcy discharge of a secured creditor's claim does not affect the status of the creditor's underlying lien on the debtor's property. *See Long v. Bullard*, 117 U.S. 617, 620-21 (1886) ("Here the creditor neither proved his debt in bankruptcy nor released his lien. Consequently his security was preserved notwithstanding the bankruptcy of his debtor."). Over the years, the Court has reiterated this holding. *See, e.g., United States Nat'l Bank v. Chase Nat'l Bank*, 331 U.S. 28, 33, (1947) (stating that a secured creditor "may disregard bankruptcy proceedings, decline to file a claim, and rely solely upon his security . . ."). The Receiver's contention that this rule is only grounded in bankruptcy has no merit. *See Dewsnup v. Timm*, 502 U.S. 410, 417 (1992) (concluding that "the creditor's lien stays with the real property until the foreclosure" despite the absence of any such language in the Bankruptcy Code). In fact, the cases cited in the Receiver's recent reply brief (Doc. No. 714, p. 2, n.1), have no application here as they all deal with the non-filing of proofs of claim by investors or unsecured creditors, not secured creditors such as Wells Fargo.

reasons and the reasons that follow, the Motion should be denied and the Court should lift the injunction and/or compel the Receiver to abandon the Rite Aid Property to Wells Fargo.³

MEMORANDUM OF LAW

A. The Receiver Has Failed to Comply With the Procedural Safeguards Mandated By 28 U.S.C. § 2001 Regarding the Disposition of Real Property in SEC Receivership Proceedings.

Preliminarily, the Receiver's Motion should be denied because the contemplated private sale fails to comply with the procedural safeguards mandated by 28 U.S.C. § 2001(b). Section 2001(b) provides:

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b) (emphasis supplied).

Courts in this and other districts have determined that the power of a district court to authorize the sale of property in an SEC receivership proceeding is limited by the statutorily mandated procedural requirements set forth in 28 U.S.C. § 2001. *See SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1137 (9th Cir. 1996) (applying § 2001 to the receiver's proposed sale of real estate within receivership estate in SEC enforcement action), *abrogated in part by Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 118 (1998)); *SEC v. T-Bar Resources, LLC*, 2008 WL

³ Contemporaneously herewith, Wells Fargo is filing a motion to lift the Court's injunction against the Rite Aid Property or, in the alternative, to compel the Receiver to abandon the Rite Aid Property to Wells Fargo.

4790987, at *2 (N.D. Tex. Oct. 28, 2008) (same); *SEC v. AmeriFirst Funding, Inc.*, 2008 WL 706846, at *1 (N.D. Tex. March 11, 2008) (same); *Kirkland v. Sunset Bay Club, Inc.*, 2006 WL 3627557, at *2 (M.D. Fla. Dec. 11, 2006) (same); *see also United States v. Brewer*, 2009 WL 1313211, at *1 (M.D. Fla. May 12, 2009) (applying § 2001 to the receiver's proposed sale of real estate within receivership estate in insurance fraud case).

As noted, before confirmation of any private sale, the Court shall appoint three disinterested persons to appraise such property and no private sale shall be confirmed at a price less than two-thirds of the appraised value. This provision is not discretionary, it is mandatory. *See, e.g., United States v. Monsanto*, 491 U.S. 600, 607 (1989) (by using “shall” in civil forfeiture statute, “Congress could not have chosen stronger words to express its intent that forfeiture be mandatory in cases where the statute applied”). Here, it is without dispute that the Receiver has not complied with the procedural requirements set forth in Section 2001(b). It should also be noted that a recent appraisal obtained by Wells Fargo values the Rite Aid Property at **\$4.14 Million**.⁴ Clearly, there is a dispute as to the value of the property. The Receiver contends the property is worth less than the secured debt to Wells Fargo. If so, there is no equity in the property and it should be abandoned to the secured creditor. The Receiver concedes he has marketed the Rite Aid Property for sale since August 2009 and that he has had several offers on the property, with the highest offer of \$4,177,000 being received in August 2010 (*See* Motion at p. 5). Incredibly, the Receiver now seeks to sell the Rite Aid Property at a price significantly below market value (\$2.4 Million) and well below the total amount of the Wells Fargo's secured claim. It is precisely for situations such as these that the legislature enacted the procedural safeguards in 28 U.S.C. § 2001(b), which require three independent appraisals of property, in connection with the private sales of real estate before United States courts. Accordingly, the

⁴ A copy of the Appraisal is annexed hereto as Exhibit A.

Receiver's Motion to sell the Rite Aid Property should be denied on that basis alone.

B. The Receiver, and Implicitly this Court, Cannot Abrogate Wells Fargo's State Law Property Rights Through the Receiver's Sale Motion or Otherwise.

"It is well established that a 'receiver appointed by a federal court takes property subject to all liens priorities or privileges existing or accruing under the laws of the State.'" *SEC v. Madison Real Estate Group*, 647 F. Supp. 2d 1271, 1277 (D. Utah 2009); *SEC v. Homeland Comm. Corp.*, 2010 WL 2035326, at *7-8 (S.D. Fla. 2010) (determining that secured creditors' claims must be paid out of foreclosure proceeds of collateral and prior to claims of defrauded investors). In addition, a district court's equitable authority in a receivership proceeding does not extend to abrogating property rights created by state law and protected by due process. *See SEC v. Haligiannis*, 608 F. Supp. 2d 444, 449 (S.D.N.Y. 2009) (citing *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893)). While a court may have broad powers to carry out the purpose of the receivership, the court should not put the interests of investors and the receivership over the interests of secured creditors. *See SEC v. Madison Real Estate Group*, 647 F. Supp. 2d at 1277.

Significantly, the Receiver does not allege – because he cannot – that Wells Fargo's security interests in the Rite Aid Property and related collateral are not valid under North Carolina law. Instead, the Receiver contends that he only needs to demonstrate that the denial of Wells Fargo's secured claim be "fair and equitable." (*See* Doc. No. 714, p. 2). Thus, the Receiver not only attempts to unfairly abrogate Wells Fargo's state law property rights, but he also improperly applies general principles of law to facts without any precedent. Moreover, just as the Receiver's claims determination motion lacked any evidentiary support, his Motion to sell the Rite Aid Property is also devoid of any relevant evidence. The Motion merely contains unsubstantiated allegations regarding the value of the property, the purported reasons for its

declining value, and the mysterious "shadow account" claims which the Receiver has informally asserted against Wells Fargo.⁵

Incredibly, the Receiver now seeks to sell the Rite Aid Property at a price significantly below market value (\$2.4 Million) and well below the total amount of the Wells Fargo Claim. At the Receiver's proposed sale price, he concedes that there is no equity in the property. Accordingly, the injunction should be lifted and the Rite Aid Property be abandoned to Wells Fargo. *See, e.g., SEC v. Madison Real Estate Group*, 647 F. Supp. 2d at 1284-85 (lifting stay to allow secured creditors to foreclose on various properties because there was not equity in the properties). It should also be noted that federal receivers such as Mr. Wiand are required to manage real estate according to the law of the state where the property is located. *See* 28 U.S.C. § 959(b) (noting receiver must manage and operate the property "in the same manner that the owner or possessor thereof would be bound to do" under applicable state law). Against this backdrop, the district court in *SEC v. Madison Real Estate Group*, specifically held that in order for a receiver to retain property in the estate, the receiver must preserve the status quo with the lender -- which includes bringing current the regular, monthly principal and interest payments, as well as property taxes. *See* 647 F. Supp. 2d at 1284-85 (citing *SEC v. Wencke*, 742 F.2d 1230, 1231 (9th Cir. 1984)). Thus, at minimum, Wells Fargo is entitled to monthly interest payments on the Rite-Aid Property loan during the pendency of this case. Here, the Receiver has been collecting substantial rent from Rite Aid (which is also Wells Fargo's collateral) over the last three years and has failed to turnover those proceeds to Wells Fargo. The monthly rent on the property is \$33,073.08 and the total estimated rent collected by the Receiver exceeds \$1.19

⁵ Importantly, Wells Fargo's objection (Doc. No. 689) to the Receiver's claims determination motion, sets forth the significant obstacles to the Receiver's pursuit of any "shadow account" or equitable subordination claims against Wells Fargo.

Million. While the Receiver did pay interest on this loan through October 2009, he has not made any payment to Wells Fargo since that date. As a result, Wells Fargo's collateral has been severely impaired during the pendency of this case.⁶ The Receiver now seeks to further abrogate Wells Fargo's state law property rights by selling the Rite Aid Property for significantly less than Wells Fargo's valid secured claim, based upon unsupported allegations devoid of any factual support.

When various encroachments such as these have collectively impaired a creditor's security, and have become unduly burdensome on the creditor, or have impinged upon due process as a result of arbitrary and unreasonable procedures, the Supreme Court has found an unconstitutional taking of property rights. *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 560 (1936) (invalidating bankruptcy legislation because it effected a taking of a secured creditor's property rights contrary to the Fifth Amendment's prohibition against taking property without compensation); *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (determining the taking possession of collateral, making it impossible for subcontractors to enforce their secured interest in the property in the form of liens, violated Fifth Amendment); *see also Lynch v. United States*, 292 U.S. at 579 (1934) (determining contract rights are considered "property" under the Takings clause); *see also SEC v. Madison Real Estate Group*, 647 F. Supp. 2d at 1277 (determining receiver in SEC enforcement action takes property subject to all liens and encumbrances); *SEC v. Homeland Comm. Corp.*, 2010 WL 2035326, at *7-8 (determining that secured creditors' claims must be paid out of foreclosure proceeds of collateral

⁶ In accordance with this Court's September 24, 2009 Order (Doc. No. 207), which stated it was intended "to prevent any subsequent motions to intervene which would require the SEC, the Receiver, and the Court to expend valuable time and resources," Wells Fargo has refrained from seeking intervention as the vehicle for protecting its interests in the Rite Aid Property. To the extent the Court now deems a motion to intervene helpful or necessary, Wells Fargo requests the opportunity to submit such motion. *See SEC v. Flight Transportation Corp.*, 699 F.2d 943 (8th Cir. 1983).

prior to claims of defrauded investors); *SEC v. Haligiannis*, 608 F. Supp. 2d at 449 (determining court's equitable authority in a receivership proceeding does not extend to abrogating property rights created by state law and protected by due process).

Indeed, security interests have long been recognized as property rights protected by the Constitution's prohibition against takings without just compensation. *See* U.S. Const. amend. V; *United States v. Security Indus. Bank*, 459 U.S. 70, 75, (1982); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. at 589 (“[T]he position of a secured creditor, who has rights in the specific property, differs fundamentally from that of an unsecured creditor, who has none.”); *In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984). Here, it is clear that the numerous encroachments on Wells Fargo's collateral outlined above are burdensome, oppressive, and constitute an impermissible taking of Wells Fargo's property rights. Accordingly, this Court should deny the Motion, lift the injunction, and order the Receiver to immediately abandon the Rite Aid Property and turnover all of Wells Fargo's rent collateral to the Bank.

The Receiver primarily relies on several cases from the 1930s to support his argument that he should be permitted to sell the Rite Aid Property over the objections of a valid, secured creditor. These cases are all clearly distinguishable from this case. For instance, in *Spreckles v. Spreckles Sugar Company*, 79 F.2d 322 (2d Cir. 1935), the City of Yonkers appealed a court of equity's decree directing that a large sugar refinery be sold free and clear of the city's lien for unpaid taxes. The Court of Appeals was clearly troubled by the lower court's decision, acknowledging that "the position of the City was prejudiced" by the sale of the property, and recognizing that "ordinarily a Court will not sell a property free and clear of a lien unless it can see that there is substantial equity to be preserved." *Id.* at 334. Nevertheless, the Court conceded

that the receiver really had no choice as the property had "been already three years in attempted liquidation, slowly wasting away." *Id.* In the instant case, the Rite Aid Property is not "slowly wasting away;" rather, the property is occupied by a significant income paying tenant, on valuable land. Unlike in *Spreckles*, there is no immediate or urgent need for the Receiver to sell the Rite Aid Property – and it is especially inappropriate given that the Receiver proposes to do so without the required statutory procedural safeguards. The Receiver's proposed action does not "preserve" a substantial equity, but rather harms it by selling the property (without the appraisals to justify the sale price as required by statute) for substantially less than the property is worth.

The Receiver relies on *People's-Pittsburgh Trust Co. v. Hirsch*, 65 F.2d 972 (3d Cir. 1933), which is also distinguishable from the instant case. The Court in *People's Pittsburgh Trust Co.* noted that "in the ordinary case this state of facts would preclude the sale free of liens." 65 F.2d at 974. In *People's Pittsburgh Trust Co.* the Court permitted the sale by a receiver of a hotel on a resort on Conneaut Lake in rural Pennsylvania. Significantly, in *People's Pittsburgh Trust Co.* the creditor who held the lien on the hotel did not appear to object to the sale. The court noted that the "Receiver asserts that the receivership received the assent of the mortgagee and that he was in close touch with the latter during the entire period of his operations and did nothing of any importance without the knowledge and approval of its officers." *Id.* The court also recognized that the hotel "contains a large amount of furniture, furnishings, etc. of very considerable value, which are admittedly not covered by any mortgage and which must be sold by the Receiver" and that "it would seem in the interests of the receivership that the hotel furnishings should be put up at the same sale as the hotel property." *Id.* Because of this special circumstance and consideration, the receiver's sale was allowed to go forward – even though the court acknowledged that such a result is certainly not the norm. The *People's Pittsburgh Trust*

Co. case is distinguishable from the instant case as Wells Fargo has strenuously objected to the Receiver's proposed sale at a value far less than the amount of its secured claim, and there is no special circumstance with regard to the Rite Aid Property – such as the furniture of considerable value not covered by the mortgage – which should permit the Court to approve the Receiver's ill-conceived and inappropriate proposal to sell the property pursuant to the Receiver's Motion.

Finally, the Receiver relies on several bankruptcy cases to support his proposal for the sale of the Rite Aid Property.⁷ See Motion at p. 12, citing *In re Hout*, 9 F. Supp. 419 (W. D. Pa. 1934) and *In Re Slotterbeck Chevrolet Co.*, 8 F. Supp. 1023 (W.D. Pa. 1934)). But these cases are also distinguishable. See *In re Slotterbeck Chevrolet Co.*, 8 F. Supp at 1023 (noting "there was no petition to this court by the mortgagees for leave to proceed upon the mortgages"); see also *In re Hout*, 9 F. Supp. at 419 (noting the issue was whether or not there is equity in the property for *unsecured* creditors). In short, this precedent does not support the Receiver's Motion to sell the property over the objections of a valid, secured creditor -- particularly when his proposed sale would ignore the procedural safeguards of 28 U.S.C. § 2001(b), and abrogate Wells Fargo's state law property rights. See *SEC v. Madison Real Estate Group*, 647 F. Supp. 2d at 1277 (noting that a receiver appointed by a federal court "takes property subject to all liens priorities or privileges existing or accruing under the laws of the State."). Moreover, at a minimum, Wells Fargo is entitled to credit bid its entire secured claim in connection with any sale of the Rite Aid Property. See, e.g., *River Road Partners, LLC v. Amalgamated Bank (In re River Road Partners, LLC)*, 651 F.3d 642, 652-53 (7th Cir. 2011) (noting secured creditor has absolute right to credit bid its claim in connection with sale of its collateral; finding it dubious that a plan based on a "free and clear" asset sale that did not provide lenders the right to credit

⁷ Notably, the Receiver cites to bankruptcy cases throughout many of his pleadings with this Court when it is convenient for him, yet asserts that "bankruptcy principles do not apply" in response to many of Wells Fargo's assertions. This fast and loose approach to these proceedings should not be tolerated.

bid could ever be considered by any court “fair and equitable.”); *In re SunCruz Casinos, LLC*, 298 B.R. 833, 839 (Bankr. S.D. Fla. 2003) (same); *In re Midway Investments, Ltd.*, 187 B.R. 382, 390-91 (Bankr. S.D. Fla. 1995) (same).

Significantly, Wells Fargo has located no cases (because it does not believe any exist) where the claims of valid, non-insider secured creditors such as Wells Fargo have been abrogated absent fraud on the part of the secured creditor directly related to the specific secured transaction at issue.⁸ Here, the Receiver seeks to abrogate Wells Fargo's state law property rights through his unsupported allegations related to purported "shadow account" claims and Wells Fargo's purported investments in certain of Nadel's hedge funds.⁹ As noted in Wells Fargo's objection to the Receiver's claims resolution motion, to the extent that the Receiver wishes to pursue these wholly unrelated damage claims against Wells Fargo, he should do so by filing a lawsuit. However, those separate and distinct damage claims provide no bases to abrogate Wells Fargo's valid state law property rights in the Rite Aid Property. *See Sender v. The Bronze Group, Ltd. (In re Hedged Investments Assocs., Inc.)*, 380 F.3d 1292, 1298-1303 (10th Cir. 2004) (refusing to abrogate lender's secured claims despite (i) making loan a thinly capitalized corporate debtor that was being operated as a Ponzi scheme, (ii) lender's lack of due diligence in making loan, and (iii) similarities existing between lender's return on the loan and returns promised to investors in Ponzi scheme); *see also Henry v. Lehman Commercial Paper, Inc. (In re First Alliance Mortg. Co.)*, 471 F.3d 977, 1007 (9th Cir. 2006) (refusing to subordinate

⁸ *See SEC v. Haligiannis*, 608 F. Supp. 2d at 449 (noting equity follows the law and determining security interest must be recognized if New York court would recognize such interest); *see also SEC v. Homeland Comm. Corp.*, 2010 WL 2035326, at *7-8 (noting that no precedent or rule of law is provided for the proposition that the claims of investors have priority over valid secured creditors).

⁹ Importantly, at footnote 9 of Wells Fargo's objection (Doc. No. 689) to the Receiver's claims determination motion, the Bank completely undermines the Receiver's disingenuous allegations that Wells Fargo was somehow an "investor" in two Nadel-related hedge funds.

secured lender's claim, thus allowing Lehman's \$77 Million secured claim despite Lehman's alleged involvement in aiding and abetting the debtor's fraudulent lending practices).

The Receiver also alleges – again with no evidentiary support whatsoever – that half of the funds used to purchase the Rite Aid Property, as well as all of the mortgage payments, were derived from Arthur Nadel's Ponzi scheme (Motion at p. 4). Even if this were true (which Wells Fargo disputes), those factors have no bearing on Wells Fargo's valid security interests in the Rite Aid Property, which were obtained in an arms'-length transaction with Scoop Real Estate, L.P. As Judge Marra recently determined in *SEC v. Homeland Comm. Corp.*, 2010 WL 2035326, at *7-8, the use of proceeds of a fraud to make hundreds of thousands of dollars of lease payments, and for maintenance, improvements and operating expenses of a restaurant, is insufficient to discharge or subordinate the legal contracts and lien rights of the secured party. Significantly, Scoop Real Estate, L.P. enjoyed the benefits of the Rite Aid Property by collecting rent in amounts well in excess of the interest payments due Wells Fargo. Finally, in *SEC v. Madison Real Estate Group*, 647 F. Supp. 2d at 1282, the court determined that it was inappropriate to disallow a secured creditor's claim, despite the fact that commingled Ponzi scheme funds were used to purchase the property. As such, the Receiver's allegations in this regard are red herrings and should be disregarded. In any event, Wells Fargo does not believe these accusations to be accurate. As the Receiver concedes, the Rite Aid Property has been producing income at a rate of \$33,073.08 per month. Accordingly, at a minimum, the interest payments made to Wells Fargo, which averaged approximately \$13,500 per month, clearly came from the rents collected from Rite Aid, not investor money. The Receiver's contention to the contrary is disingenuous at best.

CONCLUSION

Based on the foregoing, the Motion should be denied because the Receiver's contemplated private sale does not comply with the mandated procedural safeguards set forth in 28 U.S.C. § 2001(b), which require the Court to appoint three disinterested persons to appraise the property prior to any such sale. In addition, Wells Fargo's first priority secured claim remains intact despite the Receivership Proceeding, and Wells Fargo is entitled to be paid in full on its claim in accordance with the loan documents, including principal, interest, default interest, late fees, attorneys' fees and costs. Because the Receiver's Motion seeks to sell the Rite Aid Property for significantly less than Wells Fargo's secured claim, there is no equity for the benefit of the receivership, and the Court should lift the injunction, order the Receiver to immediately abandon the property to Wells Fargo, and turnover all other collateral of the Bank. As noted to the Receiver before his filing of this Motion, Wells Fargo remains willing to accept abandonment of the Rite Aid Property and to reserve its rights with respect to its rent collateral until after the Bank's disposition of the collateral, and agree to litigate the Receiver's "shadow account" claims separately.

RESERVATION OF RIGHTS

Nothing set forth herein is intended, nor shall be deemed, to modify, limit, release, reduce, or waive any of the Wells Fargo's rights, claims, remedies, causes of action, or privileges at law or in equity, all of which are specifically preserved. More specifically, but not limiting the foregoing, Wells Fargo reserves its right to object in greater detail to the Motion after discovery has concluded, whether by written or oral objection, or in connection with any subsequent motion to which the Receiver seeks to sell the Rite Aid Property, on any basis allowable under applicable law. The filing of this Objection is also not intended, nor shall be deemed, to modify,

limit, release, reduce, or waive any of the Wells Fargo's rights, claims, remedies, causes of action, or privileges at law or in equity, with respect to the Rite Aid Property, the Mount Laurel Property, the Evergreen Property or the Sarasota Property, or any additional claims of Wells Fargo against the Receivership Entities or assets subject to the Forfeiture Proceeding pending in the United States District Court for the Southern District of New York, all of which are specifically preserved.

DEMAND FOR RELIEF

WHEREFORE, Wells Fargo respectfully requests the Court (i) sustain the Objection, (ii) deny the Receiver's Motion, (iii) lift the injunction as it relates to the Rite Aid Property, (iv) order the Receiver to immediately abandon the Rite Aid Property and return all other collateral to Wells Fargo, and (v) grant such other and further relief as it deems just and proper.

Dated this 19th day of January, 2012 in Tampa, Florida.

Respectfully submitted,

AKERMAN SENTERFITT

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Counsel for Wells Fargo, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following:

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