

**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 JONATHAN COHEN IN SUPPORT OF THE RECEIVER'S
OPPOSITION TO MOTION OF WELLS FARGO BANK, N.A. (I) FOR
DETERMINATION THAT THE FILING OF PROOFS OF CLAIM HEREIN IS NOT
NECESSARY TO PRESERVE SECURED CREDITORS' VALID STATE LAW
SECURITY INTERESTS IN, AND CLAIMS AGAINST, COLLATERAL IN THE
RECEIVER'S POSSESSION, OR, IN THE ALTERNATIVE, (II) FOR LEAVE TO
FILE LATE CLAIMS PURSUANT TO FED. R. CIV. P. 60(b)**

Jonathan Cohen declares as follows:

1. I am an attorney with James, Hoyer, Newcomer & Smiljanich, P.A. in Tampa, Florida, and am counsel for Burton W. Wiand in his capacity as court-appointed Receiver in

this matter (the “**Receiver**”).¹ I make this declaration in support of the Receiver’s Opposition to the Motion of Wells Fargo Bank, N.A. (I) for Determination that the Filing of Proof of Claims Herein Is Not Necessary to Preserve Secured Creditors’ Valid State Law Security Interests in, and Claims Against, Collateral in the Receiver’s Possession, or, in the Alternative, (II) for Leave to File Late Claims Pursuant to Federal Rule of Civil Procedure 60(b) (Doc. 740) (the “**Motion**”). I make this declaration based on information known to me or obtained from the Receiver’s office, true and correct copies of which are attached hereto as Exhibits A through M.

2. On February 8, 2012, Wells Fargo Bank, N.A. (“**Wells Fargo**”) filed its Motion. Amongst other issues, the Motion relates to a loan made by MSC Mortgage, LLC to Neil V. Moody as Trustee of the Neil V. Moody Revocable Trust Agreement, secured by a condominium located at 464 Golden Gate Point, Unit 703, Sarasota, Florida, commonly referred to in this Receivership as the “**Sarasota Property**,” which was subsequently assigned to Bank of America (“**BOFA**”), and for which Wells Fargo has served as servicer.

3. The Court entered an Order, dated January 28, 2010, granting the Receiver’s Motion for Possession of and Title to the Real Property Located at 464 Golden Gate Point, Unit 703, Sarasota, Florida. (Doc. 324) The Order vested the title to, and the immediate possession of, the Sarasota Property in the Receiver. Additionally, the Order directed Neil V. Moody, as Trustee of the Neil V. Moody Revocable Trust Agreement, to cooperate with the Receiver in effectuating the immediate transfer of title and possession to the Sarasota

¹ The Receiver’s counsel at James, Hoyer, Newcomer & Smiljanich, P.A. participate in this action only to the extent that the issues involve Wells Fargo Bank, in accordance with the letter dated February 2, 2012 from the Receiver to the Honorable Richard A. Lazzara. (Doc. 730).

Property from the Trust to the Receiver. The Order was recorded in the Official Records of Sarasota County, Florida, on February 25, 2010. Attached as **Exhibit A** is a true and correct copy of the Order entered on January 28, 2010, and recorded on February 25, 2010.

4. On or about February 1, 2010, the Receiver filed a Notice of Filing in the case styled *Bank of America, National Association v. Neil V. Moody, as Trustee of the Neil V. Moody Revocable Trust Agreement Dated February 9, 1995, et al.*, Case No. 2009 CA 017517 NC (12th Cir. Fla.) (the “**Foreclosure**”), wherein he provided notice, and attached copies thereto, of the Order Appointing Receiver (Doc. 8), Order of Preliminary Injunction and Other Relief as to Defendants Scoop Capital, LLC and Scoop Management, Inc. and All Relief Defendants (Doc. 7), Order Reappointing Receiver (Doc. 316), and Order (Granting Motion for Possession of and Title to the Real Property Located at 464 Golden Gate Point, Unit 703, Sarasota, Florida) (collectively, the “**Notice of Filing**”) (Doc. 327). Attached as **Exhibit B** are true and correct copies of the Notice of Filing.

5. Other counsel for the Receiver, Wiand Guerra King, P.L. (“**Wiand Guerra King**”) caused true and correct copies of the Notice of Filing to be mailed to counsel for BOFA, Kristia M. Bared, Christina N. Riley, and Jacqueline F. Kuyk of Florida Default Law Group, P.L. at P.O. Box 25018, Tampa, Florida 33622-5018 (“**Counsel for BOFA**”), and counsel for Wells Fargo, Edward B. Pritchard of Kass, Shuler, Solomon, Spector, Foyle & Singer, P.A. at P.O. Box 800, 1505 N. Florida Avenue, Tampa, Florida 33601 (“**Counsel for Wells Fargo**”) on January 29, 2010. Wiand Guerra King also caused true and correct copies of the Notice of Filing to be sent via facsimile to Counsel for BOFA at (813) 251-1541, and to Counsel for Wells Fargo at (813) 229-3323. According to the transmittal receipt, the

facsimiles were successfully transmitted to the above-identified recipients at 2:59 p.m. on January 29, 2010. Attached as **Exhibit C** are true and correct copies of the facsimile cover page and transmittal receipt.

6. On March 9, 2010, Wiand Guerra King sent a letter to counsel for all parties participating in the Foreclosure of the Sarasota Property, including Counsel for BOFA and Counsel for Wells Fargo, advising that the Foreclosure should be stayed. Attached to the letter were the Order Appointing Receiver (Doc. 8), Order Reappointing Receiver, dated June 3, 2009 (Doc. 140), Order Reappointing Receiver, dated January 19, 2010 (Doc. 316), and Order (Granting Motion for Possession of and Title to the Real Property Located at 464 Golden Gate Point, Unit 703, Sarasota, Florida) (Doc. 327). Attached as **Exhibit D** are true and correct copies of the letter and attachments, dated March 9, 2010.

7. On June 4, 2010, the Receiver mailed a claim packet to BOFA, wherein he described the Court-approved claims process in detail, identified the claim bar date, and emphasized that, to have a claim considered, BOFA must submit a completed and signed Proof of Claim Form by the claim bar date. A Notice of Deadline Requiring Filing of Proof of Claim on or Before September 2, 2010 and Proof of Claim Form were included in the claim packet. Attached as **Exhibit E** is a true and correct copy of the claim packet mailed to BOFA on June 4, 2010.

8. On October 28, 2010, Wiand Guerra King contacted Counsel for BOFA and Counsel for Wells Fargo via e-mail, wherein it reiterated that the Receiver had been appointed by the Court in this case, and that title to and possession of the Sarasota Property was vested in the Receiver on January 28, 2009. In its correspondence, Wiand Guerra King

requested that BOFA and Wells Fargo provide itemized payoff figures to the Receiver in connection with the loans encumbering the Sarasota Property. A legal assistant to Counsel for Wells Fargo, responded to Wiand Guerra King's inquiry, thereby confirming that Counsel for Wells Fargo received the correspondence sent on behalf of the Receiver. Attached as **Exhibit F** are true and correct copies of the above-described e-mail correspondence, dated October 28, 2010.

9. Wiand Guerra King contacted Counsel for BOFA and Counsel for Wells Fargo via e-mail again on November 2, 2010 to confirm whether a representative of BOFA intended to respond to the Receiver's request on October 28, 2010 for itemized payoff figures regarding the loans encumbering the Sarasota Property. Kristia Bared, Counsel for BOFA, responded and confirmed that the Receiver's request for payoff figures had been escalated and should be received soon thereafter. Attached as **Exhibit G** are true and correct copies of the above-described e-mail correspondence, dated November 2, 2010.

10. On November 22, 2010, Wells Fargo sent a letter to Wiand Guerra King informing him that Wells Fargo possessed the loan payoff information requested by the Receiver on October 28, 2010, but that it had not received authorization from the borrower to release loan information to the Receiver. Included with this letter was an authorization form for the borrower to complete in order for Wells Fargo to release the requested loan information. Attached as **Exhibit H** are true and correct copies of Wells Fargo's letter and authorization form from November 22, 2010.

11. Wells Fargo sent another letter to Wiand Guerra King on December 1, 2010, wherein he restated that Wells Fargo possessed the loan payoff information requested by the

Receiver, but that it could not release the information until the borrower provided a notification of authorization to Wells Fargo permitting it to do so. Attached as **Exhibit I** is a true and correct copy of Wells Fargo's letter dated December 1, 2010.

12. On December 30, 2010, Wells Fargo corresponded with Wiand Guerra King. Wells Fargo confirmed that it serviced the first mortgage loan, which was assigned to BOFA, and that Wells Fargo originated a second mortgage loan on the Sarasota Property on May 23, 2006 in the amount of \$880,000. Further, Wells Fargo confirmed that the first mortgage was referred to Wells Fargo's foreclosure attorneys on August 21, 2009, while the second mortgage was referred on December 8, 2009 due to periods of non-payment. Within the letter, Wells Fargo also stated that it was denying the Receiver's request to negotiate fees or costs associated with the foreclosure on the Sarasota Property. According to the letter, copies of both notes were provided to Wiand Guerra King. Attached as **Exhibit J** is a true and correct copy of Wells Fargo's letter dated December 30, 2010.

13. On January 26, 2011, Wiand Guerra King issued a letter to Wells Fargo restating that the Court had granted the Receiver possession of the Sarasota Property and that, accordingly, the Property was an asset of the Receivership Estate. Wiand Guerra King notified Wells Fargo that its recent request to place a lockbox on the Sarasota Property, and any other acts by Wells Fargo to interfere with the Receiver's possession of the Property, is a violation of the Court's Order of Preliminary Injunction (Doc. 7). Finally, Wiand Guerra King advised Wells Fargo to immediately cease making any requests or taking any other steps that interfere in any way with the Receiver's possession of the Sarasota Property.

Attached as **Exhibit K** is a true and correct copy of Wiand Guerra King's letter dated January 26, 2011.

14. Wells Fargo caused a Beneficiary's Demand Statement to be sent to Wiand Guerra King via facsimile on February 17, 2011, wherein Wells Fargo provided details of the principal, interest and other associated fees and costs it claimed were due in connection with the Sarasota Property. Attached as **Exhibit L** is a true and correct copy of the Beneficiary's Demand Statement and corresponding facsimile cover sheet, dated February 17, 2011.

15. Counsel for Wells Fargo corresponded with Wiand Guerra King via e-mail on March 13, 2011 regarding the status of the SEC investigation in connection with the Sarasota Property. Within the e-mail, Wells Fargo informed Wiand Guerra King that its foreclosure action for the Property was on hold. Wiand Guerra King responded that the Property was in the Receiver's possession and actively being marketed. Attached as **Exhibit M** is a true and correct copy of the above-described e-mail correspondence, dated March 13, 2011.

I declare under the penalty of perjury that the foregoing is true and correct and is executed this 23rd day of February, 2012.

JAMES, HOYER, NEWCOMER &
SMILJANICH, P.A.

s/ Jonathan B. Cohen

Jonathan B. Cohen, FBN 0027620

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Attorney for the Receiver, Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 23, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on February 24, 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/ Jonathan B. Cohen

Jonathan B. Cohen, FBN 0027620