

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

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.

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

Carol Lomax Fortenberry, MAI, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury as follows:

1. I am a Partner at Fortenberry Lambert, Inc., and I am a member of the Appraisal Institute and a North Carolina State Certified General Appraiser and in such capacity, I have the capability to make this declaration.

2. I have recently conducted an appraisal of the Rite Aid Pharmacy property located at 841 South Main Street in Graham, North Carolina. My appraisal is reflected in the self-contained report delivered to the Receiver. Our estimate of value as shown in the appraisal is \$3,740,000. Our valuation is not based upon any extraordinary assumptions or hypothetical conditions.

3. I have reviewed the appraisals of Thomas J. Skeahan of CB Richard Ellis Valuation & Advisory Services (“Skeahan Appraisal”) and Roscoe W. Shiplett of Grubb & Ellis Landauer Valuation Advisory Services, LLC (“Shiplett Appraisal”).

4. Both the Skeahan Appraisal and Shiplett Appraisal provide inaccurate estimates of the property’s market value, because both the Skeahan Appraisal and Shiplett Appraisal are based upon an assumption that the rent will be renegotiated downward. Shiplett notes this assumption as an “extraordinary assumption.” Under the Uniform Standards of Professional Appraisal Practice an extraordinary assumption is “an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as facts otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.” Skeahan notes this assumption as a “hypothetical condition” as defined by the Uniform Standards of Professional Appraisal Practice as “...that which is contrary to what exists but is supposed for the purpose of analysis...” These assumptions/conditions are inconsistent with the actual state of facts and render much lower values.

5. Both the Skeahan Appraisal and Shiplett Appraisal presume that a significantly lower rent is in place, and both disregard the actual, higher rent that has been, and continues to be in effect pursuant to the contract with the tenant.

6. The lease is guaranteed by the tenant; and in fact, is similar to a bond in that there is guaranteed fixed payments over a period of time.

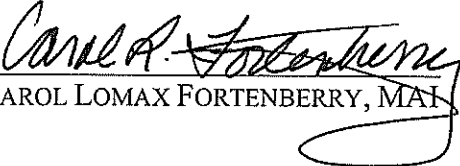
7. There is a significant term left on the lease. The rental income from the property is a significant factor in estimating the property's market value.

8. The risk of default on the lease is already accounted for by the capitalization rate abstracted from the other Rite Aid sales used in the Skeahan Appraisal and Shiplett Appraisal. Therefore, the Skeahan Appraisal and Shiplett Appraisal should not assume a default by the tenant if the rent remains at the actual, higher contract rate.

9. The Skeahan Appraisal and Shiplett Appraisal both use hypothetically renegotiated (lower) rents to appraise the property, even though the property receives significantly higher rents. This is an extraordinary assumption/hypothetical condition that should not have been made. The tenant requested that the rent be renegotiated in 2009, but the Landlord denied the request. The store is still open for business, and is paying the contract rent stipulated in the original lease. As a result of the extraordinary assumption/hypothetical condition made by the other appraisers, both the Skeahan Appraisal and Shiplett Appraisal provide an artificially low estimate of the value of the property at issue.

I declare under penalty of perjury that the foregoing is, to the best of my knowledge,
information and belief, complete, true and correct.

Executed on this 2nd day of May, 2012
in Charlotte, North Carolina.


CAROL LOMAX FORTENBERRY, MAI