

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.

**WELLS FARGO BANK, N.A.'S LIMITED EMERGENCY MOTION FOR
RECONSIDERATION OF ORDER (DOC. NO. 840) AND ORDER
(DOC. NO. 842) GRANTING RENEWED MOTION TO APPROVE
SALE AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Wells Fargo Bank, N.A. ("Wells Fargo"),¹ by and through undersigned counsel and pursuant to Fed. R. Civ. P. 59(e), hereby files this Limited Emergency Motion for Reconsideration of Orders (Doc. Nos. 840 and 842) Granting Renewed Motion to Approve Sale (the "Reconsideration Motion") and Memorandum of Law in Support Thereof, solely to request that the Court reconsider the cited orders and rescind approval of the sale of the Rite Aid

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

Property to Trinet West, LLC for \$2,400,000. Wells Fargo further requests that the Court direct the Receiver to consider and accept the contract attached hereto as **Exhibit A** (the "Higher Contract") received this date that provides for a higher sale price of \$2,750,000.² Wells Fargo bases its request on this new evidence set forth in the attached Higher Contract. In support of the Motion for Reconsideration, Wells Fargo states as follows:

MEMORANDUM OF LAW

By two Orders, Doc. Nos. 840 and 842 (collectively, the "Sale Orders"), this Court denied Wells Fargo's objection and approved a proposed sale of the Rite Aid Property, an operating drug store, at a price of \$2,400,000, approximately \$903,462³ less than the current amount of the secured claim of Wells Fargo. Since that time, the Receiver has received a higher offer of \$2,750,000 on the exact same terms, as evidenced by the Higher Contract, subject to payment of the buyer's broker's commission of \$150,000. At a minimum, Wells Fargo moves this Court to reconsider the Sale Orders, to deny the Receiver's Sale Motion based upon this newly discovered evidence, and to direct the Receiver to accept the Higher Contract. This new offer is \$350,000 higher than the prior offer and will provide more funds to satisfy Wells Fargo's secured claim.⁴ Accordingly, this higher and better offer is in the best interest of the receivership

² The new offer is for \$2,750,000 and provides for the payment of the buyer's broker's commission of \$150,000; the new offer otherwise proposes the exact same terms as the prior offer of \$2,400,000.

³ As of April 25, 2012, the current amount of the secured claim of Wells Fargo was \$3,303,461.60, which is exactly \$903,461.60 more than the proposed sale price of \$2,400,000. Interest has accrued, and continues to accrue, on this valid secured claim at a per diem rate of \$397.61.

⁴ Further, as this Court is aware, Wells Fargo has a security interest in the property, *i.e.*, under North Carolina law, Wells Fargo actually holds legal title to the property to secure the repayment of its loan. The Receiver has asserted that this lien should be invalidated based upon alleged misconduct by Wells Fargo. Until those issues are resolved, Wells Fargo retains a valid secured lien on this property. In the event that the Receiver were to prevail, this higher sale price may provide as much as \$350,000 in additional funds to contribute to other claims. At minimum, to the extent a commission remains payable to the listing broker, the higher sale price would provide at least \$200,000 in additional funds to contribute to other claims, and therefore, reconsideration is in the best interests of the receivership estate as a whole.

estate, and this Court should allow the Receiver to accept it in place of the lower offer. Wells Fargo files this Motion for Reconsideration on an emergency basis given the Receiver's stated intention to close on the sale of the property tomorrow at a price \$350,000 less than the price set forth in the new Higher Contract (Doc. No. 843).

In its prior objection and memorandum of law (Doc. No. 832) (the "Objection"), Wells Fargo argued that the Receiver's Sale Motion should be denied because it attempts to sell the Rite Aid Property at a price (\$2.4 Million) significantly below market value and well below the total amount of Wells Fargo's secured claim, which currently aggregates approximately **\$3,303,461.60**.⁵ This Higher Contract provides new evidence to support Wells Fargo's value objections, as stated in the Objection. *See* Fed. R. Civ. P. 59(e); *Monticello Ins. Co. v. Dynabilt Manufacturing Co., Inc.*, No. 605CV548ORL19DAB, 2005 WL 2578715, at *2 (M.D. Fla. Oct. 13, 2005) ("The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.") (emphasis added). Nonetheless, should the Receiver be allowed to proceed with a sale despite serious questions as to the value of the property and the appropriateness of the sale price, then the Court should at least direct the Receiver to accept the highest offer available. In light of the new offer of \$2,750,000 (on virtually the same exact terms), it is absolutely clear that the prior offer of \$2,400,000 is not in the interest of justice and should not be allowed in this instance.

⁵ 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 April 25, 2012, Wells Fargo's secured claim against the property aggregated approximately \$3,303,461.60 (the "Wells Fargo Claim"), calculated as follows: Principal - \$2,655,000.00; Contract Interest - \$143,243.76; Default Interest - \$221,288.25; Appraisal Fee - \$6,840.00; Legal Fees Trenam - \$20,047.29; Legal Fees KL Gates - \$15,144.90; and Legal Fees - Akerman - \$241,897.66. 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.

CONCLUSION

Based on the foregoing, this Court should (i) reconsider its Sale Orders and the Sale Motion, for the limited purpose of directing the Receiver to accept the higher sale price of \$2,750,000 rather than \$2,400,000, (ii) rescind approval of the sale of the Rite Aid Property to Trinet West, LLC for \$2,400,000, and (iii) grant such other and further relief as it deems just and proper.

Dated this 14th day of May, 2012 in Tampa, Florida.

Respectfully submitted,

AKERMAN SENTERFITT

/s/Steven R. Wirth

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Counsel for Wells Fargo, N.A.

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for Wells Fargo has conferred with Counsel for the Receiver and Counsel for the Securities and Exchange Commission regarding this Motion for Reconsideration. The Receiver has indicated that he opposes the motion, and the SEC has not responded to Wells Fargo's request regarding its position.

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/Steven R. Wirth
Attorney