

**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-cv-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,

Relief Defendants.

**NON-PARTY ANNE NADEL-WALBRIDGE’S RESPONSE IN OPPOSITION TO
“RECEIVER’S MOTION FOR POSSESSION OF AND TITLE TO REAL PROPERTY
LOCATED IN MARSHFIELD, VT” (DOC. 936)**

Non-party Anne Nadel-Walbridge, through her undersigned counsel, hereby responds in opposition to the Receiver’s motion (Doc. 936) described above. For the following reasons, the motion should be denied.

MEMORANDUM OF LAW

In essence, Ms. Nadel-Walbridge, Arthur Nadel’s former daughter-in-law,¹ seeks the same relief that another similarly situated non-party in this litigation, Carolina Mountain Land

¹ Ms. Nadel-Walbridge remarried after the death of her husband, and Arthur Nadel’s son, Geoffrey.

Conservancy, previously sought and attained. *See* “Non-Party Carolina Mountain Land Conservancy’s Response to Order to Show Cause and Opposition to Extinguishment of Conservation Easement” (Doc. 264). By Order issued December 23, 2009, this Court reasoned that, although it has the discretion to adjudicate the Receiver’s claim of possession and title to the property so long as the non-party owner is afforded fundamental due process, it would decline to do so. (Doc. 276, p. 2). This Court noted that “adjudicating the core issue of whether Laurel Mountain’s transfer of the easement to the Conservancy constitutes a fraudulent transfer is of such complexity that the summary procedure suggested by the Receiver for resolving that issue is legally and substantively inappropriate.” *Id.*² Although Ms. Nadel-Walbridge does not necessarily assert that only a separate civil action may adequately protect her due process rights, she contends, like the Carolina Mountain Land Conservancy, that the Receiver’s proposed summary disposition would be inadequate for a determination of whether Arthur Nadel fraudulently transferred the Vermont properties³ to his son, Geoffrey, and Ms. Nadel-Walbridge, or whether the Receiver is otherwise entitled to possession and title.

Ms. Nadel-Walbridge requests, at a minimum, an opportunity to conduct reasonable discovery and proceed to an evidentiary hearing, acknowledging that routine summary judgment remedies would be available to the parties that could render such an evidentiary hearing unnecessary. In *Securities and Exchange Commission v. Elliott*, 953 F.2d 1560 (11th Cir. 1992), the Eleventh Circuit held that, although it is not a categorical rule, the district court in that case should have permitted a non-party grantee of an allegedly fraudulent transfer to intervene as a party, conduct discovery, and if appropriate, have an evidentiary hearing. *Id.*

² This Court noted that the Conservancy’s due process rights were amply served by virtue of the fact that the Receiver had subsequently brought a discrete civil action relating to the same subject matter. (Doc. 276, p.2).

³ Ms. Nadel-Walbridge’s permanent, full-time residence with her current husband, who is disabled, is in a mobile home located on one of the parcels. The property has been her homestead since 2004.

Although the material issues could ultimately be resolved at the summary judgment stage, Ms. Nadel-Walbridge should nonetheless be afforded an opportunity to conduct at least limited discovery, which in this case would include the acquisition of documents from third parties. According to *Snook v. Trust Co. of Georgia Bank*, 859 F. 2d 865 (11th Cir. 1988), for instance,

Summary judgment should not be granted until the party opposing the motion has had an adequate opportunity for discovery. The party opposing a motion for summary judgment *has a right to challenge the affidavit and other factual materials submitted in support of the motion by conducting sufficient discovery so as to enable him to determine whether he can furnish opposing affidavits.* If the documents or other discovery sought would be relevant to the issues presented by the motion for summary judgment, the opposing party should be allowed the opportunity to utilize the discovery process to gain access to the requested materials.

Id. at 870 (emphasis added). Although the Receiver, of course, does not at this stage proceed by motion for summary judgment, the instant motion relies exclusively on an affidavit, and is in that sense indistinguishable from a motion for summary judgment.

Finally, although discovery will clearly allow Ms. Nadel-Walbridge a fair opportunity to counter the Receiver's affidavit, as a wholly preliminary matter she has provided an initial affidavit demonstrating that factual matters are in dispute.⁴ See attached affidavit.

WHEREFORE, the "Receiver's Motion for Possession of and Title to Real Property Located in Marshfield, VT" (Doc. 936) should be denied, and Ms. Nadel-Walbridge requests an opportunity to engaged in limited discovery and proceed to an evidentiary hearing.

⁴ Ms. Nadel-Walbridge reserves the right, following discovery, to file an amended affidavit. As her letter (attached as Exhibit "A" to the affidavit) to Receiver's counsel explains, for instance, the Vermont properties were also granted in part as consideration for Arthur Nadel's unpaid child support obligations to his son, Geoffrey Nadel.

Respectfully submitted,

FARMER AND FITZGERALD, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to the following this 28th day of November, 2012:

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/s Matthew P. Farmer, Esq.

COUNSEL