

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, LLC.

Relief Defendants.

**RECEIVER'S UNOPPOSED VERIFIED MOTION TO APPROVE SALE OF
UNENCUMBERED REAL PROPERTY LOCATED IN RALEIGH, WAKE COUNTY,
NORTH CAROLINA TO TRI-ARC FOOD SYSTEMS, INC.**

Burton W. Wiand, as Receiver (the “**Receiver**”), respectfully moves the Court for entry of an order in substantially the form attached hereto as **Exhibit 1**, approving the sale of unencumbered real property located in Raleigh, Wake County, North Carolina (the “**Property**”) to Tri-Arc Food Systems, Inc. (“**Tri-Arc**”).

I. Background

The Receiver previously submitted his Unopposed Verified Motion to Approve Public Sale of Unencumbered Real Property Located in Raleigh, Wake County, North Carolina (Dkt. 780) which also related to sale of the Property. The Court granted the Receiver's motion on March 8, 2012 (Dkt. 782), and that motion and order (Dkts. 780 and 782) are incorporated in this motion. Iron Horse Auction Company ("**Iron Horse**") and The Swicegood Group, Inc. ("**Swicegood**") were retained by the Receiver to conduct the public sale of the Property. Iron Horse and Swicegood had estimated a potential sales price in excess of \$1,000,000.00 based upon their evaluation of the Property and in the previous motion (Dkt. 780) the Court was so advised.

II. Result of the Public Auction of the Property

Iron Horse and Swicegood conducted the public sale on April 12, 2012. Six potential purchasers attended the auction and bid on the Property. At the conclusion of the public auction, the highest bid was \$840,000.00 and a proposed contract was submitted to the Receiver for consideration. Since the reserve price was not met, the Receiver, as authorized by the Order on his Unopposed Verified Motion to Approve Public Sale of Unencumbered Real Property Located in Raleigh, Wake County, North Carolina, opened negotiations with the highest bidder to try to secure a price which more reasonably reflected the value of the Property. Another bidder, Tri-Arc, contacted Iron Horse and Swicegood on April 13, 2012 to determine if the Property was still available and subsequently submitted a proposed contract to purchase the Property for \$950,000.00¹ for the Receiver's consideration. The terms of the

¹ After payment of the 7% buyer's premium (*see* Doc. 780 at 10), the final sale price is \$1,016,500.00.

sale of the Property to Tri-Arc are reflected in the Contract attached as **Exhibit 2**. The high bidder at the auction indicated on April 13, 2012 that he would stand on his original bid of \$840,000.00. The Receiver has accepted the second offer in the amount of \$950,000.00 offer and believes this is the highest realizable price for the Property. While this Court's prior order (Dkt. 782) provided the Receiver with the authority to complete this transaction, this motion is nevertheless being filed out of an abundance of caution because the sale price is below the previously estimated price of over \$1,000,000.00.

III. Approval of the Sale of the Property to Tri-Arc

The Receiver believes that the sale of the Property to Tri-Arc for \$950,000.00 is in the best interest of the Receivership Estate and, accordingly, requests that this Court enter an order approving the sale of the Property for the following reasons:

- 1) The Receiver believes that the offer of Tri-Arc accurately reflects the current value of the Property;
- 2) The Receivership Estate will receive over \$900,000.00 from the sale of the Property after the payment of a 3% commission to Iron Horse and Swicegood and advertising costs which will not exceed \$13,500.00;
- 3) It is not likely that the Receiver will find a buyer to offer more than \$950,000.00 for the Property in light of the poor economic conditions in the market and the absence of a tenant; and,
- 4) The Property will likely continue to decline in value the longer it remains unoccupied, and its sale to Tri-Arc will eliminate the costs to maintain the Property, thus conserving Receivership funds.

IV. The Court Has the Authority to Approve This Transaction

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers. Furthermore, the relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached hereto as **Exhibit 1**, approving the sale of the Property to Tri-Arc for \$950,000.00 pursuant to the terms and conditions set forth in this Motion and in the Contract attached hereto as **Exhibit 2**.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

The Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that this motion is unopposed.

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 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 non-CM/ECF participants.

Arthur Nadel, Register No. 50690-018
FCI BUTNER LOW
Federal Correctional Institution
P.O. Box 999
Butner, NC 27509

s/Gianluca Morello

Gianluca Morello, FBN 034997
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*Attorney for the Receiver, Burton W. Wiand
W. Wiand*

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Relief Defendants. /

ORDER

Before the Court is the Receiver's Unopposed Verified Motion to Approve Sale of Unencumbered Real Property Located in Raleigh, Wake County, North Carolina to Tri-Arc Food Systems, Inc. (the "Motion") (Dkt. ____). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8), the Orders Reappointing Receiver (Dkts. 140, 316 and 493), and applicable law, it is **ORDERED AND ADJUDGED** that the Motion is **GRANTED**.

The sale of the real property located at 4905 Waters Edge Drive in Raleigh, Wake County, North Carolina, pursuant to the Contract attached as Exhibit 2 to the Motion, is hereby approved. The Receiver is hereby directed to transfer free and clear of all claims, liens, and encumbrances to Tri-Arc Food Systems, Inc., by way of Receiver's Deed, title to the real property located in Raleigh, Wake County, North Carolina, which bears the following legal description:

Being all of Lot 5 as shown on map entitled "Recombination of Lots 5 and 6 Waters Edge Office Park recorded in Book of Maps 1985, Page 2117, Wake County Registry.

Together with those easement and rights in and to thereof for parking, pedestrian, vehicular traffic and common driveway as set forth in that Agreement dated 7 October 1974 and recorded in Book 2276, Page 121 Wake County Registry, and as shown on that map recorded in Book of Maps 1977, Vol. 3 page 303 Wake County Registry, and in Book of Maps 1974, Vol. 4 page 384, Wake County Registry.

DONE and ORDERED in chambers in Tampa, Florida this ____ day of _____, 2012.

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

Counsel of Record

TLH Buyer BW Seller

NORTH CAROLINA

WAKE COUNTY

This Contract for the purchase of real estate made this 12th day of April 2012, by and between Tri-Arc Food Systems, Inc. A NC Corporation hereinafter called "Purchaser", and Burton W. Wiand, as Receiver for Scoop Real Estate, LP; hereinafter called "Seller".

WITNESSETH:

That on this date an auction was held, Subject To The Approval of the United States District Court for the Middle District of Florida; and

That Tommy Haddock was the last and highest bidder in the amount of:
\$ _____.

PARCEL	AMOUNT PER PARCEL	SUBTOTAL
1		\$950,000
		SUBTOTAL: \$950,000

For the real estate known as: AUCTION LOT #1, KNOWN AS 4905 WATERS EDGE DRIVE, RALEIGH, NC; DESCRIBED AS PIN #0783364557, AND FOUND AT DEED BOOK 11326, PAGE 1050, WAKE COUNTY REGISTRY; and

That a 7% Buyer's Premium in the amount of \$ 66,500 is added to the last and highest bid price for a total final sales price of \$ 1,016,500; and,

That accordingly, the Purchaser and the Seller enter into this written contract of sale.

NOW THEREFORE, for and in consideration of the payment of the earnest money by Purchaser, Seller and Purchaser enter this Contract for the purchase of real estate upon the following terms and conditions:

1. The total purchase price is \$ 1,016,500 to be paid in cash at the time of closing the sale.
2. An earnest money deposit in the amount of Two Hundred Three Thousand Three Hundred Dollars (\$203,300) has been paid by Purchaser to IRON HORSE AUCTION CO., INC., Escrow Account, to be held in said account and the earnest money shall be applied to the purchase price on the day of closing. In the event of default by the Purchaser, said earnest money shall be payable to the Seller as liquidated damages. This provision shall not preclude the Seller from pursuing any other legal or equitable remedy against the Purchaser, although Purchaser shall be entitled, in such event, to have the earnest money deposit credited against the seller's damages otherwise recoverable.
3. All prior years' taxes are the expense of the Seller and shall be paid by the Seller at closing if not previously paid. The current year's taxes shall be pro-rated as of the date of closing. Seller shall be responsible for preparation of the deed, revenue stamps and the Auctioneer's commission only. Purchaser shall be responsible for all other expenses required to close out the transaction to include points, pro-rated taxes, county transfer

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TLH Buyer DW Seller

tax, title search, attorney's fee, survey fees, related expenses and a 7% buyer's premium.

4. The Seller shall provide the Purchaser with a Receiver's Deed to the property in its present condition, free and clear of all liens and encumbrances, excepting easements, zoning, encroachments, environmental issues, rights-of-way, restrictions of record, property owner's association regulations, or any announced at the auction. The Purchaser shall have the right to have a title examination made at the expense of the Purchaser. It is understood that the transaction is to be closed on or before 30 days or upon delivery of the deed, whichever is sooner of the date of this Contract at the office of the Buyer's attorney. In the event that there is any reason beyond the control of the seller and/or the auction company that results in a delay of the delivery of the deed and/or survey, an additional 30 days will be allotted for such delivery. In the event that any flaw is found by the Purchaser's title examination, then the closing shall be extended an additional 30 days for the Seller to attempt to clear the title. In the event that the Seller cannot provide insurable title, the earnest money deposit made by the Purchaser shall be returned to the Purchaser with no further liability of the Seller. The sale is Subject To The Approval of the United States District Court for the Middle District of Florida. All property is being sold "AS IS".

5. The possession of the property shall be given at the time of closing.

6. The Purchaser has personally inspected the property being sold and referred to in this contract and accepts the property in the present condition and does acknowledge that the property is being sold "as is", "where is", with no warranty or guarantee either expressed or implied, except warranty of title as described above. It is expressly agreed that all of the terms and conditions of this Contract are included herein and that there are no verbal agreements. This Contract shall be binding upon the Purchaser and the Seller and their respective heirs, administrators, executors, successors, and assigns.

7. Other special provisions: No Personal Property is included in this transaction.

8. Any and all causes of action, which may arise as a result of this Contract, shall be interpreted in accordance with the laws of the United States of America and any action brought thereon must be brought in the US District Court for the Middle District of Florida as the sole and exclusive venue for same. Any and all costs arising out of such causes of action shall be at the expense of the Buyer and shall include reasonable attorney's fees.

9. In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

10. The undersigned Purchaser and Seller have read and fully understand and hereby voluntarily enter into this Contract and acknowledge receipt of a copy of same. Buyer understands and acknowledges that the Auctioneer/Broker is representing the Seller in this transaction and at no time in the transaction is the Auctioneer/Broker representing the Buyer.

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TN Buyer fo Seller

11. This Contract represents the entire agreement by and between the parties hereto and all prior conversations and discussions are merged herein. This Contract shall not be modified except by written agreement duly executed by the party to be bound.

WITNESS our hands and seals this day and year first above written.

Tommy L. Haddock (SEAL)
PURCHASER TOMMY L. HADDOCK, President
April 13, 2012

PURCHASER (SEAL)

Burton W. Wland (SEAL)
SELLER - Burton W. Wland, as Receiver for Scoop
Real Estate, LLC

I, as an authorized representative of IRON HORSE AUCTION CO., INC., acknowledge receipt of the earnest money deposit in the amount of \$ _____ this the 12th day of April, 2012, and agree to hold as escrow agent, pursuant to the terms set forth above.

IRON HORSE AUCTION CO., INC.

By: _____ NC RE License # _____
ESCROW AGENT

NCAL: 3936; SCAL 1684; VAAL 580