

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-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.

**RECEIVER'S UNOPPOSED MOTION TO EXPAND
RECEIVERSHIP TO INCLUDE SUMMER PLACE DEVELOPMENT
CORPORATION AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to 28 U.S.C. § 754, Rule 66 of the Federal Rules of Civil Procedure, and Local Rule 3.01, Burton W. Wiand, as Receiver, moves the Court for an order, in substantially the form attached as **Exhibit 1**, expanding the scope of the receivership in this case to include Summer Place Development Corporation (“**Summer Place**”). As explained below and in the Declaration of Burton W. Wiand in Support of the Unopposed Motion to Expand Receivership to Include Summer Place Development Corporation (the “**Receiver’s**”

Declaration”), which is being filed along with this motion, at the relevant time Receivership Entity Scoop Capital, LLC (“**Scoop Capital**”) owned 50% of Summer Place, and Summer Place was funded with proceeds of the fraudulent scheme underlying this case. As a result, it should be placed in receivership to preserve its assets and to allow the sale of Summer Place for the benefit of defrauded investors and other creditors of this receivership. The Receiver has been involved in Summer Place since inception of the Receivership, and, significantly, Summer Place’s only other shareholders, Clyde A. Connell and Juanita A Connell (collectively, the “**Connells**”), recently voluntarily transferred their shares in Summer Place to the Receiver, and they consent to the expansion of the Receivership over Summer Place.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (“**Commission**”) initiated this action to prevent Defendants from further defrauding investors of hedge funds managed by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital and Scoop Management, Inc. (“**Scoop Management**”) and for Relief Defendants Scoop Real Estate, L.P. (“**Scoop Real Estate**”); Valhalla Investment Partners, L.P. (“**Valhalla Investment Partners**”); Valhalla Management, Inc. (“**Vahalla Management**”); Victory Fund, Ltd. (“**Victory**”); Victory IRA Fund, Ltd. (“**Victory IRA**”); Viking IRA Fund, LLC (“**Viking IRA**”); Viking Fund, LLC (“**Viking**”); and Viking Management, LLC (“**Viking Management**”) (the “**Order Appointing Receiver**”). (*See generally* Order Appointing Receiver (Doc. 8).) Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to “administer and manage the business affairs, funds, assets, choses in action and any other property of the

Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” (Order Appointing Receiver at 1-2.)

Between January 27, 2009, and August 9, 2010, on the Receiver’s motions, the Court entered orders expanding the scope of this Receivership to include additional entities controlled by Nadel or funded with proceeds of the scheme. (*See* Docs. 17, 44, 68, 81, 153, 172, 454.) All of the entities and the trust in receivership are hereinafter referred to collectively as the “**Receivership Entities.**”

The Commission concluded that Nadel used Scoop Capital, Scoop Management, Valhalla Management, and Viking Management to defraud investors of the hedge funds those companies managed, Relief Defendants Scoop Real Estate, Valhalla Investment Partners, Victory, Victory IRA, Viking IRA, and Viking (collectively, the “**Hedge Funds**”). (*See* Compl. ¶¶ 5-7 (Doc. 1).) The Commission contends Defendants violated federal securities laws from at least January 2008 forward by “massively” overstating investment returns and the value of fund assets to investors and providing false account statements to investors. (*Id.* ¶¶ 3, 36.) The Commission also contends that Nadel misappropriated investor funds by transferring \$1.25 million from Viking IRA and Valhalla Investment Partners to secret bank accounts. (*Id.* ¶ 5.) The Court found the Commission demonstrated a *prima facie* case that Defendants committed multiple violations of federal securities laws. (Order Appointing Receiver at 2.)

While the Commission’s evidence showed that Nadel defrauded investors since at least January 2008, the Receiver’s investigation uncovered evidence showing the fraud began

no later than the inception of the first Hedge Fund, Valhalla Investment Partners. (*See, e.g.,* Receiver's 5th Interim Report at 12 (Doc. 362) (the "Interim Report").) In connection with the Receiver's "clawback" cases, the Receiver retained forensic accounting expert Maria M. Yip, who performed a comprehensive analysis and independently concluded that Nadel defrauded investors since at least the inception of Valhalla Investment Partners. (*See, e.g., Wiand, as Receiver v. H. Buhl*, Case No. 8:10-cv-075-T-17MAP, Docs. 87, 95, 106.) Indeed, on February 24, 2010, Nadel pled guilty to all counts in his indictment, which charged that he ran the scheme underlying this case from 1999 forward. (*See* Receiver's Decl. ¶10.) (A copy of the Indictment and Nadel's guilty plea is attached as Composite Exhibit C to the Receiver's Motion for Possession of Funds and Motion for an Order to Show Cause (Doc. 434).) Nadel's guilty plea to all counts in the indictment establishes in a dispositive manner the existence of his scheme from 1999 forward. *See, e.g., Raiford v. Abney*, 695 F.2d 521 (11th Cir. 1983).

The Receiver also uncovered evidence that Scoop Capital received substantial amounts of proceeds of Nadel's scheme through purported management, profit incentive, and/or advisory fees paid by the Hedge Funds. (*See* Receiver's January Declaration in Support of Motion to Expand Scope of the Receivership at ¶¶ 11-14 (Doc. 16).) During the course of his investigation, the Receiver also learned that other businesses controlled by Nadel, including Summer Place, were funded with proceeds of Nadel's scheme. Specifically, at least \$125,304.99 was transferred from Scoop Capital to purchase an interest in and fund the operations of Summer Place. *Wiand Decl.* ¶12.

Summer Place Development Corporation

Summer Place is a Florida company that was formed in May 2005. Summer Place was bought by Clyde A. Connell in December 2005. Beginning in December 2006, Nadel, through Scoop Capital, purchased a fifty-percent ownership stake in Summer Place with a payment of \$50,000 to Clyde A. Connell and another payment of \$13,204.99 to the Connells in February 2007. Wiand Decl. ¶12. Nadel was appointed Director, Secretary, and Treasurer of Summer Place at that time. *See Id.* ¶13. Between December 2006 and December 2008, Scoop Capital paid Summer Place \$62,100.00 to cover operational expenses. *Id.* ¶12. The funds from Scoop Capital were derived from Nadel's scheme, and thus the proceeds of that scheme were used to purchase an ownership interest in and fund Summer Place's operations. *See id.* ¶9. More specifically, Scoop Capital transferred money to Summer Place as follows (*Id.* ¶12, Ex. 1):

Date	Amount	Check No.	Payor	Payee
12/13/2006	10,000.00	1093	Scoop Capital	Summer Place
3/13/2007	10,000.00	1112	Scoop Capital	Summer Place
1/4/2008	2,000.00	1138	Scoop Capital	Summer Place
1/8/2008	5,000.00	1139	Scoop Capital	Summer Place
1/16/2008	2,000.00	1141	Scoop Capital	Summer Place
3/27/2008	4,100.00	1150	Scoop Capital	Summer Place
4/9/2008	5,000.00	1156	Scoop Capital	Summer Place
4/22/2008	5,000.00	1157	Scoop Capital	Summer Place
6/17/2008	10,000.00	1169	Scoop Capital	Summer Place
7/1/2008	2,000.00	1171	Scoop Capital	Summer Place
7/30/2008	1,500.00	1175	Scoop Capital	Summer Place
8/14/2008	1,500.00	1178	Scoop Capital	Summer Place
12/9/2008	4,000.00	1213	Scoop Capital	Summer Place

Nadel was replaced by the Receiver as Director, Secretary, and Treasurer of Summer Place in April 2009, and Scoop Capital's shares in Summer Place were transferred to the Receiver at that time. *Id.* ¶13. The Receiver has been working with Summer Place's other Director, and President, Mr. Connell, to preserve Summer Place and its assets for the benefit of the Receivership Estate. *Id.* The Receiver attempted to sell his fifty-percent interest in Summer Place with no success. Recently, the Connells relinquished their remaining interest in Summer Place and transferred all shares of stock to the Receiver. *Id.* Ex. 2. Today, the Receiver is the one-hundred percent owner of Summer Place. In exchange for their transfer of shares, the Receiver has agreed to pay the Connells one-half of the net proceeds of the sale of assets owned by Summer Place. *Id.*

Summer Place was originally created to build affordable home sites on a six-acre parcel of land it owns in Bradenton, Florida, with the assistance of Receivership Entity Home Front Homes, LLC. *Id.* 14. However, due to the decline in the market for affordable housing, no development ever occurred. Summer Place has had no operations for several years due to the decline in home building and the housing market in general and currently generates no income. Its sole asset is the six-acre parcel of land in Bradenton, Florida. Notwithstanding Summer Place's stagnation, the parcel of land it owns has some value and the Receiver intends to market and sell it. *Id.* The future sale of the land, for which the Receiver will seek Court approval, will provide funds for the Receivership Estate and benefit defrauded investors and other creditors.

The parcel of land owned by Summer Place has no known liens or encumbrances. *Id.* ¶18. The only assertion of an interest relating to Summer Place of which the Receiver is

aware is the local homeowners' association's contention that Summer Place owes monthly assessments. *Id.* That contention can be efficiently resolved through the Receivership.

ARGUMENT

The Court's power to supervise an equity receivership and determine the appropriate action 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. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Id.* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)).

Such discretion may be properly exercised in the form of expansion of a receivership where a party seeking expansion establishes (1) a commingling of funds, (2) intertwined business operations, (3) utilization of an identical business address or identical offices and addresses, (4) or co-identity of officers, directors, or principals. *See SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 233 (D. Nev. 1985), *aff'd*, 805 F.2d 1039 (9th Cir. 1986); *see also Elliott*, 953 F.2d at 1565, n.1 (holding that court may extend equitable receivership over related entities).

In determining whether or not to extend a receivership to include related entities, a federal court has broad discretion to disregard corporate separateness and form and to give effect to the substance of the enterprise. *Elmas Trading Corp.*, 620 F. Supp. at 233. A corporate entity may be disregarded under federal law "in the interests of public convenience, fairness, and equity . . ." *Id.* at 234; *see In re Bowen Transp., Inc.*, 551 F.2d 171, 179 (7th Cir. 1977) (stating that "[t]he separate corporateness of affiliated corporations owned by the

same parent may be equally disregarded under the proper circumstances.”). The key goal behind a proposed receivership expansion should be “to ensure that all available assets are brought within the receivership and may properly be distributed to creditors.” *Id.* at 233.

Given the Court’s wide discretion and authority, the Receivership Estate in this case should be expanded to encompass Summer Place. As discussed above and in the Receiver’s Declaration, the evidence uncovered by the Receiver’s investigation shows that (1) Scoop Capital, of which Nadel was the managing member, held a fifty-percent interest in Summer Place; (2) Nadel was Summer Place’s Director, Secretary, and Treasurer; and (3) Summer Place and its operations were funded with proceeds of Nadel’s Ponzi scheme transferred to it directly from Scoop Capital. In short, the information gathered shows that Nadel and Scoop Capital funded and exercised control over Summer Place. Further, the only other holders of an interest in Summer Place – the Connells – have consented to its placement in Receivership and have already transferred their 50% ownership interest to the Receiver.

This Court’s Order Appointing Receiver already requires the Receiver to “marshal and safeguard all of the assets of the Receivership Entities and take whatever actions are necessary for the protection of the investors.” (Doc. 8). Marshalling and safeguarding Summer Place is necessary to protect investors and to preserve the value of its assets. Notably, this Court’s Order Appointing Receiver contemplates the expansion of the receivership. The Order expressly states:

In the event that the Receiver discovers that funds of persons who have invested in the Corporate Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, *extending this receivership over any person or entity holding such investor funds.*

(Doc. 8 ¶ 24 (emphasis added).)

WHEREFORE, because (1) the Court has the authority to expand the receivership to include Summer Place; (2) the Receiver presently holds a 100% ownership interest in Summer Place; (3) the Connells – the only other stakeholders in Summer Place - have consented to Summer Place being included in the Receivership; (4) the evidence shows that Nadel operated a fraudulent scheme and used proceeds of that scheme to purchase an interest in and fund Summer Place; and (5) expansion of the Receivership is necessary for the protection of the investors and the Receivership Estate, the Receiver respectfully moves the Court for entry of an order, in substantially the form attached as Exhibit 1, expanding the Receivership to include Summer Place Development Corporation.

LOCAL RULE 3.01(G) CERTIFICATION OF COMPLIANCE

The undersigned counsel for the receiver has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 11, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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_____ /

ORDER

Upon due consideration of the Court file and the Receiver's declaration (Dkt. ____), it is ordered and adjudged that the Receiver's Unopposed Motion to Expand Receivership to Include Summer Place Development Corporation (Dkt. ____) is **GRANTED**. The scope of the receivership created in this case is expanded to include Summer Place Development Corporation. This entity is specifically included within the ambit of the Court's previous orders appointing and reappointing Burton W. Wiand as the Receiver in this case.

EXHIBIT 1

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

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record