

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Debtor.

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§ Bankruptcy Case
§ No. 19-34054-sgj-11
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HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P. and NEXPOINT ADVISORS,
L.P.,

Appellants,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Appellee.

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§ Civ. Act. No. 3:21-cv-00538-N
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HIGHLAND GLOBAL ALLOCATION FUND,
HIGHLAND INCOME FUND, NEXPOINT
CAPITAL, INC., and NEXPOINT STRATEGIC
OPPORTUNITIES FUND,

Appellants,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Appellee.

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§ Civ. Act. No. 3:21-cv-00539-N
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JAMES DONDERO,

Appellant,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Appellee.

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§ Civ. Act. No. 3:21-cv-00546-L
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20] the “Debtor’s Objection”) and adopts the legal argument and authority set forth therein. In support of this Objection, the Committee respectfully states as follows:

1. On February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “Confirmation Order”). In brief, the Plan³ provides for the restructuring of the ownership of the Debtor and the creation of a Claimant Trust that will monetize the Debtor’s assets, pursue Estate Claims, and distribute the proceeds to the creditors of the Debtor in accordance with the Plan. The beneficiaries of the Claimant Trust will be the Debtor’s unsecured creditors who will direct and control management of the Claimant Trust through their designated Claimant Trustee, Litigation Trustee, and Claimant Trust Oversight Board.

2. After James Dondero, directly and indirectly through the entities he owns and/or controls, failed to defeat confirmation of the Plan (which was overwhelmingly supported by non-insider creditors), Mr. Dondero, and certain of his related entities – the Funds, the Advisors and the Trusts (all of whom this Court has determined are owned and/or controlled by Mr. Dondero) (collectively, the “Dondero Entities” or the “Appellants”)⁴ filed four separate appeals of the Confirmation Order.⁵ Continuing in their effort to halt implementation of the Plan and distributions to creditors, Dondero and the Dondero Entities then filed motions requesting that the

³ The term “Plan” means the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Docket No. 1808] (as amended, the “Plan”).

⁴ As used herein, “Funds” means, collectively, Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.; “Advisors” means, collectively, NexPoint Advisors, L.P., and Highland Capital Management Fund Advisors, L.P.; and “Trusts” means, collectively, the Dugaboy Investment Trust and the Get Good Trust.

⁵ See *Notice of Appeal* filed by the Advisors [Docket No. 1957]; *Notice of Appeal* filed by the Funds [Docket No. 1966]; *Notice of Appeal* filed by Mr. Dondero [Docket No. 1970]; and *Notice of Appeal* filed by the Trusts [Docket No. 1972] (together, the “Confirmation Order Appeals”).

Bankruptcy Court stay effectiveness of the Confirmation Order (the “Bankruptcy Court Stay Motions”) for potentially years until their appeals are fully litigated.⁶ The Bankruptcy Court denied those motions.⁷ Now, the Advisors and the Trusts (together, the “Stay Movants”) continue the pursuit of blocking effectuation of the Plan by filing the Stay Motions. It is clear to the Committee that the Stay Motions are not premised on the good faith desire to protect an economic interest or protect legal rights, but instead are consistent with the Dondero playbook of increasing costs and trying to “burn down” the Debtor in a flailing attempt to create leverage to retake the company he voluntarily decided to place into bankruptcy. Indeed, as the Court noted in the Confirmation Order, there is “good reason to believe that [Dondero and the Dondero Entities] are not objecting to protect economic interests they have in the Debtor but to be disruptors.”⁸

3. This Court should not grant the relief sought in the Stay Motions because, as the Bankruptcy Court held, the Stay Movants have simply not met the high burden to satisfy the standard for stay pending appeal.⁹ As much more specifically laid out in the Debtor’s Objection, the Stay Motions should be denied because the Stay Movants still have not established (a) any likelihood of success on the merits of the Appeals, (b) any irreparable harm the Stay Movants would suffer if the stay is denied, or (c) any public policy interest served by staying the Confirmation Order. Most importantly, the Stay Movants cannot refute that there will be

⁶ See *Emergency Motion of the Advisors for Stay Pending Appeal of the Confirmation Order, and Brief In Support Thereof* [Bankr. Docket No. 1955] filed by the Advisors; *Motion for Stay Pending Appeal of the Court’s Order Confirming the Debtor’s Fifth Amended Plan* [Docket No. 1967] filed by the Funds; *Joinder to Motions for Stay Pending Appeal of the Court’s Order Confirming the Debtor’s Fifth Amended Plan* [Docket No. 1971] filed by the Trusts; and *Joinder in Motion for Stay Pending Appeal and Additional Grounds for the Issuance of a Stay Pending Appeal* [Docket No. 1973] filed by Dondero.

⁷ See *Order on Motions for Stay Pending Appeal* [Docket No. 2084] (the “Bankruptcy Court Order”) and *Supplemental Order on Motions for Stay Pending Appeal* [Docket No. 2095] (the “Supplemental Bankruptcy Court Order”) and together with the Bankruptcy Court Order, the “Bankruptcy Court Orders”).

⁸ Confirmation Order ¶ 17.

⁹ See Supplemental Bankruptcy Court Order ¶ 1.

substantial harm to the unsecured creditors of the Debtor—many of whom have waited years, some more than a decade, to recover on their claims against the Debtor—if the Confirmation Order is stayed.

4. In denying the Bankruptcy Court Stay Motions, the Bankruptcy Court unequivocally agreed with the Debtor and Committee that “there will be substantial harm to the legitimate creditors here, the creditors who have faced nothing but delay in pursuing their claims for years and years, some for decades now.”¹⁰ The Bankruptcy Court also found that Dondero and the Dondero Entities “simply have not shown that they will suffer irreparable harm.”¹¹ Finally, the Bankruptcy Court found that the pursuit of a stay “is more about Mr. Dondero's private agenda to get his company back, the company that he decided to file Chapter 11 back in October 2019, more than about protection of the public interest or the interests of retail investors that he or the Advisors or Funds purport to be acting to protect.”¹²

5. “[C]ourts have generally found that a significant delay in the administration of an estate, or a *delay in the distribution to creditors under a plan* generally satisfies the criterion of harm to other parties.”¹³ There is no debate that the delay of effectiveness of the Confirmation Order will likely delay distributions under the Plan to creditors, potentially for years, thereby causing the creditors further harm. Additionally, a delay in the effectiveness of the Confirmation

¹⁰ Hr’g Tr. 72:1-4 (Mar. 19, 2021).

¹¹ Hr’g Tr. 71:15-16 (Mar. 19, 2021).

¹² Hr’g Tr. 72:5-11 (Mar. 19, 2021).

¹³ *In re Dernick*, No. 18-32417, 2019 WL 236999, at *4 (Bankr. S.D. Tex. Jan. 16, 2019) (emphasis added) citing *In re Lickman*, 301 B.R. 739, 748 (Bankr. M.D. Fla. Nov. 25, 2003); *In re Baker*, No. CV05-3487, 2005 WL 2105802, at *10 (E.D.N.Y. Aug. 31, 2005); see also *In re Salvo*, No. 07-11829, 2008 WL 938585, at *4 (Bankr. N.D. Ohio Apr. 4, 2008) (holding that a stay could injure all creditors by delaying their potential payments through a confirmed plan); *In re The Charter Company*, 72 B.R. 70, 72 (Bankr. M.D. Fla. Mar. 20, 1987) (holding that claimants would suffer substantial harm as a result of a stay because of the resulting delay in their receipt of settlement funds).

Order will deprive the creditors of the control over the monetization of assets and the pursuit of Estate Claims through the carefully crafted Litigation Trust, Claimant Trust and Oversight Board structure set forth in the Plan.

6. In response, the Stay Movants unconvincingly argue that because Class 8 rejected the Plan, delaying distributions is actually not a substantial harm.¹⁴ This argument fails for several reasons. As an initial matter, the Stay Movants do not hold any claims in Class 8, so their views on harm to Class 8 Claims is irrelevant. Additionally, the overwhelming amount of claims in terms of dollar amount (over 98%) in Class 8 voted to accept the Plan.¹⁵ Finally, the Claims held by those who voted in Class 8 to reject the Plan are not entitled to any distributions under the Plan. All such claims were contingent on continued employment by the Debtor, and the employees holding such Claims have since been terminated.¹⁶ The Stay Movants cannot credibly base their assertion of lack of harm to creditors upon the stay of the effectiveness of the Plan on claimholders who are not economically impacted by the Plan. For these and additional reasons the Bankruptcy Court held that the Plan was confirmable and met all the requirements of the Bankruptcy Code, including the requirements for cramdown under section 1129(b), despite a technical lack of numerosity voting to support the Plan in Class.

7. After a year and a half in bankruptcy, and with a confirmed Chapter 11 plan that provides for the monetization of assets, the pursuit of claims and the distribution to creditors, there simply is no reason to stay the Confirmation Order and permit the Dondero Entities to delay the effectiveness of the Plan for the sole purpose of continuing their destructive litigation.

¹⁴ Advisors' Motion ¶ 43.

¹⁵ See *Supplemental Certification of Patrick M. Leathem with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887].

¹⁶ See *Debtor's Third Omnibus Objection to Certain No Liability Claims* [Docket No. 2059].

8. For these reasons, and the reasons set forth in the Debtor's Objection, the Committee respectfully submits that the Stay Motions should be denied.

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WHEREFORE, the Committee respectfully requests that the Court deny the Stay Motions.

Dated: April 16, 2021
Dallas, Texas

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 16, 2021, a true and correct copy of the foregoing Notice of Appearance will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

/s/ Juliana L. Hoffman _____
Juliana L. Hoffman