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ATTORNEYS FOR DEFENDANT JAMES DONDERO

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

**In re:** § **Case No. 19-34054**  
§  
**HIGHLAND CAPITAL MANAGEMENT, L.P.** § **Chapter 11**  
§  
**Debtor.** §

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**HIGHLAND CAPITAL MANAGEMENT, L.P.,** §  
§  
**Plaintiff.** §  
§  
**v.** § **Adversary No. 20-03190**  
§  
**JAMES D. DONDERO,** §  
§  
**Defendant.** §

**DEFENDANT’S EMERGENCY MOTION TO STAY PENDING APPEAL  
AND FOR APPROVAL OF SUPERSEDEAS BOND OR OTHER SECURITY**

**TO THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:**

Defendant James Dondero (“Dondero”), pursuant to Rule 62(b) of the Federal Rules of Civil Procedure (the “Federal Rules”), made applicable to this proceeding through Rule 7062 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Bankruptcy Rule 8007, hereby files *Defendant’s Emergency Motion to Stay Pending Appeal and for Approval of*



*Supersedeas Bond or Other Security* (the “Motion”). In support thereof, Dondero respectfully shows the Court as follows:

### **I. BACKGROUND**

1. On March 22 and 24, 2021, this Court conducted a hearing on *Plaintiff’s Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the “Contempt Motion”). At the conclusion of the hearing on March 24, 2021, the Court took the matter under advisement.

2. On June 7, 2021, this Court entered its *Memorandum Opinion and Order Granting In Part Plaintiff’s Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO* [Docket Nos. 190 and 191] (the “Contempt Order”).

3. Among other things, the Contempt Order requires Dondero to pay the Debtor \$450,000 by June 22, 2021. The order also provides that a “sanction of \$100,000” will be added by the Court for “each level of rehearing, appeal, or petition for certiorari that Mr. Dondero may choose to take” to the extent such appellate remedy is unsuccessful.

4. On June 15, 2021, Defendant filed a notice of appeal of the Contempt Order. *See* Docket No. 195.

5. Because Dondero is appealing the Contempt Order, the Court should stay the enforcement of the Contempt Order pending appeal upon the posting of a proper supersedeas bond or equivalent security.

### **II. ARGUMENT AND AUTHORITIES**

6. Pursuant to Bankruptcy Rule 8007 and Federal Rule 62(b), made applicable here through Bankruptcy Rule 7062, Dondero respectfully requests that the Court (i) stay execution and enforcement of the Contempt Order pending appeal; and (ii) approve a supersedeas bond or

equivalent cash security in the amount of \$550,000 to cover the monetary award contained in the Contempt Order.

7. Federal Rule 62(b) provides that “[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.” Fed. R. Civ. P. 62(b).<sup>1</sup>

8. Under this rule, the posting of a sufficient supersedeas bond or equivalent security provides the movant with a stay as a matter of right. Fed. R. Civ. P. 62(b); *Hebert v. Exxon Corp.*, 953 F.2d 936, 938 (5th Cir. 1992).

9. Bankruptcy Rule 8007(a) in turn provides as follows:

(a) Initial Motion in the Bankruptcy Court.

(1) *In General*. Ordinarily, a party must move first in the bankruptcy court for the following relief:

- (A) a stay of a judgment, order, or decree of the bankruptcy court pending appeal;
- (B) the approval of a bond or other security provided to obtain a stay of judgment;
- (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or
- (D) the suspension or continuation of proceedings in a case or other relief permitted by subdivision (e).

(2) *Time to File*. The motion may be made either before or after the notice of appeal is filed.

Fed. R. Bankr. P. 8007.

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<sup>1</sup> On December 1, 2018, existing Rule 62(b) replaced and expanded former Rule 62(d), “carr[ying] forward in modified form the supersedeas bond provisions” of the former rule. *Seneca Nation of Indians v. New York*, 2019 U.S. Dist. LEXIS 214399, at \*2 (W.D.N.Y. 2019) (citing Fed. R. Civ. P. 62 (b) advisory committee’s note to 2018 amendment). “Rule 62(b) now makes explicit the opportunity to post security in a form other than a bond, by providing that at any time after judgment is entered, a party may obtain a stay by providing a bond or other security.” *Id.* (citing Fed. R. Civ. P. 62 (b)) (internal quotations omitted). The availability of a stay is no longer contingent on the filing of an appeal. *See Murillo v. A Better Way Wholesale Autos & Westlake Servs., LLC*, 2019 U.S. Dist. LEXIS 213987, 2019 WL 6700185, at \*2 n.1 (D. Conn. Dec. 9, 2019).

10. “The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party’s rights pending appeal.” *Poplar Grove Planting & Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190-91 (5th Cir. 1979). Accordingly, a judgment debtor may post security “to avoid the risk of satisfying the judgment only to find that restitution is impossible after reversal on appeal.” *Id.* In contrast, “the bond secures the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal.” *Id.*

11. Because Dondero is appealing the Contempt Order, he therefore respectfully requests that the Court stay the enforcement of the Contempt Order pending appeal upon the posting of an appropriate supersedeas bond or equivalent security.

12. Dondero respectfully requests that the Court approve the depositing of a cash security (in lieu of bond) in the amount of \$550,000, which will stay execution on the Contempt Order pending appeal. Upon a ruling from the Court granting this Motion, Dondero will promptly deposit a cash security in the amount of \$550,000 with the registry of the Court. While Dondero does not believe that the additional \$100,000 sanction imposed by the Court for unsuccessful appeals is justified, he proposes this amount be included in the amount of the cash security to be deposited with the Court pending the appeal. The proposed security will cover the monetary amounts awarded under the Contempt Order and provide sufficient security to the Debtor while the appeal is pending.

### **III. PRAYER**

For the reasons set forth above, Dondero prays that the Court enter an order (i) granting this Motion; (ii) staying the enforcement of the Contempt Order pending disposition of Defendant’s appeal; (iii) approving the amount of cash security proposed herein, or alternatively

establishing such other reasonable amount of security in accordance with applicable law; and (iv) providing Dondero such other and further relief to which he may be entitled.<sup>2</sup>

Dated: June 15, 2021

Respectfully submitted,

/s/ Bryan C. Assink  
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**ATTORNEYS FOR DEFENDANT JAMES  
DONDERO**

**CERTIFICATE OF CONFERENCE**

I, the undersigned, hereby certify that, on June 14-15, 2021 I conferred with counsel for the Debtor, Mr. John Morris, regarding the relief requested herein. Mr. Morris indicated that the Debtor is still evaluating the substance of this Motion and therefore has not yet taken a position as to the relief requested.

/s/ Bryan C. Assink  
Bryan C. Assink

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on June 15, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Debtor and on any other party requesting electronic service in this case.

/s/ Bryan C. Assink  
Bryan C. Assink

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<sup>2</sup> While not required, a discretionary stay would also be justified here under the factors articulated by the Fifth Circuit because Defendant could show (i) a likelihood of success on the merits; (ii) irreparable injury if the stay is not granted; (iii) no prejudice to others if the stay is granted; and (iv) the granting of a stay would serve the public interest. *See In re First South Sav. Ass'n*, 820 F.2d 700, 704 (5th Cir. 1987).

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<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
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<b>Plaintiff.</b>	§	
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<b>v.</b>	§	
	§	<b>Adversary No. 20-03190</b>
<b>JAMES D. DONDERO,</b>	§	
	§	
<b>Defendant.</b>	§	

**ORDER GRANTING DEFENDANT’S EMERGENCY MOTION TO STAY PENDING APPEAL AND FOR APPROVAL OF SUPERSEDEAS BOND OR OTHER SECURITY**

On this date, the Court considered *Defendant’s Emergency Motion to Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security* (the “Motion”)<sup>1</sup>. Upon consideration of

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

the Motion, the arguments of counsel, and the evidence presented during the hearing on the Motion, if any, and the record of this proceeding, the Court finds that the Motion is well taken and should be granted as set forth herein. Accordingly, the Court finds that just cause exists for entry of the following order.

**IT IS THEREFORE ORDERED** that the Motion is **GRANTED** as set forth herein.

**IT IS FURTHER ORDERED** that, within three (3) business days after entry of this Order, the Defendant shall deposit with the Clerk of the Court a cash security in the amount of \$550,000 (the "Cash Security") to be held in the registry of the Court pending the disposition of Defendant's appeal of the Contempt Order.

**IT IS FURTHER ORDERED** that the execution and/or enforcement of the Contempt Order is hereby **STAYED** on and after June 21, 2021 pending further order of this Court.

**IT IS FURTHER ORDERED** that upon disposition of the appeal of the Contempt Order, either Plaintiff or Defendant may file a motion with this Court requesting payment or disposition of all or a portion of the Cash Security in accordance with any applicable order or ruling from the appellate court.

**IT IS FURTHER ORDERED** that the Court shall retain jurisdiction related to the enforcement or implementation of this Order.

**### END OF ORDER ###**