

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

No. 3:21-CV-01585-S

**IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,
DEBTOR.**

**THE CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD.,
APPELLANTS,**

v.

**HIGHLAND CAPITAL MANAGEMENT, L.P.,
APPELLEE.**

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
BANKRUPTCY CASE NO. 19-34054 (SGJ)

**APPELLANTS' REPLY IN SUPPORT OF MOTION TO REOPEN
ADMINISTRATIVELY CLOSED APPEAL, NOTICE OF FIFTH CIRCUIT
DECISION, AND REQUEST FOR BRIEFING SCHEDULE**

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**APPELLANTS' REPLY IN SUPPORT OF MOTION TO REOPEN
ADMINISTRATIVELY CLOSED APPEAL, NOTICE OF FIFTH
CIRCUIT DECISION, AND REQUEST FOR BRIEFING SCHEDULE**

Appellants The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. ask this Court to reopen this abated and administratively closed appeal and set a briefing schedule. Appellee opposes in part, arguing that “there is no good cause to establish a new briefing schedule now.” Response [Doc. 27] at 3. But Appellee agrees that “the Clerk [may] be directed to update the docket to reflect that [the case is] reopening.” *Id.* at 2. Appellants respectfully submit (1) that the case should be reopened, (2) that Appellee invokes the wrong legal standard with regard to the briefing schedule, and (3) that this Court has the discretion to grant the relief requested here. In support, Appellants would show the Court as follows:

1. Appellants seek reopening of this appeal so that it may be resolved on the merits and not for any improper purpose. There is no argument that the case should remain administratively closed. It should not. On that issue, the parties agree.

2. Appellee’s Response [Doc. 27] first brought to Appellants’ attention the springing deadline for Appellants’ opening brief that was established by the Court’s electronic order of October 6, 2021 [Doc. 19], which Appellants had inadvertently overlooked. Appellants have since filed a Motion for Extension of Time to File Opening Brief [Doc. 29], seeking leave to file that brief out of time,

and asserting in that motion that their noncompliance was due to inadvertence and not bad faith. There, Appellants briefed the applicable legal standard, which is excusable neglect and not good cause as Appellee asserts in its Response to this Motion.

3. As is shown in Appellants' Motion for Extension of Time, this Court has discretion to grant Appellants additional time. Moreover, Appellants submit that the law favors dispositions on the merits over defaults resulting from inadvertence. *See, e.g., Foman v. Davis*, 371 U.S. 178, 181-82 (1962) ("one misstep by counsel [should not] be decisive to the outcome"). This appeal raises legitimate questions about the limits of bankruptcy-court powers and the available means of challenging orders that go beyond the reach of those powers. Appellants respectfully submit it should be decided on the merits.

For these reasons, Appellants' Motion should be granted.

Dated: October 18, 2022

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Jonathan Bridges

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CERTIFICATE OF COMPLIANCE

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/s/ Jonathan Bridges

Jonathan Bridges

CERTIFICATE OF SERVICE

I certify that on October 18, 2022, I caused a copy of the foregoing document to be served by Electronic Case Filing System for the United States District Court for the Northern District of Texas.

/s/ Jonathan Bridges _____
Jonathan Bridges