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

<p>In re:</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P. Reorganized Debtor.</p>	<p>Chapter 11</p> <p>Case No. 19-34054-sgj11</p>
<p>THE DUGABOY INVESTMENT TRUST and PATRICK DAUGHERTY,</p> <p style="text-align: center;">Appellants,</p> <p>v.</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P. <i>et al.</i>,</p> <p style="text-align: center;">Appellees.</p>	<p>Case No. 3:25-cv-01876-K</p>

APPELLEES’ MOTION TO DISMISS APPEAL AS MOOT

Appellees Highland Capital Management, L.P., the Highland Claimant Trust (together “**Highland**”), and Marc S. Kirschner as Litigation Trustee of the Highland Litigation Sub-Trust (the “**Litigation Sub-Trust**” and, together with Highland, “**Appellees**”), move to dismiss this appeal. It is statutorily moot.



This motion is supported by the *Declaration of James P. Seery, Jr. in Support of Appellees' Motion to Dismiss Appeal as Moot* (the “**Seery Declaration**” or “**Seery Dec.**”), filed contemporaneously with this motion.

PRELIMINARY STATEMENT

1. On July 14, 2025, Appellant The Dugaboy Investment Trust (“**Dugaboy**”) commenced its appeal of the *Order Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 Approving Settlement Between the Highland Entities and the HMIT Entities and Authorizing Actions Consistent Therewith* [Bankr. Doc. 4297] (the “**Settlement Order**”)¹ entered by the Bankruptcy Court on June 30, 2025. Appellant Patrick Daugherty (“**Daugherty**”) commenced a separate appeal (Case No. 3:25-cv-01901-S) of the Settlement Order on July 14, 2025, followed by an *Amended Notice of Appeal* on July 22, 2025.²

2. The Settlement Order approved a comprehensive, integrated settlement transaction between Appellees and the HMIT Entities that included Appellees’ sale of significant assets to the HMIT Entities under Bankruptcy Code § 363, including: (i) all the Litigation Sub-Trust’s right, title, and interest in and to the Kirschner Claims (as defined in the Settlement Agreement); and (ii) a promissory note made

¹ A copy of the Settlement Order is attached to the Seery Declaration as Exhibit 2.

² On August 8, 2025, the appeals were consolidated. Doc. 19. Appellant Daugherty and Appellant Dugaboy are collectively referred to as “**Appellants**.”

by Dugaboy in the original amount of approximately \$24 million (the “**Dugaboy Note**”).³

3. The Settlement Order approved the sale of the Assets “pursuant to ... section 363(b) of the Bankruptcy Code” (as well as Bankruptcy Rule 9019) and, most significantly, ordered that the “HMIT Entities, as good faith purchasers of Estate assets in the Settlement, are **entitled to the protections contained in section 363(m) of the Bankruptcy Code.**”⁴

4. Appellants did not seek nor obtain a stay of the Settlement Order pending this appeal under Bankruptcy Rule 8007.⁵ **The sale of the Assets has closed and is now complete.** Seery Dec. ¶¶ 13-14, Exhibits 9 and 10.⁶

5. Because (i) the sale was approved under Bankruptcy Code § 363(b), (ii) Appellants neither sought nor obtained a stay of the Settlement Order pending

³ The Kirschner Claims and the Dugaboy Note are collectively referred to as the “**Assets.**”

⁴ Settlement Order at 3–4 (emphasis added). Appellants have not challenged the HMIT Entities’ status as “good faith purchasers” under Bankruptcy Code § 363(m). *See* Bankr. Doc. 4351 at 2 (Daugherty’s statement of issues on appeal) and Bankr. Doc. 4365 at 1 (Dugaboy’s statement of issues on appeal).

⁵ On July 14, 2025, Dugaboy did move for a “stay” of the Settlement Order under Bankruptcy Code § 105 for the stated purpose of conducting an “investigation” to determine “whether a FRCP 60 motion is necessary.” Bankr. Doc. 4326 ¶ 33. The Bankruptcy Court denied that stay, noting that it was not a motion under Bankruptcy Rule 8007 to stay the Settlement Order pending this appeal. Bankr. Doc. 4333 at 3. And Appellants have not sought a stay of the Settlement Order in this Court.

⁶ As set forth in the Seery Declaration, in addition to the sale and transfer of the Assets, the parties to the Settlement Agreement have taken all steps to fulfill their respective obligations except those tied to future dates. Seery Dec. ¶¶ 9–12, 15–16, Exhibits 3–8.

appeal, and (iii) the approved sale has since closed, this appeal is statutorily moot under Bankruptcy Code § 363(m) and the Court should dismiss it.

THE APPEAL SHOULD BE DISMISSED

6. Under Bankruptcy Code § 363(m), asset sales approved under Bankruptcy Code § 363(b) are statutorily moot when the appellant has failed to obtain a stay and the transactions have closed. Bankruptcy Code § 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

7. The Fifth Circuit Court of Appeals has ruled uniformly and repeatedly that appeals of bankruptcy court orders approving settlements that include asset sales under Bankruptcy Code § 363(b) are statutorily moot under Bankruptcy Code § 363(m) when the appellant failed to obtain a stay and the transactions closed.

8. In *Moore*, the Fifth Circuit held, in “an issue of first impression in this circuit,” that the bankruptcy court abused its discretion by not treating a proposed settlement as a sale of estate assets under Bankruptcy Code § 363. In so holding, the Fifth Circuit explicitly adopted *Mickey Thompson*, a decision of the Ninth Circuit Bankruptcy Appellate Panel recognizing a bankruptcy settlement to be the settling

parties' purchase of assets from the estate.⁷ The *Moore* court noted that its decision to treat settlements as sales of assets under Bankruptcy Code § 363 not only follows *Mickey Thompson* but is also consistent with holdings of the Third Circuit Court of Appeals and courts in at least two other circuits.⁸

9. Accordingly, it is well accepted that compromises and settlements in bankruptcy cases that involve the sales of assets—as is true here—implicate the sale provisions of Bankruptcy Code § 363. Recognizing this, the Bankruptcy Court entered the Settlement Order, which expressly included approval of a sale of the Assets under Bankruptcy Code § 363. Because Appellants did not seek or obtain a stay of the Settlement Order and the sale has closed, Bankruptcy Code § 363(m) applies to render any appeal of the Settlement Order moot.

⁷ *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010), adopting *Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.)*, 292 B.R. 415, 420–22 (BAP 9th Cir. 2003) (“the settlement is in reality a purchase by the Settling Parties of a chose in action of the estate ... We agree with the Third Circuit that the disposition by way of ‘compromise’ of a claim that is an asset of the estate is the equivalent of a sale of the intangible property represented by the claim, which transaction simultaneously implicates the ‘sale’ provisions under section 363”).

⁸ *Myers v. Martin (In re Martin)*, 91 F.3d 389, 394-95 (3d Cir. 1996) (settlement agreement “compromised an asset of the debtors’ estate” triggering Bankruptcy Code § 363); *see also In re Nicole Energy Servs., Inc.*, 385 B.R. 201 (S.D. Ohio 2008) (settlement is an asset sale; applied § 363); *In re Dow Corning Corp.*, 198 B.R. 214 (Bankr. E.D. Mich. 1996); *In re Telesphere Commc’ns*, 179 B.R. 544 (Bankr. N.D. Ill. 1994). The Fifth Circuit reaffirmed *Moore* in *Gluckstadt Holdings, LLC v. VCR I, LLC (In re VCR I, LLC)*, 922 F.3d 323, 327 (5th Cir. 2019), which held that “when a settlement agreement in a bankruptcy proceeding involves the sale of the debtor’s property, such agreement triggers the requirements of § 363.” The *Gluckstadt* court found that appeal not moot because the appeal was not of the sale order but, rather, a bankruptcy court ruling that denied the appellant damages for the trustee’s breach of a prior agreement.

10. In *Sneed Shipbuilding*, the Fifth Circuit considered a sale of assets including a settlement of a probate dispute—all of which was approved by the bankruptcy court under Bankruptcy Code § 363 in a single order (as here). The Fifth Circuit affirmed the district court’s dismissal of an appeal of the settlement approval order as moot.⁹ The Fifth Circuit held that “section 363(m) made the bankruptcy court’s approval the final word on the subject when the objector did not obtain a stay of that ruling.”¹⁰ The Fifth Circuit went further:

Recognizing this role of section 363(m), New Industries says it does not challenge the sale of the property but only challenges the disbursement of cash to the probate estate. But it does not cite any authority that would allow us to perform this isolated analysis. Paying off the probate estate was an essential feature of the sale. And when creditors have tried to cut off part of a sale and challenge it elsewhere, courts have found their appeals moot As the bankruptcy court noted, **there is no way to sever the settlement from the sale; they are mutually dependent. Congress has ordered us not to review such decisions by the bankruptcy court when they are not stayed. This case is moot.**¹¹

11. The Fifth Circuit reaffirmed its ruling in *Sneed Shipbuilding* in a 2021 decision in *Walker City Hospital*.¹² In addressing an appellant’s attempt to skirt

⁹ *New Indus. v. Byman (In re Sneed Shipbuilding, Inc.)*, 914 F.3d 1000 (5th Cir. 2019). *Followed by In re Energy Future Holdings Corp.*, 949 F.3d 806, 818–20 (3d Cir. 2020) (dismissed appeal of plan confirmation order that included a sale of assets as statutorily moot under § 363(m); there is no “due process exception” to § 363(m)).

¹⁰ *Sneed Shipbuilding*, 914 F.3d at 1001.

¹¹ *Id.* at 1004 (emphasis added).

¹² *Official Comm. v. Walker Cty. Hosp. Dist. (In re Walker Cty. Hosp. Corp.)*, 3 F.4th 230 (5th Cir. 2021).

§ 363(m) by arguing that it was appealing only the bankruptcy court’s amendment of a sale order (which approved the settlement), not the sale order itself, the Fifth Circuit rejected the argument, saying that

such a strict reading of the rule would ... undermine the **important policy of affording finality to lower court judgments in bankruptcy proceedings** A creditor made a similar argument in *Sneed Shipbuilding* In response, this court stated that it could not perform an “isolated analysis,” given that the payment was an “essential feature of the sale.” The court went on to note that because the arrangements were “mutually dependent” and could not be “sever[ed],” the creditor’s argument was unavailing.¹³

12. This case is no different. The Settlement Order: (a) approved the settlement as a sale of assets under Bankruptcy Code § 363; (b) found that the HMIT Entities were good faith purchasers of those assets; and (c) ruled that the approval of the settlement entitled the HMIT Entities to “the protections contained in section 363(m),” which includes statutory mootness of an appeal.

13. Additionally, and critically, Appellants neither sought nor obtained any stay of the Settlement Order pending this appeal under Bankruptcy Rule 8007, and the sale closed. Accordingly, the appeal of the Settlement Order is now statutorily moot under Bankruptcy Code § 363(m). The Court should dismiss it.

¹³ *Walker Cty. Hosp.*, 3 F.4th at 235 (emphasis added) (internal citations omitted). *See also Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App’x 429, 434 (5th Cir. 2016) (“‘A trustee may sell litigation claims that belong to the estate, as it can other estate property, pursuant to [11 U.S.C.] § 363(b).’ ... [but] **any challenge on appeal to the approval of such a sale is subject to the statutory mootness provision contained in 11 U.S.C. § 363(m)**”) (emphasis added).

PRAYER

Therefore, for the reasons stated above, Appellees respectfully request that the Court enter an order (i) dismissing this appeal, and (ii) granting Appellees any additional relief the Court deems appropriate.

August 12, 2025

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CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. Bankr. P. 8013(f)(3)(A) because, excluding the portions excluded by Fed. R. Bankr. P. 8015(g), this document contains 1,908 words.
2. This document complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word, typeface Times New Roman, 14-point type (12-point type of footnotes).

/s/ Zachery Z. Annable
Zachery Z. Annable

CERTIFICATE OF SERVICE

I hereby certify that, on August 12, 2025, a true and correct copy of the foregoing motion was served electronically via the Court's CM/ECF system upon all parties receiving electronic notice in this case.

/s/ Zachery Z. Annable
Zachery Z. Annable

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
THE DUGABOY INVESTMENT TRUST and PATRICK DAUGHERTY, Appellants, v. HIGHLAND CAPITAL MANAGEMENT, L.P. <i>et al.</i> , Appellees.	Case No. 3:25-cv-01876-K

ORDER DISMISSING APPEAL AS MOOT

Having considered *Appellees’ Motion to Dismiss Appeal as Moot* (the “**Motion**”)¹ filed by Highland Capital Management, L.P., the Highland Claimant Trust (together “**Highland**”), and Marc S. Kirschner as Litigation Trustee of the Highland Litigation Sub-Trust (the “**Litigation Sub-Trust**” and, together with Highland, “**Appellees**”) in which Appellees moved to dismiss the above-captioned appeal (the “**Appeal**”), the Court hereby finds and concludes that, based on (i) the evidence set forth in the *Declaration of James P. Seery, Jr. in Support of Appellees’ Motion to Dismiss Appeal as Moot* filed contemporaneously with the Motion and (ii)

¹ Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

the arguments set forth in the Motion, the Appeal is statutorily moot under Bankruptcy Code § 363(m). Accordingly, it is hereby **ORDERED THAT**:

1. The Motion is **GRANTED**.
2. The Appeal is **DISMISSED** in its entirety.

IT IS SO ORDERED this ____ day of August, 2025.

The Honorable Ed Kinkeade
United States District Judge