

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.,

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

**MARK S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST**

Plaintiff,

v.

**JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC
LEVENTON; GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST
AND NANCY DONDERO, AS TRUSTEE OF
DUGABOY INVESTMENT TRUST; GET GOOD
TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE
OF GET GOOD TRUST; HUNTER MOUNTAIN
INVESTMENT TRUST; CLO HOLDCO, LTD.;
CHARITABLE DAF HOLDCO, LTD.; CHARITABLE
DAF FUND, LP; HIGHLAND DALLAS FOUNDATION;
RAND PE FUND I, LP, SERIES 1; MASSAND
CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS
ASSET RECOVERY, LTD.,**

Defendants.

Adv. Pro. No. 21-03076-sgj

**PLAINTIFF HUNTER MOUNTAIN INVESTMENT TRUST'S APPLICATION
FOR EXPEDITED HEARING ON ITS: (1) EMERGENCY VERIFIED MOTION
FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND
APPOINTMENT OF RECEIVER; AND (2) MOTION FOR EXPEDITED DISCOVERY**

Plaintiff Hunter Mountain Investment Trust ("HMIT") files this Application for Expedited Hearing ("Application") on HMIT's Emergency Verified Motion for Temporary Restraining Order, Preliminary Injunction, and Appointment of Receiver ("Verified Motion"), and on HMIT's



Motion for Expedited Discovery (“Discovery Motion”; together with the Verified Motion, the “Emergency Motions”), as soon as counsel can be heard. In support of this Motion, HMIT respectfully states:

I. PROCEDURAL POSTURE

1. This Adversary Proceeding was previously stayed pursuant to the Court’s *Order Granting the Litigation Trustee’s Motion to Stay the Adversary Proceeding* dated April 4, 2023 [Doc. 338] (“Stay Order”). Following HMIT’s substitution as Plaintiff on September 3, 2025,¹ HMIT immediately provided notice on September 3, 2025, of its intention to lift the stay.² Notwithstanding the continued pendency of the stay through October 3, 2025, the Court is empowered and authorized to consider this Application. This Court’s jurisdiction and authority to issue injunctive and equitable relief derives from Bankruptcy Code § 105(a) and Bankruptcy Rule 7065, which incorporates Fed. R. Civ. P. 65. The Court’s authority to grant the relief requested is in no way limited by the stay order. *See, e.g., Guadian v. Debtblue LLC*, 2024 U.S. Dist. LEXIS 6399, *13 (W.D. Tex. Jan. 8, 2024) (a court always has inherent authority and duty to “preserve the integrity of the judicial process”).

2. Should the Court feel otherwise, it may simply reduce the time required or amend the stay order, as requested in this Application. Bankruptcy Rule 9006(c) expressly provides that “[w]hen a rule, notice given under a rule, or court order requires or allows an act to be done within a specified time, the court may—for cause and with or without a motion or notice—reduce the time.” In addition, Bankruptcy Rule 7054 incorporates Fed. R. Civ. P. 54(b), which provides that “any order ... however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties ... may be revised at any time before the entry of a

¹ See Docket Text [Doc. 374]; Order Granting Motion to Substitute [Doc. 377].

² Notice of Intent to Lift Stay [Doc. 375].

judgment.” *See also Melancon v. Texaco, Inc.*, 659 F.2d 551, 553 (5th Cir. 1981) (a court “possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient”); *Domain Protection, LLC v. Sea Wasp, LLC*, 2019 U.S. Dist. LEXIS 140683, *13 (E.D. Tex. Aug. 20, 2019) (“a district court may revisit an interlocutory order on any ground it sees fit”).

II. BACKGROUND

3. This adversary proceeding was initiated “to recover hundreds of millions of dollars in damages that HCMLP suffered at the hands of its founder, James Dondero, acting in concert with other entities that he owned and/or controlled ... and with the aid of other HCMLP officers and attorneys who disregarded their fiduciary duties to HCMLP in favor of Dondero and their own self-interests.”³ The Amended Complaint brings numerous causes of action against Defendants, including for the avoidance and recovery of numerous fraudulent transfers under the Bankruptcy Code and other applicable law.⁴

4. On September 15, 2025, HMIT filed its Emergency Verified Motion for a Temporary Restraining Order, Preliminary Injunction, and Appointment of Receiver seeking entry of a temporary restraining order and a preliminary injunction enjoining Defendant Dondero and other named Defendants acting in concert with him, from directly or indirectly, through their affiliated corporate entities or anyone else acting on their behalf or in concert with them, concealing or dissipating assets or otherwise transferring assets out of the country or otherwise beyond the jurisdictional reach of this Court, in any manner that would hinder or prevent the satisfaction of a potential recovery or judgment awarded to HMIT in this proceeding. HMIT is also seeking the appointment of one or more receivers.

³ Amended Complaint and Objection to Claims [Doc. 158] (“Amended Complaint”), ¶ 1.

⁴ *See* Amended Complaint, ¶¶ 172-186.

5. Also on September 15, 2025, HMIT filed its Emergency Motion for Expedited Discovery asking the Court to authorize interrogatories, requests for production, and oral depositions of both parties and non-parties that are needed on an expedited basis to prepare for and in anticipation of a hearing on a preliminary injunction and appointment of one or more receivers.

IV. ARGUMENT AND AUTHORITIES

6. Pursuant to section 105(a) of the Bankruptcy Code, the Court “may issue any order ... that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Furthermore, pursuant to Bankruptcy Rule 9006, the Court may, for cause shown, reduce the notice period required prior to a hearing.

7. A prompt hearing is necessary because, absent the relief requested in the Emergency Motions, HMIT’s ability to obtain the relief requested in this proceeding, which includes equitable relief in the form of the avoidance, recovery and return of fraudulently transferred assets out of the HCMLP estate,⁵ will be jeopardized, and the integrity of this lawsuit will be threatened. Emergency relief is needed to avoid immediate and irreparable harm if Defendants are allowed to continue secreting and transferring assets beyond the reach of the Court.

8. Absent the relief requested in the Emergency Motions, Defendant Dondero and those acting in concert with him are likely to continue to engage in an effort to conceal the very assets at issue in this litigation and transfer such assets outside the jurisdiction of the Court, thereby putting HMIT’s projected recovery at risk. HMIT’s ability to fully recover on its judgment, if it prevails herein, will be impacted without immediate relief from this Court. Thus, it is vital that the Court consider the Emergency Motions on an expedited basis.

9. Additionally, under Bankruptcy Rule 7065 and Civil Rule 65, the Court may order an immediate hearing on HMIT’s request for temporary restraining order given the risk of

⁵ See Amended Complaint, ¶¶ 137-186.

imminent irreparable harm to HMIT. *See Walker v. Doe*, No. 6:24-cv-00633-ADA, 2025 U.S. Dist. LEXIS 100396, at *10 (W.D. Tex. 2025) (granting *ex parte* asset-freezing TRO). Nevertheless, notice of the proposed expedited hearing on the Emergency Motions will be provided to counsel of record by email and by electronic filing. Such notice is sufficient because the relief requested in the Emergency Motions is sought against Defendants, and Defendants have, or will have, actual notice of the Amended Complaint, the Emergency Motions, and the issues raised therein prior to the date of the proposed hearing.

10. HMIT respectfully requests an expedited hearing on its Emergency Motions at the earliest available opportunity.

WHEREFORE, HMIT respectfully requests the Court grant this Application, set an expedited hearing on the Emergency Motions at the Court's earliest possible opportunity, and grant HMIT all such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Sawnie A. McEntire

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**ATTORNEYS FOR HUNTER MOUNTAIN
INVESTMENT TRUST**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, on September 15, 2025, counsel for HMIT emailed counsel for Defendants regarding the relief requested in this Application for Expedited Hearing, and stating that if a response was not received by 2:00 p.m. HMIT would consider Defendants to be opposed. Counsel for HMIT then and conducted a telephone call with counsel for Defendants Dondero, Dugaboy, Nexpoint, and HCMFA, who advised that such Defendants are opposed to the relief requested this Motion, and further stated that they would attempt to coordinate with the other Defendants, but that HMIT should assume the remaining Defendants are also opposed. Accordingly, this Motion is being filed as opposed due to the need for immediate relief.

/s/ Ian B. Salzer

Ian B. Salzer

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2025, a true and correct copy of the foregoing document was served on all parties of record via the Court's ECF system.

/s/ Ian B. Salzer

Ian B. Salzer

**UNITED STATES BANKRUPTCY COURT
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**TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE
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CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS
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Defendants.

**ORDER GRANTING PLAINTIFF HUNTER MOUNTAIN INVESTMENT TRUST'S
APPLICATION FOR EXPEDITED HEARING ON ITS: (1) EMERGENCY VERIFIED
MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND APPOINTMENT OF RECEIVER; AND (2)
MOTION FOR EXPEDITED DISCOVERY**

Having considered Plaintiff Hunter Mountain Investment Trust's ("HMIT") Application for Expedited Hearing ("Application") on HMIT's Emergency Verified Motion for Temporary Restraining Order, Preliminary Injunction, and Appointment of Receiver ("Verified Motion"), and on HMIT's Motion for Expedited Discovery ("Discovery Motion"; together with the Verified Motion, the "Emergency Motions"), the Court finds that proper notice was given and that good cause exists for entry of this Order. It is therefore:

ORDERED that the Application is **GRANTED**; and

IT IS FURTHER ORDERED that a hearing on the Emergency Motions shall be held on September ____, 2025, at _____.m. (Central Time) before the Honorable Stacey G. C. Jernigan. Any responses to the Emergency Motion shall be filed by _____.

End of Order