

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	)	Case No. 19-12239 (CSS)
Debtor.	)	)	<b>Related to Docket Nos. 86, 122</b>

**RESPONSE OF THE DEBTOR TO  
ACIS’S JOINDER TO MOTION TO TRANSFER VENUE**

The above-captioned debtor and debtor in possession (the “Debtor”) hereby responds to the substantive joinder [Docket No. 122] (the “Joinder”) filed by Acis Capital Management, L.P. and Acis Capital Management GP, LLP (together, “Acis”) to the motion of the Official Committee of Unsecured Creditors (the “Committee”) to transfer venue of this case [Docket No. 86] (the “Motion to Transfer”) to the Northern District of Texas (the “Texas Bankruptcy Court”).<sup>2</sup>

In support of this response, the Debtor respectfully states as follows:

**Response**

1. The Joinder filed by Acis only serves to prove the Debtor’s point in its own objection to the Motion to Transfer [Docket No. 118] that Acis seeks to achieve a litigation advantage by transferring this case to the Texas Bankruptcy Court.<sup>3</sup>

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> The Joinder was filed on the same date that the Debtor’s objection to the Motion to Transfer was due. The Debtor therefore files this response to the Joinder on the same date as replies are due.

<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Debtor’s objection to the Motion to Transfer.



2. The current principal of Acis (Joshua Terry) commenced an involuntary case against Acis in the Texas Bankruptcy Court that subsequently stripped the Debtor of its interests in Acis. Acis, under the direction of Terry, is suing the Debtor for recovery of alleged fraudulent transfers and a variety of other claims, which if successful will deplete assets of the Debtor's estate available to pay creditors. Almost every aspect of Acis's bankruptcy proceeding has been adverse to the interests of the Debtor to date. The Debtor is currently supporting two pending appeals of the orders of the Texas Bankruptcy Court granting the involuntary petition against Acis and confirming the chapter 11 plan that put Terry in charge of Acis.

3. Under these circumstances, Acis should not be permitted to subvert the Debtor's choice of forum before this Court, no matter the number of hearings that may have occurred, filings that may have been made, and orders that may have been entered in Acis's bankruptcy case. Acis seeks a transfer of venue not because Acis is an alleged affiliate of the Debtor – it most certainly is not affiliated with the Debtor today. Acis seeks a transfer to the Texas Bankruptcy Court because that would serve Acis's own litigation objectives in its "home court."

4. This chapter 11 case is about the Debtor, not Acis. The prior proceedings that occurred in the Texas Bankruptcy Court revolved around Acis and its business, assets, and liabilities and claims that it may or may not have against the Debtor. The Texas Bankruptcy Court and the appellate courts within the Fifth Circuit have heard nothing about the details of the Debtor's business, assets, and liabilities, aside from its prior involvement with Acis. Like the Motion to Transfer, the Joinder fails to establish how the apparently substantial amount of documents and testimony considered in the Acis bankruptcy and any related appeals is relevant

to the instant chapter 11 case. Yes, there was a lot of paper submitted in the Acis matter and the Texas Bankruptcy Court conducted many hearings, but what does that have to do with this Debtor's case?

5. Perhaps out of desperation, Acis turns to the "interest of justice" component of 28 U.S.C. § 1412. Acis cites to Judge Gross's decision in *In re Restaurants Acquisition I, LLC*, 2016 Bankr. LEXIS 684 at \*14-15 (Bankr. D. Del. Mar. 4, 2016), for the proposition that the interest of justice is determined by "whether transfer of venue will promote the efficient administration of the estate, judicial economy, timeliness, and fairness." Notably, in the *Restaurants Acquisition* case, Judge Gross declined to transfer venue based, among other factors, on the learning curve that would be required by the transferee court in Texas and the need for parties in interest to retain new professionals. *Id.* at \*15-16. Judge Gross also found it pertinent that the debtor in that case selected Delaware as the forum of choice for its bankruptcy case. *Id.* at \*16-17.

6. Virtually the same analysis applies in the instant case. The Debtor's choice of venue in this Court deserves a certain amount of deference. Further, a transfer of the Debtor's case to the Texas Bankruptcy Court would bring with it attendant delays in scheduling hearings and retaining new professionals, including local counsel, and would require the Texas Bankruptcy Court to get up to speed on the Debtor and all that has transpired in this case to date. As noted, the Texas Bankruptcy Court may be familiar with Acis and even the Debtor's prior involvement in Acis, but that translates into few current details about the Debtor itself and its operations, assets, and liabilities. All parties (and their chosen professionals) are already before this Court and there are various significant matters pending that are set for hearing on the same

date as the Motion to Transfer, including the CRO Motion and the Protocols Motion. For these reasons, just like in the *Restaurants Acquisition* case, the interest of justice strongly supports retaining venue of this case in Delaware.

7. Finally, venue of this case should remain in this Court so that Acis is not permitted to achieve some perceived litigation advantage by transferring this case to the Texas Bankruptcy Court. That court should continue to focus on the interests of Acis, including pending litigation brought by Acis against the Debtor (which now has been stayed). This Court, on the other hand, can preside over the Debtor's estate, free from any of the countervailing interests and motives of Acis and its principal, Terry.

WHEREFORE, the Debtor respectfully requests that this Court enter an order denying the Motion to Transfer and granting such other and further relief as this Court deems appropriate.

Dated: November 21, 2019

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