

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE: . Case No. 19-34054-11(SGJ)  
 .  
HIGHLAND CAPITAL . Earle Cabell Federal Building  
MANAGEMENT, L.P., . 1100 Commerce Street  
 . Dallas, TX 75242-1496  
 .  
Debtor. .  
 . . . . .  
 . Adv. No. 20-03190(SGJ)  
HIGHLAND CAPITAL, .  
MANAGEMENT, L.P., .  
 .  
Plaintiff, .  
 .  
v. .  
 .  
JAMES D. DONDERO, .  
 .  
Defendant. . May 18, 2021  
 . 9:37 a.m.  
 . . . . .

TRANSCRIPT OF HEARING ON RULING RESOLVING ADVERSARY PROCEEDING  
FILED BY PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.  
BEFORE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For Highland Capital Management: Pachulski Stang Ziehl & Jones LLP  
BY: JOHN MORRIS, ESQ.  
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New York, NY 10017

For James Dondero: Bonds Ellis Eppich Schafer Jones LLP  
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(TELEPHONIC APPEARANCES CONTINUED ON NEXT PAGE.)

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TELEPHONIC APPEARANCES (CONTINUED):

For Official Committee     Sidley Austin, LLP  
of Unsecured Creditors:    By:   MATTHEW CLEMENT, ESQ.  
                                  One South Dearborn  
                                  Chicago, IL 60603

1 THE COURT: -- now in session. The Honorable Stacey  
2 Jernigan presiding.

3 THE COURT: Good morning. Please be seated.

4 Well, I came in here not with a giant stack of paper  
5 but a very small stack of paper. We have a setting in Highland  
6 Capital Management, Case Number 19-34054 and Adversary 20-  
7 03190.

8 Let me get appearances first from the main parties.  
9 For the debtor this morning, who is appearing?

10 MR. MORRIS: Good morning, Your Honor. Can you hear  
11 me? It's John Morris from Pachulski Stang Ziehl & Jones for  
12 the debtor.

13 THE COURT: Thank you.

14 All right. For Mr. Dondero, who do we have  
15 appearing?

16 MR. WILSON: John Wilson with Bonds Ellis Eppich  
17 Schafer Jones for Mr. Dondero.

18 THE COURT: All right. And I'll ask for an  
19 appearance from the Creditors Committee, please. Who do we  
20 have appearing?

21 MR. CLEMENTE: Good morning, Your Honor. Matthew  
22 Clemente, Sidley Austin, on behalf of the Creditors' Committee.

23 THE COURT: All right. Thank you.

24 Well, I guess I should ask for an appearance from  
25 Wick Phillips. I think we're going to have a status conference

1 maybe on a motion that was set. Who is appearing for I guess I  
2 should say HCRE Partners and/or Wick Phillips?

3 MR. MORRIS: There may not be anybody here, Your  
4 Honor. We filed -- I think we filed notice of cancellation of  
5 the status conference.

6 THE COURT: Okay.

7 MR. MORRIS: And that's an item I was going to  
8 address, but --

9 THE COURT: Okay. Thank you.

10 MR. MORRIS: -- that we have cancelled that  
11 conference (indiscernible).

12 THE COURT: All right. Well, let's -- I'll stop with  
13 appearances at this point, and let me just say for the record  
14 where we are this morning.

15 We did have four interim fee applications of  
16 professionals for the Unsecured Creditors' Committee. We did  
17 not have any objections on those. I reviewed them in chambers  
18 and signed orders approving those on an interim basis yesterday  
19 evening. So we have no business to accomplish on those four  
20 fee applications.

21 The main event that I thought we had going today was  
22 the final trial in the injunctive relief sought against Mr.  
23 Dondero in Adversary 20-03190. And much to my delight and  
24 surprise, I saw that at 8:38 this morning a proposed consensual  
25 order resolving the adversary proceeding has been submitted.

1           So, Mr. Morris, do you want to start with that?

2           MR. MORRIS: I would, Your Honor. But just to make  
3 sure the record is clear with respect to the Wick Phillips  
4 matter. I believe at Docket 2321 we did specifically file a  
5 notice of cancellation of today's status conference. I have  
6 sought from Your Honor's clerk yesterday a trial date in the  
7 matter, and I was able to back into that with Wick Phillips on  
8 a proposed scheduling order, which if we haven't already done  
9 so, we'll be uploading later today. And that's the reason for  
10 the cancellation of that conference.

11           THE COURT: Okay. Thank you. And you've reminded  
12 me. I remember late-ish yesterday afternoon getting that  
13 communication and seeing the proposed, I think, October -- it's  
14 an October trial setting you've agreed to with them?

15           MR. MORRIS: That's the date that we were told was  
16 convenient for the Court.

17           THE COURT: Okay.

18           MR. MORRIS: But we had agreed to the balance of the  
19 schedule.

20           THE COURT: Okay. Very good. So there's no business  
21 to accomplish there. I'll be looking for that order to sign it  
22 today -- the scheduling order, I should say.

23           All right. So now, again, turning to the main event,  
24 Mr. Morris?

25           MR. MORRIS: Yes. Thank you, Your Honor. John

1 Morris, Pachulski Stang Ziehl & Jones. We were scheduled  
2 today, as Your Honor pointed out, for a trial on the merits of  
3 the debtor's claim for permanent injunctive relief. We did  
4 file at Docket 180 this morning in the adversary proceeding  
5 notice of a consensual proposed order that we'd like to present  
6 today.

7           As Your Honor knows as well as anybody, this has been  
8 a very long road. You know, our only goal, the debtor's only  
9 goal as I tried to make clear was to be left alone, was to be  
10 free from threats and interference and related improper  
11 conduct. We're pleased that we've gotten to this point. I  
12 can't tell you that I know what's motivating Mr. Dondero. But  
13 I can tell you that from the debtor's perspective, that we  
14 believe that the evidence supporting the requested relief and  
15 relief now obtained is overwhelming.

16           We've put forth substantial proposed findings of fact  
17 and conclusions of law, including 120-numbered paragraphs that  
18 cited to dozens of documentary exhibits and expensive trial  
19 testimony. And so we believe that on the strength of that  
20 evidence, we were able to come to this agreement, an agreement  
21 that we believe protects the debtor in the ways that the debtor  
22 believes it needs to be protected.

23           I'd like to just highlight some of the changes in the  
24 proposed order of what the debtor had originally sought in its  
25 proposed findings of fact and conclusions of law so that Your

1 Honor is familiar with, you know, the substantive changes that  
2 have been made.

3           The first change, Your Honor, I'm just taking them in  
4 the order in which they appear, and I don't know if Your Honor  
5 has the blackline or the clean copy.

6           THE COURT: I do.

7           MR. MORRIS: But the first change -- okay, the first  
8 change is that this is no longer a permanent injunction. It's  
9 an injunction that will stay in effect until the Court grants a  
10 motion by the debtor to close its Chapter 11 case. So that's  
11 the first change.

12           The second change is that while we believe it was  
13 implicit in the earlier draft, this proposed order now  
14 expressly applies the debtor's successors including, as you can  
15 see, the Claimant Trust Oversight Board, the claimant trustee,  
16 the litigation trustee, which are defined as the protected  
17 entities, as well as the reorganized debtor. And I think  
18 that's the relief that we would have obtained had we gone to  
19 trial. But it is helpful that that is qualified in this  
20 version of the order.

21           As we discussed at the docket call conference, there  
22 are no longer any shared services agreements between the debtor  
23 and any related entity and, therefore, there is now a blanket  
24 prohibition preventing Mr. Dondero from communicating with any  
25 person employed by the debtor or the reorganized debtor.

1           But there are new arrangements in place between the  
2 debtor and some of the entities controlled by Mr. Dondero, and  
3 this order reflects that. Specifically, if we can go to the  
4 next page.

5           You'll see at the end of the second ordered  
6 paragraph, Mr. Dondero is still enjoined from working with  
7 entities or people under his control, but the exception now is  
8 no longer to shared services agreements. They're to a prior  
9 order of this Court and something that's known as the shared  
10 resources agreement because, you know, frankly, and this was a  
11 constructive part of the negotiations over the last 24 or 48  
12 hours.

13           There are still ongoing communications between the  
14 debtor's employees or certain of the debtor's employees and  
15 certain employees in Mr. Dondero's companies. And we need  
16 those communications to continue. So we wanted to make it  
17 clear that all of that is permitted except as it says at the  
18 very end of that paragraph, except for threats or acts of  
19 interference. Even if it's under the guise of the shared  
20 resources agreement, that kind of conduct is not acceptable.

21           Also, in footnote 3 there, we've also made it clear  
22 that communications between and among counsel are -- will not  
23 be a violation of this order, again, unless it violates (b)  
24 pertaining to threats or (d) pertaining to interference.

25           The last I think substantive change, which is



1 consistent with what we believe to be the law, is you'll see at  
2 the bottom of the document we make it clear that the prior  
3 preliminary injunction will be deemed dissolved and superseded  
4 by this order upon entry.

5           Those are really the substantive changes, Your Honor.  
6 I think it actually does improve the document. I think it  
7 provides some clarifications that are worth -- that were worth  
8 negotiating, and I do appreciate the Bonds Ellis firm's efforts  
9 in that regard.

10           A couple of other things, we have agreed, and I'd  
11 like Mr. Wilson to come on the record that upon entry of this  
12 order, Mr. Dondero will as soon as practicable withdraw with  
13 prejudice his petition for a writ of mandamus that is pending  
14 in the Fifth Circuit. He will withdraw with prejudice his  
15 motion for a stay of these proceedings pending a determination  
16 on the petition for a writ of mandamus. And he will withdraw  
17 with prejudice his interlocutory appeal that's now pending in  
18 the United States District Court for the Northern District of  
19 Texas.

20           The debtor is pleased, as I said, to resolve this  
21 particular proceeding. As Your Honor knows too well, this is  
22 just one aspect of a much larger landscape that we're dealing  
23 with here. And I just -- I need to emphasize that the debtor  
24 will always look to work cooperatively, but at all times, it is  
25 determined to continue to take all steps necessary to protect

1 its estate and the integrity of this bankruptcy process.

2 That's all I have, Your Honor, unless Your Honor has  
3 any questions.

4 THE COURT: All right. Not yet. I want to hear from  
5 Mr. Wilson and see if I have any questions after I hear from  
6 him.

7 Mr. Wilson, would you confirm these statements and  
8 add anything you think needs to be added?

9 MR. WILSON: I apologize, Your Honor. I have a mouse  
10 problem. But, yes, I agree with -- largely with what Mr.  
11 Morris stated. It was actually upon the status conference  
12 hearing when we heard that the relief that the debtor was  
13 seeking would be narrowed that I suspected that we could  
14 resolve this matter because, in truth, I've visited with my  
15 client about this.

16 Mr. Dondero has no intention of threatening the  
17 debtor or interfering with their business and, therefore, does  
18 not -- is not concerned with these provisions in this  
19 injunction to that effect.

20 Our main concern was simply that the order provided  
21 enough clarity and also, you know, provided for the necessary  
22 transitioning things that needed to occur between Highland and  
23 the Dondero-related entities to complete the unwinding that is  
24 there.

25 And, of course, there's agreements in place, as

1 you've heard, and those agreements need to be carried out. And  
2 so, therefore, we feel like we were able to achieve a working  
3 version of the order that both sides could live with. And so  
4 we are -- we're pleased that we were able to reach this  
5 agreement.

6 And as to the point about the Fifth Circuit  
7 proceedings, we have notified the Fifth Circuit this morning  
8 about the -- that we will be withdrawing the mandamus seeking  
9 its dismissal and the accompanying motions. And at the  
10 conclusion of the proceeding upon entry of this order, yes, we  
11 do intend to file those documents.

12 THE COURT: All right. Thank you.

13 All right. A follow-up question I have, I'm looking  
14 at my computer screen, you cannot see what's on it, but what is  
15 on it is a draft so far 29-page ruling, order, and opinion on  
16 the motion for contempt that, as you know, I've had under  
17 advisement since March 24th. No one has said anything about  
18 whether this is an intention to resolve or withdraw that.

19 So can I assume that I should continue forward and  
20 issue my ruling on this?

21 MR. MORRIS: The debtor would urge you to do so, Your  
22 Honor. This -- that was implicit in what I was trying to say  
23 is that this resolves solely the debtor's motion for permanent  
24 injunctive relief. The debtor hopes and expects that the Court  
25 will continue to work on and ultimately issue its ruling on its

1 motion for contempt.

2 THE COURT: All right.

3 Mr. Wilson, any misunderstanding on that part?

4 MR. WILSON: Your Honor, the motion for contempt was  
5 not discussed in our negotiations that were this final  
6 objection.

7 THE COURT: Okay. All right. Well, then I expect to  
8 get this done now that I have today freed up and tomorrow,  
9 unless I have an emergencies I don't know about right now. I  
10 think I can get this out in the next few days.

11 No judge likes to keep things under advisement more  
12 than 60 days. You've probably heard that before. That's kind  
13 of our internal deadline we give ourselves. So I guess Monday  
14 would be May 24th. I'm going to try very hard to have this out  
15 to you by then and just so you know, if you've been wondering  
16 where things stood on that,

17 My other question, I mean, this is just curiosity.  
18 So obviously, a big part of the injunction request had to do  
19 with the debtor's management of the CLOs and the debtor's  
20 liquidating certain assets in those CLOs and the alleged  
21 interference with Mr. Dondero. I mean I presume that part of  
22 what's going on outside of the Court is maybe a transition of  
23 that or no? Is that not something happening?

24 MR. MORRIS: That's not happening, Your Honor.

25 THE COURT: Okay. I just wasn't sure where things

1 stood on that.

2 MR. MORRIS: And I just do want to make it clear  
3 because now I recall that at 4 o'clock this morning I think I  
4 wrote somewhere that this settlement resolves the adversary  
5 proceeding. Obviously, the debtor does not intend and, by Mr.  
6 Wilson's comments, I think he does not intend that the  
7 adversary proceeding is going to be closed upon the entry of  
8 the order resolving the claim for injunctive relief.

9 I just don't want to have any argument later that  
10 somehow the resolution of this claim precludes the Court from  
11 issuing its ruling on the contempt motion. I think Mr. Wilson  
12 has made that perfectly clear that it wasn't part of the  
13 discussions, and I just want to make sure and nip that in the  
14 bud so that somebody doesn't make any argument at some future  
15 point that because there's a statement in a title of a document  
16 that addresses the adversary proceeding, that the Court still  
17 has -- that the case -- that the adversary proceeding is not  
18 closed and that the Court has the full authority to render its  
19 ruling on the motion for contempt.

20 THE COURT: All right. Let me look at the order real  
21 quick on that point.

22 (Pause)

23 THE COURT: And there is the final paragraph that:  
24 "Court retains exclusive jurisdiction with respect to all  
25 matters arising from or relating to the implementation,

1 interpretation, and enforcement of this order." And the  
2 paragraph before that, it's a resolution of the injunctive  
3 relief and not any broader than that.

4 All right. Well, anything else anyone wants to put  
5 on the record?

6 (No audible response)

7 THE COURT: No?

8 MR. MORRIS: Nothing from the debtor, Your Honor.

9 THE COURT: Mr. Wilson, anything?

10 MR. WILSON: No, Your Honor.

11 THE COURT: All right. Well, again, I appreciate  
12 these good-faith efforts outside of the courtroom. And in  
13 light of, you know, where things are today, it seems like, you  
14 know, this is reasonable. So I will happily sign this order.  
15 And I guess the next time I will see you is Friday morning at 9  
16 o'clock Central Time, right, on the UBS compromise motion?

17 MR. MORRIS: Yes, Your Honor. That's the only thing  
18 -- that's the next item scheduled.

19 THE COURT: All right. Well, thank you all. And I  
20 hope we all have a good day doing other things than trying this  
21 matter. And I'll see you Friday morning, okay.

22 (Proceedings concluded at 9:57 a.m.)

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C E R T I F I C A T I O N

I, DIPTI PATEL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL

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DATE: May 21, 2021