

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
In re:	§	
	§	
JAMES DONDERO, et al.,	§	
	§	
Appellants,	§	
	§	
v.	§	Case No. 3:21-cv-00879-K
	§	
HON. STACEY G. C. JERNIGAN,	§	
	§	
Appellee.	§	

MOTION FOR LEAVE TO SUPPLEMENT RECORD ON APPEAL

James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware limited liability company (collectively, “*Appellants*”) file this Motion for Leave to Supplement Record on Appeal.

MOTION FOR LEAVE TO SUPPLEMENT

As the Court is aware, this is an appeal from the denial of a motion to recuse. The core issues on appeal are: (a) whether “a reasonable man, cognizant of the relevant circumstances surrounding [the Bankruptcy Court’s] failure to recuse, would harbor legitimate doubts about that judge’s impartiality;”¹ and (b) whether the Bankruptcy Court should be recused from sitting as the judge and jury in the various Adversary Proceedings listed above. Respectfully, Appellants, like

¹ *United States v. Bremers*, 195 F.3d 221, 226 (5th Cir.1999).



every litigant, are entitled to a full and fair opportunity to make their case in a fair and impartial forum.² As an appellate court, this court has the discretion to order supplementation of the record on appeal.³

Here, Appellants timely filed their notice of appeal, statement of issues and designated the record that existed at that time to show the Bankruptcy Court’s bias and prejudice to Appellants. However, since Appellants designated the record, the Bankruptcy Court has taken additional positions that further support a finding that the Court’s impartiality is likely to be reasonably questioned. Debtor, who has just now intervened, will not suffer any prejudice, as it is just now preparing its own designation of record.

These hearings show the Bankruptcy Court’s continued appearance of bias, lack of impartiality, and establish findings against Appellants that lack any evidence. For example, at one of these hearings the Bankruptcy Court suggested causes of action that the Debtor could bring against Appellants, namely Dondero, if Dondero’s defenses were successful and ordering relief that no party had requested.

Appellants respectfully request the Court grant leave to supplement the record, including by adding the following:

Main Case

Docket No.	Date	Description
2256	4/29/21	Dugaboy Motion to Compel Compliance with Bankruptcy Rule 2015.3
2440	6/10/21	Transcript of hearing held on 6/8/21
2445	6/10/21	Transcript of hearing held on 6/10/21

² *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 893 (5th Cir. 2021).

³ *Huddleston v. Nelson Bunker Hunt Tr. Est.*, 102 B.R. 71, 75 (N.D. Tex. 1989).

Adversary No. 20-03190

Docket No.	Date	Description
175	5/10/21	Transcript of hearing on trial docket call and defendant's emergency motion to stay
182	5/18/21	Order Resolving Adversary Proceeding
185	5/21/21	Transcript of Hearing on Ruling Resolving Adversary Proceeding
190	6/7/21	Memorandum Opinion and Order Granting in Part Plaintiff's Contempt Motion

Adversary No. 21-03003

Docket No.	Date	Description
21	4/15/21	Defendant's Motion to Withdraw Reference
22	4/15/21	Defendant's Motion to Stay Pending Motion to Withdraw Reference
23	4/15/21	Motion to Expedite Motion to Stay
	4/20/21	Email from courtroom deputy regarding request for expedited hearing on motion to stay
35	5/14/21	Motion to Compel Seery Deposition Testimony (including exhibits)
36	5/14/21	Motion to Expedite Motion to Compel
	5/14/21-5/17/21	Email chain between B Assink to Courtroom deputy re: filing of motion to compel and motion to expedite and setting of hearing on motion to compel, dated 5/14/21 – 5/17/21
	5/14/21-5/18/21	Additional Email chain between B Assink to Courtroom deputy re: filing of motion to compel and motion to expedite and setting of hearing on motion to compel, dated 5/14/21 – 5/18/21
49	5/24/21	Order Denying Motion to Compel
50	5/25/21	Transcript of hearing held on motion to compel on 5/20/21
58	5/27/21	Transcript of hearing held on Motion to Stay and Status Conference on Motion to Withdraw Reference
64	6/4/21	Order Granting In Part James Dondero's Motion to Stay

Adversary No. 20-03195

Docket No.	Date	Description
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45	5/19/21	UCC motion to expedite motion to stay
46	5/19/21	UCC motion to stay proceeding for 90 days (as re-filed)
47	5/19/21	Notice of Hearing setting hearing on motion to stay for 5/20/21
48	5/19/21	Order Granting UCC motion to expedite
50	5/19/21	Highland Dallas Foundation and CLO Holdco's Objection to UCC's emergency motion to stay
52	5/20/21	Highland Dallas Foundation and CLO Holdco's W&E List for Hearing on Motion to Stay (with exhibits attached)
54	5/20/21	Court admitted exhibits
57	5/21/21	Post-hearing memorandum suggesting error by the Court
62	5/24/21	Order staying adversary proceeding
65	5/25/21	Transcript of hearing held on UCC's motion to stay on 5/20/21
67	5/27/21	Order addressing post hearing memorandum suggesting error

CONCLUSION

For the foregoing reasons, Appellants respectfully request the Court grant leave to supplement the records and award Appellants such other and further relief to which they may be entitled.

Dated: June 16, 2021

Respectfully submitted,

By: /s/ Michael J. Lang

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Counsel for Movants

CERTIFICATE OF CONFERENCE

The undersigned certifies that on June 15, 2021, Appellants conferred with opposing counsel who indicated that they are opposed to the relief requested.

/s/ Michael J. Lang
Michael J. Lang

CERTIFICATE OF SERVICE

The undersigned certifies that on June 16, 2021, a true and correct copy of the above and foregoing document was served on all parties of record via the Court's e-filing system.

/s/ Michael J. Lang
Michael J. Lang