

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3006-sgj

Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3007-sgj

Case No. 3:21-cv-00881-X

**ERRATA TO
DECLARATION OF JOHN A. MORRIS IN SUPPORT OF PLAINTIFF’S OMNIBUS
MOTION (A) TO STRIKE CERTAIN DOCUMENTS AND ARGUMENTS FROM THE
RECORD, (B) FOR SANCTIONS, AND (C) FOR AN ORDER OF CONTEMPT**

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceedings (the “Adversary Proceedings”) and the reorganized debtor (“Highland” or the “Plaintiff”), hereby submits this errata (the “Errata”) to **Exhibit 1** attached to the *Declaration of John A. Morris in Support of Plaintiff’s Omnibus Motion (a) to Strike Certain Documents and Arguments from the Record, (b) for Sanctions, and (c) for an Order of Contempt* (the “Declaration”) and respectfully states as follows:

1. In Exhibit 1 attached to the Declaration, Highland inadvertently redacted footnote 79. The correct redaction should be to footnote 76.
2. Accordingly, Exhibit 1 shall be deemed superseded and replaced with amended Exhibit 1 (“**Amended Exhibit 1**”), attached hereto as **Exhibit A**, which redacts footnote 76.

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Dated: February 18, 2022

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EXHIBIT A

EXHIBIT 1

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

| | | |
|--|---|------------------------------------|
| In re: | § | Case No. 19-34054 |
| | § | |
| HIGHLAND CAPITAL MANAGEMENT, L.P. | § | Chapter 11 |
| | § | |
| Debtor. | § | |
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| HIGHLAND CAPITAL MANAGEMENT, L.P., | § | |
| | § | |
| Plaintiff, | § | Adv. Proc. No. 21-03003-sgj |
| | § | |
| vs. | § | |
| | § | |
| JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, | § | |
| | § | |
| Defendants. | § | |
| <hr/> | | |

the HCRE Term Note pursuant to the respective oral SSAs are genuine issues of material fact.⁷⁶ Moreover, as discussed in greater detail below, Plaintiff failed to remind HCMS of prepayments that had been made that relieved it of the obligation to make any additional payment in 2020.

E. Prepayment on the Term Notes

1. NexPoint's Prepayments

29. NexPoint asserts the affirmative defense of prepayment on the NexPoint Note, which relieved NexPoint of any obligation to make any additional payment in 2020. Thus, the NexPoint Note was not in default when no payment was made on December 31, 2020. NexPoint demonstrates *infra* that there is evidence supporting this affirmative defense and summary judgment denying this affirmative defense is inappropriate as a matter of law.

30. There is no dispute of fact that, between March and August of 2019, the following payments were made on the NexPoint Note (collectively, the "NexPoint Prepayments"): (i) \$750,000.00 on March 29, 2019; (ii) \$1,300,000.00 on April 16, 2019; (iii) \$300,000.00 on June 4, 2019; (iv) \$2,100,000.00 on June 19, 2019; (v) \$630,000.00 on July 9, 2019; and (vi) \$1,300,000.00 on August 13, 2019.⁷⁷ These payments totaled \$6,380,000.00 in 2019.⁷⁸ The normal December, 2019 payment of principal and interest on the Note would have been \$2,273,970.54, leaving \$4,106,029.46 remaining to apply as prepayments on the Note.

31. None of the aforementioned payments were scheduled payments or payments on arrears.⁷⁹ Rather, they were prepayments since the Plaintiff needed money and asked NexPoint to transfer it funds for liquidity purposes, which NexPoint did.⁸⁰ These transfers were intended by

■ [REDACTED]

[REDACTED]

[REDACTED]

⁷⁷ Pl. Ex. 200, Amortization Schedule, Pl. Appx. 03249.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Def. Ex. 1, J Dondero Dec., ¶ 42, Def. Appx. 21.