

Case No. 22-10960

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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In the Matter of: Highland Capital Management, L.P.,  
Debtor

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The Dugaboy Investment Trust,  
Appellant

v.

Highland Capital Management, L.P.,  
Appellee

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**RECORD EXCERPTS TO THE OPENING BRIEF OF  
APPELLANT, THE DUGABOY INVESTMENT TRUST**

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Appeal from the United States District Court for  
The Northern District of Texas, Dallas Division,  
Honorable Sam A. Lindsey; USDC No. 3:21-CV-261

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**Attorneys for Appellant,  
The Dugaboy Investment Trust**



193405422120700000000005

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<b>1</b>	<b>Docket Sheet</b>	<b>ROA.22-10960.1-9</b>
<b>2</b>	<b>Notice of Appeal</b>	<b>ROA.22-10960.3880-3885</b>
<b>3</b>	<b>Order Appealed</b>	<b>ROA.22-10960.3875-3879</b>
<b>4</b>	<b>Certificate of Service</b>	

**TAB 1**

APPEAL,BKAPP,CLOSED,TOLIVER

**U.S. District Court  
Northern District of Texas (Dallas)  
CIVIL DOCKET FOR CASE #: 3:21-cv-00261-L**

The Dugaboy Investment Trust and Get Good Trust et al v.  
Highland Capital Management LP  
Assigned to: Judge Sam A. Lindsay  
Case in other court: BK Court, 19-34054-sgj11  
USCA5, 22-10960

Cause: 28:0158 Notice of Appeal re Bankruptcy Matter (BA

**Debtor**

**Highland Capital Management LP**

Date Filed: 02/05/2021  
Date Terminated: 09/26/2022  
Jury Demand: None  
Nature of Suit: 422 Bankruptcy: Appeal 28  
USC 158  
Jurisdiction: Federal Question

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**Appellant**

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**Appellee**

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**Notice Only**

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represented by **Case Admin Sup**  
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**PRO SE**

Date Filed	#	Docket Text
02/05/2021	<u>1 (p.10)</u>	Pursuant to Fed. R. Bankr. P. 8003(d), the bankruptcy clerk has transmitted the notice of appeal filed in <u>bankruptcy case</u> number 19-34054 and the notice of appeal has now been docketed in the district court in case 3:21-cv-261. (The filing fee has been paid in the Bankruptcy Court.) Pursuant to <u>Fed. R. Bankr. P. 8009</u> , before the record on appeal can be assembled and filed in the district court, designations of items to be included in the record on appeal and statements of issues must be filed in the bankruptcy case. If a sealed document is designated, the designating party must file a motion in the district court case for the document to be accepted under seal. See also <u>District Court Local Bankruptcy Rule 8012.1</u> . Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms and Instructions found at <a href="http://www.txnd.uscourts.gov">www.txnd.uscourts.gov</a> , or by clicking here: <u>Attorney Information - Bar Membership</u> . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # <u>1 (p.10)</u> Notice of appeal and supporting documents) (Blanco - TXNB, Juan) (Entered: 02/05/2021)
02/05/2021		New Case Notes: A filing fee has been paid. (axm) (Entered: 02/05/2021)
02/19/2021	<u>2 (p.315)</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$100; Receipt number 0539-11618202) filed by The Dugaboy Investment Trust

		and Get Good Trust (Attachments: # <u>1 (p.10)</u> Exhibit(s)) (Draper, Douglas) (Entered: 02/19/2021)
02/19/2021	3	ELECTRONIC ORDER granting <u>2 (p.315)</u> Application for Admission Pro Hac Vice of Douglas S. Draper. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Sam A. Lindsay on 2/19/2021) (chmb) (Entered: 02/19/2021)
02/19/2021	<u>4 (p.319)</u>	MOTION to Waive Requirement of Local Rule 83.10 for Designation of Lead Counsel for Appellant The Dugaboy Investment Trust and Get Good Trust. (Draper, Douglas) Modified event text on 2/22/2021 (jmg). (Entered: 02/19/2021)
03/19/2021	<u>5 (p.323)</u>	MOTION for Authority to Accept Documents Under Seal filed by The Dugaboy Investment Trust and Get Good Trust (Draper, Douglas) (Entered: 03/19/2021)
03/22/2021	6	ELECTRONIC ORDER granting <u>4 (p.319)</u> Motion to Waive Requirement for Local Counsel. Accordingly, the court allows Douglas S. Draper and the law firm of Heller, Draper & Horn, LLC to proceed without designating local counsel in this action. (Ordered by Judge Sam A. Lindsay on 3/22/2021) (chmb) (Entered: 03/22/2021)
03/22/2021	<u>7 (p.327)</u>	ORDER: <u>5 (p.323)</u> Motion for Authority to Accept Documents Under Seal filed by The Dugaboy Investment Trust and Get Good Trust is Granted. Accordingly, pursuant to Federal Rule of Bankruptcy Procedure 8009(f), the Clerk of the Bankruptcy Court is directed to transmit the sealed documents identified in the Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009 after proper notification by the Appellants of a ruling providing for the transmittal to the Clerk of the Bankruptcy Court, which includes filing a notice of this order on the docket of the Bankruptcy Court. (Ordered by Judge Sam A. Lindsay on 3/22/2021) (svc) (Entered: 03/22/2021)
04/09/2021	<u>8 (p.328)</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Gregory V. Demo (Filing fee \$100; Receipt number 0539-11783346) filed by Highland Capital Management LP (Attachments: # <u>1 (p.10)</u> Certificate of Good Standing) (Hayward, Melissa) (Entered: 04/09/2021)
04/09/2021	9	ELECTRONIC ORDER granting <u>8 (p.328)</u> Application for Admission Pro Hac Vice of Gregory V. Demo. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Sam A. Lindsay on 4/9/2021) (chmb) (Entered: 04/09/2021)
04/09/2021	<u>10 (p.333)</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$100; Receipt number 0539-11783675) filed by Highland Capital Management LP (Attachments: # <u>1 (p.10)</u> Certificate of Good Standing) Attorney John A Morris added to party Highland Capital Management LP(pty:dbpos), Attorney John A Morris added to party Highland Capital Management LP(pty:e) (Morris, John) (Entered: 04/09/2021)
04/13/2021	<u>11 (p.338)</u>	Notice Transmitting COMPLETE BK Record on Appeal re <u>1 (p.10)</u> Notice Transmitting BK Appeal or Withdrawal of Reference. (Attachments: # <u>1 (p.10)</u> Mini Record Vol. 1, # <u>2 (p.315)</u> Appellant Record Vol. 2, # <u>3</u> Appellant Record Vol. 3, # <u>4 (p.319)</u> Appellant Record Vol. 4, # <u>5 (p.323)</u> Appellant Record Vol. 5, # <u>6</u> Appellant Record Vol. 6, # <u>7 (p.327)</u> Appellant Record Vol. 7, # <u>8 (p.328)</u> Appellant Record Vol. 8, # <u>9</u> Appellant Record Vol. 9, # <u>10 (p.333)</u> Appellee Record Vol. 10,



		# <u>11</u> (p.338) Appellee Record Vol. 11, # <u>12</u> (p.3655) Appellee Record Vol.12, # <u>13</u> (p.3658) Appellee Record Vol.13) (Blanco - TXNB, Juan) (Entered: 04/13/2021)
04/13/2021	<u>12</u> (p.3655)	NOTICE of Attorney Appearance by Paige Holden Montgomery on behalf of Official Committee of Unsecured Creditors. (Filer confirms contact info in ECF is current.). Party Official Committee of Unsecured Creditors added. (Montgomery, Paige) (Entered: 04/13/2021)
04/13/2021	<u>13</u> (p.3658)	NOTICE of Attorney Appearance by Juliana Lorraine Hoffman on behalf of Official Committee of Unsecured Creditors. (Filer confirms contact info in ECF is current.) (Hoffman, Juliana) (Entered: 04/13/2021)
04/13/2021	<u>14</u> (p.3661)	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Jeffrey N. Pomerantz (Filing fee \$100; Receipt number 0539-11793669) filed by Highland Capital Management LP (Attachments: # <u>1</u> (p.10) Certificate of Good Standing) (Hayward, Melissa) (Entered: 04/13/2021)
04/13/2021	<u>16</u>	(Document Restricted) Sealed Notice of Transmittal: Appellant Record 1708, 1717, 1738, 1739 and 1740 transmitted. (Attachments: # <u>1</u> (p.10) Appellant Record 1708, # <u>2</u> (p.315) Appellant Record 1717, # <u>3</u> Appellant Record 1738, # <u>4</u> (p.319) Appellant Record 1739, # <u>5</u> (p.323) Appellant Record 1740) (axm) (Entered: 04/15/2021)
04/14/2021	<u>15</u> (p.3666)	NOTICE of Attorney Appearance by Penny P Reid on behalf of Official Committee of Unsecured Creditors. (Filer confirms contact info in ECF is current.) (Reid, Penny) (Entered: 04/14/2021)
04/19/2021	17	ELECTRONIC ORDER granting <u>10</u> (p.333) Application for Admission Pro Hac Vice of John A. Morris. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Sam A. Lindsay on 4/19/2021) (chmb) (Entered: 04/19/2021)
04/19/2021	18	ELECTRONIC ORDER granting <u>14</u> (p.3661) Application for Admission Pro Hac Vice of Jeffrey N. Pomerantz. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Sam A. Lindsay on 4/19/2021) (chmb) (Entered: 04/19/2021)
04/20/2021	<u>19</u> (p.3669)	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Highland Capital Management LP. (Annable, Zachery) (Entered: 04/20/2021)
04/23/2021	<u>20</u> (p.3672)	NOTICE of Attorney Appearance by Gregory V Demo on behalf of Highland Capital Management LP. (Filer confirms contact info in ECF is current.) (Demo, Gregory) (Entered: 04/23/2021)
05/13/2021	<u>21</u> (p.3674)	Appellant's BRIEF by The Dugaboy Investment Trust and Get Good Trust. (Draper, Douglas) (Entered: 05/13/2021)
05/13/2021	<u>22</u> (p.3694)	CERTIFICATE OF SERVICE re: <u>21</u> (p.3674) Appellant's Brief <i>Certificate of Service</i> by The Dugaboy Investment Trust and Get Good Trust. (Draper, Douglas) Modified text and event on 5/14/2021 (mjr). (Entered: 05/13/2021)
06/09/2021	<u>23</u> (p.3698)	MOTION (Unopposed Motion for Entry of an Order (I) Authorizing the Acceptance under Seal of Documents Designated by Debtor as Part of the Record on Appeal and (II) Supplementing the Record on Appeal Therewith) filed by Highland Capital

		Management LP (Attachments: # <u>1</u> (p.10) Exhibit(s) A--Proposed Order, # <u>2</u> (p.315) Exhibit(s) B--Agreed Protective Order) (Annable, Zachery) (Entered: 06/09/2021)
06/14/2021	<u>24</u> (p.3718)	CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>23</u> (p.3698) MOTION (Unopposed Motion for Entry of an Order (I) Authorizing the Acceptance under Seal of Documents Designated by Debtor as Part of the Record on Appeal and (II) Supplementing the Record on Appeal Therewith) (Annable, Zachery) (Entered: 06/14/2021)
06/14/2021	<u>25</u> (p.3723)	ORDER Granting <u>23</u> (p.3698) Motion for Entry of an Order (I) Authorizing the Acceptance Under Seal of Documents Designated by Debtor as Part of the Record on Appeal and (II) Supplementing the Record on Appeal. Accordingly, the court directs the clerk of court to: (i) accept from the clerk of the United States Bankruptcy Court for the Northern District of Texas certain sealed documents designated by the Debtor as part of the record on appeal in this Appeal, and (ii) supplement the Record with the Sealed Documents. (Ordered by Judge Sam A. Lindsay on 6/14/2021) (svc) (Entered: 06/14/2021)
06/14/2021	<u>26</u> (p.3725)	Appellee's BRIEF by Highland Capital Management LP. (Annable, Zachery) (Entered: 06/14/2021)
06/16/2021	<u>27</u> (p.3763)	CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>26</u> (p.3725) Appellee's Brief, <u>25</u> (p.3723) Order on Motion for Miscellaneous Relief,, (Annable, Zachery) (Entered: 06/16/2021)
06/28/2021	<u>28</u> (p.3769)	Appellant's REPLY BRIEF by The Dugaboy Investment Trust and Get Good Trust. (Draper, Douglas) (Entered: 06/28/2021)
06/28/2021	<u>29</u> (p.3781)	CERTIFICATE OF SERVICE by The Dugaboy Investment Trust and Get Good Trust re <u>28</u> (p.3769) Appellant's Reply Brief (Draper, Douglas) (Entered: 06/28/2021)
06/28/2021	<u>30</u> (p.3782)	CERTIFICATE OF SERVICE by The Dugaboy Investment Trust and Get Good Trust re <u>28</u> (p.3769) Appellant's Reply Brief (Draper, Douglas) (Entered: 06/28/2021)
07/06/2021	<u>31</u> (p.3786)	Notice Transmitting APPELLEE SUPPLEMENTAL RECORD VOL. 1 BK Record on Appeal re <u>11</u> (p.338) Notice Transmitting BK Record on Appeal. (Attachments: # <u>1</u> (p.10) Appellee Supplemental Record Vol. 1) (Blanco - TXNB, Juan) (Entered: 07/06/2021)
07/06/2021	<u>32</u>	(Document Restricted) SEALED Notice Transmitting BK Record on Appeal: Appellee Supplemental Record Vol. 1. (jmg) (Entered: 07/07/2021)
01/13/2022	<u>33</u> (p.3813)	MOTION to Dismiss for Lack of Jurisdiction ( <i>Appellee's Motion to Dismiss Appeal as Constitutionally Moot</i> ) filed by Highland Capital Management LP (Annable, Zachery) (Entered: 01/13/2022)
01/19/2022	<u>34</u> (p.3829)	CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>33</u> (p.3813) MOTION to Dismiss for Lack of Jurisdiction ( <i>Appellee's Motion to Dismiss Appeal as Constitutionally Moot</i> ) (Annable, Zachery) (Entered: 01/19/2022)
01/20/2022	<u>35</u> (p.3834)	RESPONSE filed by The Dugaboy Investment Trust and Get Good Trust re: <u>33</u> (p.3813) MOTION to Dismiss for Lack of Jurisdiction ( <i>Appellee's Motion to Dismiss Appeal as Constitutionally Moot</i> ) (Draper, Douglas) (Entered: 01/20/2022)
01/27/2022		

	<u>36</u> (p.3855)	REPLY filed by Highland Capital Management LP re: <u>33 (p.3813)</u> MOTION to Dismiss for Lack of Jurisdiction ( <i>Appellee's Motion to Dismiss Appeal as Constitutionally Moot</i> ) (Annable, Zachery) (Entered: 01/27/2022)
02/02/2022	<u>37</u> (p.3870)	CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>36 (p.3855)</u> Reply (Annable, Zachery) (Entered: 02/02/2022)
09/26/2022	<u>38</u> (p.3875)	ORDER granting <u>33 (p.3813)</u> Motion to Dismiss for Lack of Jurisdiction. (Ordered by Judge Sam A. Lindsay on 9/26/2022) (ndt) (Entered: 09/27/2022)
09/26/2022	<u>39</u> (p.3879)	JUDGMENT: The appeal by Appellants The Dugaboy Investment Trust and Get Good Trust is dismissed by agreement as to Get Good Trust and dismissed for lack of bankruptcy standing as to The Dugaboy Investment Trust. Pursuant to Federal Rule of Bankruptcy 8014, all reasonable and allowable costs are to be taxed against Appellants. (Ordered by Deputy Clerk on 9/26/2022) (ndt) (Entered: 09/27/2022)
10/04/2022	<u>40</u> (p.3880)	NOTICE OF APPEAL as to <u>39 (p.3879)</u> Judgment, to the Fifth Circuit by The Dugaboy Investment Trust. Filing fee \$505, receipt number ATXNDC-13199701. T.O. form to appellant electronically at <a href="#">Transcript Order Form</a> or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions <a href="#">here</a> . (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Draper, Douglas) (Entered: 10/04/2022)
10/07/2022		USCA Case Number 22-10960 in USCA5 for <u>40 (p.3880)</u> Notice of Appeal filed by The Dugaboy Investment Trust. (svc) (Entered: 10/07/2022)

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**TAB 2**

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

THE DUGABOY INVESTMENT  
TRUST and GET GOOD TRUST  
Appellants,

v.

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,  
Appellee

CIVIL ACTION NO. 3:21-cv-261-L

In re:  
HIGHLAND CAPITAL  
MANAGEMENT, L.P.,  
Debtor

CASE NO. 19-34054-sgj11

COME NOW, The Dugaboy Investment Trust (“Appellant”), creditor and party in interest in the above-captioned bankruptcy case and appellant in the above-captioned bankruptcy appeal, and, pursuant to 28 U.S.C. § 158(d), hereby appeal to the United States Court of Appeals for the Fifth Circuit that certain *Order* (the “Order”) entered by the District Court on September 26, 2022, at ECF Docket No. 38 affirming the bankruptcy court’s order.

The names of the parties to the Order and the contact information for their attorneys are as follows:

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Highland Capital Management, L.P.

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3. Appellee:

Highland Capital Management, L.P.

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Respectfully Submitted this 4<sup>th</sup> day of October 2022.

**HELLER, DRAPER & HORN, L.L.C.**

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ATTORNEYS FOR THE DUGABOY  
INVESTMENT TRUST

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 4<sup>th</sup> day of October 2022, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the Appellee.

The undersigned hereby certifies that, on this the 4<sup>th</sup> day of October 2022, true and correct copies of this document were served via U.S. Mail, First Class, properly addressed with pre-paid postage to the counsel for the Party-in-Interest and counsel for the Debtor.

*/s/ Douglas S. Draper*

Douglas S. Draper

**TAB 3**

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

**THE DUGABOY INVESTMENT TRUST  
and GET GOOD TRUST,**

Appellants,

v.

**HIGHLAND CAPITAL  
MANAGEMENT, LP,**

Appellee.

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Civil Action No. **3:21-CV-261-L**

**ORDER**

The Dugaboy Investment Trust (“Dugaboy”) and Get Good Trust (“Get Good”) (collectively, “Appellants”) brought this action on February 5, 2021, to appeal the bankruptcy court’s order granting Debtor Highland Capital Management, LP’s Motion For Entry of an Order Approving Settlement with HarbourVest (“9019 Motion”) (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith (Bankr. Doc. 1788), based on its finding that the 9019 Motion was in the best interest of the Debtor’s estate, bankruptcy appeal. On January 13, 2022, Appellee Highland Capital Management, LP, (“Appellee” or “Highland Capital”) filed its Motion to Dismiss Appeal as Constitutionally Moot (Doc. 33) which Appellants oppose in part. For the reasons herein explained, the court **grants** Highland Capital’s Motion to Dismiss (Doc. 33) and **affirms** the bankruptcy court order appealed by Appellants.

Highland Capital contends that all claims asserted by Appellees are moot, as they were withdrawn after this appeal was taken. Highland Capital further asserts that Appellees lack standing as a result to pursue this appeal. Below is a summary of claims that Highland Capital contends were withdrawn for which standing is lacking:

Summary of Appellants' Claims			
Appellant	Claims at Time of Appeal	Disposition	Result
Get Good	Claim No. 120	Withdrawn / disallowed	No standing
	Claim No. 128	Withdrawn / disallowed	No standing
	Claim No. 129	Withdrawn / disallowed	No standing
Dugaboy	Claim No. 113	Withdrawn / disallowed	No standing
	Claim No. 131	Withdrawn / disallowed	No standing
	Claim No. 177	Withdrawn / disallowed	No standing

Appellee's Mot. 4.

Appellants concede that dismissal of Get Good is appropriate given the dismissal of its claims and "lack of an ownership interest in any of the non-debtor affiliates or the Debtor." Appellants' Resp. 1 & n.1. Appellants, therefore, "consent" to the dismissal of Get Good. *Id.* In light of this concession, the appeal as to Get Good will be dismissed by agreement.

Appellants nevertheless contend that, because Dugaboy has a direct pecuniary interest in the HarborVest Settlement, it continues to have standing to appeal the bankruptcy court's order granting the Debtor's 9019 Motion. Appellants argue that, "[w]ithout HarbourVest's 80 million in claims granted under the HarbourVest Settlement, Dugaboy's recovery would be much more likely." *Id.* at 2. For this reason, it contends that it has bankruptcy standing under the "person aggrieved" test.

Alternatively, it asserts that it has standing under section 1109 of the Bankruptcy Code, which provides: "A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). Appellants contend that "Dugaboy, as an equity holder, defendant to multiple actions commenced by the Debtor, and a party enjoined under the Plan[,] is a 'party-in-interest.'" Appellants' Resp. 1 & n.13

As correctly noted by Highland Capital, however, the mere possibility of obtaining relief is insufficient for purposes of bankruptcy standing. As the Fifth Circuit in *In re Technicool Systems, Incorporated* aptly explained:

The narrow inquiry for bankruptcy standing—known as the “person aggrieved” test—is “more exacting” than the test for Article III standing. Rather than showing the customary “fairly traceable” causal connection, a bankruptcy appellant must instead show that he was “directly and adversely affected pecuniarily by the order of the bankruptcy court.” In essence, bankruptcy standing requires “a higher causal nexus between act and injury.” This restriction narrows the playing field, ensuring that only those with a direct, financial stake in a given order can appeal it. Thus in bankruptcy litigation, as in life, “the more money we come across, the more problems we see.”

*In re Technicool Sys., Inc.*, 896 F.3d 382, 385-86 (5th Cir. 2018) (footnotes and citations omitted).

The court in *Technicool* went on to conclude that the appellant in that case could not satisfy the narrow, more exacting test for bankruptcy standing because the prospect of harm was speculative rather than direct:

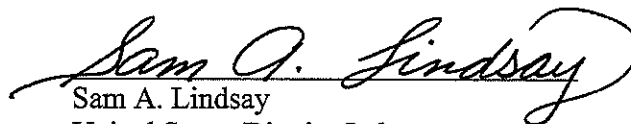
Furlough cannot show that he was “directly and adversely affected pecuniarily by the order of the bankruptcy court.” Furlough’s primary contention is that, but for NOV’s proof of claim, Technicool’s assets would exceed its debt, and he would be entitled to any estate surplus. Because SBPC represents both NOV and the Trustee, Furlough argues, it might fail to disclose any problems with NOV’s claim, robbing him of the possibility of recovering a surplus.

This speculative prospect of harm is far from a direct, adverse, pecuniary hit. Furlough must clear a higher standing hurdle: The order must burden his pocket before he burdens a docket. SBPC was appointed to assist the Trustee in consolidating claims and piercing the corporate veil. That appointment does not directly affect whether the bankruptcy court approves or denies NOV’s claim against the estate, and thus it does not directly affect Furlough’s pecuniary interests. Furlough’s argument is essentially that if NOV’s claim ceased to exist or dramatically decreased, the estate’s assets would exceed its debt, and he would benefit financially. This might be true but it would not be a direct result of this appeal. That Furlough feels grieved by SBPC’s appointment does not make him a “person aggrieved” for purposes of bankruptcy standing.

*Id.* at 386 (citations and footnote omitted).

Notwithstanding Dugaboy's attempt at distinguishing *Technicool*, the court, for similar reasons, agrees with Highland Capital that Dugaboy's indirect interest in the order approving the HarbourVest Settlement and prospect of harm is speculative and insufficient to meet the strict requirements for bankruptcy standing. Further, Appellants acknowledge that "[t]he Fifth Circuit has not decided the issue of whether section 1109(b) confers appellate standing one way or the other." Appellants' Resp. 11. Accordingly, the court: (1) **dismisses by agreement** this appeal as to Get Good; (2) **dismisses for lack of bankruptcy standing** the appeal by Dugaboy; and **affirms** the bankruptcy court order appealed by Dugaboy.

**It is so ordered** this 26th day of September, 2022.

  
Sam A. Lindsay  
United States District Judge



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

**THE DUGABOY INVESTMENT TRUST  
and GET GOOD TRUST,**

Appellants,

v.

**HIGHLAND CAPITAL  
MANAGEMENT, LP,**

Appellee.

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Civil Action No. 3:21-CV-261-L

**JUDGMENT**

In accordance with the court’s September 26, 2022 order, it is **ordered, adjudged, and decreed** that the bankruptcy court’s order granting Debtor Highland Capital Management, LP’s Motion For Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith (Bankr. Doc. 1788) is **affirmed**; and that the appeal by Appellants The Dugaboy Investment Trust and Get Good Trust is **dismissed** by agreement as to Get Good Trust and **dismissed** for lack of bankruptcy standing as to The Dugaboy Investment Trust. Pursuant to Federal Rule of Bankruptcy 8014, all reasonable and allowable costs are to be taxed against Appellants.

**Signed** and entered this 26th day of September, 2022.

Karen Mitchell, Clerk of the Court

By s/Tannica Stewart  
Tannica Stewart, Deputy Clerk

**TAB 4**

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

There are no participants in the case who are not registered CM/ECF users.

Dated: December 6, 2022  
New Orleans, Louisiana

/s/ Douglas S. Draper  
Douglas S. Draper

Attorney for Appellant,  
The Dugaboy Investment Trust