

Case No. 24-10287

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

In re Highland Capital Management, L.P.,
Reorganized Debtor

James Dondero; Highland Capital Management Fund Advisors, L.P.;
The Dugaboy Investment Trust; NexPoint Real Estate Partners, L.L.C.;
Get Good Trust,
Plaintiffs - Appellants

v.

Stacey G. Jernigan; Highland Capital Management, L.P.,
Defendants - Appellees

Appeal from the United States District Court,
Northern District of Texas, Dallas Division
Case No. 3:23-cv-00726-S
Hon. Karen Gren Scholer, District Judge

**APPELLEE'S OBJECTION TO APPELLANTS' MOTION
FOR LEAVE TO FILE REPLY BRIEF
IN SUPPORT OF REHEARING EN BANC**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that:

(a) There are no other debtors associated with this bankruptcy case other than Highland Capital Management, L.P., and there are no publicly-held corporations that own 10% or more of Highland Capital Management, L.P., which is not a corporation or a parent corporation;

(b) On information and belief (and not as represented on the Certificate of Interested Persons contained in their opening brief, which is incomplete and does not comply with 5th Cir. R. 28.2.1), Appellants are all private, non-governmental parties whose owners are also private, non-governmental parties and no publicly-held corporation owns 10% or more of the equity interests in any of these entities;

(c) The following listed persons and entities, as described in the fourth sentence of 5th Cir. R. 28.2.1, have an interest in the outcome of this case:

- (i) Highland Capital Management, L.P., Appellee
Counsel: Pachulski Stang Ziehl & Jones LLP
Hayward PLLC
- (ii) The Highland Claimant Trust, the beneficiaries of which comprise the creditors of Highland Capital Management, L.P., indirectly interested party
Counsel: Pachulski Stang Ziehl & Jones LLP
Hayward PLLC
- (iii) James Dondero; The Dugaboy Investment Trust; NexPoint Real Estate Partners, L.L.C.; Get Good Trust; Highland Capital Management Fund Advisors, L.P., Appellants
Counsel: Crawford Wishnew Lang PLLC
Ashcroft Sutton Reyes
Mitchell Law PLLC
- (iv) The Honorable Stacey G. Jernigan, U.S. Bankruptcy Court, Northern District of Texas, Dallas Division, Appellee

/s/ Zachery Z. Annable
Zachery Z. Annable

**APPELLANTS’ MOTION FOR LEAVE TO FILE A REPLY
SHOULD BE DENIED¹**

On December 3, 2024, Appellants filed their *Petition for Rehearing En Banc* [Doc. 96] (the “**En Banc Petition**”). On December 24, 2024, in response to the Court’s request for a response,² Appellee filed its opposition to the En Banc Petition.³

In contrast to typical motion practice, reply briefs in support of en banc petitions are not authorized.⁴ Appellants know this; that’s why they were forced to file their Motion.⁵ Yet the Motion is based *solely* on the subjective assessment that Appellee’s response “raised numerous arguments against rehearing that warrant a reply.”

Respectfully, if that is a sufficient justification for filing an unauthorized reply, then no basis would exist to deny a motion for leave since litigants invariably want the last word.

¹ Capitalized but undefined terms used in this response have the meanings given to them in the *Brief of Appellants* [Doc. 34] (the “**Opening Brief**”) that initiated the appeal in this Court of the District Court’s denial of Appellants’ petition for a writ of mandamus.

² See Doc. 112 (Letter to Appellee’s counsel requesting a responsive brief).

³ Under Fed. R. App. P. 40(a)(4), Appellee was not permitted to file a response until the Court requested one.

⁴ Compare Fed. R. App. P. 40 (no provision for reply briefs in connection with petitions for rehearing) with Fed. R. App. P. 27(a)(4) (authorizing replies in further support of motions).

⁵ “**Motion**” refers to *Appellants’ Motion for Leave to File a Reply Brief in Support of Rehearing En Banc* [Doc. 119].

Significantly, the proposed reply advances yet more new arguments never preserved for appeal that further highlight the improper nature of the Motion and proposed reply.⁶

Petitioners seeking en banc hearings should be required to do more than assert that a reply “is warranted” before the Court considers further argument. Appellants failed to do so here.

CONCLUSION

For the foregoing reasons, the Motion should be denied.

⁶ Compare Opening Brief at 29 (“This Court reviews the denial of mandamus for abuse of discretion.... Decisions about whether to recuse are also reviewed for an abuse of discretion”) with En Banc Petition at 1 (the issue supposedly meriting en banc consideration is “[w]hether a judge’s ruling on a motion to recuse pursuant to 28 U.S.C. § 455 should be reviewed de novo or for abuse of discretion”) and Motion at 2 (arguing that the District Court “committed legal error by refusing” to apply a standard of review that (a) contradicts the same standard Appellants told the Panel applies here, and (b) Appellants never requested until filing their En Banc Petition).

January 2, 2025

Respectfully submitted,

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF COMPLIANCE

I certify:

1. This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, including footnotes and excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 432 words.

2. This document complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because, in compliance with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), this document has been prepared in a proportionally spaced serif (Times New Roman) typeface at 14-point type (12-point for footnotes).

/s/ Zachery Z. Annable

Zachery Z. Annable

CERTIFICATE OF SERVICE

I certify that, on January 2, 2025, the foregoing document was served electronically on all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

/s/ Zachery Z. Annable
Zachery Z. Annable