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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL	§	
MANAGEMENT, L.P.	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
	§	
Charitable DAF Fund, L.P.	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	Adversary Proceeding No. 24-03073
Alvarez & Marsal CRF Management,	§	
LLC	§	
	§	
Defendant.	§	
	§	



MOTION TO STAY PENDING APPEAL

Plaintiff, Charitable DAF Fund, L.P. ("DAF"), files this Motion to Stay Pending Appeal ("Motion") and would respectfully show:

This is an action that was pending in Texas state court for over two years until A&M wrongfully removed the case to this Court. DAF filed a motion to remand the case back to Texas state court because this Court lacks subject matter jurisdiction. The Court denied DAF's motion to remand, finding that the case was "related to" the bankruptcy of Highland Capital Management, L.P. ("Highland"). DAF has filed a motion seeking leave to file an interlocutory appeal of the Court's Memorandum Opinion and Order Denying Motion to Remand of Charitable DAF Fund, L.P. (Docs. 21-22) ("Order") on DAF's motion to remand based on lack of subject matter jurisdiction. Accordingly, DAF seeks a stay of this adversary proceeding until DAF has fully prosecuted its appeal, and the district court (or an appellate court) finally determines whether or not this Court has subject matter jurisdiction over the removed action.

When asked to consider whether to grant a stay of litigation, this Court must determine "(1) whether the stay applicant has made a strong showing of likelihood to succeed on the merits; (2) whether the applicant will be irreparably harmed absent a stay; (3) whether issuance of a stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Plaquemines Par. v. Chevron United States, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023).

“[A] likelihood of success on the merits [also] can be met when the party ‘present[s] a substantial case on the merits when a serious legal question is involved and show[s] that the balance of the equities weighs heavily in favor of granting the stay.’” *Trend Intermodal Chassis Leasing LLC v. Zariz Transp. Inc.*, 711 F. Supp. 3d 627, 640 (N.D. Tex. 2024) (first alteration added). “A serious legal question has “far-reaching effects” or [is a] matter[] of “public concern[]” that go[es] well beyond the interests of the parties.” *Id.* (alterations in original).

DAF has met the four elements required for a stay of these proceedings pending appeal. As outlined in DAF’s Motion for Leave to File Interlocutory Appeal, which is incorporated herein by reference, because the relevant inquiry is whether the potential outcome of DAF’s claims may have any impact on the interpretation or implementation of the confirmed plan of reorganization, and the Court’s decision to retain the case was based instead on a hypothetical future action against another party (Mr. Seery), DAF has a substantial likelihood of success on appeal. DAF has distinguished each of the various bases for the Court’s holding with clear authority in support of DAF’s arguments.

In the event the Court disagrees with DAF’s prospects on appeal, the questions presented are “serious legal questions” because the ability of Bankruptcy Courts to peer beyond the claims in a pleading to determine subject matter jurisdiction has profound, wide-reaching consequences on the forums available to litigants. A court of appeals will undoubtedly want the opportunity to address this expansion of Article III.

Additionally, any orders that this Court may enter while the appeal is pending would be void if this Court does indeed lack subject matter jurisdiction. A dismissal of DAF's claims by a court that lacks jurisdiction to make that determination, or requiring DAF to expend resources litigating a case where jurisdiction is lacking—only to have to relitigate those matters upon remand—would irreparably harm DAF, as DAF would have no recourse to recover those expenses. *FTC v. Educare Ctr. Servs.*, No. EP-19-CV-196-KC, 2020 U.S. Dist. LEXIS 135341, at *11 (W.D. Tex. 2020) (“[T]he Fifth Circuit recognizes monetary injuries as irreparable when they arise in ‘[t]he absence of an available remedy by which the movant can later recover monetary damages.’”).

DAF would be prejudiced by being forced to prosecute multiple ongoing appeals all based on subject matter jurisdiction in the unlikely event litigation proceeds here and this Court grants A&M's Motion to Dismiss, at which point some claims will remain in this Court (subject to appeal for lack of jurisdiction), while the dismissed claims will be on appeal for that very same reason. Thus, if DAF is not granted a stay and permitted to appeal now, additional litigation resources will necessarily be expended either way (and in some cases, duplicatively) just to end up in the same spot, with no ability for DAF to recoup those expenses.

Conversely, A&M, as the defendant in this matter, will not incur any injury by a stay of these proceedings. Indeed, A&M's primary motivation in removing this case from the outset was to delay a resolution on the merits and to avoid court ordered discovery.

As such, A&M should only be benefitted by a stay. In fact, should DAF wish to proceed with discovery pending a determination on A&M's Motion to Dismiss, it is almost certain A&M will request a stay until a decision is reached (which calls into question this Court's own ability to ensure a timely adjudication, under A&M's theory). Of course, A&M will incur the same appellate expenses in any case (although they too could be subject to multiple appeals if the subject matter jurisdiction is not resolved from the outset given the potential segregation of claims posed by A&M's Motion to Dismiss).

Finally, public interest weighs in favor staying these proceedings because "there is a strong public interest 'not to have the Court exercise authority over parties over whom the Court lacks jurisdiction.'" *Trend Intermodal Chassis Leasing LLC v. Zariz Transp. Inc.*, 711 F. Supp. 3d 627, 641 (N.D. Tex. 2024).

PRAYER

For the foregoing reasons, DAF respectfully requests the Court grant DAF's Motion, stay this adversary proceeding in its entirety until the issue of this Court's subject matter jurisdiction can be fully and finally resolved on interlocutory appeal, and grant DAF all such other and further relief to which it may be justly entitled, general or special, in law or in equity.

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY
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By: /s/ Sawnie A. McEntire

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***Attorneys for Charitable DAF Fund,
L.P.***

CERTIFICATE OF CONFERENCE

On January 25, 2025, counsel for DAF conferred via email with counsel for A&M, who stated that A&M opposes the relief requested in this Motion to Stay.

/s/ Sawnie A. McEntire

Sawnie A. McEntire

CERTIFICATE OF SERVICE

On January 28, 2025, I filed the foregoing document with the clerk of court for the U.S. Bankruptcy Court, Northern District of Texas. I hereby certify that I have served the document on all counsel and/or pro se parties of record by a manner authorized by Federal Rules of Civil Procedure 5(b)(2).

/s/ Sawnie A. McEntire

Sawnie A. McEntire

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Charitable DAF Fund, L.P.	§	
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Plaintiff,	§	
	§	
v.	§	
	§	Adversary Proceeding No. 24-03073
Alvarez & Marsal CRF Management, LLC	§	
	§	
	§	
Defendant.	§	

ORDER GRANTING MOTION TO STAY PENDING APPEAL

Before this Court is the motion to stay pending appeal (the "Motion") filed by Charitable DAF Fund, L.P. ("DAF"), seeking a stay of the above-captioned adversary proceeding, pending disposition of DAF's Motion for Leave to File Interlocutory Appeal of this Court's *Memorandum Opinion and Order Denying Motion to Remand of Charitable DAF Fund, L.P.*, and any ensuing interlocutory appeal. Having considered the Motion and the responsive pleadings filed, this Court grants DAF's Motion, and therefore,

IT IS ORDERED THAT:

1. The Motion is **GRANTED**.
2. The above-captioned adversary proceeding is stayed in its entirety, pending final disposition of DAF's Motion for Leave to File Interlocutory Appeal and/or any subsequent appellate proceedings occurring in connection therewith.

End of Order

Submitted by:
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