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and in his official capacity as
MAYOR OF MONTVALE, LOU
D'ANGELO, individually and in his
official capacity as COUNCIL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

CIVIL ACTION

DOCKET NO.: A-3170-24(AM-480-24)

ON APPEAL FROM:
SUPERIOR COURT OF NEW
JERSEY, LAW DIVISION, MERCER
COUNTY

DOCKET NO.: MER-L-1778-24

SAT BELOW: Hon. Robert T. Lougy,
A.J.S.C.

MOTION FOR LEAVE TO APPEAL,
TRANSFER TO THE APPELLATE
DIVISION, CONSOLIDATE WITH
A-1247-24, AND ACCELERATE

PRESIDENT of the BOROUGH OF
TOTOWA, RUDY BOONSTRA,
individually and in his official
capacity as MAYOR of the
TOWNSHIP OF WYCKOFF,
CHARLES J.X. KAHWATY,
individually and in his official
capacity as MAYOR of the
BOROUGH OF FRANKLIN
LAKES, BRIAN FOSTER,
individually and in his official
capacity as MAYOR of the
TOWNSHIP OF HOLMDEL,

Plaintiffs/Appellants

vs.

STATE OF NEW JERSEY,
AFFORDABLE HOUSING
DISPUTE RESOLUTION
PROGRAM, GLENN A. GRANT, in
his official capacity as ACTING
ADMINISTRATIVE DIRECTOR OF
THE COURTS, and HOUSING
MORTGAGE FINANCE AGENCY,

Defendants/Respondents

vs.

FAIR SHARE HOUSING CENTER,

Defendant-Intervenor/
Respondent

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PRELIMINARY STATEMENT

Plaintiffs seek interlocutory review of a Law Division order barring Plaintiffs from pleading claims based upon the notion that they belong in the Appellate Division. The Law Division refused to transfer the claims to the Appellate Division and instead entered an order denying Plaintiffs the ability to assert them. Because Plaintiffs cannot file an original jurisdiction complaint in the Appellate Division, they are constrained to file the instant motion for interlocutory relief.

This complicated procedural landscape arises from litigation challenging the Fourth Round Affordable Housing Law, P.L. 2024, c. 2 (“Law”). The Law vests rulemaking authority in the executive branch Housing and Mortgage Finance Agency (“HMFA”) but places adjudicative authority in the judiciary including the Affordable Housing Dispute Resolution Program.

HMFA issued rules governing the Fourth Round affordable housing without notice or comment. An appeal was filed from this final agency rulemaking with this Court under A-1247-24, which remains pending. In a past emergent application, this Court denied relief and distinguished between challenges to the agency rulemaking being before the Appellate Division and challenges to the Law being before the Law Division.

Accordingly, Plaintiffs sought to file counts in the Law Division among other things seeking invalidation of the Law’s exception to notice or comment (“APA Exception”) as violative of procedural due process and for equitable or injunctive relief from the Law’s deadlines enforced by the judiciary. The State Defendants and the Fair Share Housing Center (“FSHC”) opposed this relief claiming the Appellate Division had jurisdiction.

Rather than transfer the matter to this Court pursuant to Rule 1:13-4, the Law Division judge erroneously entered an order denying Plaintiffs’ motion for leave to amend. As such, Plaintiffs are now procedurally barred from bringing their claims that relate to the HMFA rulemaking but arise under the Law.

Plaintiffs now move for leave to file an interlocutory appeal from the Law Division’s incorrect order. Considering the parties below and the Law Division judge all believe this Court should have jurisdiction, Plaintiffs further move for this Court to order the transfer of their claims to this Court, to have them consolidated with the pending HMFA appeal, and to have them accelerated.

PROCEDURAL HISTORY

Prior to 2024, affordable housing rulemaking and adjudications were both vested in the Council on Affordable Housing (“COAH”), located within the executive branch. As such, any appeals from COAH’s rulemaking – and any

relief that may be required from its adjudications – were undisputably vested in the Appellate Division under Rule 2:2-3(a)(2).

Under the Law, the Legislature vested the rulemaking powers formerly belonging to COAH in the HMFA, also in the executive branch. At the same time, the Legislature moved the enforcement and compliance powers from the executive branch to the judicial branch, including specifically the Affordable Housing Dispute Resolution Program.

On or about December 19, 2024, HMFA issued rules without engaging in notice or comment under the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq. (“APA”) (Pa10-11). Under the Law, these rules are now the subject of enforcement by the judiciary, including relative to a June 30, 2025 deadline for municipalities to submit housing elements and fair share plans and draft ordinances and resolutions. N.J.S.A. 52:27D-304.1(f)(1).

A subset of Appellants filed notice of appeal from this rulemaking with the Appellate Division on January 3, 2025 under Docket No. A-1247-24 (the “HMFA Appeal”).¹ They contend that this rulemaking is illegal and unconstitutional. They sought emergent relief from this Court relative to the Law’s January 31, 2025 deadline to enter into the Affordable Housing Dispute Resolution

¹ This appeal was brought by twenty-five (25) of the Appellant municipalities and Michael Ghassali.

Program or else lose affordable housing immunity, but were denied. (Pa202-04). In relevant part, the panel wrote as follows:

Appellants’ claim against the HMFA that the Act itself is unconstitutional insofar as it improperly permits transitional rulemaking, is not a challenge to agency action but, rather, to the statute itself.

[(Pa203)].

As such, on March 26, 2025, Appellants filed the instant motion to amend in MER-L-1778-24 to assert claims that this Court in the foregoing order indicated belonged in the Law Division (the “HMFA Counts”): (1) that HMFA’s rulemaking – including using an APA exception while engaging in an iterative process with special interest groups as outlined in the proposed amended complaint – violates state constitutional procedural due process (Count 10) and (2) that HMFA’s unconstitutional or illegal rulemaking warrant “equitable relief to toll the various statutory deadlines [under the Law] until such time as the HMFA engages in proper rulemaking under the Law,” recognizing “[t]he Appellate Division’s review of the HMFA Rules involves jurisdiction over the HMFA, while the HMFA does not have any jurisdiction over the deadlines, which are enforced by Defendant Affordable Housing Dispute Resolution Program.” (Count 11).² (Pa256-58). The proposed

² Plaintiffs have invited the Appellate Division to invoke its original jurisdiction to consider the HMFA Counts, absent which the Law Division must have jurisdiction. To this end, in their HMFA Appeal merits brief, Plaintiffs wrote as follows:

amended complaint appended hundreds of pages demonstrating how HMFA worked with special interest groups to develop the rulemaking under review all while refusing to participate in notice or comment. (Pa555-650). These claims were contained within the HMFA Counts to the proposed Fifth Amended Complaint that Plaintiffs sought to file below. (Pa256-58). The State Defendants opposed leave to assert the HMFA Counts solely on grounds that the Appellate Division must have jurisdiction and Defendant-Intervenor Fair Share Housing Center made the same principal argument in opposition. In reply, Plaintiffs contended that the Appellate Division's purported jurisdiction was not a ground to bar the amendment of a complaint, and that instead, a transfer pursuant to Rule 1:13-4 was the appropriate remedy.

Consistent with Rule 4:5-1, Appellants advise this Court that they have filed a motion for leave to amend their complaint in the Law Division under Docket No. MER-L-1778-24 to assert two counts (the "Counts") relative to the HMFA Rulemaking. (Pa313-80). Appellants contend that it would be prudent for the Appellate Division to invoke its original jurisdiction to consider the due process dimension to the Rules as well as potential equitable relief under the Law as a result of same. Rule 2:10-5. Given that Appellants lack the ability to compel the Appellate Division to invoke its original jurisdiction, as well as the seeming reluctance of this Court to do so as reflected in the Order, Appellants seek to file such claims in the Law Division to protect their rights. Appellants would invite an order of this Court exercising original jurisdiction over the Counts in this docket.

On May 7, 2025, the trial court denied Plaintiffs' motion to amend to assert the HMFA Claims on account of purported Appellate Division jurisdiction:

The Court denies Plaintiffs' application to amend the complaint to add counts challenging HMFA rule-making. Black letter law firmly establishes that the Appellate Division, and not the Law Division, has "exclusive jurisdiction to review any action or inaction of a [S]tate administrative agency." Beaver v. Magellan Health Servs., Inc., 433 N.J. Super 430, 442 (App. Div. 2013) (citing Mutschler v. N.J. Dep't of Env't. Prot., 337 N.J. Super. 1, 8 (App. Div. 2001)); see also Pascucci v. Vagott, 71 N.J. 40, 52 (1976) (explaining that "every proceeding to review the action or inaction of a state administrative agency [shall] be by appeal to the Appellate Division."). Rule 2:2-3(a)(2) expressly and exclusively allocates to the Appellate Division responsibility "to review the validity of any rule promulgated by [any state administrative agency of officer]." Such jurisdiction does not depend on the theory of the party's claims, nor the nature of the relief sought. Mutschler, 337 N.J. Super. at 9.

The Court denies Plaintiffs' request to send these counts to the Appellate Division per Rule 1:13-4 for several practical reasons. First, the counts have not yet been filed, as of the date of this order. Although the Court permits the amended complaint here, that amended complaint has not yet been filed. Thus, the Court cannot transfer them out by this Order. Second, allowing the amendment – which would add not only new counts but also a new party – and then executing the transfer seems to be one more step than necessary. The Court fully understands the principles of judicial economy underlying Rule 1:13-4 but granting the amendment solely to then transfer the counts to the Appellate Division does not seem to further those principles.

[(Pa8-9)].

LEGAL ARGUMENT

Under Rule 2:2-4, the Appellate Division “may grant leave to appeal, in the interest of justice, from an interlocutory order of a court.” The interests of justice require them to be afforded with an opportunity to bring an interlocutory appeal or else they are prevented from bringing claims that the Law Division judge believes should be brought before this Court and are corollary to the HMFA Appeal pending before this Court.

Plaintiffs below filed a motion for leave to file an amended complaint including the HMFA Counts. The motion was supposed to be governed by Rule 4:9-1, which requires “that motions for leave to amend be granted liberally.” Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. 437, 456 (1998) (citing Presler, Current N.J. Court Rules, comment on R. 4:9-1 (1998)). “The New Jersey Supreme Court has made it clear that ‘. . . achievement of substantial justice is the fundamental consideration.’” Cardell, Inc. v. Piscatelli, 277 N.J. Super. 149, 155 (App. Div. 1994) (citations omitted) (alteration in original). “The motion for leave to amend is required by the court rule to be liberally granted and without consideration of the ultimate merits of the amendment.” Interchange State Bank v. Rinaldi, 303 N.J. Super. 239, 256 (App. Div. 1997) (citations omitted). Where a claim arises after the operative complaint is filed, leave to amend should be granted as of course. State, Dep’t of Env’tl. Prot. v. Standard Tank Cleaning Corp., 284 N.J. Super. 381, 396

(App. Div. 1995)). The liberality of amendment “is, of course, especially appropriate in matters affecting the public interest.” Pressler, Current N.J. Court Rules, comment 2.1 on R. 4:9-1 (2025) (citing Springfield Tp. v. Board of Educ., 217 N.J. Super. 570 (App. Div. 1987); DYFS v. M.W., 398 N.J. Super. 266, 288 (App. Div. 2008)). The trial court denied Plaintiffs’ motion to amend and include the HMFA Counts. It did not base its reasoning at all upon the applicable liberal standard governing complaint amendments in Rule 4:9-1. That alone was plain error.

The trial court instead based its denial upon purported Appellate Division jurisdiction, contending that the amended complaint had not yet been filed (as it could not have been under the trial court’s past orders) and that allowing the amendment and transferring to the Appellate Division pursuant to Rule 1:13-4 “seems to be one more step than necessary.” (Pa9). The trial court’s reasoning is inconsistent with the cited Rule and corresponding law.

Under Rule 1:13-4, “if any court is without jurisdiction of the subject matter of an action, . . . it **shall**, on motion or on its own initiative, order the action, with the record and all papers on file, transferred to the proper court, or administrative agency, if any, in the State. The action shall then be proceeded upon as if it had been originally commenced in that court or agency.” (emphasis added). This Rule “authorize[s] transfer from a court lacking subject matter jurisdiction to any court having such jurisdiction **in order to avoid dismissal of the action on jurisdictional**

grounds.” Pressler & Verniero, Current N.J. Court Rules, cmt. 1.1 to R. 1:13-4 (2025) (emphasis added). “Where relief is improperly sought in a trial division of the Superior Court, the matter should be transferred to the Appellate Division pursuant to [Rule] 1:13-4.” Pressler & Verniero, Current N.J. Court Rules, cmt. 3.2.3 to R. 2:2-3 (2025).

In a case cited by Plaintiffs below but not addressed by the trial court in its statement of reasons, Affiliated FM Ins. Co. v. State, 338 N.J. Super. 540, 544 (App. Div. 2001), numerous insurance companies challenged the constitutionality of the Good Driver Protection Act of 1994, as well as actions taken by the Commissioner of Insurance, State Treasurer, and other State officials and agencies. The constitutional challenge to the statute was brought before the Chancery Division and then transferred to the Appellate Division under Rule 1:13-4(a). Id. at 557. The panel wrote it was “satisfied” that the constitutional challenges “belonged in the Chancery Division.” Ibid. However, it wrote that those challenges were “so entwined with the challenges to the actions of government officials as to virtually mandate integrated consideration.” Ibid.

The foregoing law confirms that Rule 1:13-4 exists to avoid dismissals on jurisdictional grounds by requiring that a court transfer a matter to the proper court. The Law Division erred in denying Plaintiffs’ motion to amend on account of Appellate Division jurisdiction, which had the opposite effect, barring

Plaintiffs from bringing the HMFA Counts. A transfer was the proper, required, and only mechanism for Plaintiffs' claims to reach the Appellate Division, because our Court Rules do not allow Plaintiffs to file an original jurisdiction complaint in this Court. The interests of justice support interlocutory review of the trial court's order, as otherwise, Plaintiffs will be prohibited from bringing claims that the Law Division has held belong before this Court.

Additionally, the trial court's opinion is inconsistent with Affiliated FM. In that case, this Court identified the jurisdictional distinction between constitutional challenges and challenges to actions taken by executive branch officers. It concluded that the Chancery Division had original jurisdiction over the constitutional challenges but that transfer to the Appellate Division was appropriate because the challenge was so "entwined" to "mandate integrated consideration." The exact same situation is present here between the HMFA Counts and the HMFA Appeal.

Given the complex procedural posture, Plaintiffs are constrained to move for leave to amend, which the interests of justice support. But if that alone is granted, it would then lead to briefing before this Court on whether the trial court's order should be reversed, which would only send this matter back to the trial court, all while the Law Division and all litigants maintain that this Court should have jurisdiction.

Thus, in the interest of judicial economy, and consistent with Rule 2:11-2, Plaintiffs request in this motion that this Court order a transfer of the HMFA Counts to this Court pursuant to Rule 1:13-4. They further request that this transferred matter be consolidated with the HMFA Appeal, A-1247-24, so that all of the claims that Plaintiffs wish to assert relating to the HMFA rulemaking may be decided at once. Lastly, Plaintiffs move for this appeal to be accelerated and adjudicated before a June 30, 2025 deadline under the Law. There is a concurrent motion to accelerate that was filed in the HMFA Appeal, A-1247-24, on May 13, 2025, the argument for which Plaintiffs incorporate by reference, and which in relevant part provides:

Under the Law, the HMFA's Uniform Housing Affordability Controls ("UHAC") rulemaking under review governs the housing element and fair share plans, as well as draft ordinances and resolutions, which New Jersey's municipalities are required to file by June 30, 2025 in order to maintain Fourth Round immunity. N.J.S.A. 52:27D-304.1(f)(1). Thus, New Jersey's municipalities are currently having to take steps to draft proposed plans based upon the subject rules that may be invalid, and they will be required to complete more formal actions and make submissions to the Affordable Housing Dispute Resolution Program based upon these very regulations in approximately one-and-a-half months. Had HMFA acted in accordance with its representation that it was going to reissue rules to provide parties including Appellants an opportunity to comment, this legal issue may have been mitigated. But they did not, and there will not be new rules adopted for the June 30, 2025 deadline.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for leave to appeal, transfer the HMFA Counts to the Appellate Division, consolidate with the HMFA Appeal in A-1247-24, and accelerate this appeal.

Respectfully submitted,

KING, MOENCH & COLLINS, LLP
Attorneys for Plaintiffs/Appellants

A handwritten signature in blue ink, appearing to read 'mfc', is written over a horizontal line.

By: Michael L. Collins, Esq. (068092013)

Dated: June 17, 2025



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
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May 27, 2025

Via eCourts Appellate
Marie C. Hanley, Clerk
Superior Court of New Jersey,
Appellate Division
Hughes Justice Complex
25 Market Street
P.O. Box 006
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Re: Borough of Montvale, Township of Denville, Borough of Florham Park, Borough of Hillsdale, Township of Mannington, Township of Millburn, Township of Montville, Borough of Old Tappan, Borough of Totowa, Borough of Allendale, Borough of Westwood, Township of Hanover, Township of Wyckoff, Borough of Wharton, Borough of Mendham, Borough of Oradell, Borough of Closter, Township of West Amwell, Township of Washington, Borough of Norwood, Township of Parsippany-Troy Hills, Borough of Franklin Lakes, Township of Cedar Grove, Township of East Hanover, Township of Holmdel, Township of Wall, Township of Little Falls, Township of Warren, Michael Ghassali, individually and his official capacity as Mayor of Montvale, Lou D'Angelo, individually and in his official capacity as Council President of the Borough of Totowa, Rudy Boonstra, individually and in his official capacity as Mayor of the Township of Wyckoff, Charles J.X. Kahwaty, individually and in his official capacity as Mayor of the Borough of Franklin Lakes, Brian Foster, individually and in his official capacity as Mayor of the Township of Holmdel, v. State of New Jersey, Affordable Housing



Dispute Resolution Program, Michael J. Blee, in his official capacity
as Acting Administrative Director of the Courts,

Motion No. AM-480-24

Civil Action: On Motion for Leave to Appeal from the Superior
Court of New Jersey, Law Division,
Docket No. MER-L-1778-24

Letter Brief on Behalf of the State Defendants in Opposition to
Motion for Leave to Appeal

Dear Ms. Hanley:

Please accept this letter brief on behalf of the State of New Jersey, the
Affordable Housing Dispute Resolution Program (Program), and Michael J.
Blee in his official capacity as Acting Administrative Director of the Courts
(ADC), and putative defendant New Jersey Housing and Mortgage Finance
Agency (HMFA) (collectively Defendants), in opposition to Plaintiffs’ motion
for leave to appeal.

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PRELIMINARY STATEMENT

This Court should deny leave for Plaintiffs to appeal the trial court’s May 7, 2025 denial of their motion seeking to amend their complaint in the Law Division to plead claims challenging HMFA’s rulemaking that are undisputedly within this Court’s exclusive jurisdiction. Despite already raising near-identical claims before this Court in their pending appeal challenging HMFA’s interim Uniform Housing Affordability Control (UHAC) rules, Plaintiffs sought leave to amend to add those same claims to their complaint in the Law Division. The Law Division rightly denied the motion to amend as futile, finding that it does not have jurisdiction to consider challenges to agency action or rulemaking and denying Plaintiffs’ alternative request to allow the amendment solely to transfer the claims to the Appellate Division.

Interlocutory review of that order is unwarranted. Initially, Plaintiffs do not attempt to show a grave harm or injustice necessitating immediate review—nor can they, as Plaintiffs suffer no harm when they are presently litigating substantially identical challenges to HMFA’s rulemaking in their pending

appeal from those rules in this Court. See No. A-1247-24. And granting a second appeal for Plaintiffs to simultaneously press these same challenges to the same agency action would produce precisely the duplication and piecemeal litigation the Rules disfavor. Beyond the obvious inefficiencies, Plaintiffs' appeal also lacks merit, as the Law Division did not abuse its discretion in finding that it lacks jurisdiction to hear these challenges to HMFA's rulemaking. Leave to appeal should accordingly be denied.

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

A. The Act And Its Implementation.

The Legislature passed, and the Governor signed, landmark amendments to the Fair Housing Act (FHA) on March 20, 2024. L. 2024, c. 2. Among many other things, the Act: (1) abolishes the Council on Affordable Housing (COAH); (2) codifies a statutory formula for calculating a municipality's affordable housing obligations; (3) directs the Department of Community Affairs (DCA) to provide nonbinding guidance on those obligations; (4) creates the Affordable Housing Dispute Resolution Program, housed in the Judiciary; and (5) grants immunity from exclusionary-zoning litigation for the Fourth Round of affordable housing obligations, which begins July 1, 2025, to municipalities that

¹ Because they are closely related, these sections are combined for efficiency and the court's convenience.

choose to participate in the Program and meet its deadlines. Participation in the Program is voluntary. Any municipality that intends to opt in must, by January 31, adopt and file a binding resolution calculating its present and prospective obligations, N.J.S.A. 52:27D-304.1(f)(1)(a), (b), and then submit its housing element and fair share plan by June 30, 2025, id. at -304.1(f)(2)(a), and adopt implementing ordinances and resolutions by March 15, 2026, id. at -304.1(f)(2)(c). Municipalities that decline to participate in the Program lack statutory immunity from exclusionary litigation but may seek a judgment of repose via a declaratory judgment action, id. at -304.1(f)(1)(b), or simply defend against any ensuing litigation, ibid.

The Act re-delegated oversight of the UHAC rules, N.J.A.C. 5:80-26.1 to -26.26, to HMFA, now in consultation with DCA. N.J.S.A. 52:27D-313.3(b), -321(f).² These controls primarily ensure that affordable housing units are in fact occupied by low- and moderate-income residents. N.J.A.C. 5:80-26.1. The Act authorizes HMFA to issue interim regulations implementing the law even before the Fourth Round begins on July 1, so that stakeholders have the benefit of guidance as they develop Fourth Round plans. Specifically, N.J.S.A. 52:27D-321(f) (Section 321(f)) authorizes HMFA to “update or amend any controls

² The UHAC rules had previously been issued by HMFA in collaboration with COAH.

previously adopted by the agency, in consultation with [COAH],” prior to the Act’s effective date, provided they are “consistent with” preexisting regulations, on topics “including, but not limited to” maintenance and preservation of housing, affordability averages, and marketing; directs HMFA to “promulgate updated regulations no later than nine months following the [Act’s] effective date”; and states, “[n]otwithstanding the provisions of the [APA] to the contrary, the agency, after consultation with [the] department, may adopt ... said regulations, which shall be effective for a period not to exceed one year from the date of the filing,” after which HMFA must “amend, adopt, or readopt the regulations in accordance with the [APA].” Section 321(f) further states, “[a]ll parties may continue to rely on regulations previously adopted by [HMFA] pursuant to the authority provided by this section as in effect immediately prior to the effective date of [the Act] until new rules and regulations are adopted by [HMFA].”

On December 20, 2024, HMFA adopted the interim amendments pursuant to Section 321(f). (Pa10).³ As Section 321(f) provides, these UHAC rules will sunset by December 20, 2025; in anticipation of its next statutory deadline, HMFA is currently in the process of promulgating regulations via notice and

³ “Pb” refers to Plaintiffs’ motion brief; “Pa” refers to Plaintiffs’ motion appendix; and “Da” refers to Defendants’ motion appendix.

comment. (Pa553-54). As with prior iterations of the UHAC rules, these interim rules primarily restrict who may occupy low- and moderate-income units to residents with qualifying income levels. N.J.A.C. 5:80-26.1. These interim rules also create “controls” on certain properties that receive credit under the FHA, ibid., and align the UHAC with the new mandates of the Act, e.g., id. at -26.5 (control periods), to account for downstream effects of the initial changes, e.g., id. at -26.3 (distributing very-low-income units to reflect distribution of affordable units as a whole); and to reduce the burden on administrative agents, e.g., ibid. (affordability averages and bedroom distributions); id. at -26.15 (affirmative marketing); id. at -26.16 (income verification).

B. Plaintiffs’ Challenges.

Plaintiffs have sought emergent relief on numerous occasions from the Act and its implementation, including relief against these interim UHAC rules, but those requests have been resoundingly rejected, including by this Court.

Plaintiffs commenced the underlying suit from which this interlocutory appeal arises in September 2024. (Da17). On October 29, Plaintiffs filed an order to show cause OTSC, along with a Third Amended Complaint, seeking to stay both the Act and the Fourth Round of their constitutionally mandated Mount Laurel obligations. (Ibid.) The Law Division rejected their OTSC in full on January 2, 2025. (Da1)

Plaintiffs then filed two emergent motions in this Court. The first sought review of the Law Division's denial of their OTSC, and sought to stay the Act. The second leveled new claims challenging these interim UHAC rules, and was accompanied by a notice of appeal pursuant to Rule 2:2-3(a)(2). This Court denied both stay motions on January 10, explaining (as to the UHAC-based motion) that insofar as Plaintiffs contend "the UHAC amendments were not promulgated in accordance with the Act and in turn seek to stay implementation of those amendments," that claim is properly brought in the Appellate Division, but "appellants were required to first seek a stay from the agency before requesting emergent relief from this court." (Pa203-04). But to the extent Plaintiffs claimed "that the Act itself is unconstitutional insofar as it improperly permits transitional rulemaking," the panel explained, such a claim was "not cognizable in this complaint against HMFA," as it "is not a challenge to agency action but, rather, to the statute itself." (Ibid.).

Thereafter, on January 13, 2025, Plaintiffs filed a putative Fifth Amended Complaint and second OTSC in the Law Division raising substantially similar challenges to the UHAC rules and seeking a stay of these rules. (Da74). The trial court again denied the OTSC, first finding that the Amended Complaint itself was deficient because Plaintiffs failed to move for leave to amend under Rule 4:9-1. (Da76-83). Nonetheless, the trial court found, as to their challenge

to the UHAC rules, that Plaintiffs could not establish a likelihood of success on the merits because “Rule 2:2-3 gives exclusive jurisdiction to the Appellate Division to challenge agency decisions and rulemaking.” (Da105). Given that Plaintiffs’ appeal from the UHAC rules was pending, the trial court added that “this very question is presently pending before the Appellate Division, and this Court has no interest in countermanding the clearest command of Rule 2:2-3(a)(2).” (Da101). This Court denied Plaintiffs’ request to file an emergent appeal from that decision, finding that “the application on its face fails to establish a threat of irreparable injury or a situation in which the interests of justice otherwise require additional adjudication on short notice.” (Da107-09).

Meanwhile, on January 13, 2025 Plaintiffs also filed a request with HMFA for a stay of the UHAC rules to exhaust their remedies before the agency. (Da111-12). HMFA convened a special Board meeting to hear the stay request and voted to deny the request to stay the interim UHAC rules pending appeal. (Ibid.) On January 28, 2025, that denial became effective when the Governor approved HMFA’s meeting minutes on an expedited basis. Plaintiffs filed another emergent motion the same day, again seeking a stay both of the UHAC rules and the Act’s statutory deadlines, which this Court again denied on January 30. (Da127-28).

Notwithstanding their pending appeal of the UHAC rules in this Court, on March 26, 2025 Plaintiffs moved to amend their complaint in the Law Division

May 27, 2025

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action to assert near-identical claims against HMFA (after their previous attempt to plead those claims in that action without leave of court was denied). (Pa244-58). Proposed Count 10 alleged that the UHAC rules violated the Act and Plaintiffs' due process rights, and Count 11 requested that the Act's deadlines be equitably tolled. (Pa256-58). On May 7, 2025, the Law Division denied the request to add Counts 10 and 11, while granting leave to make unrelated technical amendments. (Pa8-9). The court held that adding these new challenges to HMFA rulemaking would be futile, noting that "[b]lack letter law firmly establishes that the Appellate Division, and not the Law Division, has 'exclusive jurisdiction to review any action or inaction of a [S]tate administrative agency.'" (Pa8). The court also denied Plaintiffs' request (made for the first time on reply) to instead transfer those two counts to this Court, finding that it would not serve judicial economy to grant the addition of new claims, which had not yet been formally pled, only to immediately transfer them. (Id. at 9). Plaintiffs now seek leave to appeal from that May 7 order.

ARGUMENTS**POINT I****ALLOWING THIS DUPLICATIVE APPEAL FOR PLAINTIFFS' CLAIMS AGAINST THE UHAC RULES IS NOT IN THE INTEREST OF JUSTICE.**

Interlocutory appeals are granted only in rare cases and where required “in the interest of justice.” R. 2:2-4; see State v. Reldan, 100 N.J. 187, 205 (1988) (confirming interlocutory review is “exercised only sparingly”). This rule reflects our courts’ “general policy against piecemeal review of trial-level proceedings,” Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008), which “favors an uninterrupted proceeding at the trial level with a single and complete review.” Grow Company, Inc. v. Chokshi, 403 N.J. Super. 443, 461 (App. Div. 2008); see also Huny & BH Assocs.Inc. v. Silberberg, 447 N.J. Super. 606, 609 (App. Div. 2016) (“Our Rules are intended to limit interlocutory and fragmentary appeals that would delay the disposition of cases and clog our courts.”). Interlocutory review is thus warranted only where “there is the possibility of ‘some grave damage or injustice’ resulting from the trial court’s order.” Brundage, 195 N.J. at 599 (quoting Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div. 1956)). And the movant “must establish, at a minimum, that the desired appeal has merit and that justice calls for [an appellate court’s] interference in the cause.” Ibid. (quotation omitted).

Plaintiffs cannot satisfy this high standard. Most obviously, Plaintiffs cannot demonstrate “grave damage or injustice” from the trial court’s order when they are currently litigating these same claims in another pending appeal. Indeed, in both their proposed Counts 10 and 11 and their merits brief in their pending appeal from the UHAC rules (No. A-1247-24), Plaintiffs challenge HMFA’s action as violating both the Act and Plaintiffs’ procedural due process rights (Da129, 159), and request relief “pausing the Law and requiring an APA-compliant rulemaking process to proceed,” (Da168; compare Pa257-58). Plaintiffs likewise raise many of the same arguments in both matters: that HMFA improperly relied on Section 321(f) in issuing its interim rules without notice and comment, (compare Pa244-254, with Da148-59); HMFA’s reliance on Section 321(f) violates due process, (compare Pa256-57 with Da159-63); HMFA allegedly engaged in private stakeholder meetings, which also deprived Plaintiffs of due process, (compare Pa247-57 with Da138-48, Da165-67). And Plaintiffs are able to press a constitutional challenge to Section 321(f) itself in their pending appeal—indeed, they expressly argue that “[i]t is unconstitutional for the Legislature to have authorized and the HMFA to have promulgated regulations using a process that denies the Municipalities ... any opportunity to comment.” (Da162). Apparently recognizing the duplication of arguments, Plaintiffs themselves asked this Court in that pending appeal to exert “original

jurisdiction” over Counts 10 and 11. (Da159 n.2). In short, the only harm Plaintiffs claim is the supposed inability to have their claims heard in the Appellate Division, but they cannot show a grave harm or injustice when they are already litigating these same claims (including a constitutional challenge to the statute authorizing interim rulemaking) in a pending appeal in this Court.

Likewise, Plaintiffs’ requested appeal would force a piecemeal (or at least less efficient) review of their claims. See Brundage, 195 N.J. at 599 (noting courts’ “general policy against piecemeal review”). Granting the appeal would require setting briefing and argument in two separate appeals, potentially before two different panels, to hear the same challenges to the same agency action with respect to the same law. And Plaintiffs’ suggestion to consolidate the appeals does not cure the issue. See (Pb14-15).

Initially, it underscores the duplication, which is why this is not one of the rare cases warranting interlocutory review. But it is also unclear how consolidation would work: the pending appeal in No. A-1247-24 is further ahead (Plaintiffs already filed their opening brief and filed a motion to accelerate that appeal), meaning this Court would need to either issue a joint schedule so that No. A-1247-24 can proceed on a slower timeline, or allow briefing to proceed on separate tracks, doubling the number of briefs submitted on this

dispute.⁴ Either way, interlocutory review would simply mean adjudicating an already-pending dispute less efficiently than if Plaintiffs are held to litigating these claims in No. A-1247-24—precisely the kind of “unnecessary course of litigation” that appellate courts strive to avoid. Brundage, 195 N.J. at 599.

POINT II

PLAINTIFFS’ APPEAL LACKS MERIT BECAUSE THE TRIAL COURT CORRECTLY DENIED THE MOTION FOR LEAVE TO AMEND.

Beyond the inefficiencies that Plaintiffs’ requested appeal would produce, their appeal lacks merit, as the Law Division’s decision was plainly correct. Indeed, Plaintiffs themselves agree that the trial court did not have jurisdiction over these claims, instead asking only for a transfer to this Court (where the same claims are already pending). (Pb10). The trial court thus correctly denied leave to amend, and at a minimum did not abuse its discretion.

Appellate courts “review a trial court’s decision to grant or deny a motion to amend the complaint for abuse of discretion.” Grillo v. State, 469 N.J. Super. 267, 275 (App. Div. 2021). While leave to amend is generally liberally granted

⁴ Defendants are filing a separate opposition to Plaintiffs’ motion to accelerate No. A-1247-24 which mirrored their request here that this Court complete briefing, hear argument, and issue its opinion before June 30, 2025, see (Pb14-15), and note here only that Plaintiffs waited four months after commencing the appeal in No. A-1247-24 to make this request based on a statutory deadline that has been known since the Act’s enactment in March 2024.

in the interests of justice, R. 4:9-1, “[c]ourts are free to refuse leave to amend when a newly asserted claim is not sustainable as a matter of law. In other words, there is no point to permitting the filing of an amended pleading when a subsequent motion to dismiss must be granted.” Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 494 (2006). Here, the Law Division rightly denied leave to add the proposed claims against HMFA for the straightforward reason that it lacked jurisdiction to adjudicate them. These claims challenge HMFA’s adoption of the UHAC rules and its rulemaking process, and thus are challenges to administrative agency action that fall within this Court’s exclusive jurisdiction. See R. 2:2-3(a)(2); Prado v. State, 186 N.J. 413, 422-23 (2006); Mutschler v. N.J. Dep’t of Env’tl. Prot., 337 N.J. Super. 1, 9 (App. Div. 2001) (noting this jurisdiction “does not turn on the theory” of the claim or “the nature of the relief sought”). Plainly, these claims belong before this Court. Indeed, as noted, Plaintiffs raise essentially identical claims in their pending appeal, (Da157-64), where they further request that the Appellate Division enter an order “exercising original jurisdiction over” the same claims they sought to include in the Law Division. (Da159); see Mutschler, 337 N.J. Super. at 9 (holding that Appellate Division has exclusive jurisdiction over challenges to agency action regardless of the legal theory or the “nature of the relief sought”).

Plaintiffs likewise misunderstand this Court’s prior January 10, 2025 order indicating that any claims “that the Act itself is unconstitutional insofar as it improperly permits transitional rulemaking” were not cognizable in their prior emergent motion. (Pa203-04). To be sure, had Plaintiffs then sought to bring a standalone facial challenge to that transitional rulemaking provision in the Act, that would be proper in the Law Division. But that is not what Plaintiffs asserted in the Law Division, and their proposed claims were instead entirely premised on and wrapped up with HMFA’s actions. (Pa244-58). Nothing in this Court’s prior order suggested that claims challenging HMFA’s rulemaking process itself were properly brought in the Law Division. Nor was it an abuse of discretion for the Law Division to decline to transfer the claims to this Court—much less a “grave damage or injustice” requiring interlocutory review, Brundage, 195 N.J. at 599, where those same claims are already pending in another appeal in this Court.

May 27, 2025

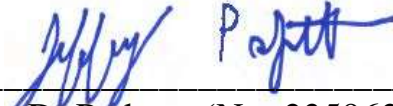
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CONCLUSION

This Court should deny Plaintiffs' motion for leave to appeal.

Respectfully submitted,

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Fair Share Housing Center

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BOROUGH OF MONTVALE, et al., Appellants, vs. STATE OF NEW JERSEY, AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM, and GLENN A. GRANT, in his official capacity as ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS, Defendants, and FAIR SHARE HOUSING CENTER, Defendant-Intervenor.	Superior Court of New Jersey Appellate Division Docket No. AM-000480-24 On Appeal From: Law Division, Mercer County Docket No. MER-L-1778-24 Sat Below: Hon. Robert T. Lougy, A.J.S.C. CIVIL ACTION (<u>Mount Laurel</u>)
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**FAIR SHARE HOUSING CENTER’S LETTER BRIEF IN OPPOSITION
TO APPELLANTS’ MOTION FOR LEAVE TO APPEAL**

Of Counsel and on the Brief:

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PRELIMINARY STATEMENT

This motion is the latest in an unyielding attempt by a few of New Jersey’s wealthiest municipalities to thwart and delay the construction of affordable homes. In doing so, these municipalities have challenged many different elements of amendments to New Jersey’s Fair Housing Act passed over a year ago.

The Plaintiffs have married inexcusable delay and scorched-earth litigation tactics to manufacture a supposed crisis.

The instant motion stems from the Plaintiffs confusion about where to file certain elements of its complaints about the Fair Housing Act amendments, that is, challenges to a statute, and the agency actions that flow from those amendments, or challenges to agency action.

Plaintiffs have received clear and unambiguous decisions from multiple courts at this point that agency action, such as rulemaking, must be challenged in the Appellate Division, and challenges to statutes including statutory deadlines and delegation of authority shall be brought in the Law Division.

This explanation was provided to Plaintiffs by Judge Smith in his January 10, 2025 decision and order wherein the Plaintiffs attempted to file claims about the legislature's delegation of authority and the constitutionality of the statute in the Appellate Division. Judge Smith made clear that this claim "is not cognizable in this complaint against the HMFA."

This explanation was also provided to the Plaintiffs when they attempted to file claims in the Law Division about agency-rulemaking against the Housing and Mortgage Finance Agency ("HMFA") and the manner in which the agency adopted its rules.

In both instances the Plaintiffs had things exactly backwards.

All the while, though, the Plaintiffs have complained that they are being sent in circles. In reality, Judge Smith's decision and the trial court's decision below are not in conflict and are in perfect harmony with one another.

The motion for leave to appeal should be denied because there is no articulable interest of justice that would be served by allowing the Plaintiffs to file their claims in the wrong court.

Nor does it serve the interests of justice for the trial court to have granted Plaintiffs belated request, raised for the first time in its reply brief, to grant the motion to amend only to transfer the claims to the Appellate Division.

Lastly, it must be emphasized that Plaintiffs will not be harmed in any way by a denial because they already have a substantially similar claim already pending in the Appellate Division. In that matter the Plaintiffs have already filed their opening brief and sought to have the matter expedited in order to seek a decision before the legislatively imposed June 30, 2025 deadline for municipal fair share plans to be filed.

The Plaintiffs here really want one thing. To delay the implementation of the statutory amendments. At bottom though this matter is purely a policy dispute between the Plaintiffs, some of the wealthiest municipalities in New Jersey, and the legislature, on when certain deadlines should run and when certain steps are taken by executive agencies. This court should resist this latest, but certainly not the last, attempt to drag the courts into this plot any further.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

- 1. In passing P.L. 2024 c.2, the Legislature streamlined the Mount Laurel process by creating clear guidelines for development across New Jersey and distributing certain tasks across several executive agencies and the judiciary.**

The Legislature, after nearly a decade of a court-driven process, answered the Supreme Court’s call for alternative approaches to implementing Mount Laurel by passing the first comprehensive legislation since 1985 to do just that. P.L. 2024, c. 2.

The Legislature expressed particular concern about the “gap period” that arose from COAH’s inaction as “frustrat[ing] the intent of the Legislature” and found it was “necessary to establish definitive deadlines for municipal action and any challenges to those actions to avoid such a ‘gap period’ from being repeated in the future.” N.J.S.A. 52:27D-302(m). To avoid another gap period and also address the Legislature’s desire to “eliminate the lengthy and costly processes. . . that have characterized both the Council on Affordable Housing and court-led system.” N.J.S.A. 52:27D-302(n), the final Law intentionally divides responsibilities among all three branches for carrying out the constitutional obligation. The Legislature created far more clear and detailed standards for municipal obligations and compliance, which is what the Supreme Court has been asking the Legislature to

¹ The statement of facts and procedural history are combined because they are inextricably intertwined.

do for decades. For instance, the Law provides a clear formula for municipalities to calculate their obligations, a task previously left for COAH to promulgate through regulation and the subject of much of the “gap period” litigation. N.J.S.A. 52:27D-304.2. The Law also provides statutory clarity on how municipalities may get credit towards those obligations, for example, spelling out the conditions under which municipalities may get “bonus credits”: a topic previously left to regulation. N.J.S.A. 52:27D-311(k)(l).

The Legislature also reinvigorated critical administrative agency functions that had become dormant upon COAH becoming defunct by abolishing COAH permanently and reassigning those functions to two executive branch agencies, the New Jersey Housing and Mortgage Financing Agency (“HMFA”) and the Department of Community Affairs (“DCA”). The Legislature required DCA to publish non-binding advisory calculations of municipal obligations under the statutory formula. N.J.S.A. 52:27D-304.1(c)(d)(e). The Law also calls for the DCA to take responsibility for many important functions, including the training and certification of administrative agents (who are responsible for administering affordable housing across the state). N.J.S.A. 52:27D-321(i).

The Law also requires HMFA to adopt updated regulations on the administration of affordable housing units called the “Uniform Housing Affordability Controls” (“UHAC”). N.J.S.A. 52:27D-313.3.2. These regulations

govern how affordable homes are administered across New Jersey, and in their current form have not been updated since 2004. Because of COAH's inaction, many of the responsibilities in these regulations had been left to an unsanctioned and patchwork fix that includes a non-profit, the Affordable Housing Professionals of New Jersey, and a small program at Rutgers University working together to ensure that administrative agents are trained properly.

The Legislature assigned the role of dispute resolution as to fair share obligations and municipal plans to the judicial branch. The Law allows municipalities to choose one of three routes: (1) adopt a binding resolution, including calculation of the municipal fair share number, to enter the new Affordable Housing Dispute Resolution Program (hereinafter, the "Program") no later than January 31, 2025; (2) file a declaratory judgment action as has been allowed since even before the original FHA, which became the predominant means of voluntary compliance after Mount Laurel IV; or (3) wait to be sued in exclusionary zoning litigation. N.J.S.A. 52:27D- 304.1(f)(1)(b). All these means of resolving disputes over a municipality's fair share obligation and plan are bound by the new, far more specific standards under the Law, and thus leave a far smaller scope of potential issues to adjudicate than the post-Mount Laurel IV landscape.

2. Planning for the Fourth Round process pursuant to P.L. 2024, c.2. continues to progress in the efficient, simplified way it was intended to.

Since P.L. 2024, c. 2 was signed into law, all the executive and judicial branch agencies tasked with implementation have taken extensive action towards implementing the law. On May 17, 2024, the Acting Administrative Director of the Courts (ADC) Glenn Grant published a Notice to the Bar, appointing program members. (See Da71.) On December 19, 2024, the ADC published Directive #14-24, outlining Program rules.

On October 18, 2024, the DCA published the “Affordable Housing Obligations for 2025-2035 (Fourth Round Methodology and Background).” (Da26.)

As required by the Law, HMFA adopted special rulemaking on the Uniform Housing and Affordability Controls on December 20, 2024, within the time period specified by the law of “no later than nine months following the effective date of P.L.2024, c.2.” N.J.S.A. 52:27D-321(f); accord N.J.S.A. 52:27D-313.3. (Pa10.)

The Affordable Housing Dispute Resolution Program (the “Program”) has now heard and/or issued recommendations in all of its cases. At this juncture over 440 municipalities, including every Plaintiff, has received a specific order outlining its affordable housing obligations. More than half of these municipalities had their obligations set without any challenge at all from any party. The remainder went

through the Program process and either settled their obligations with interested parties or had their obligations set pursuant to a recommendation from a Program member.

3. Plaintiffs repeated attempts to delay the process.

Plaintiffs have engaged in a scorched-earth litigation strategy to attempt to stop the amended FHA from being implemented. Plaintiffs at the moment currently have multiple lawsuits pending in the Law Division, two matters in the Appellate Division, and recently filed some of the claims which were dismissed from their first state court complaint in federal court in the District of New Jersey. Plaintiffs have filed at least three Orders to Show Cause and no fewer than four emergent applications with the Appellate Division.

On October 29, 2024, Plaintiffs filed their first Order to Show Cause in this matter, seeking both a stay of the legislation and the entire Fourth Round process. This initial request for substantive relief was filed nearly seven months after the statutory amendments were passed and signed into law.

On December 20, 2024, after the matter was fully briefed, the trial court heard oral argument on Appellants' Order to Show Cause. On January 2, 2025, Judge Robert Lougy issued a 68-page written decision denying Appellants' application for preliminary relief in its entirety. (Da1.)

The Plaintiffs shortly thereafter filed two different emergent motions with this Court. The first was an appeal of the trial court's January 2, 2025 decision denying their Order to Show Cause. The second was filed under a new docket number, which included a notice of appeal, in the Appellate Division wherein the Plaintiffs were challenging the December 19, 2024 interim UHAC rules. (Pa202.)

This court denied both requests from Plaintiffs in two orders and decisions on January 10, 2025. The decision denying relief in the UHAC matter correctly found and explained that Plaintiffs had failed to demonstrate any entitlement to a stay. The decision essentially found that the application failed for two distinct procedural reasons. First, the decision found that "to the extent appellants contend that the UHAC amendments were not promulgated in accordance with the Act" that "the appellants were required to first seek a stay from the agency before requesting relief from this court." (Pa203-204.) Second, the court found that if the Plaintiffs challenge is against "the HMFA that the Act itself is unconstitutional" that this "is not a challenge to agency action but, rather, to the statute itself." The court found that a stay of the Act "is not cognizable in this complaint against the HMFA." (Ibid.)

The Plaintiffs then returned to the trial court below to file yet another Order to Show Cause which was accompanied by a Fifth Amended Complaint. This new complaint added counts related to the HMFA's adoption of the UHAC

amendments. (Da74.) The trial court ultimately denied this relief, in part, because the Plaintiffs filed an amended complaint without first seeking leave of court pursuant to Rule 4:9-1. (Da76-83.)

Plaintiffs again sought immediate appellate review of this decision via an emergent application which was denied. (Da107-09.)

Plaintiffs then filed a request for a stay directly with the HMFA which was denied. (Da111.) Yet another emergent application challenging this denial was rejected by this court on January 30, 2025. (Da127-28.)

4. Plaintiffs newest trial court filings which are the subject of this appeal.

The Plaintiffs filed a motion to amend their complaint on March 26, 2025. This motion to amend attached a new Fifth Amended Complaint which proposed many new factual allegations, added several new parties, and importantly for this appeal, added two new counts. (Pa244-58.) Count 10 in the newest amended complaint proposed to add a claim directly attacking the HMFA's adoption of the new UHAC rules. (Pa256.) Count 11 requested equitable relief relating to the rulemaking by the HMFA. (Pa257.) The trial court denied the Plaintiff's request to add Counts 10 and 11 to the complaint. (Pa8-9.) The trial court did, however, allow the Plaintiffs to assert the other factual allegations and add additional parties as Plaintiffs.

In its May 7, 2025 decision that is the subject of this appeal, the trial court found, just as Judge Smith did in the January 10, 2025 decision, that “the Appellate Division, and not the Law Division, has exclusive jurisdiction to review any action or inaction of a [S]tate administrative agency.” (Pa8.) The trial court also denied the belated request to transfer these claims to the Appellate Division finding that “allowing the amendment [. . .] and then executing the transfer seems to be one more step than necessary” and that “granting the amendment solely to then transfer the counts to the Appellate Division does not” further the principles of judicial economy.” (Pa9.) The Plaintiffs filed this motion shortly after.

For the reasons that follow, FSHC urges this Court to deny Appellants’ motion for leave to appeal the trial court’s decision below.

LEGAL ARGUMENT

1. The Interests of Justice Does Not Warrant Granting Leave to Appeal.

The movants correctly state the relevant standard for granting motions for leave to appeal which finds that interlocutory orders will only be reviewed by the Appellate Division where the “interest of justice” is at stake. R. 2:2-4. However, the motion should be denied as it fails to demonstrate that it meets this heightened standard through a showing of “grave damage or injustice” caused by the trial court’s May 7, 2025 Order.

Appellate courts exercise their authority to grant leave to appeal “only sparingly” because “[i]nterlocutory appellate review runs counter to a judicial policy that favors an `uninterrupted proceeding at the trial level with a single and complete review.” Janicky v. Point Bay Fuel, 396 N.J. Super. 545, 550 (App. Div. 2007)(citations omitted). “Piecemeal reviews ordinarily are anathema to [the judiciary’s] practice.” Hallowell v. American Honda Motor Co., 297 N.J. 314, 318 (App. Div. 1997). Appellate courts discourage interlocutory review of trial court proceedings because “[t]he interruption of litigation at the trial level . . . disrupts the entire process and is wasteful of judicial resources.” CPC Int’l, Inc. v. Hartford Accident Indem., 316 N.J. Super. 351, 365 (App. Div. 1998).

There is nothing about this motion presented by the Plaintiffs that arises to the level of “grave damage or injustice” as required by voluminous precedent. The Plaintiffs were not permitted by the trial court to file claims in the trial court that are properly brought in the Appellate Division. There is nothing controversial about the trial court’s decision below. Indeed, the trial court simply followed the court rules, as it was required to do. In fact, had the trial court done the opposite and instead allowed the Plaintiffs to file Counts 10 and 11 seeking relief against the HMFA in the Law Division for allegations related to agency actions that decision likely would be the kind of decision that warrants immediate review by this Court.

Likewise, the trial court's refusal to grant the Plaintiffs belated request to grant their motion to amend and then immediately transfer Counts 10 and 11 to the Appellate Division is sound. The trial court's decision on this front is reasonable for at least two reasons.

First, Rule 1:13-4 is aimed at ensuring a party's claims are not dismissed on jurisdictional grounds and/or are not eventually dismissed if out of time once the jurisdictional problem is discovered. See State Farm v. Dept. of Pub. Advo., 227 N.J. Super. 99 (App. Div. 1988). The key word in the rule and in the case law on this rule is "dismissed." The claims to be transferred must have first been actually filed in a court before the jurisdictional issue was discovered. In those cases, the court rules clearly indicate a preference for transferring the case rather than dismissing the case. There is, however, nothing in the case law that in any way requires a court to grant a motion for leave to amend a complaint under Rule 4:9-1 purely for the purposes of allowing a Plaintiff to file a claim that will then be immediately transferred to another court.

The trial court found this to be "one more step than necessary." The trial court below was presented with a matter that is already nine months old with the Plaintiffs filing their Fifth Amended Complaint. The trial court was also made aware of the fact that the Plaintiffs had already filed another matter in the Appellate Division seeking review of the HMFA's rulemaking involving the UHAC rules.

That case was already well into briefing with the Plaintiffs having already filed their opening brief and a briefing schedule issued for respondents to file their opposing briefs. The Plaintiffs could have and perhaps should have brought these claims when it filed its initial challenge to the HMFA rulemaking involving the interim UHAC rules. The Plaintiffs, for their own reasons, decided to not file these claims in that case and instead months later tried to file them in the Law Division.

Second, the Plaintiffs argument on Page 10 of its brief is perplexing. The Plaintiffs appear to argue that the trial court should have granted the motion to amend in order to execute a transfer to the Appellate Division because the Plaintiffs themselves are unable to file the complaint directly with this court. One of two things must be true. Either the Plaintiffs are permitted to file these claims and make this challenge in the Appellate Division, in which case the Plaintiffs could have and should have done so; or, the Plaintiffs are not permitted to file these claims and make these challenges in the Appellate Division, in which case there is no basis for the Law Division to execute a transfer because a transfer requires the sending court to send a matter to a court with proper jurisdiction.

The Plaintiffs clearly believe that these claims were appropriately brought before the Law Division – a belief that is not shared by either of the defendants or the trial court. The only solution available to the Plaintiffs in this situation is thus

to appeal the trial court's decision and see if the Appellate Division agrees with their position. It is not to force a transfer of the case.

CONCLUSION

The court should reject the motion for leave to appeal because the trial court appropriately denied the motion to amend the complaint.

Respectfully submitted,

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Dated: June 19, 2025

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Center

c: All counsel of record via eCourts and email