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Attorneys for Plaintiff
Lowenstein Sandler LLP

LOWENSTEIN SANDLER LLP,

Plaintiff,

v.

HARMONY FOUNDATION OF NEW
 JERSEY, INC.; ALLEN WILEN, in his
 capacity as RECEIVER of HARMONY
 FOUNDATION OF NEW JERSEY,
 INC.; TRIF & MODUGNO LLC;
 LOUIS A. MODUGNO, ESQ.; and
 SECAUCUS INVESTORS LLC,

Defendants.

NEW JERSEY SUPERIOR COURT
 LAW DIVISION: ESSEX COUNTY

CIVIL ACTION
 CBLP ACTION

DOCKET NO. ESX-L-007647-24

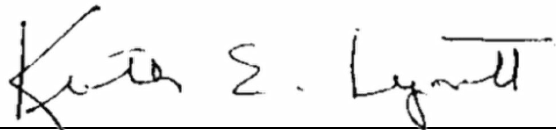
**ORDER GRANTING MOTION
 TO CONSOLIDATE AND VENUE
 ACTIONS IN THE ESSEX
 COUNTY COMPLEX BUSINESS
 LITIGATION PROGRAM**

THIS MATTER having come before the Court on the motion of Plaintiff, Lowenstein Sandler LLP (“Lowenstein”), through its attorneys, Marino, Tortorella & Boyle, P.C. (Kevin H. Marino, Esq., appearing) for entry of an Order consolidating the above-captioned action (the “Lowenstein Action”) with the later-filed action commenced by Harmony Foundation of New Jersey, Inc. (“Harmony”), captioned *Harmony Foundation of New Jersey, Inc. v. Lowenstein Sandler, LLP, et al.*, No. BER-L-000681-25 (the “Harmony Action”), and setting the venue of both

actions in the Essex County Complex Business Litigation Program (“CBLP”); and the Court having considered the submissions and argument of the parties; and good cause having been shown;

IT IS on this **12th** day of **May**, 2025, **ORDERED** that:

1. Lowenstein’s motion is hereby **GRANTED**;
2. The Harmony Action is transferred from Bergen County to Essex County and consolidated with the Lowenstein Action;
3. The consolidated action is assigned to the CBLP and shall proceed before the Honorable Keith E. Lynott;
4. In accordance with *R. 4:38-1(c)*, counsel for Lowenstein shall file a copy of this Order with the deputy clerk of the Superior Court of Bergen County within five (5) days of the date of entry of this Order.



HON. KEITH E. LYNOTT, J.S.C.

[X] Opposed
[] Unopposed

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Secaucus Investors, LLC, Trif & Modugno, LLC and
Louis A. Modugno, Esq.*

LOWENSTEIN SANDLER LLP,

Plaintiff,

v.

HARMONY FOUNDATION OF NEW
JERSEY, INC, ALLEN WILEN, in
his capacity as RECEIVER of
HARMONY FOUNDATION OF NEW
JERSEY, INC., TRIF & MODUGNO,
LLC, LOUIS A. MODUGNO, ESQ.,
and SECAUCUS INVESTORS, LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO.: ESX-L-007647-24

CIVIL ACTION

ORDER

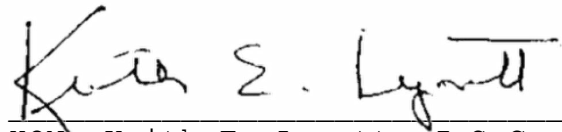
THIS MATTER having been opened to the Court by Trif & Modugno LLC, attorneys for Defendants, Harmony Foundation of New Jersey, Inc., Secaucus Investors, LLC, Trif & Modugno, LLC and Louis A. Modugno, Esq. ("Defendants"), by way of Notice of Cross-Motion ("Cross-Motion") for an Order, pursuant to N.J.S.A. 15A:14-18, Rule 4:3-1 and Rule 4:3-3, to transfer this matter to the Bergen County Superior Court, Chancery Division; and the Court having reviewed the papers submitted in connection with the Cross-Motion and any arguments by the parties; and the within form of Order

having been submitted to the Court for signature; and for good cause having been shown;

IT IS on this 12th day of May, 2025;

ORDERED that Defendants' Cross-Motion is and shall hereby be **DENIED**; and it is further

ORDERED that a copy of this Order shall be served upon all counsel of record within seven (7) days from the date hereof.


HON. Keith E. Lynott, J.S.C.

 X Opposed

 Unopposed

ORDER PREPARED BY THE COURT

LOWENSTEIN SANDLER LLP,

Plaintiff,

v.

HARMONY FOUNDATION OF NEW JERSEY, INC.; ALLEN WILEN, in his capacity as RECEIVER of HARMONY FOUNDATION OF NEW JERSEY, INC.; TRIF & MODUNGO LLC; LOUIS A. MODUGNO, ESQ.; and SECAUCUS INVESTORS LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ESSEX COUNTY

DOCKET NO. ESX-L-7647-24

CIVIL ACTION

ORDER DESIGNATING SUPERIOR COURT JUDGE TO CONSOLIDATE AND TRANSFER VENUE

This matter, having been brought *sua sponte* by the Assignment Judge, Essex Vicinage, requesting that the Hon. Keith E. Lynott, J.S.C. preside over the pending Motion to Consolidate and Transfer Venue, and the Assignment Judge finding that Judge Lynott is familiar with the matter, and the matter being a complex business litigation,

IT IS on this 5th day of February 2025,

ORDERED that, pursuant to R. 4:38-1(a) and R. 4:3-3(a), Judge Lynott is hereby designated to preside over the pending Motion to Consolidate and Transfer Venue; and it is

FURTHER ORDERED that a copy of this Order shall be served upon all parties and/or counsel of record within 7 days.

/s/ Sheila Venable
HON. SHEILA VENABLE, A.J.S.C.

STATEMENT OF REASONS

In this action seeking to recover unpaid attorneys' fees, the Plaintiff Lowenstein Sandler, LLP ("Lowenstein") moves pursuant to R. 4:38-1 to transfer to the Essex County Vicinage a case lodged in the Superior Court of New Jersey, Law Division, Bergen County, captioned as Harmony Foundation of New Jersey, Inc. v. Lowenstein Sandler, LLP, et al., Docket No. BER-L-000681-25 ("Harmony Action"), and for consolidation of such action with this case, as well as assignment of the action to the Complex Business Litigation Program.¹ The Defendants in this action, Secaucus Investors, LLC ("Secaucus"), Trif & Modugno, LLC and Lewis A. Modugno, Esq. (collectively, the "Modugno Defendants"), oppose and cross-move to transfer this case to Bergen County for disposition in the Chancery Division of the Superior Court of New Jersey, Bergen County.

For the reasons set forth herein, the Court grants Lowenstein's motion. It denies the Defendants' cross-motion.

The facts relevant to the disposition of this motion are not meaningfully disputed. The parties differ over the legal consequences and import of such facts in relation to the transfer and consolidation issues raised by this motion practice.

The parties are well aware of the factual averments of the present action. The Court will not rehearse them again in detail here. It incorporates herein its prior Statement of Reasons issued in connection with its ruling on the Defendants' motion to dismiss the Plaintiff's Amended Complaint for a more complete recitation of the factual averments and the claims asserted in this case.

Distilled to its essentials, Lowenstein's Amended Complaint alleges that it was engaged for many years as counsel to Harmony Foundation of New Jersey, Inc. ("Harmony"), a (then)

¹ The applicable Rules of Court require that motions to transfer venue must be directed to the Assignment Judge of the relevant vicinage. However, the Rules also permit the Assignment Judge to delegate authority to adjudicate such a motion. In this case, Assignment Judge Sheila Venable delegated and assigned the motion to this Court.

not-for-profit corporation engaged in dispensing cannabis. Lowenstein alleges that it assisted Harmony in securing regulatory approvals for its business, and then in attempting to convert to a for-profit entity in accordance with applicable New Jersey law.

Lowenstein alleges that the Defendant Secaucus Investors, LLC (“Secaucus”), aided and abetted by its attorneys, the Modugno Defendants, undertook an unlawful takeover of Harmony, in the course of which it prevented Harmony from paying Lowenstein \$765,000 in earned but unpaid legal fees. In essence, Lowenstein alleges that, under the guise of exercising rights conferred via a loan transaction, Secaucus improperly acquired a majority ownership interest in Harmony, and then improperly used its position as a controlling member and/or creditor to defeat the legitimate rights of Harmony’s other creditors, including Lowenstein.

When Harmony's then-management attempted to convert Harmony to a for-profit entity, Secaucus opposed such efforts. Harmony, represented by Lowenstein, brought an action in the Superior Court, Chancery Division, Bergen County to challenge Secaucus's efforts to block this reorganization, which action was then submitted to binding arbitration. In such arbitration, an arbitrator recognized, contrary to law (so Lowenstein alleges), that Secaucus was a majority owner of Harmony.

The Superior Court, Chancery Division, Bergen County entered judgment confirming the arbitrator’s award. Lowenstein alleges that, while Harmony, with Lowenstein as its counsel, was prosecuting an appeal of the trial court’s judgment as to the arbitration award, Secaucus improperly invoked the rights of a creditor, even though it had been declared a controlling owner, to secure the appointment of a custodian for Harmony, and subsequently of a receiver.

Lowenstein contends that Secaucus then caused Harmony to cease paying Lowenstein (and other creditors). It asserts that Secaucus, aided by the Modugno Defendants, forced the sale of Harmony’s assets to a third party that left Harmony without sufficient means to pay Lowenstein and its other creditors. In connection with these actions, according to Lowenstein,

Secaucus caused Harmony to discontinue the appeal from the arbitrator's award and the trial court's Order confirming it and secured Lowenstein's removal or withdrawal as Harmony's counsel.

Lowenstein has its principal offices in Essex County and asserts that it performed its representation of Harmony from its offices in Essex County. It brought this action in this vicinage in November 2023.

Lowenstein seeks to collect its unpaid legal fees, which it asserts amount to \$765,000. Lowenstein claims that Harmony and its Receiver breached Harmony's contract with Lowenstein by failing to pay fees it claims were due and owing. It also asserts that Harmony was unjustly enriched as a result of the failure to pay legal fees.

Lowenstein also lodges claims against the Receiver, Secaucus, and the Modugno Defendants asserting tortious interference by the latter with Lowenstein's attorney/client contract with Harmony and its right to collect its unpaid legal fees. It claims these Defendants improperly caused Harmony to cease paying Lowenstein and forced a sale of Harmony's assets without arranging for an adequate reserve to pay Harmony's debts, including its obligation to pay Lowenstein's invoices for legal services.

Lowenstein avers that, in connection with securing court approval of the asset sale transaction, Secaucus and the Modugno Defendants misrepresented to the Court that a sufficient reserve would be established, as required by law, to pay Harmony's obligations when they knew this was untrue. Lowenstein seeks to collect its unpaid legal fees as damages caused by alleged tortious interference, which it asserts amount to \$765,000.

In connection with an omnibus motion to dismiss, the Court dismissed the First and Second Counts of Lowenstein's Amended Complaint lodged against Harmony and the Receiver. The Court determined that, in order to pursue such a claim against a client or former client for unpaid legal fees, Lowenstein was first required to serve on Harmony a Pre-Action

Notice, advising Harmony of its right to pursue fee arbitration pursuant to the New Jersey Court Rules. The Court found that, as Lowenstein had not provided such a notice, it was not permitted to pursue an action against its former client at that time. It dismissed the claims against Harmony and the Receiver sounding in breach of contract and unjust enrichment without prejudice.

The Court denied the motion to dismiss the claims against Secaucus and the Modugno Defendants alleging tortious interference with Lowenstein's attorney/client relationship with Harmony. (Lowenstein did not oppose dismissal of such claims as to the Receiver). In so holding, this Court rejected, on a motion to dismiss, the assertions of Secaucus and the Modugno Defendants that the litigation privilege or principles of res judicata operate to bar Lowenstein's action as a matter of law.

In particular, the Court found that Lowenstein's action was not an improper collateral attack on the judgment of the Chancery Division approving the sale of Harmony's assets, as the Court determined that Lowenstein's action does not seek to set aside or declare invalid such Court's judgment. Instead, this Court determined that Lowenstein's action against these Defendants was predicated on a contention that they had misled the Chancery Division into approving the asset sale.

Following this disposition, as the present record reflects, Lowenstein served a Pre-Action Notice. Although Harmony (via the Receiver) elected fee arbitration, the Fee Arbitration Committee disclaimed jurisdiction. Lowenstein has filed a motion to reinstate its former breach of contract and unjust enrichment claims against Harmony.

While these events were transpiring, Harmony commenced the Harmony Action in the Superior Court, Law Division, Bergen County, against Lowenstein and multiple other defendants. Such defendants include former members of Harmony's management. Harmony's

action as to Lowenstein seeks a judgment for damages and disgorgement of all legal fees previously paid by Harmony to Lowenstein.

In connection with such action, Harmony alleges that Lowenstein committed legal malpractice during or in connection with its representation of Harmony, causing Harmony to fail. It also alleges that Harmony's former management breached fiduciary duties owed to Harmony, also causing or contributing to Harmony's failure. It alleges that Lowenstein aided and abetted such breach of fiduciary duty by Harmony's former management.

This motion and cross-motion followed. Lowenstein contends that the circumstances present a straightforward application of R. 4:38-1. It asserts the rule permits consolidation (and concomitant transfer) when there is a common issue of fact or law linking two actions. It argues that there can be no dispute that one or more such common issues exist.

Lowenstein argues that it seeks to recover unpaid legal fees earned during the course of its proper representation of Harmony, while Harmony asserts that Lowenstein should not only be denied such relief, but should be required to disgorge the fees paid to it and suffer a judgment for damages based on its alleged professional malpractice and/or breach of fiduciary duty. According to Lowenstein, not only is transfer and consolidation in such circumstances routine, but allowing the two cases to proceed separately would be contrary to principles of sound judicial management and would present a serious risk of inconsistent outcomes.

Lowenstein argues the filing of this action here was not part of "a race to the courthouse." It points out that it filed this action first and several months prior to the filing by Harmony of the Harmony Action in Bergen County. It contends that it filed this action in the venue where it has conducted its practice for decades, including its representation of Harmony, and rejects as fundamentally inaccurate any claim by the Defendants that it did so while the parties were still engaged in mediation under the auspices of a "standstill" agreement. It asserts

that the Defendants had given Lowenstein notice of their withdrawal from such agreement prior to the filing by Lowenstein of this action.

Secaucus and the Modugno Defendants contend that the two cases do not present sufficient commonality of fact or law to warrant the relief of transfer and consolidation. They assert the present case is a claim by Lowenstein for its (allegedly) unpaid legal fees. However, according to Secaucus and the Modugno Defendants, the Harmony Action is materially broader in scope and alleges Lowenstein's participation, along with other defendants not party to this case, in a breach of fiduciary duty that financially disabled Harmony and resulted in its receivership and the sale of its assets.

The Defendants also contend that Lowenstein jumped the line by filing this action. They assert the parties were participating under a "standstill" agreement when Lowenstein abruptly ended the discussions and filed this action after regular court hours. Accordingly, they argue that this Court should not give any weight to a claim that this case was filed first.

These parties further assert that, pursuant to applicable law, Lowenstein was required to bring its present claim against them in the Chancery Division in Bergen County, to which this action should now be transferred. They argue that this Court lacks subject matter jurisdiction, as the action relates to acts or alleged omissions of a Receiver, and the applicable statute – N.J.S.A. 15A:14-18 – requires cases that relate to such actions to be venued in that court, citing J.L.B. Equities v. Dumont, 310 N.J. Super. 336 (App. Div.), certif. denied, 156 N.J. 406 (1998). They posit that Lowenstein could pursue its claim for legal fees against Harmony in this Court, now that fee arbitration will not proceed, but that Lowenstein cannot pursue the claims against Secaucus and the Modugno Defendants in this venue.

Rule 4:38-1(a) authorizes consolidation of actions that share "a common question of law or fact." This Court concludes that, because the Harmony Action presents multiple issues

of fact and law in common with this case, transfer of the former action to this venue and consolidation of the two actions – the latter of which was filed here first – is appropriate.

As an initial matter, the record does not support the claim that Lowenstein acted precipitously and violated a “standstill” agreement in filing this action first or that Lowenstein otherwise secured an unfair procedural advantage over Secaucus and the Modugno Defendants in initiating this case here. The Defendants have not refuted Lowenstein’s averment that the Defendants had already terminated the “standstill” agreement and that they had so advised Lowenstein prior to the initiation of this action. Moreover, the Plaintiff filed this action here several months before the Defendants commenced their action in Bergen County.

The action Lowenstein filed here irrefragably shares “a common question of law or fact” with the Defendants’ recently filed claim against Lowenstein. The applicable Court Rule requires only that a common question of law or fact must exist in order to support consolidation. In this case, examination of the gravamen of the two actions discloses that there are numerous common issues. Such issues include the circumstances, terms, and purpose of the retention of Lowenstein by Harmony; the performance by Lowenstein of its services to Harmony and the quality of such services; whether Lowenstein committed malpractice or other breach of duty, including fiduciary duty, in its representation of Harmony; the amount owed (if any) to Lowenstein on account of its services; and the amount of any setoff and/or amount owed to Harmony on account of any malpractice or breach of fiduciary duty by Lowenstein.

More fundamentally, both cases have at their core the question of whether Lowenstein, via professional dereliction, breach of fiduciary duties owed by Lowenstein to Harmony, and/or aiding or abetting the breach of fiduciary duties by others, caused Harmony to fail, as the Defendants claim, or whether the Defendants caused Harmony’s corporate demise by their allegedly tortious actions, as Lowenstein claims. This is so because Lowenstein’s claim to recover its fees is predicated on its contention that the Defendants – not Lowenstein – disrupted

Harmony's progress and caused it to fail, preventing Harmony from paying or being able to pay outstanding legal fees claimed by Lowenstein. In contrast, the Defendants contend that Lowenstein caused or contributed to the failure of Harmony and thus is not entitled to any attorney's fees, whether previously paid or still unpaid.

Indeed, if Harmony had not brought a separate case of its own against Lowenstein, the Defendants would perforce be required to raise the claims it asserts against Lowenstein as mandatory counterclaims. Moreover, it is readily apparent that, even in the absence of affirmative claims, the Defendants would defend this action, at least in part, on the basis of the facts underpinning such claims. To require the parties to conduct two actions addressing essentially the same issues and conduct in two different venues would waste the parties' time and resources and also consume scarce judicial resources to no apparent benefit. More importantly, a substantial risk would then exist of inconsistent outcomes.

That the Harmony Action includes additional parties and theories is not a basis for denying transfer and consolidation. The claims asserting breach of fiduciary duty by Lowenstein overlap with the claims of attorney malpractice and form the basis of both the defense to the present action and grounds for affirmative relief in the Harmony Action. As noted, both cases seek to demonstrate exactly which party or parties caused Harmony to fail and to be unable to service Harmony's obligations and why.

It appears highly likely that both cases will involve overlapping – if not virtually identical – discovery, witnesses, trial proofs, and motion practice concerning all such matters. To the extent there are issues or claims that are singular to one action or the other, the Court has tools, particularly in the Complex Business Litigation track, to address such issues of case management.

Lowenstein filed this action several months before the Defendants filed the claims in Bergen County. This case is properly venued here (see the discussion infra concerning the

assertion that the Plaintiff was required to file its case against Secaucus and the Modugno Defendants in the Chancery Division). This action has proceeded through a motion to dismiss and is poised to proceed forward as a Complex Business Litigation track case. There is no prejudice to any party in having both actions proceed here on a consolidated basis.

Lowenstein was not required by N.J.S.A. 15A:14-18 to file its action against Secaucus and/or the Modugno Defendants in the Chancery Division in Bergen County. As previously determined by this Court (albeit on a motion to dismiss), Lowenstein is not seeking to challenge, invalidate, or modify any order of the court entered in the Chancery Division action. Nor does Lowenstein seek an interpretation or declaration of rights as to the meaning of any such order or its application in a particular circumstance. Instead, Lowenstein alleges that the Defendants acted in concert and improperly to secure an order approving the sale of Harmony's assets for the purpose, in whole or in part, of depriving Lowenstein of its ability and right to recover its unpaid legal fees from Harmony, and therefore that such Defendants bear liability for damages as a result of such conduct.

Whether Lowenstein can prove these averments remains to be seen. But it is beyond peradventure that Lowenstein contends it is entitled to the relief sought against these Defendants because of the existence of one or more orders of the Chancery Division court as valid and enforceable orders, and that it does not seek to cause this Court to undermine them in any way.²

Nor do Lowenstein's claims relate directly to actions or inactions of the Receiver (and Lowenstein acknowledged, by dropping the Receiver from the Third and Fourth Counts of its Amended Complaints, that any claim against the Receiver contesting the propriety of the Receiver's actions in that capacity would have to be brought in the Court that is the source of

² The Court is aware that the Defendant sought relief in aid of litigants' rights in the Chancery Division in Bergen County, seeking to have that court require Lowenstein to proceed there. The court denied the relief.

the Receiver's appointment and authority). Instead, the claims against Secaucus and the Modugno Defendants, as noted, relate to their actions in securing the (unchallenged) results of the Chancery Division action and thus at best only indirectly relate, implicate, or arise from actions or inactions of the Receiver.

It is noteworthy that the Defendants acknowledged at oral argument on this motion the right of Lowenstein, now that a fee arbitration proceeding is not available, to pursue its claim against Harmony for unpaid legal fees in this Court. Such action by Lowenstein has a greater connection to an action by the Receiver – i.e., denial of payment of legal fees allegedly owed by Harmony – than its claims against Secaucus and the Modugno Defendants. As the claims against the Defendants are far more attenuated from actions of the Receiver than the Receiver's denial of Lowenstein's claim for legal fees, this is a revealing acknowledgment.

In any event, neither the statute nor the case law instructs that Lowenstein was required to bring this action in the Chancery Division in Bergen County. The statute itself – providing only that such actions by "any person aggrieved by the proceedings of the receiver in the discharge of his duties shall be entitled to a review of the receiver's actions in a summary manner in the Superior Court" – does not establish a lack of subject matter jurisdiction in this Court. Putting aside that the statute does not specify the venue, other than the Superior Court, Lowenstein's action, as noted, does not seek review of the Receiver's action, but instead challenges the propriety of the Defendants' conduct in procuring actions of the Receiver.

J.L.B., supra, 310 N.J. Super. 366, is not apposite. That case involved an action against the receiver (in such capacity), based on a claim that the receiver had improperly failed to accept an offer to sell a property for which the receiver was responsible and as to which the plaintiff held a mortgage interest. The receiver had applied for and obtained a discharge from the court that appointed him, contending that none of the sales offers available would have satisfied the outstanding claims.

It was in this context that the trial court and the Appellate Division held that the plaintiff was required to proceed before the Chancery Division court that had appointed the receiver, noting that "such claims against the receiver must be brought in the Chancery Division." Id. at 374. In so holding, the court reasoned that J.L.B.'s claim was for alleged negligence committed by the receiver while acting in his capacity. The court also held that the plaintiff was aware of the receiver's petition for discharge, "and of claims against the receiver for duties arising during the receivership," and had not taken any action to oppose them. Id. at 372. The court concluded that J.L.B. "had a duty to intervene in the proceeding or move to vacate the discharge in order to preserve its rights." Ibid.

For reasons already stated, there are no comparable circumstances here. It is also difficult to conceive how a claim (and defense) such as those to be joined in this action can possibly be addressed in a summary manner.

Withal, as Lowenstein contends, this is a relatively straightforward application for consolidation of a claim for unpaid legal fees with a claim alleging legal malpractice and other misfeasance by the attorney claimant, among other parties. The movant has established the requisite commonality of fact and law. Considerations of efficiency, sound judicial management, judicial economy and, in particular, avoidance of inconsistent outcomes warrant the exercise of discretion to grant the relief.