

Levin v. Jacobson; Shareff v. Jacobson, 2016 NCBC Order 8.

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS 12062

ERIC LEVIN, HOWARD SHAREFF,
SHAREFF & ASSOCIATES, DDS PA,
individually and derivatively in the right of
LAKEBOUND FIXED RETURN FUND,
LLC, and SILVERDEER OLDE
LIBERTY, LLC,

Plaintiffs,

v.

HOWARD A. JACOBSON, CILPS
ACQUISITION LLC, and PROVINCE
GRANDE OLDE LIBERTY LLC,

Defendants.

**ORDER ON MOTIONS TO
CONSOLIDATE AND TRIAL
SCHEDULING**

HOWARD SHAREFF,

Plaintiff,

v.

HOWARD A. JACOBSON,

Defendant.

09 CVS 9983

1. **THIS MATTER** is before the Court upon Plaintiffs' Motion to Consolidate in *Levin v. Jacobson*, No. 10-CVS-12062 (Wake County) ("*Levin*"), Plaintiff's Motion to Consolidate in *Shareff v. Jacobson*, No. 09-CVS-9983 (Wake County) ("*Shareff*") (collectively, the "Motions" or the "Motions to Consolidate"), and *sua sponte* to address scheduling matters for trial in the above-captioned cases.

2. The Motions were filed in their respective cases on June 3, 2013. In status reports to the Court on January 30, 2015, the parties asked the Court to rule on the pending summary judgment motion in *Levin* before considering the Motions to Consolidate. The Court ruled on the summary judgment on December 7, 2015 and invited supplemental briefing on the Motions to

Consolidate. Having now considered the Motions, the briefs, and the arguments of counsel at a March 2, 2016 telephone hearing on the Motions, the Court hereby memorializes its ruling during the telephone hearing and **DENIES** the Motions.

3. The Court's power to consolidate actions for trial is discretionary and may be exercised when the actions involve the same parties and same subject matter. *Kanoy v. Hinshaw*, 273 N.C. 418, 423, 160 S.E.2d 296, 300 (1968). Actions should not be consolidated for trial if prejudice or harmful complications will result. *Id.*

4. These cases involve most of the same parties and the same subject matter, although the claims in each case focus on separate, discrete events in the life of an investment fund named Lakebound Fixed Return Fund, LLC ("Lakebound"). The claims in *Shareff* focus on Howard A. Jacobson's ("Jacobson") alleged liability in inducing Howard Shareff's ("Shareff") investment in Lakebound. The remaining claims in *Levin* focus on Jacobson's alleged misuse of Lakebound funds after investment, and those claims are asserted derivatively.¹

5. The Court is concerned that Mr. Jacobson may be prejudiced by consolidating the matters. A consolidated trial would likely become overly complicated by the many limiting instructions that would be needed to help segregate and clarify the matters in the mind of the jury. The Court is also sympathetic to the concerns of Defendant Providence Grand Olde Liberty ("PGOL") that a consolidated trial would be unfair and overly burdensome to PGOL because PGOL is currently in bankruptcy and is potentially only subject to equitable remedies as a stakeholder in *Levin*. For each of these reasons, and as announced at the March 2 telephone hearing, the Court currently declines to exercise its discretionary power to consolidate these actions for trial.

¹ A more complete description of the allegations and claims in the *Levin* matter are set forth in *Levin v. Jacobson*, 2015 NCBC LEXIS 108 (N.C. Super. Ct. Dec. 7, 2015).

6. At the hearing, the Court set dates for a pretrial hearing and trial in each case. Those dates are memorialized below, and the Court will shortly issue a more detailed Pretrial Order in each case.

7. **WHEREFORE**, the Court hereby **DENIES** the Motions to Consolidate, although the parties may move for consolidation again at a later date for good cause shown. A trial in *Levin* shall begin on August 29, 2016. A pretrial hearing in *Levin* shall occur on August 19, 2016. *Shareff* will be tried second, with trial to begin on September 12, 2016. A pretrial hearing in *Shareff* shall occur on September 7, 2016.

SO ORDERED, this the 7th day of March, 2016.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Special Superior Court Judge
for Complex Business Cases