

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss.

DAVID MEEHAN

v.

STATE OF NEW HAMPSHIRE, ET AL

217-2020-CV-00026
(Consolidated YDC/YDSU Cases)

John Doe #402 v. State of New Hampshire et al.
217-2022-CV-00905

John Doe #415 v. State of New Hampshire, et al.
217-2022-CV-00714

John Doe #480 v. State of New Hampshire et al.
217-2022-CV-00797

John Doe #526 v State of New Hampshire et al.
217-2022-CV-00804

PROCEDURAL ORDER RELATING
TO CLAIMS AGAINST NON-STATE DEFENDANTS

This order relates solely to claims made by plaintiffs in these consolidated cases against **non-State defendants**. In what has become the parlance of these cases, such defendants are known as "contractor defendants." The relevant plaintiffs allege that when they were juveniles, and while they were in the legal custody of the State, they were placed by the State into

the contractor defendants' facilities or programs where they were harmed.¹

The court has given sustained and careful attention to lead plaintiffs' proposed plan for litigating pending and future dispositive motions filed by the contractor defendants. (See Plaintiffs' Pre-Hearing Memorandum, filed 1/26/23, Section IV,

¹As of today there are approximately 208 complaints against a total of 34 contractor defendants. See Lead Plaintiff's Pre-Hearing Memorandum, filed 1/26/23 at p. 2. Those defendants are (1) Ascentria Care Alliance, Inc., (2) Charter Behavioral Health System of Nashua, Inc. a/k/a Charter Brookside, (3) Community Alliance of Family/Human Services, Inc., f/k/a Community Youth Advocates a/k/a Chandler House, (4) Dover Children's Home, (5) Easter Seals New Hampshire, Inc., (6) Eckerd Youth Alternatives, Inc., (7) Educational Challenge Associates, Inc. a/k/a Lakeview, (8) Elan School, (9) Frederic L. Chamberlain Center, Inc. a/k/a Chamberlain School, (10) Harbor Schools Incorporated, (11) Institute For Family And Life Learning, (12) Kurn Hattin Homes For Children, (13) Learning Networks Foundation, (14) Malley Farm Boys Home f/k/a Somersworth Group Home, (15) The Maple Valley School, Inc., (16) Mount Prospect Academy, Inc., (17) Nashua Children's Home, (18) New England Salem Children's Trust, Inc., (New Hampshire Catholic Charities), (19) NFI North, Inc., (20) Odyssey House, Inc. a/k/a OdysseyNH, (21) The Oliverian School, Inc., (22) Orion House, Incorporated, (23) Our House for Girls f/k/a Group Home of Dover, Inc., (24) Outward Bound, (25) Pine Haven Boys Center (26) Robert F. Kennedy Community Alliance, Inc., (27) Saddleback Mountain Retreat, Inc., (28) St. Ann's Home, Inc., (29) Spaulding Academy & Family Services (f/k/a Spaulding Youth Center), (30) The Spurwink School, New Hampshire, (31) Waypoint, f/k/a Child and Family Services, (32) Webster House, (33) Wediko Children's Services, Inc., and (34) Wreath School of New Hampshire, Inc.

This is a fluid list. Many of the contractor defendants have not yet been served. Additional contractor defendants may be named in the future. The court thinks it likely, based on the number and nature of the cases, that affiliated entities will be substituted for some of the contractor defendants.

pp. 12-14.) Having done so, the court rejects plaintiffs' proposal and goes in a different direction.

Background: The above-captioned Meehan case is both an individual case and the lead file for hundreds of other cases that have been consolidated for at least pretrial purposes. According to counsel for the overwhelming majority of the plaintiffs, there will soon be close to 900 consolidated cases.

All of these consolidated cases involve allegations of historical abuse at State run juvenile justice and juvenile residential facilities in New Hampshire. In at least 208 of these cases, the individual plaintiffs also claim that they further (or previously) abused or injured while placed by the State in non-State facilities owned and operated by the contractor defendants. In such cases, the plaintiffs have sued both the State and the pertinent contractor defendant(s).

The court notes that there are a handful of non-consolidated, individual cases brought against the State and contractor defendants. Unlike these consolidated cases, the individual cases do not include any claim of alleged injury or harm resulting from placement in a facility run directly by the State. To state the obvious, this order does not govern any non-consolidated case.

The Issue: At least three contractor defendants have filed motions to dismiss in a total of four cases. See:

-John Doe #402 v. State of New Hampshire et al., 217-2022-CV-00905 (Mount Prospect Academy, Inc.);

-John Doe #480 v. State of New Hampshire et al., 217-2022-CV-00797 (Orion House Incorporated);

-John Doe #415 v. State of New Hampshire, et al., 217-2022-CV-00714 (Orion House Incorporated); and

-John Doe #526 v State of New Hampshire et al., 217-2022-CV-00804 (Frederic L. Chamberlain Center, Inc. ("Chamberlain")).

All three of these defendants have alleged that (a) the plaintiffs' claims are barred by the applicable statute of limitations and (b) the complaints (which consist of a Master Complaint filed in Meehan and a so-called "Short Form Complaint" filed in the individual case) fail to state a claim upon which relief may be granted. Additionally, defendant Chamberlain has challenged the court's personal jurisdiction.

The plaintiffs propose to put these motions, and future motions by other contractor defendants, on the back burner. They opine that the contractors' motions should not be litigated until after the court decides the two pending motions to dismiss the Master Complaint as to the State. In their view, the resolution of the State's motions will provide clarity and guidance. They also opine that the contractors' motions are capable of similar consolidated treatment.

The court disagrees, and disagrees strongly. The State's motions to dismiss the Master Complaint raises somewhat novel questions concerning (a) sovereign immunity, (b) the State's status as a fiduciary *vel non*, and (c) the statute of limitations governing claims against the State. These issues are unique to the State. The contractor defendants cannot assert, and have not claimed, the benefit of the State's sovereign immunity. The *legal* issues relating to fiduciary duty and limitations with respect to these private entities are relatively straightforward. Chamberlain's jurisdictional argument relates solely to Chamberlain.

What all of the pending motions to dismiss have in common, is that they are fact-bound:

-The cause of action for breach of fiduciary duty exists. The question presented is whether the complaints allege material facts which, if proven, would entitle the plaintiff to relief. Superior Court Rule 8.

-The defendants, in their initial responses to the motions to dismiss, suggest that the resolution of the limitations issue will depend on the discovery rule. If so, the questions in each case will be (a) when did the plaintiff discover his or her injury and the contractor defendant's role in bringing it about, (b) what fact provoked the discovery, and (c) why could the plaintiff not discover his or her injury earlier through the

exercise of reasonable diligence. These are questions of fact, not law.

-Whether a defendant has sufficient minimum contacts with the forum state is a case-specific and defendant-specific inquiry.

To the extent that the limitations issue, or other issues, involve questions of law that may be present in many contractor cases, the court believes that the resolution of those issues is best accomplished the traditional way, i.e. by the adversary process in individual cases grounded on crystallized facts.

Chamberlain has been named in only one case. A contractor defendant who appears in only one or a small number of cases, and who believes that it has a meritorious motion to dismiss, should not be compelled to remain in the whirlpool of these 900 cases any longer than necessary. Each month of delay will bring added litigation cases and continued distraction.

Other contractor defendants appear in many cases. Such defendants may agree with the plaintiffs that the best course of action *for them* is to postpone their deadlines. There may be many very sound reasons for this, which the court will not second guess.

Yet contractor defendants who have been named in multiple cases may also have sound reasons for filing motions to dismiss and other dispositive motions earlier rather than later.

Rulings:

1. **The Parties' Reasonable Agreements Control:** The court will honor any reasonable agreement between specific plaintiffs and specific contractor defendants regarding the dates and deadlines for motions to dismiss and other dispositive motions. The court will also honor any reasonable agreement between such parties relating to discovery in connection with such motions. (Although the court cannot presently see how the State might be prejudiced by such an agreement, if it perceives that it is, it may file an objection and the court will consider it in determining reasonableness.)

2. **Contractor Defendants' Deadline Extended To 4/28/23 If Served Prior To 3/3/23:** The court accepts the plaintiff's proposal to extend the contractor defendants' deadline for filing either Answers or dispositive motions by April 28, 2023. Contractor defendants who are served, or who accept service, on or after March 30, 2023 shall have the 30 days provided by Superior Court Rule 9(a) to file an Answer or dispositive motion. The court will take a liberal approach to motions filed by contractor defendants to extend the 30-day deadline.

3. **Plaintiff May Supplement Its Objections To The Presently Pending Motions Within 30 days:** Plaintiffs have filed placeholder objections to the presently pending motions to dismiss. They may, within 30 days of the clerk's notice of this

order, which deadline may be extended on motion, file supplemental objections and memoranda of law.

4. Motions Alleging Failure To State A Claim: Superior Court Rule 8 requires a plaintiff to plead “material facts” which, if proven, would entitle the defendant to relief. In determining whether the complaint meets this standard, the court must “rigorously scrutinize” the complaint and then decide whether it alleges facts that are sufficient to constitute a cause of action. Trinity EMS, Inc. v. Coombs, 166 N.H. 523, 525 (2014). When doing so, the court must accept the well-pled facts in the Complaint and take all reasonable inferences in the plaintiff’s favor. Ojo v. Lorenzo, 164 N.H. 717, 721 (2013); Bel Air Associates v. New Hampshire Department of Health and Human Services, 154 N.H. 228, 231 (2006). The court need not, however, assume the truth of statements in the complaint that are merely conclusions of law. Ojo, 164 N.H. at 721. Nor must the court accept any “invective . . . bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like” that may be included in the complaint. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996); see also, Brown v. Latin Am. Music Co., 498 F.3d 18, 24 (1st Cir. 2007).

The court has churned through these well-known legal precepts to remind plaintiffs that they need to meet the traditional pleading standard in their Short-Form Complaints.

Plaintiffs may file Amended Short-Form Complaints within 30 days, which deadline may be extended on motion.

5. Motions Alleging Lapse Of The Applicable Statute Of

Limitations: The statute of limitations is an affirmative defense. Perez v. Pike Industries, Inc., 153 N.H. 158, 160 (2005), citing Glines v. Bruk, 140 N.H. 180, 181 (1995). A defendant has the obligation to allege and prove that the complaint was brought after the limitations period. Perez, 153 N.H. at 160. If the defendant meets this burden, then the plaintiff has the burden to prove that the claim is timely by virtue of the discovery rule, equitable tolling, fraudulent concealment or some other doctrine. Id.

Limitations issues may be resolved by a motion to dismiss for failure to state a claim, or by a motion for summary judgment, or if necessary, at trial. The court will take the following approach in these cases:

A. A defendant has the burden to show, based on the complaint that the claim was brought after the claimed limitations period has run. If this burden is not met, the motion to dismiss will be denied.

B. If plaintiff claims the benefit of a different statute of limitations, plaintiff must identify it with specificity. Plaintiff should not expect the court to scour the RSAs looking for potentially applicable alternative statutes. If the court

finds that a different statute applies, and if the limitations period has not run, the motion to dismiss will be denied.

C. If plaintiff claims the benefit the discovery rule, or claims equitable tolling or fraudulent concealment or some other doctrine tolling the limitations period, **the motion to dismiss will be automatically converted to a motion for summary judgment.**

The limitations issue will then be litigated **forthwith** on the merits on summary judgment, without prejudice to later summary judgment motions on the merits. Presumably, the facts related a plaintiff's discovery of his or her injury and the defendant's role in bringing it about, as well as the facts related to plaintiff's exercise of reasonable diligence, are facts already known to the plaintiff.

Within the time for objection (or supplemental objection), plaintiff must then file a brief statement indicating that he or she intends to rely on the discovery rule (or some other doctrine). Plaintiff will then have thirty days to file an objection supported by such affidavit(s) and exhibits as may be necessary. Defendant will have 30 days to respond.

Either party may move to extend these deadlines for the purpose of taking discovery with respect to the limitations issues. However, any deposition of the plaintiff at this early

stage of the case will need to be approved by the court in advance, on a defendant's motion.

6. Motions Relating To Personal Jurisdiction: "The plaintiff bears the burden of demonstrating facts sufficient to establish personal jurisdiction over the defendant." Staffing Network, Inc. v. Pietropaolo, 145 N.H. 456, 457 (2000) (quoting Phelps v. Kingston, 130 N.H. 166, 170 (1987)); see also The Lyme Timber Co. v. DSF Investors LLC, 150 N.H. 557, 559 (2004). Thus, it is the plaintiff's responsibility to present "affirmative proof" sufficient to establish personal jurisdiction. Staffing Network, at 457.

However, in appropriate cases the court may find personal jurisdiction based on a prima facie showing by the plaintiff. To do so the court must find that the plaintiff has proffered sufficient creditable evidence to support findings of all facts essential to personal jurisdiction. State v. North Atlantic Refining Ltd., 160 N.H. 275, 280-281 (2000). Speaking generally, the plaintiff cannot rest on the complaint but must instead provide the court with properly authenticated, granular facts that will establish jurisdiction.

"The prima facie method is a useful means of screening out cases in which personal jurisdiction is obviously lacking, and those in which the jurisdictional challenge is patently bogus." In Re Atrium Medic Corp. C-Qur Mesh Product Liability

Litigation, 299 F. Supp. 3d 324, 332 (D.N.H. 2017). “[H]owever, in closer, harder-to-call cases, particularly those that feature conflicting versions of the facts, the prima facie method offers little assistance.” Id. (internal citations and quotation marks omitted). In such cases, the court may require an evidentiary hearing. Id.; see also North Atlantic Refining, 160 N.H. at 280 (noting the court’s ability to hold an evidentiary hearing on personal jurisdiction when appropriate).

The facts related to personal a jurisdiction are often in possession of the defendant rather than the plaintiff. Therefore, when personal jurisdiction is raised as a defense, the court typically allows the plaintiff to engage in jurisdictional discovery.

With these thoughts in mind:

The plaintiff in the Chamberlain case may take jurisdictional discovery by document requests, interrogatories and depositions.

That plaintiff may move to extend the deadline for supplementation of his objection to the jurisdictional argument in Chamberlain’s motion to dismiss for up to 90 days from the date of the clerk’s notice of this order to allow such discovery to take place. This will not extend plaintiff’s deadlines for supplementing his objections to the other arguments in the

motion to dismiss (i.e. failure to state a claim and limitations).

Chamberlain may respond to the supplemental objection to its jurisdictional argument. Thereafter, the court will decide whether to utilize the prima facie standard or, alternative, order an evidentiary hearing. The court may also order a non-evidentiary hearing.

February 10, 2023



Andrew R. Schulman,
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/13/2023