

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT  
Case No. 2020-0259

Christine Seward  
Plaintiff – Appellee

v.

Charles E. Richards, Chairman’s View Holdings, LLC, CoreValue  
Holdings, LLC, Consulting Software Systems, Inc., and George  
Sandmann  
Defendants – Appellants

---

Rule 7 Discretionary Appeal from the New Hampshire Superior  
Court, Grafton County  
Case No. 215—2019-CV-260

---

**BRIEF FOR CHARLES E. RICHARDS, CHAIRMAN’S VIEW  
HOLDINGS, LLC, AND COREVALUE HOLDINGS, LLC  
DEFENDANTS – APPELLANTS**

---

*Attorneys for Defendants – Appellants*

HUGHES ATWOOD & MULLALY, PLLC  
John R. Hughes III, Esq. for Bradford T. Atwood, Esq.  
NH Bar ID# 19331  
30 Bank Street  
Lebanon, NH 03766  
(603) 448-3900-Telephone  
(603) 448-3939- Fax  
Email: [rh@hsh-law.com](mailto:rh@hsh-law.com)

**TABLE OF CONTENTS**

TABLE OF CASES.....3-4

TABLE OF STATUTES AND OTHER  
AUTHORITIES.....4

QUESTIONS PRESENTED FOR REVIEW.....5

STATUTES INVOLVED IN THE CASE.....6-9

STATEMENT OF THE CASE AND REQUEST FOR ORAL  
ARGUMENT.....10

SUMMARY OF ARGUMENT.....14

ARGUMENT.....17

CONCLUSION AND REQUEST FOR RELIEF.....34

## TABLE OF CASES

<i>BSNF Railway Co. v. Tyrrell</i> , 137 S. Ct. 1549 (2017).....	16, 18, 19, 20
<i>Burger King Corp</i> , 471 U.S. 462 (1985).....	26, 28
<i>Boit v. Gar-Tec Products, Inc.</i> , 967 F.2d 671, 675 (1 <sup>st</sup> Cir. 1992).....	17, 18
<i>Calder v. Jones</i> , 104 S. Ct. 1482 (1984).....	29
<i>Cossaboon v. Maine Medical Center</i> , 600 F.3d 25, 37 (1 <sup>st</sup> Cir. 2010).....	34
<i>Daimler AG v. Bauman</i> , 134 S. Ct. 746 (2014).....	16, 18, 19, 20, 21, 23
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 131 S. Ct. 2846, 2856 (2011) .....	19
<i>Interface Biomedical Lab. V. Axiom Medical, Inc.</i> , 600 F. Supp. 731, 738 (E.D.N.Y. 1985).....	32
<i>International Shoe Co. v. State of Wash., Office of Unemployment Comp. &amp; Placement</i> , 326 U.S. 310, 316 (1945).....	5
<i>Kimball Union Academy v. Genovesi</i> , 165 N.H. 132, 136 (2013).....	18, 28
<i>Neirbo Co. v. Bethlehem Shipbuilding Corp.</i> , 308 U.S. 165, 174-175 (1939).....	33
<i>N.H. Bank Comm’r v. Sweeney</i> , 167 N.H. 27, 32 (2014).....	17
<i>Northern Laminate Sales, Inc. v. Davis</i> , 403 F.3d 14 (1 <sup>st</sup> Cir. 2005).....	29
<i>Petition of Reddam</i> , 170 N.H. 590 (2018).....	23
<i>Phillips Exeter Academy v. Howard Phillips Fund</i> , 196 F.3d 284 (1 <sup>st</sup> Cir. 1994).....	24, 25
<i>Sawtelle v. Farrell</i> , 70 F. 3d 1381, 1389 (1 <sup>st</sup> Cir. 1995).....	26
<i>Seward v. Chairman's View, Inc.</i> , No. 215-2016-CV-176.....	11
<i>Skillsoft Corp. v. Harcourt General, Inc.</i> , 146 N.H. 770 (2001).....	27
<i>State v. North Atlantic Refining Ltd.</i> , 160 N.H. 275 (2010).....	28, 29
<i>Ticketmaster-New York, Inc. v. Alioto</i> , 26 F.3d 201, 203 (1 <sup>st</sup> Cir. 1994).....	18

*Walden v. Fiore*, 134 S. Ct. 1115 (2014).....16, 18, 30, 31, 32

**TABLE OF STATUTES AND OTHER AUTHORITIES**

RSA 293-A:1.28.....6, 20, 33, 34

RSA 510:4.....7

42 Pa. C.S.A §5301 (a)(2)(i)-(iii).....8, 9, 33

Michigan Law Review, Vol. 90, PERSONAL JURISDICTION OVER ALIENS  
IN PATENT INFRINGEMENT ACTIONS: A UNIFORM APPROACH  
TOWARD THE SITUS OF THE TORT (December 1991).....31, 32

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the plaintiff stated, as a matter of law, facts sufficient to support the exercise of personal specific jurisdiction over Appellants in the District of New Hampshire? *See Defendants' Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction filed on October 15, 2019 in the New Hampshire Superior Court, Docket No: 215-2019-CV-00260 ("Motion to Dismiss") at 1-2; see also Memorandum of Law in Support of Motion to Dismiss filed on October 15, 2020 ("Memorandum"), Docket No: 215-2019-CV-00260 at 1-2.*
2. Whether Appellants' actions and conduct are sufficient to establish personal specific jurisdiction over Appellants, specifically whether (a) Appellants' contacts relate to the plaintiff's cause of action; (b) Appellants purposefully availed themselves of the protection of New Hampshire's law; and (c) if it would be fair and reasonable to require Appellants to defend the lawsuit in New Hampshire? *See Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945); Motion to Dismiss at 1-2; Memorandum at 1-2.*
3. Whether Appellants submitted to the jurisdiction of New Hampshire when (a) Chairman's View, Inc., a Delaware corporation, registered to do business as a foreign corporation in New Hampshire and (b) Chairman's View, Inc. transferred a patent it owned to CoreValue Holdings, LLC, a Nevada limited liability company? *See Motion to Dismiss at 1-2; Memorandum at 1-2.*

## STATUTES INVOLVED IN THE CASE

### **RSA 293-A:1.28. Certificate of Existence**

- (a) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.
- (b) A certificate of existence or authorization sets forth:
  - (1) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;
  - (2) that:
    - (i) the domestic corporation is duly incorporated under the law of this state and the date of its incorporation; or
    - (ii) that the foreign corporation is authorized to transact business in this state;
  - (3) that all fees, taxes, and penalties owed to this state have been paid, if:
    - (i) payment is reflected in the records of the secretary of state; and
    - (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;
  - (4) that its most recent annual report has been filed with the secretary of state;
  - (5) that articles of dissolution have not been filed; and
  - (6) other facts of record in the office of the secretary of state that may be requested by the applicant.

- (c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

**RSA 510:4. Nonresident Defendant**

- I. Jurisdiction. Any person who is not an inhabitant of this state and who, in person or through an agent, transacts any business within this state, commits a tortious act within this state, or has the ownership, use, or possession of any real or personal property situated in this state submits himself, or his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from or growing out of the acts enumerated above.
- II. Service of Process on Secretary of State. Service of process upon any person who is subject to the jurisdiction of this state, as provided in this section, may be made by leaving a copy thereof, with a fee of \$10, in the hands or office of the secretary of state. Such service shall be of the same legal force and effect as if served on the defendant at his abode or place of business in the state or country where he resides and according to the law of that state or country, provided that notice thereof and a copy of the process is forthwith sent by registered mail, postage prepaid, by the plaintiff or his attorney to the defendant at his last known abode or place of business in the state or country in which the defendant resides. The defendant's return receipt and an affidavit of the plaintiff or his attorney of compliance with the section shall be appended to the process and entered therewith. In the event that the notice and

a copy of the process are not delivered to or accepted by the defendant, the court may order such additional notice, if any, as justice may require.

**Pa.C.S. § 5301 Persons**

- (a) General rule.--The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:
  - (1) Individuals.subject> Presence in this Commonwealth at the time when process is served.
  - (ii) Domicile in this Commonwealth at the time when process is served.
  - (iii) Consent, to the extent authorized by the consent.
- (2) Corporations.--
  - (i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.
  - (ii) Consent, to the extent authorized by the consent.
  - (iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.
- (3) Partnerships, limited partnerships, partnership associations, professional associations, unincorporated associations and similar entities.--
  - (i) Formation under or qualification as a foreign entity under the laws of this Commonwealth.



- (ii) Consent, to the extent authorized by the consent.
  - (iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.
- (b) Scope of jurisdiction.--When jurisdiction over a person is based upon this section any cause of action may be asserted against him, whether or not arising from acts enumerated in this section. Discontinuance of the acts enumerated in subsection (a)(2)(i) and (iii) and (3)(i) and (iii) shall not affect jurisdiction with respect to any act, transaction or omission occurring during the period such status existed.

**STATEMENT OF FACTS AND OF THE CASE**  
**AND REQUEST FOR ORAL ARGUMENT**

*Procedural History*

The plaintiff, Christine Seward (“Plaintiff” or “Appellee”), brought this action against the defendants, Charles E. Richards (“Richards”), Chairman's View Holdings, Inc. (“Chairman’s View”), CoreValue Holdings, LLC (“CoreValue”), Consulting Software Systems, LLC (“CSS”) and George Sandmann (“Sandmann”), alleging claims for breach of contract, enforcement of a security interest, fraudulent transfer, consumer fraud, civil conspiracy, and piercing the corporate veil arising out of the defendants' involvement in a patent transfer. This action is the Plaintiff’s attempt to collect on a judgment against Chairman’s View.

The Plaintiff is an individual residing in Hanover, New Hampshire. (Complaint ¶ 1). Plaintiff used to work for Chairman’s View as the Controller and, in 2014-2015 before she quit, she invested in Chairman’s View a total of \$370,500, evidenced by two promissory notes. (*Id.* ¶ ¶ 12, 13 & 15). Other employees and vendors also invested in Chairman’s View, also evidenced by promissory notes. (Richards Aff. ¶ ¶) 12, 14). By April 29, 2016, Chairman's View had not made any principal or interest payments on the notes to the plaintiff. (Complaint ¶ 14). On July 5, 2016, the Plaintiff and Chairman's View entered into a security agreement wherein Chairman's View pledged its assets to secure payment of the notes. (*Id.* ¶ 16.) filed the current lawsuit seeking, among other forms of relief, to void the patent assignment to CoreValue and the subsequent patent license to

CSS, along with attachment of any proceeds from such transactions (“Second Suit”). The Plaintiff maintains that the defendants in the Second Suit conspired to engage in a scheme that avoids paying the judgment against Chairman’s View in the First Suit and circumvents her security interest in the patent.

Appellants Richards, Chairman's View and CoreValue jointly filed a motion to dismiss the complaint in the Second Suit on the ground that the trial court lacks personal jurisdiction to adjudicate these claims. The Plaintiff objected.

None of the Appellants are residents of New Hampshire or conduct business in New Hampshire. Chairman’s View is a Delaware corporation. CoreValue is a Nevada limited liability company. Richards is an individual residing in Norwich, Vermont. (Richards Aff. ¶¶ 1-7). At all relevant times with regard to the assignment and use of the patent, Chairman's View and CoreValue are a corporation and limited liability company, respectively, each with a principal place of business in White River Junction, Vermont. (*Id.*). Although Chairman's View was registered to do business in New Hampshire as a foreign corporation when the Plaintiff was granted a judgment in the First Suit, Chairman’s View operated and made most if not all major business decisions in Vermont. (*Id.* ¶¶ 11-13)

The trial court conducted a non-evidentiary hearing on the parties' motion and the plaintiff’s objection on March 4, 2020, at which it heard oral argument from the parties. On April 17, 2020, the trial court

(MacLeod, J.) issued an Order on Defendants' Motion to Dismiss (the "Order") finding that exercising specific jurisdiction in this case is consistent with notions of fair play and substantial justice and therefore denied Defendants' Motion to Dismiss. This appeal followed.

Appellants request that the Court grant it 15 minutes for oral argument.

## SUMMARY OF ARGUMENT

Appellants seek a discretionary appeal on the issue of specific jurisdiction over Richards, Chairman's View and CoreValue.

The trial court found that the Plaintiff does not advance any argument that the court has general jurisdiction over Appellants and instead focused on whether New Hampshire held specific personal jurisdiction. The trial court denied Appellants' motion to dismiss for lack of personal jurisdiction, holding that New Hampshire has a strong interest in adjudicating this case, despite the extent to which this case rests on the common interest of sovereigns whose principal places of business are in Vermont. Appellants' position is the trial court's weighing of the traditional notions of fair play and substantial justice violates the Due Process Clause.

The Plaintiff filed the Second Suit against non-resident parties in her attempt to collect on a final judgment against Chairman's View. The Plaintiff's core argument is that Appellants jointly conspired to transfer a patent included as collateral under the security agreement to avoid payment of the debt, seeking a joint remedy that would void the assignment of the patent and attach any and all proceeds generated from the patent. To do so, the Plaintiff must establish personal jurisdiction of the State of New Hampshire over the Appellants— Richards, Chairman's View and CoreValue.

This case rests upon New Hampshire's long-arm statute and its two prongs of jurisdiction (transacting business and committing a tortious act) to

establish specific personal jurisdiction over Appellants. None of Appellants' business entities are incorporated in New Hampshire, and all corporate governance, direction, control and major business activities occurred in Vermont, the principal place of business for the business entities. All high-level decisions were and are currently made in Vermont. All decisions governing the security agreement and transfer of the patent were made in Vermont, Texas or Massachusetts, but not in New Hampshire.

The basis for Appellants' appeal is that the trial court erred in finding 1) that the Plaintiff pled specific jurisdiction, and 2) that specific jurisdiction over Appellants is consistent with notions of fair play and substantial justice. Appellants assert that the Plaintiff failed to plead specific jurisdiction or facts to support specific jurisdiction. The Plaintiff's alleged personal jurisdiction consists of connecting separate and legally corporate events to reach the statutory prong of transacting business. The Plaintiff bootstraps (i) Chairman's View's foreign registration to do business as submitting to the general jurisdiction of New Hampshire; (ii) to the act of specifically conducting business when it entered into and then allegedly breached the security agreement; (iii) through its corporate officer and agent, non-resident defendant Richards; (iv) to CoreValue when it accepted use of the patent, even though CoreValue has no corporate connection to New Hampshire except through the involvement of its agent and officer, non-resident defendant Richards.

This appeal questions the trial court's analysis of New Hampshire's long-arm statute as conferring specific jurisdiction under the plaintiff's asserted facts. The United States Supreme Court's precedent, as well as that of other states applying due process analysis, hold that the mere registration of a foreign corporation in a state cannot establish specific jurisdiction over that corporation unless in the exceptional circumstance when a corporation's operations are so substantial to confer personal jurisdiction in a foreign state. *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (unanimously restricting general jurisdiction to when a defendant is "at home," rejecting an imputed agency theory of related entities or subsidiaries, clarifying that a corporation that does substantial business in a state is not, by itself, sufficient to confer general personal jurisdiction); *BSNF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017) (reaffirming the holding in *Daimler* that a corporation cannot be sued in any state simply because the company does some business in that state); and *Walden v. Fiore*, 134 S. Ct. 1115 (2014) (jurisdiction must arise from contacts the defendant creates within the forum state, holding that the plaintiff cannot be the only link between the defendant and the forum state).

Plaintiff's alternative argument under New Hampshire's long-arm statute is that Appellants' business activity resulted in a tortious conveyance of the patent and thus within the prong of committing a tort in New Hampshire. The Plaintiff alleges that, when Appellants transferred the patent outside New Hampshire, they committed a tortious act in New Hampshire, because the

injury from Appellants' tortious act affected the Plaintiff, a New Hampshire resident.

Appellants maintain that the trial court erred in finding the Due Process Clause is satisfied, because the Plaintiff's cause of action does not arise from, or relate to, Appellants' forum-based contacts. The judgment in the First Suit is a separate and distinct cause of action and Chairman's View brief physical presence by way of having an address as a foreign corporation cannot confer specific jurisdiction over the business activity that took place outside New Hampshire with non-residents. This appeal addresses whether Appellants' transfer of the patent, with no specific connection to or in New Hampshire, meets the purposeful availment factor to establish specific personal jurisdiction.

### **ARGUMENT**

The central issue before this Court on appeal is whether the Plaintiff properly plead and proved specific jurisdiction over Appellants and, if so, whether the trial court can exercise specific jurisdiction over Appellants to the extent permissible under the Due Process Clause.

This Court's standard of review is *de novo*, due to the procedural history. *N.H. Bank Comm'r v. Sweeney*, 167 N.H. 27, 32 (2014). Under the *prima facie* standard, the Plaintiff "must make [a] showing as to every fact required to satisfy both the forum's long arm statute and the due process clause of the Constitution." *Boit v. Gar-Tec Products, Inc.*, 967 F.2d 671, 675 (1<sup>st</sup> Cir. 1992). "The *prima facie* showing of personal jurisdiction must be based on evidence of specific facts



set forth in the record. The plaintiff must go beyond the pleadings and make affirmative proof.” *Id.*; see also *Kimball Union Academy v. Genovesi*, 165 N.H. 132, 136 (2013) (plaintiff usually cannot rest upon pleadings but “is obligated to adduce evidence of specific facts”). “[W]e do not credit conclusory allegations or draw farfetched inferences.” *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 203 (1<sup>st</sup> Cir. 1994). Because New Hampshire’s long-arm statute, RSA 510:4, authorizes a court to exercise personal jurisdiction to the extent permissible under the Due Process Clause, the analysis depends upon due process.

**1. WHETHER THE PLAINTIFF STATED, AS A MATTER OF LAW, FACTS SUFFICIENT TO SUPPORT THE EXERCISE OF PERSONAL SPECIFIC JURISDICTION OVER THE DEFENDANTS IN THE DISTRICT OF NEW HAMPSHIRE?**

In this case, the trial court’s analysis is limited to specific jurisdiction. Therefore, the Plaintiff must prove more than general or all-purpose jurisdiction, similar to the issues addressed in three critically precedential United States Supreme Court cases. See *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (unanimously restricting general jurisdiction to when a defendant is “at home,” rejecting an imputed agency theory of related entities or subsidiaries, clarifying a corporation that does substantial business in a state is not, by itself, sufficient to confer general personal jurisdiction); *Walden v. Fiore*, 134 S. Ct. 1115 (2014) (jurisdiction must arise out of contacts the defendant itself creates within the forum state, holding the plaintiff cannot be the only link between the defendant and the forum state); and *BSNF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017) (reaffirming *Daimler* that a company cannot be sued in any state simply because the company does some business in that state).

Although the trial court construes the Plaintiff's facts to support specific jurisdiction, this Court's review is *de novo*. The Plaintiff's facts are sparse and the basis for jurisdiction is entirely dependent upon Chairman's View filing with New Hampshire as a foreign corporation. The trial court summarily rejects an analysis of general jurisdiction, and Appellants submit that general jurisdiction does indeed control the Plaintiff's Second Suit and, as such, the Plaintiff fails to establish specific jurisdiction.

**A. General Jurisdiction:** Beginning in 2014, the Supreme Court solidified the extent to which a foreign corporation can be subjected to a state's long-arm jurisdiction, holding due process permits general jurisdiction over a foreign company only when that company is "at home" in the state. *Daimler*, 134 S. Ct. at 749. Justice Ginsburg explained that "all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business." *Id.* (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2856 (2011)). Most importantly, the Supreme Court distinguished previous cases, stating that merely doing business in a forum, even continuously and systematically, is no longer the test.

In 2017, the Supreme Court reaffirmed *Daimler* by restating the circumstances under which a foreign company can properly be sued in a state other than the state of its legal existence. *See BSNF Railway Co. v. Tyrrell*, 137 S. Ct. at 1558-1559. In *BSNF Railway*, Justice Ginsburg restated a corporate defendant for purposes of general jurisdiction is "at home" in only three possible jurisdictions: (1) the state in which the corporation is incorporated; (2) the state in

which the corporation has its principal place of business; and (3) in an “exceptional case,” any state in which the corporation’s operations are so substantial that it also is “at home” in that state. *Id.* In analyzing the jurisdiction challenge, the Supreme Court first noted the Railway was not incorporated in the forum state and its principal place of business was not in the forum state. The Court next looked to the facts to support the “exceptional case” in which the Railway’s ties to the forum state were so substantial that it created an additional principal place of business. The Court held the Railway’s only connection to the forum state was miles of track and employees and, as such, its activities in the forum state were not “so substantial and of such a nature as to render the corporation at home in that State.” *Id.* at 1559. The Supreme Court held that allowing the suit to continue would violate the Due Process Clause.

As instructed in *Daimler*, Chairman’s View is not subject to personal jurisdiction in New Hampshire simply because it complied with the New Hampshire Business Corporation Act, RSA 293-A:1.28, and filed an Application for Certificate of Authority for Profit Foreign Corporation (“Certificate of Authority”) to conduct business as a foreign corporation. Even if Chairman’s View is considered to have submitted to the jurisdiction of New Hampshire because of the First Suit, the plaintiff cannot bootstrap specific jurisdiction over Richards or CoreValue on an imputed agency theory. The Supreme Court in *Daimler* explained the paradigm forum for the exercise of jurisdiction is the individual’s domicile or where the corporation is at home, otherwise an agency theory would subject corporations and individuals to “an outcome that would

sweep beyond even the ‘sprawling view of general jurisdiction.’” *Daimler*, 134 S. Ct. at 759-760.

The uncontroverted facts demonstrate that Appellants are not domiciled or incorporated in New Hampshire and all corporate governance, direction, control and major business activities occur in Vermont, Appellants’ principal place of business. All of Appellants’ high-level decisions were and are currently made in Vermont. All decisions governing the security agreement and transfer of the patent were made in Vermont, Texas or Massachusetts, but not in New Hampshire. As such, the Plaintiff’s Verified Complaint does not establish a cognizable basis to exercise personal specific jurisdiction to Appellants.

**B. Chairman’s View’s Security Agreement.** The Plaintiff’s triggering claim, which she argues captures all Appellants, is initiated through the security agreement with Chairman’s View. From an alleged breach of the security agreement, the Plaintiff enlarges the scope of that breach to Richards, in his capacity as an officer of Chairman’s View, and to CoreValue as the recipient of the use of patent. Relying upon Chairman’s View’s contract with the Plaintiff, the Plaintiff invokes two of the three prongs of New Hampshire’s long-arm statute—transacting any business within New Hampshire and committing a tortious act within New Hampshire—to support specific jurisdiction. The trial court’s use of the security agreement to capture Richards and CoreValue in its breach and to relate that breach to the commission of a tort distorts the relationship analysis of specific jurisdiction.

The Plaintiff's proffered evidence relates only to general jurisdiction and falls far short of meeting her burden of specific jurisdiction. The Plaintiff rests solely upon five factual allegations in the Verified Complaint and two documents attached to the Verified Complaint, showing a statutory registration as a foreign corporation.<sup>1</sup> The Plaintiff's key point is that Richards, as an individual, controlled Chairman's View, which was for a brief time registered as a foreign corporation to do business in New Hampshire, thus transacting business in New Hampshire, which ultimately involved CoreValue. Alternatively, the Plaintiff argues that Richards' conduct, through corporate governance, and CoreValue as the recipient of a license to use the patent, resulted in injury to the Plaintiff, a resident of New Hampshire, thus committing a tortious act within New Hampshire.

The trial court's analysis under a specific jurisdiction standard is flawed because, confined to the Plaintiff's facts, it too improperly bootstraps (i) Chairman's View foreign registration to do business as submitting to the general jurisdiction of New Hampshire,<sup>2</sup> (ii) to the act of conducting business when Chairman's View enters into and then breaches the security agreement, (iii) through its corporate officer and agent, Richards. The trial court's reliance on *Petition of Reddam*, 170 N.H. 590 (2018), is misplaced when it adopts the

---

<sup>1</sup> This appeal does not address the conduct or actions of CSS, and the trial court's analysis does not depend upon its connections to New Hampshire.

<sup>2</sup> Plaintiff wrongfully implies the principal office business address on the Certificate of Authority is the same as a principal place of business. The Certificate of Authority establishes service of process, identifying a business address to serve the foreign corporation in the forum state. It does not establish or mean the same as a corporation's principal place of business. Here, Chairman's View, Inc. is a Delaware corporation, with a principal place of business in Vermont.

Plaintiff's position that CoreValue transacted business in New Hampshire when it received the transfer of the patent, even though it has no corporate connection to New Hampshire except through the bootstrapped involvement of its agent and officer, Richards. The factors the Court relied upon in *Reddam* highlight key material differences between that case and this case.

First, in *Reddam*, the individual (not the corporations) challenged jurisdiction, arguing potential statutory liability as a control person is insufficient to establish specific jurisdiction. *Reddam*, 170 N.H. at 593. Second, *Reddam* involved statutory compliance with New Hampshire laws governing lending to consumers, rather than a garden variety tort or breach of contract claim affecting one individual through a contract. Unlike the plaintiff's claim in this case, *Reddam* turned on direct and specific statutory compliance and control over that statutory compliance. *Id.* at 598 (Reddam was directly involved to issue loans in violation of NH licensing and regulatory requirements, which the Department/petitioner enforced). Third, the enforcement mechanism was not an individual against another distinct individual, but rather the New Hampshire Banking Department, involving all consumers in the state and wide-spread impact.

Unlike *Reddam*, the Plaintiff in this case alleges tortious interference with her ability to collect on a judgment and, alternatively, an alleged breach of contract that depends upon the jurisdiction over non-contractual parties. The trial court's adherence to the Plaintiff's convoluted assertions are indefensibly wrong under *Daimler* and *BSNF Railway*. The trial court erred in its use and extension of

these facts to create a connected relationship among Appellants with the Plaintiff residing in New Hampshire, unconstitutionally eliminating corporate governance and statutory boundaries.

**C. Due Process Analysis.** The trial court's reliance on selective citations of New Hampshire case law is misplaced, because its analysis is based on general jurisdiction standards and therefore cannot be construed to extend to specific jurisdiction due process analysis. In *Phillips Exeter Academy v. Howard Phillips Fund*, 196 F.3d 284 (1<sup>st</sup> Cir. 1994), the Court clearly instructs the lower court to consider specific jurisdiction on a claim-by-claim basis. *Phillips Exeter Academy*, 196 F.3d at 289 (the lower court must analyze the contract and tort claims discretely, because questions of specific jurisdiction are always tied to the particular claims asserted). The Court cautioned against conflating contract and tort claims and emphasized the specific jurisdiction analysis concentrates on the quality and quantity of the potential defendants contacts with the forum. *Id.* at 288.

Unlike the numerous direct forum contacts in *Phillips Exeter Academy*, the Plaintiff here relies solely on Chairman's View's written contractual relationship with the Plaintiff and the judgment in the First Suit. Richards and CoreValue are not parties to the security agreement and therefore have no privity of contract on the Plaintiff's contract claim. Further, the alleged breach of the security agreement did not occur in New Hampshire. The initial relationship between Chairman's View and the Plaintiff was short-lived, limited to a one-time loan, and involved security in intellectual property that has no situs. As in *Phillips Exeter*

*Academy*, specific jurisdiction over each of the Appellants “must stand or fall based on its own contacts with the forum.” *Phillips Exeter Academy*, 196 F.3d at 288 n. 2. <sup>3</sup> The Plaintiff failed to make a prima facie showing adequate to justify an exercise of specific jurisdiction, because the causes of action the plaintiff pleaded against Appellants did not arise out of or relate sufficiently to Appellants’ contacts with New Hampshire. The trial court’s ruling that a separate analysis of each count is unnecessary is in error, because it failed to consider the elements of the Plaintiff’s causes of action, separately in contract or tort. *See Id.* at 289 (a court charged with determining the existence of specific personal jurisdiction must draw a distinction between the plaintiff’s contract and tort claims).

Therefore, the Plaintiff’s tort claims must be analyzed separately and cannot be bootstrapped to the original contract or the judgment in the First Suit. The Plaintiff’s facts are too generic and casual to bind Chairman’s View’s previous contact with the Plaintiff to the consequences of a breach that have no specific contact with any of Appellants or support the elements of a tort. *See Id.* Neither Richards nor CoreValue owe a duty to the Plaintiff under the security agreement or its enforcement. The Plaintiff fails to plead facts to support a constitutional relationship between herself and CoreValue to support the requirements of a specific jurisdiction analysis. *See Id.* (prior negotiations and contemplated future consequences, along with actual course of dealing, determine purposefully

---

<sup>3</sup> The Plaintiff must initially demonstrate how Chairman’s View, Inc. breached the security agreement within the four corners of the document. The security agreement does not prevent a transfer of the patent to another entity or person. A mere assignment of the ownership of the patent does not extinguish or modify the Plaintiff’s security interest in the patent or its proceeds, as provided under the terms of the security agreement.



established minimum contacts with the forum). There are no distinct and separate contacts between any of Appellants and the Plaintiff to warrant specific jurisdiction and the trial court erred in analyzing the Plaintiff's contract and tort claims together, ignoring the Court's directive in *Phillips Exeter Academy*.

**D. Minimum Contact Analysis.** To support specific jurisdiction, the Court must conduct an analysis of the minimum contacts within New Hampshire for all Appellants. To meet the requirements of due process, the Court must determine if Appellants' contacts relate to the litigation; that is, the cause of action must arise from Appellants' contacts with New Hampshire.

This "requirement is not met merely because a plaintiff's cause of action arose out of the general relationship between the parties; rather, the action must directly arise out of the specific contacts between the defendant and the forum state." *Sawtelle v. Farrell*, 70 F. 3d 1381, 1389 (1<sup>st</sup> Cir. 1995).

The First Suit does not establish specific jurisdiction against Richards and CoreValue. *See Burger King Corp*, 471 U.S. 462, 479-80 (1985) (mere existence of a contractual relationship between out-of-state defendant and an in-state plaintiff does not suffice to establish jurisdiction in the plaintiff's home state). Here, at best, the facts that give rise to this action are Appellants' business practices and operations, not a breach of the security agreement between the Plaintiff and Chairman's View. The Court must consider the contacts between Appellants and New Hampshire viewed through the prism of the Plaintiff's particular suit. The contacts relative to Appellants' business practices and decisions establish only a general relationship between the parties and are

irrelevant to the specific personal jurisdiction at issue here. *See, e.g., Skillsoft Corp. v. Harcourt General, Inc.*, 146 N.H. 770 (2001). Plaintiff cannot be permitted to evade the common law principle of privity of contract to bootstrap Appellants into a lawsuit in a state where there are no minimum contacts to authorize personal jurisdiction under the Due Process Clause of the Constitution.

**2. WHETHER APPELLANTS' ACTIONS AND CONDUCT ARE SUFFICIENT TO ESTABLISH PERSONAL SPECIFIC JURISDICTION OVER APPELLANTS, SPECIFICALLY WHETHER THE (A) APPELLANTS' CONTACTS RELATE TO THE PLAINTIFF'S CAUSE OF ACTION; (B) APPELLANTS PURPOSEFULLY AVAILED THEMSELVES OF THE PROTECTION OF NEW HAMPSHIRE'S LAW; AND (C) IF IT WOULD BE FAIR AND REASONABLE TO REQUIRE THE APPELLANTSS TO DEFEND THE LAWSUIT IN NEW HAMPSHIRE? *SEE INT'L SHOE CO. V. STATE OF WASH., OFFICE OF UNEMPLOYMENT COMP. & PLACEMENT*, 326 U.S. 310, 316 (1945).**

The trial court erred in denying Appellants' Motion to Dismiss. As argued above, the Plaintiff failed to proffer sufficient evidence to support the trial court's finding of personal specific jurisdiction. The trial court then applied the time-honored analysis of minimum contacts to a set of facts that are not supported by the record and to contacts that do not comport with due process. The trial court's analysis of Appellants' contacts within the relevant case law strains the perception of a due process relationship among Appellants, New Hampshire and the Second Suit. Although the First Suit was litigated in New Hampshire, the extension of a Second Suit piggy-backed on a judgment against Chairman's View is not square with specific jurisdiction.

The trial court relies heavily on the fact that a defendant does not need to be physically present in the forum state to justify specific jurisdiction. *See Burger*

*King Corp*, 471 U.S. at 476. There are numerous material differences between *Kimball Union Academy*, 165 N.H. 132 (2013), and *State v. North Atlantic Refining Ltd.*, 160 N.H. 275 (2010), and this case which render *Kimball Union Academy* and *North Atlantic Refining Ltd.* an ill-fitting template for the trial court's analysis and decision.

In this case, Appellants' alleged tort is not akin to personal services rendered. As explained in *Kimball Union Academy*, "to meet the purposeful availment factor, there must be additional conduct of the defendant that indicates an intent or purpose to serve the market in the forum State." *Kimball Union Academy*, 165 N.H. at 140. In conducting the specific jurisdiction analysis under the due process prong of New Hampshire's long-arm statute, the Court distinguished the "stream of commerce plus" theory applied in products liability cases from cases involving personal services. *Id.* ("placement of a product into the stream of commerce, without more, is not an act . . . purposefully directed toward the forum state" and "defendant's awareness that the stream of commerce may or will sweep the product into the forum state [is not] sufficient to establish purposeful availment"). In other words, the claim underlying this action must directly arise out of, or relate to, Appellants' New Hampshire activities. The Plaintiff does not plead any specific facts relating to Appellants, other than to summarily allege the tortious claims. In *North Atlantic Refining Ltd.*, the trial court identified 37 shipments of gas to a New Hampshire location, finding a constitutional nexus of relatedness and foreseeability. *North Atlantic Refining Ltd.*, 160 N.H. at 283. The Court explained the purposeful availment prong is not

premised upon a defendant's isolated contact but rather upon a deliberate contact and also cautioned against basing contact on the unilateral acts of another party.

*Id.* at 284.

A key difference here is the contact through the First Suit cannot be imputed to Appellants in the Second Suit. The situation here is distinguishable from the routine general business claims. For example, the court typically finds in the record well-pleaded facts to warrant its finding of specific jurisdiction. For example, in *Northern Laminate Sales, Inc. v. Davis*, 403 F.3d 14 (1<sup>st</sup> Cir. 2005), the Court relied upon repeated, directed and purposeful statements to the Plaintiff, set forth in the initial pleadings with specificity, without contradiction, relating to the subject matter of payment on a debt. *Northern Laminate Sales*, 403 F. 3d at 23, 25-26. A better case to illustrate the proper constitutional analysis is *Calder v. Jones*, 104 S. Ct. 1482 (1984), where the United States Supreme Court established an "effects" test to determine personal jurisdiction in a suit involving an intentional tort. *See Calder v. Jones*, 104 S. Ct. at 1486. In *Calder*, the defendants wrote an article about the Plaintiff and her activities in her home state of California, impugning her reputation as a television entertainer. The defendants were Florida residents and the article was circulated nationally, not just in California. *Id.* The Supreme Court upheld personal jurisdiction against the Florida residents in California, explaining the focal point of the story and harm suffered were intentionally directed at the Plaintiff. Pointedly and critically, publication to third persons in a necessary element of libel and the plaintiff's reputation in California connected the defendants' conduct to California, not just to the plaintiff

who lived in California. The question that remained, however, was the complexity of creating sufficient minimum contacts when the defendant has few if any direct contacts with the forum state. In *Walden*, the Supreme Court sharpened *Calder* when intentional torts are involved. The Supreme Court held that jurisdiction over an out-of-state tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum state and mere effects in the forum state are insufficient to confer personal jurisdiction. *Walden*, 134 S. Ct. at 1122-1123.

First, the relationship must arise out of contacts that the ‘defendant himself’ creates with the forum State. Due process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties . . . . Second, our ‘minimum contacts’ analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there . . . . [T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him . . . . These same principles apply when intentional torts are involved. . . . A forum State’s exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum. *Id.*

Thus, in this particular action, where the only connection with New Hampshire is the Plaintiff, and where Appellants have nothing more than a general relationship with New Hampshire, there is no personal jurisdiction over Appellants. The mere timing of the signing of the security agreement and the timing of the transfer of the patent are far short of intentional conduct that creates the necessary minimum contacts with New Hampshire to meet the due process requirements of its long-arm statute.

In light of *Walden*, the situs of a tort involving a patent and its transfer will not and cannot be easily determined to be where the Plaintiff resides. A patent is intellectual property, which is an intangible asset with no physical substance that is ultimately governed under federal patent law. The relevant law governing patent infringement illustrates the best approach dictates personal jurisdiction where the infringement occurred. *See generally*, Michigan Law Review, Vol. 90, PERSONAL JURISDICTION OVER ALIENS IN PATENT INFRINGEMENT ACTIONS: A UNIFORM APPROACH TOWARD THE SITUS OF THE TORT (December 1991). The situs of the economic injury too broadly interprets and applies the due process prong of a state's long-arm statute. *Id.* at 671. Patent rights exist throughout the United States and, thus, the situs of the infringement more correctly identifies the trespass or infringement and the rightful cause of action. *Id.* at 673.

Here, the Plaintiff alleges injury in New Hampshire because she resides in New Hampshire. The Plaintiff is not the owner of the patent; she merely has a security interest in the patent. The Plaintiff's income may be affected by the use of the patent, which would include the transfer of the use of the patent. Realistically, however, the Plaintiff's income is not situated in New Hampshire, but follows her wherever she is or where she chooses to deposit or use her income. As made clear in *Walden*, the Plaintiff cannot be the only link between Appellants and New Hampshire. Here, the mere effect of the use of the patent on the Plaintiff's debt is a link to Appellants, and more is needed to establish specific jurisdiction over Appellants' conduct. The fortuitous circumstance of the

plaintiff's residence may connect New Hampshire with the alleged tort, but a result that violates the Due Process Clause and leads to forum shopping. *Id.* at 675.

Other courts that have addressed the situs of the tort in cases similar to the instant case have declared jurisdiction improper in ordinary tort cases, unless some injury would have occurred in the forum state even if the plaintiff did not reside there. *Id.* (citing *Interface Biomedical Lab. V. Axiom Medical, Inc.*, 600 F. Supp. 731, 738 (E.D.N.Y. 1985)). In the Plaintiff's case, the injury caused by Appellants would not have occurred in New Hampshire but for the fact that the Plaintiff resides in New Hampshire. *See Walden*, 134 S. Ct. at 1124. The fact that the Plaintiff is a New Hampshire resident does not meet the threshold of minimum contacts.

**3. WHETHER THE DEFENDANTS SUBMITTED TO THE JURISDICTION OF NEW HAMPSHIRE WHEN (A) CHAIRMAN'S VIEW, INC., A DELAWARE CORPORATION, REGISTERED TO DO BUSINESS AS A FOREIGN CORPORATION IN NEW HAMPSHIRE AND (B) CHAIRMAN'S VIEW, INC. TRANSFERRED A PATENT IT OWNED TO DEFENDANT COREVALUE HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY?**

As argued above, the trial court cannot base specific jurisdiction on the act of registering to do business as a foreign corporation. It follows that the trial court cannot exercise specific jurisdiction over Richards because he acted as an agent for the registration to do business as a foreign corporation. The final step in the court's analysis improperly extends specific jurisdiction to CoreValue, because it is based on the registration and agency theories of liability. The circuitous extension of specific jurisdiction violates the clear directive that

contract and tort claims must be analyzed separately, adhering to the elements of each of the plaintiff's cause of actions, without violating due process.

The Plaintiff's facts depend upon the legal argument that Chairman's View, Inc. and Richards consented to general jurisdiction in New Hampshire when Chairman's View, Inc. filed the Certificate of Authority. In light of *Daimler* and *Goodyear*, consent-based general jurisdiction through a corporation's registration to do business is no longer enforceable, absent express consent in the state's registration statute. *See generally Daimler*, 134 S. Ct. 746 (2014) (absent "exceptional case," doing continuous and systematic business in the forum state no longer exposes a foreign defendant to general jurisdiction in that forum state). Moreover, long before *Daimler*, the Supreme Court acknowledged that state statutes could not condition authorization to do business on a foreign company's designation of a local agent for service of process, without violating due process. *See Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 174-175 (1939).

In New Hampshire, pursuant to RSA 293-A:1.28, a foreign corporation may apply to the secretary of state for a certificate of authorization to transact business in New Hampshire. The statute does not provide registration as a foreign corporation in New Hampshire constitutes consent to personal jurisdiction. *Compare* 42 Pa. C.S.A §5301 (a)(2)(i)-(iii) the only state in the nation with a corporate registration statute specifically providing that a non-resident corporation consents to general jurisdiction by complying with the registration statute for foreign corporations). After *Daimler*, Plaintiffs no longer may sue foreign corporations in their forum state for claims that are unrelated to that corporation's



activities in that forum state. This Court must reject the Plaintiff's assertion that registering to do business as a foreign corporation in New Hampshire serves as a basis for New Hampshire to exercise personal jurisdiction over foreign defendants.<sup>4</sup>

The Plaintiff brings Richards under this umbrella of personal jurisdiction because the application listed him as the President at a business office address in Lebanon, New Hampshire. Here, both corporations are foreign corporations, neither designates New Hampshire as its principal place of business and, most important, neither consented to general jurisdiction. The Plaintiff fails to support jurisdiction on facts in the Complaint against all Appellants.

#### **CONCLUSION AND REQUEST FOR RELIEF**

For reasons set forth above, the trial court incorrectly held that Appellants are subject to the specific jurisdiction of New Hampshire. This Court should therefore reverse the trial court's decision and grant or direct the trial court to grant Appellants Motion to Dismiss.

---

<sup>4</sup> There is no case law that supports the plaintiff's assertion of general jurisdiction under RSA 293-A:1.28. There is, however, case law that states "[c]orporate registration in New Hampshire adds some weight to the jurisdictional analysis, but it is not alone sufficient to confer general jurisdiction." *Cossaboon v. Maine Medical Center*, 600 F.3d 25, 37 (1<sup>st</sup> Cir. 2010).

**RULE 16 (3) (i) CERTIFICATION**

I hereby certify that the appealed decision is in writing and is hereto appended to the brief.

Dated: January 5, 2021 /s/ John R. Hughes III for Bradford T. Atwood  
John R. Hughes, Esq.

HUGHES ATWOOD & MULLALY, PLLC  
John R. Hughes III, Esq. for Bradford T. Atwood, Esq.  
NH Bar ID# 19331  
30 Bank Street  
Lebanon, NH 03766  
(603) 448-3900-Telephone  
(603) 448-3939- Fax  
Email: [rh@hsh-law.com](mailto:rh@hsh-law.com)

**STATEMENT OF COMPLIANCE**

Counsel hereby certifies that pursuant to New Hampshire Supreme Court Rule 26(7), this brief complies with the New Hampshire Supreme Court Rule 26(2)-(4). Further, this brief complies with New Hampshire Supreme Court Rule 16(11), which states that “no other brief shall exceed 9,500 words exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters.” Counsel certifies that the brief contains 8,041 words (including footnotes) from the “Questions Presented for Review” to the “Conclusion” sections of the brief.

/s/ John R. Hughes III for Bradford T. Atwood  
John R. Hughes, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of January, 2021, a true and exact copy of the foregoing Brief for Charles E. Richards, Chairman's View Holdings, LLC and Corevalue Holdings, LLC was sent via U.S. First Class mail, postage pre-paid, to Howard B. Myers, Esq., counsel for the Appellee.

/s/ John R. Hughes, III for Bradford T. Atwood  
John R. Hughes III, Esq.