THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2020-0259

Christine Seward
Plaintiff - Appellee

v.

Charles E. Richards,
Chairman's View, Inc.,
CoreValue Holdings, LLC,
Consulting Software System LLC, and
George Sandmann

Defendants - Appellants

Rule 8 Interlocutory Appeal from the Grafton Superior Court
Case No. 215-2019-CV-260

BRIEF FOR APPELLEE CHRISTINE SEWARD

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Oral Argument requested. Attorney Myers will argue.

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See Plaintiff's Corrective Objection to Motion to Dismiss filed on December 4, 2019, in the Grafton Superior Court, No. 215-2019-CV-00260 ("Objection to Motion to Dismiss") (attached for the Court's convenience as ***Appendix 1*** *to this Brief) ¶¶ 4-15, at 2-6 ; see also Plaintiff's Sur-Reply to Defendants' Motion to Dismiss filed on January 27, 2020 ("Sur-Reply to Motion to Dismiss") (attached for the Court's convenience as* ***Appendix 2*** *to this Brief) at 3-11.*

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 Plaintiff's Objection to Motion to Dismiss (Appendix 1) ¶¶ 4-15, at 2-6; see also Plaintiff's Sur-Reply to Motion to Dismiss (Appendix 2) at 3-11; see also Petition of Reddam, 170, N.H. 590, 597 (2018).

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 Plaintiff's Objection to Motion to Dismiss (Appendix 1) ¶¶ 4-15, at 2-6; see also Plaintiff's Sur-Reply to Motion to Dismiss (Appendix 2) at 3-11.

STATUTES INVOLVED IN THE CASE

RSA 293-A:1.28. Certificate of Existence

(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.

RSA 545:A. Uniform Fraudulent Transfer Act

545-A:1 Definitions.

As used in this chapter:

II. "Asset" means property of a debtor[.]

III. "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

IV. "Creditor" means a person who has a claim.

V. "Debt" means liability on a claim.

VI. "Debtor" means a person who is liable on a claim.

VII. "Insider" includes:

(a) If the debtor is an individual:

(1) A relative of the debtor or of a general partner of the debtor;

(2) A partnership in which the debtor is a general partner;

(3) A general partner in a partnership described in subparagraph (2); or

(4) A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

(1) A director of the debtor;

(2) An officer of the debtor;

(3) A person in control of the debtor;

IX. "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

X. "Property" means anything that may be the subject of ownership.

545-A:2 Insolvency.

I. A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

II. A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

IV. Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

V. Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

545-A:4 Transfers Fraudulent as to Present and Future Creditors.

I. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(2) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

II. In determining actual intent under subparagraph I(a), consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or obligation was incurred, the

debtor had been sued or threatened with suit;
(e) The transfer was of substantially all the debtor's assets;
(f) The debtor absconded;
(g) The debtor removed or concealed assets;
(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
(j) The transfer occurred shortly before or after a substantial debt was incurred; and
(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

545-A:5 Transfers Fraudulent as to Present Creditors.

I. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

II. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

545-A:7 Remedies of Creditors.

I. In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in RSA 545-A:8, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by RSA 498:8.

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(2) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(3) Any other relief the circumstances may require.

(d) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

I. STATEMENT OF THE CASE

This interlocutory appeal arises out of the denial of a motion to dismiss (the "Motion"). The Appellants asserted in the Motion and again argue in this appeal that the Grafton Superior Court lacked personal jurisdiction over them. The Superior Court disagreed and, in a lengthy opinion appended to the Appellant's Brief, denied the Motion.

The case stems from Appellee's attempts to collect on two promissory notes. Appellee, a Hanover, New Hampshire, resident, was previously employed by Appellant Chairman's View, Inc. ("Chairman's View"). In 2014 and 2015, at the request of Chairman's View's President, Appellant Charles Richards, Appellee loaned Chairman's View nearly $400,000 pursuant to two demand promissory notes. Having failed to receive promised payments, Appellee made a demand for payment under the notes, following which Chairman's View defaulted. As of the date of the default, both Chairman's View's and Richards' principal business offices were located in West Lebanon, New Hampshire.

To stave off further collection activity, Chairman's View gave Appellee a security agreement (the "Security Agreement") in which it pledged all of its assets as collateral to secure payment of the amounts due under the promissory notes, including a patent described below (the "Patent"), which represented the company's sole significant asset. Richards signed the Security Agreement on behalf of Chairman's View.

When Chairman's View again defaulted, Appellee brought suit against Chairman's View, which Chairman's View defended ("Lawsuit I"). Appellee received a judgment of nearly $500,000. Richards participated in Lawsuit I on behalf of Chairman's View. Chairman's View neither appealed the judgment nor contested the Superior Court's assertion of jurisdiction over Chairman's view.

However, to avoid paying the judgment, Richards created a new company, Appellant CoreValue Holdings, LLC ("CoreValue"), of which Richards is the sole and managing member. The Security Agreement prohibits hypothecating Chairman's View's assets and transferring the Patent would divest Chairman's View of its sole significant asset. Nevertheless, without notifying Appellee or receiving her permission to do so, Richards had Chairman's View assign the Patent to CoreValue in an assignment instrument he signed on behalf of both companies. As part of Richards' scheme, that same day CoreValue licensed the patent to a new company, Consulting Software System LLC ("CSS"). CSS was formed by Chairman's View's former President, George Sandmann, who was aware of that debt owed to Appellee, the promissory notes, and the Security Agreement.[1] Being unaware of the Patent's transfer, when Appellee tried to record a post judgment attachment

[1] Although CSS and Sandmann are defendants in this action due to their complicity in Richards' scheme, they have not joined Richards and his companies as appellants in this appeal.

granted by the Grafton Superior Court in the United States Patent Office, it was to no avail: Chairman's View no longer owned the Patent.

Appellee then brought this lawsuit against all of the participants in Richards' machinations. Subsequent to the fraudulent transfer of the patent, Chairman's View and CoreValue changed their office addresses from New Hampshire to 85 North Main Street, White River Junction, Vermont, the office address of Richards' lawyer, Denise Anderson. Although Ms. Anderson continues to advise Richards, she has not entered an appearance in this case, possibly because any pro hac vice affidavit she filed would raise questions.[2]

Appellants then filed their Motion, arguing that Appellee should have sued them in Vermont, not New Hampshire, and that the Grafton Superior Court lacked personal jurisdiction. When the Superior Court denied the motion (the "Order") on April 17, 2020, this appeal followed.

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[2] *See Hammond v. City of Junction City, Kansas*, 167 F. Supp. 2d 1271 (D. Kansas 2001) (a decision in which the Magistrate Judge imposed sanctions on Ms. Anderson, who represented Black city employees in a putative class action discrimination suit against the city, for violating the Kansas Rules of Professional Conduct by engaging in ex-parte communications with the city's Director of Human Resources. The sanctions included prohibiting Ms. Anderson from representing any class of individuals in any other action based on class allegations asserted in that case, excluding evidence attorney Anderson had improperly obtained, awarding attorney's fees to Ms. Anderson's opposing counsel, and reporting the matter to the Kansas Disciplinary Administrator), *aff'd*, 126 Fed. Appx. 886 (10th Cir. 2005). For the Court's convenience, the two decisions are appended as, respectively, **Appendices 3 and 4** to this Brief.

STATEMENT OF THE FACTS

The facts of this case are straightforward.[3] Appellant Chairman's View is a Delaware corporation with a current principal office at 85 North Main Street, White River Junction, Vermont. Complaint ¶ 2. Appellant Charles Richards ("Richards"), an individual, resides in Norwich, Vermont. Appellant CoreValue is a Nevada limited liability company, created by Richards, with a listed principal place of business at the same address as Chairman's View in White River Junction, Vermont.

At all times relevant to the issues in this appeal Richards was the president, sole director, and majority shareholder of Chairman's View and the managing member and sole owner of CoreValue. *Id.* ¶ 4; Order at 3. In 2014 and 2015 Appellee, who worked for Chairman's View at its then West Lebanon, New Hampshire, office, loaned Chairman's View $370,500 pursuant to two demand promissory notes. Complaint ¶¶ 12-13. In April 2016, Seward demanded full payment of principal and all accrued interest pursuant to the demand provisions of the Notes. *Id.* ¶ 14.

In response to the demand, after discussions in which Richards personally participated, the parties entered into a security agreement in which Chairman's View pledged all of its assets to

[3] Paragraph references are to paragraphs of the Verified Complaint filed in the Grafton Superior Court, a copy of which is appended for the Court's convenience as **Appendix 5**. These allegations were accepted as true by the Superior Court when it denied the Motion. As part of its consideration of the Motion, the Grafton Superior Court held a non-evidentiary hearing on March 4, 2020. The defendants failed to include a transcript of that hearing with this appeal. Pursuant to this Court's Order of February 25, on March 9 the Appellants filed a copy of the Order as an Appendix to their brief.

secure payment of both notes (the "Security Agreement"). *Id.* ¶ 16. The Security Agreement, attached to the Verified Complaint (Appendix 5) as Exhibit 1, requires Chairman's View to "keep the collateral free from any lien, security interest or encumbrance" and to" defend the same against all claims and demands of all persons at any time claiming the same or any interest therein adverse to the Secured." Complaint ¶ 16. As the Grafton Superior Court found, the Security Agreement also contained the following language: "This Security Agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of the State of New Hampshire." Order at 4; Appendix 5 (Complaint) Exh. 1 at 1 (Security Agreement).

The collateral described in the Security Agreement includes, but is not limited to, "***computer programs, patents and patent applicators, software, licenses***" as well as any proceeds from the sale "or other disposition" of those assets. Appendix 5 (Complaint) Exh. 1 at 1 (Security Agreement) (emphasis added). This includes the Patent—U.S. Patent No. 960727842 issued to Chairman's View for proprietary software. The Patent constituted Chairman's View's sole significant asset. Complaint ¶ 17. Seward's security interest was perfected by a filing with the Delaware Secretary of State on July 5, 2016, and recently continued. *Id.* ¶ 18.

Chairman's View failed to make the payments to which the parties agreed when they entered into the Security Agreement. Accordingly, in July 2016 Appellee was forced to file suit in the Grafton Superior Court in a suit entitled *Seward v. Chairman's*

View, Inc., No. 215-2016-CV-176 (previously referenced Suit I). *Id.* ¶ 19. On August 18, 2017, the Grafton Superior Court entered a judgment for $473,774.75 in favor of Seward against Chairman's View. *Id.* ¶ 25. The judgment became final September 19, 2017, and was not appealed. *Id.* ¶ 27.

On January 19, 2016, prior to Seward's initial demand for payment on the two notes, Chairman's View filed an Application for a Certificate of Authority to do business in New Hampshire. Appendix 1 (Objection to Motion to Dismiss) Exh 1. That application lists Chairman's View's principal office address as 24 Airport Road, Suite 402, West Lebanon, New Hampshire. *Id.* Richards signed the application as President and Director and lists his own business address as also being 24 Airport Road, Suite 402, West Lebanon, New Hampshire. *Id.*

Appellant CoreValue was incorporated in Nevada on November 11, 2016, approximately fourteen weeks after Seward filed Suit I. Complaint ¶ 23. On October 2, 2017, two weeks after the judgment in Suit I became final, Richards caused CoreValue to apply for a Certificate of Authority to do business in Vermont at 85 North Main Street, White River Junction, Vermont. *Id.* ¶ 27. The day before, October 1, 2017, in direct violation of the Security Agreement's anti-hypothecation language, Richards caused Chairman's View to assign the Patent to CoreValue and recorded the assignment in the United States Patent and Trademark Office. *Id.* ¶ 30. On November 13, 2017, a little over a month later, Chairman's View filed a Business Information Change with the New Hampshire

Secretary of State in which it moved its principal business office and Richards' principal business office addresses from 24 Airport Road, West Lebanon, New Hampshire, to 85 North Main Street, White River Junction, Vermont. Appendix 1 (Objection to Motion to Dismiss) Exhibit 2.

Although Appellee still held her perfected security interest in the Patent, Richards made the assignment without informing Appellee and without her approval even though the assignment divested Chairman's View of its only significant asset and effectively caused it to become insolvent. Complaint ¶ 28; *see also* RSA 545-A:4&5. It was not until February 12, 2018, in the context of an Objection to a Motion for Post Judgment Attachment, that Chairman's View finally disclosed it had assigned the Patent to CoreValue. *Id.* ¶ 35.

Thus, at all times relevant to this litigation (April 2016 to October 2017), both Chairman's View and Richards maintained their principal business offices in West Lebanon, New Hampshire. Only after October 2, 2017, when Richards orchestrated his scheme to fraudulently transfer the Patent, did he move their operations to Vermont.

This suit was filed on July 19, 2019. It alleges, in part, that Richards' orchestration of the assignment and subsequent licensing of the Patent without Seward's knowledge or acquiescence constitutes a breach of the Security Agreement and a fraudulent transfer under RSA 545:A:4&5. The complaint further alleges that Richards designed, orchestrated, and implemented his scheme to

deny Seward the ability to collect on the judgment she had obtained in her lawsuit against Chairman's View. *Id.* ¶¶ 41-62.

SUMMARY OF ARGUMENT

In support of their Motion, both when it was before the Grafton Superior Court and now in this Court, the Appellants have continuously advanced the argument that they are not subject to personal jurisdiction based on general jurisdiction principles. *See, e.g.,* Appellants' Brief at 17-26. That assertion is a red herring because this case is governed by specific, not general, jurisdiction principles. When the specific facts set forth in the Verified Complaint as to the Appellants' forum-based actions are accepted as true and inferences derived from those facts construed in Appellee's favor, under New Hampshire law and federal law governing due process, the Grafton Superior Court's assertion of jurisdiction over Appellants was appropriate.

ARGUMENT

The focus of the Appellants' brief, with numerous case citations, is that neither the Grafton Superior Court nor this Court can assert general jurisdiction over the Appellants. *See, e.g.,* Appellants' Brief at 17-26. However, the Appellee has never advanced a claim that the Appellants are subject to jurisdiction under that theory. Rather, the Appellee's assertion of personal jurisdiction over the Appellants is based on "specific" personal jurisdiction; namely, that "the cause of action arises out of or relates to the respondent's forum-based contacts." *Petition of Reddam,* 170,

N.H. 590, 597 (2018). The Grafton Superior Court saw through those arguments as specious and analyzed Appellee's jurisdictional claims under the framework of specific, not general, jurisdiction. *See* Appellant's Brief, Appendix (Order) at 6. Similarly, although in large part Appellant's Brief and arguments rail against the assertion of general jurisdiction, Appellee's focus is based on specific actions taken by Appellants that either occurred in New Hampshire, had an effect in New Hampshire, or did both.

STANDARD OF REVIEW

Appellants argue that the Complaint should have been dismissed and the Grafton Superior Court was incorrect in not doing so because the Complaint allegedly does not set forth sufficient facts to establish personal jurisdiction over Appellants Chairman's View, CoreValue, and Richards.

In numerous cases, this Court has stated words to the effect:

> Generally, in ruling upon a motion to dismiss, the trial court is required to determine whether the allegations contained in the plaintiff's pleadings are sufficient to state a basis upon which relief may be granted. To make this determination, the court would normally accept all facts pled by the plaintiff as true, construing them most favorably to the plaintiff. When the motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim **but, instead, raises certain defenses**, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his or her right to claim relief.

Alward v. Johnston, 171 N.H. 574, 580 (2018) (brackets omitted)

(emphasis added); *see also, e.g.*, *Kibby v. Anthony Indus., Inc.,* 123 N.H. 272, 293-94 (1983).

In this case, the Motion and this appeal raise the issue of personal jurisdiction. Personal jurisdiction is not among the class of "certain defenses" addressed by this Court in *Alward* and its predecessor cases. In those cases, this Court generally limited the realm of "certain defenses" to the affirmative defenses elucidated in N.H. Super. Ct. R. 9(d) and similar affirmative defenses. In so ruling, this Court held that a motion based on a defense not included in the universe of "certain defenses" should be considered under the general standard: "the trial court must assume the truth of the plaintiff's allegations and construe all reasonable inferences in the light most favorable to the plaintiff as the nonmoving party." *E.g., Alward,* 171 N.H. at 581.

The Grafton Superior Court followed this standard in considering and denying the Motion. Appellant's Brief, Appendix (Order) at 2. In so doing the Grafton Superior Court noted that none of the facts set forth above were contradicted by the Appellants in their recitation of the facts in their Motion and, thus, must be considered to be true. *Id.* at 6 (citing *State v. North Atl. Ref. Ltd.,* 160 N.H. 275, 280-81 (2010)) (quotations omitted in Order).

The central issue here is whether the uncontradicted facts set forth in the Complaint support the imposition of specific jurisdiction over these Appellants. The answer is yes.

A. Chairman's View and Richards

At all times while Richards was taking the above actions to further his scheme, Chairman's View was not only registered to do business in the State of New Hampshire, its principal offices were physically located here. When Richards executed the Security Agreement on behalf of Chairman's View, Richards' principal business address was listed as being in and was physically located in West Lebanon, New Hampshire. Order at 3 (citing Complaint ¶ 10 & Appendix 1 (Objection to Motion to Dismiss) Exh. 1 (January 19, 2016, New Hampshire Application for Certificate of Authority)).

Why would one register to do business and physically locate in a state if one did not intend to do business there?

Why would one register to do business and list one's principal busines address in a state if one did not seek the ability to use the courts of that state to seek redress as well as for protection against claims asserted against it?

Why did Richards, on behalf of Chairman's View, agree in the Security Agreement that New Hampshire law would govern if he and Chairman's View did not foresee that issues relating to that Security Agreement might be litigated in New Hampshire courts?

Chairman's View and Richards were both officially present in New Hampshire as a matter of record with the New Hampshire Secretary of State when they participated in the first lawsuit brought by Seward against them (July 2016 to September 2017) and when they executed the Security Agreement (July 5, 2016). Order at 3-4 (citing Complaint ¶¶ 16, 26). These are not "conclusory allegations

or… farfetched inferences" as Appellants suggest[4] . Rather, these are deliberate decisions that evidence an intent to establish a busines presence within the State of New Hampshire.

Moreover, contrary to Appellants' assertions, when the fraudulent assignment of the Patent took place (October 2, 2017), Chairman's View was still registered to do business in New Hampshire and Richards' primary business address was still listed as West Lebanon. Order at 4 (citing Complaint ¶¶ 17, 30, 28, and Appendix 1 (Objection to Motion to Dismiss) Exh. 2). Indeed, the hasty migration of Richards and Chairman's View from New Hampshire to Vermont that occurred barely a month after the fraudulent assignment of the Patent suggests a conscious decision to escape potential liability from those wrongful acts.

Moreover, while registered to do business in New Hampshire, Chairman's View appointed not one, but two different registered agents in this state. Appendix 2 (Sur-Reply) at 3 (and citations therein). It fully participated in Suit I, and consistently sought the aid of the Superior Court in those proceedings. Order at 11. That participation alone constitutes a waiver of any challenge by Chairman's View to jurisdiction in this case. "A party waives a jurisdictional defense by implication [if] it seeks adjudication of issues beyond the challenge to jurisdiction." *Triple C Real Estate Inv., LLC v. Shelter Senior Living VI, LLC and Shelter Senior Living, VII, LLC,* No. 217-2019-CV-00757 (Merrimack Super. Ct.,

[4] See page 17 of Appellants' Brief in which they cite *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 203 (1st Cir. 1994).

Business Docket) (Order of Jan. 10, 2020) (McNamara, J.) (citations omitted).

Although Appellants argue that Chairman's View's registration to do business in New Hampshire is insufficient to confer jurisdiction, that assertion is incorrect. It is beyond cavil that a company consents to be sued in New Hampshire by appointment of a registered agent in this state. As this Court has observed: "[a] variety of legal arguments have been taken to represent express or implied consent to personal jurisdiction of the court. . . . One of the most solidly established ways of giving such consent is to designate an agent for the service of process within the state. . .." *Chick v. C&F Enter., LLC and another,* 156 N.H 556, 558 (2007) (citations omitted); *see also Neirbo Co. v. Bethlehem Shipbuilding Corp. Ltd.*, 308 US 165 (1939) where, in reference to the designation by Bethlehem of a registered agent in the State of New York, the Court observed that the designation of a registered agent is "part of the bargain by which Bethlehem enjoys the business freedom of the State of New York. . . ." *Id.* at 175.

The Verified Complaint alleges, and the Grafton Superior Court found, that Chairman's View significantly participated in Suit I, registered to do business in New Hampshire, and appointed two registered agents in furtherance of its registration, and that Richards listed his principal busines address as being in New Hampshire. Order at 9-10, 11, 12-14 (and citations therein). Those facts alone are sufficient for a New Hampshire court to assert specific jurisdiction over Appellants without offending due process.

B. Chairman's View, CoreValue, and Richards

In *New Hampshire Bank Comm'n v. Sweeney*, 167 N.H. 27 (2014), this Court held that before a trial court can properly exercise personal jurisdiction over a respondent it must engage in a two-part analysis:

> First, the State's long arm-statute must authorize such jurisdiction. Second, the requirements of the Federal Due Process Clause must be satisfied. However, because New Hampshire's long-arm statute authorizes the exercise of personal jurisdiction over a nonresident to the extent permissible under the Federal Due Process Clause, the due process analysis is normally dispositive of the matter.

Id. at 32 (cited and quoted in *Petition of Reddam*, *supra*, 170 N.H. at 597).

"For jurisdictional purposes, a party commits a tortious act within the State when injury occurs in New Hampshire even if the injury is the result of acts outside the State." *E.g., Kimball Union Academy v. Genovesi*, 165 N.H. 132, 137 (2013). Appellee is a resident of New Hampshire.

Among other causes of action, the Complaint alleges that Appellants negligently or intentionally acted against Seward's interests by committing a tort—fraudulent conveyance pursuant to RSA 545-A:4&5, Complaint ¶¶ 47-60; transferring the Patent in violation of the Security Agreement, a breach of contract—*id.* ¶¶ 41-46; and civilly conspiring to keep Seward from being able to exercise her security interest in the Patent, *id.* ¶¶ 61-72. The Complaint further alleges that all three of the Appellants were involved in the

fraudulent conveyance, the breach of contract, and the civil conspiracy.

It is indisputable that Appellee suffered damages in connection with Richards' transfer of the Patent from one of his companies to another, thus keeping it from being subject to the Grafton Superior Court's attachment order. The defendants argue that the operative acts underlying these causes of action occurred in Vermont or elsewhere. That assertion is factually incorrect as set forth above. However, even accepting, *arguendo*, that Richards' scheme was hatched in Vermont, that assumed fact is immaterial. New Hampshire law is clear: because Seward's injury from these acts occurred in New Hampshire, under *Kimball Union Academy* the Grafton Superior Court properly asserted personal jurisdiction over Appellants pursuant to New Hampshire's long-arm statute, RSA 510:4 (I). Therefore, the only remaining issue this Court need consider is whether exercising jurisdiction over Appellants comports with constitutional due process principles. It does.

Due Process clause analysis requires a three-pronged inquiry: (a) whether a defendant's contacts with the state "relate to the cause of action," (b) whether the defendant "has purposefully availed himself of the protection of New Hampshire's laws," and (c) whether "it would be fair and reasonable to require the [defendant] to defend the suit in New Hampshire." *E.g., Petition of Reddam*, *supra,* 170 N.H. at 597.

The relatedness requirement is satisfied if the underlying claims are related to or arise out of the defendant's activities in the

forum state. *Id.* at 599; *Kimball Union Academy, supra*, 165 N.H. at 137. As the *Reddam* court held,

> The relatedness test is a flexible, relaxed standard. To satisfy the relatedness factor, there must be more than just and attenuated connection between the contacts in the claim; the defendants in-state conduct must form an important, or at least material, element of proof in the plaintiff's case. The court's assessment of relatedness is informed by the concept of foreseeability.

Reddam, supra, 170 N.H. at 599. For these purposes, if injury occurs in the forum state that injury constitutes the requisite "activity" in that state. "A defendant need not be physically present in the forum state to cause injury (and thus "activity" for jurisdictional purposes) in the forum state." *Kimball Union Academy, supra,* 165 N.H. at 139. Thus, the relatedness requirement is satisfied in this case because the injury to Seward is related to the defendants' activities and constitutes an activity within this state for due process analysis. *Reddam* is illustrative.

John Paul Reddam was the president and chief executive officer of a California lending and loan services corporation known as CashCall. Reddam devised a scheme using other companies controlled by him to enter a contractual relationship with a company owned by the Cheyenne River Sioux tribe to make payday loans. As a sovereign Indian nation, the Cheyenne River Sioux tribe is not subject to New Hampshire's banking laws or oversight by the New Hampshire Banking Commission. By using the contractual relationship with the Cheyenne River Sioux tribe as a front to evade

New Hampshire's banking laws, Reddam, acting through the various companies he controlled, began making payday loans to New Hampshire consumers. When brought to task in New Hampshire by the New Hampshire Banking Commission, Reddam argued he had never lived in New Hampshire, had not visited New Hampshire in the preceding year, owned no real property in New Hampshire, and had no personal business dealings in New Hampshire—arguments strikingly similar to those Richards is asserting in this litigation. As to the activity taken through companies he controlled, Reddam claimed he had never personally interacted with any of the New Hampshire borrowers and had no personal involvement with servicing and collection from those borrowers except to instruct subsidiary managers and supervisors to obey all applicable laws. *Reddam, supra*, 170 N.H. at 593-94.

This Court soundly rejected Reddam's claims. It first found that Reddam's control over the companies he involved in his scheme and his personal participation in the scheme Reddam's companies used to issue loans to New Hampshire consumers were sufficiently related to the actions that occurred in New Hampshire to satisfy the relatedness test. *Id.* at 601. The Court held,

> It would be nonsensical to hold that a person could intentionally create a scheme for the purpose of violating the laws of *numerous states*, control the company that thereafter violated those state laws in accordance with the scheme, yet somehow be shielded from personal jurisdiction in each such state because he did not individually target the *particular* state's consumers.

Id. (emphasis in original).

In this case we have a similar scheme, engineered by Richards, using two companies controlled by him, Chairman's View and CoreValue, to deliberately circumvent and frustrate Seward's security interest stemming from a Security Agreement executed in New Hampshire and as to which the Agreement specifically states that New Hampshire law applies. Asserting his control over both companies, through instruments he signed, Richards was able to frustrate Seward's security interest by first causing Chairman's View to assign the Patent to CoreValue, then immediately licensing the Patent to a company owned by Chairman's View's recently departed president, Appellant George Sandmann. Richards' machinations successfully targeted Seward's security interest and caused her injury in New Hampshire: she was unable to exercise the attachment this Court granted her of Chairman's View's ownership interest in the Patent because, based on Richards' actions, when the Court did so Chairman's View no longer owned the Patent and had already licensed it to a third party, albeit a related company. Richard's, Chairman's View's, CoreValue's, CSS's, and Sandmann's participation in this scheme all relate to the injury suffered by Seward in New Hampshire. Indeed, the actions constituting the essential steps in Richards' scheme were carried out while Richards and Chairman's View still had their offices officially listed as being

in West Lebanon, New Hampshire. Accordingly, because each Appellant's actions relate sufficiently to New Hampshire and to Seward's claims, the assertion of personal jurisdiction over them is consonant with due process.

To satisfy the second prong of the due process analysis, Richard's, Chairman's View's, and CoreValue's contacts with New Hampshire "must represent a purposeful availment of the privilege of conducting activities in [New Hampshire], thereby invoking the benefits and protection of [New Hampshire's] laws and making [their] involuntary presence before the state's courts foreseeable." *Id.*

The "purposeful availment" inquiry requires both foreseeability and voluntariness. *Id.* at 602. "Foreseeability requires that the contacts also must be of a nature that the defendant could reasonably anticipate being haled into court there." *Id.* "Voluntariness requires that the defendant's contacts with the forum state proximately result from actions by the defendant,]" not by others. *Id.*

The purposeful availment requirement is satisfied in this case because the actions taken by these Appellants were taken voluntarily and intentionally to thwart Seward's security interest in the Patent. The actions were taken by the Appellants, not others, and neither instigated nor caused by any third party. And, in taking these voluntary actions, the Appellants knew or should have foreseen Appellee might sue them in a New Hampshire court.

Indeed, Appellee had already sued Chairman's View in New Hampshire and, as noted above, Richards and Chairman's View specifically agreed that New Hampshire law would govern any issue that arose under the Security Agreement. If a person agrees that a contract with another is subject to and to be interpreted under the law of a particular state, it is logical to anticipate that issues arising under the agreement will be litigated in that state. Any contention that the Appellants did not foresee they might be haled into court in New Hampshire if they breached the Security Agreement in the light of the Agreement's choice of law provision and the parties' previous dealings defies reality. Accordingly, Appellee has met the purposeful availment element for the Court to assert jurisdiction over Appellants consonant with due process.

Third, it is fair and reasonable to adjudicate this dispute in New Hampshire. The five "gestalt factors," which traditionally form the heart of the due process reasonableness analysis, are present here. Those factors consider: (1) the burden on the defendant; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies. *Id.* at 603.

There is little or no additional burden on the defendants to make them travel to New Hampshire. As the trial court found, "it is not particularly onerous for a business executive travel from

Vermont to New Hampshire. Order at 12. Two of the Appellants previously chose to locate their offices in New Hampshire, and all three claim they are currently located just across the Connecticut River in White River Junction, Vermont. Because this action relates to the enforcement of a judgment issued by the New Hampshire Superior Court and Appellants' attempts to evade that judgment, it cannot be seriously disputed that the State of New Hampshire has a substantial interest in making sure the integrity of judgments issued by its Superior Courts are respected. By allowing Appellee to proceed against Appellants in this matter, her ability to obtain just and effective relief will be enhanced. This action represents the most efficient resolution of the controversy because its underlying premise is a New Hampshire judgment in the Grafton Superior Court. This fact is admitted by the Appellants in the very first paragraph of their Brief, in which they state, "This action is the Plaintiff's attempt to collect on a judgment against Chairman's View." Appellants' Brief at 10.

Furthermore, there can be no doubt that the interest of every state in seeing that judgments issued in their courts are respected will be furthered by the exercise of jurisdiction in this case. Any state, including New Hampshire, would presumably prefer that a judgment issued by one of its courts could be enforced by its courts.

Finally, there is yet another basis upon which to assert jurisdiction over Richards. Richards is the President and sole shareholder of Chairman's View. Richards is also the sole member and Manager of CoreValue. The Complaint attests that Richards

planned, orchestrated, and implemented the fraudulent assignment of the Patent from Chairman's View to CoreValue and its subsequent licensing to Chairman's View's former President, all to evade Appellee's ability to collect on the judgment by attaching and gaining possession and control over the Patent. At the same time, it was Richards who signed the Security Agreement in which Chairman's View agreed to defend the collateral, including the Patent, against any interests "adverse to the Secured Party." In short, Richards personally requested and obtained the loan from Appellee, then was in control of everyone and everything having to do with avoiding repayment of the loan through the creation of CoreValue, the assignment of the Patent by Chairman's View to CoreValue, and its licensing to CSS to keep the Patent out of Appellee's reach.

New Hampshire courts can "establish specific personal jurisdiction over a controlling officer based upon a showing that the officer participated in the unlawful conduct." *Reddam, supra*, 170 N.H. at 599. Richards did not just participate in the activity that took place in this case to thwart Appellee's lawful property rights; rather, he planned and was in complete control of all the actions that his companies took to deliberately harm Appellee. Just as this Court held that subjecting John Paul Reddam to New Hampshire's jurisdiction was consistent with due process, allowing the Grafton Superior Court to assert jurisdiction over Charles Richards, Chairman's View, and CoreValue is also consistent with due process.

CONCLUSION AND REQUEST FOR RELIEF

The Grafton Superior Court's denial of Appellants' Motion to Dismiss and assertion of personal jurisdiction over Charles Richards, Chairman's View, and CoreValue is consistent with New Hampshire's long-arm statute and federal due process. Therefore, the Order should be affirmed.

Furthermore, despite the prolixity of the Appellants' appeal, on close scrutiny, after discarding the inapposite assertions that general jurisdiction principles do not permit the assertion of jurisdiction, and after considering that the Appellants' Brief leaves the factual assertions of the Complaint uncontradicted as to bad acts by the Appellants that were either taken in New Hampshire or had an effect in New Hampshire, one is left with the distinct suspicion that the reason this appeal was taken was to gain the Appellants time. In this they were successful: it has already been a year since the Motion was denied and this appeal has not yet run its course.

Accordingly, given the specious nature of the Appellants' appeal, the statutory interest rate in this matter should be increased and this Court should award Appellee all expenses she has incurred in defending this appeal, including her reasonable attorneys' fees. Such sanctions have been found appropriate by this Court when appellate review is sought which is "frivolous, immaterial or intended for delay." *See Wright v. Wright*, 119 N.H. 102, 104 (1979); *Nicolazzi v. Nicolazzi,* 131 N.H. 694, 697 (N.H. 1989).

Respectfully submitted,

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April 9, 2021

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STATEMENT OF COMPLIANCE

I certify that pursuant to Supreme Court Rule 26(7), this brief complies with the Supreme Court Rule 26(2)-(4). Further, this brief complies with 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 according to Microsoft Word, Appellee's brief contains 6072 words (including footnotes) from the "Questions Presented for Review" to the "Conclusion" sections of the brief.

April 9, 2021 By /s/ David N. Cole
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CERTIFICATE OF SERVICE

On the above date I served a true copy of the above Brief for Appellee Christine Seward on the following counsel of record via Odyssey and email: Howard B. Myers, Esq.; Jeremy D. Eggleton, Esq.; Melvin T. Diep, Esq.; John R. Hughes III, Esq.; and by email only on Denise Anderson at danderson@denise-anderson.law.

April 9, 2021 By /s/ David N. Cole
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