

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

David Scher

v.

Civil No. 24-cv-00407-SE
Opinion No. 2025 DNH 111

Suffolk University and Suffolk University Law School

ORDER

Though David Scher allegedly completed the coursework to earn a Juris Doctor from Suffolk University Law School in 2013, the school withheld his degree due to a student misconduct complaint. After 11 years of contested disciplinary proceedings and unsuccessful applications for readmission, he filed suit in New Hampshire state court alleging six claims and seeking monetary, injunctive, and declaratory relief. Suffolk¹ removed the case to this court and now moves to dismiss, arguing that the court cannot exercise personal jurisdiction over the out-of-state law school. Scher argues in the alternative that Suffolk has consented to general personal jurisdiction in New Hampshire, the court can exercise specific personal jurisdiction over Suffolk without its consent, he is entitled to jurisdictional discovery, or the court should transfer the case to a court with jurisdiction over his claims. Because the court cannot exercise jurisdiction over Suffolk for reasons that jurisdictional discovery cannot cure, and the court finds that transferring Scher's claims to the United States District Court for the District of Massachusetts is in the interests of justice, the court will grant the request to transfer the case.

¹ The plaintiff brings this suit against "Suffolk University" and "Suffolk University Law School;" however, the defendant repeatedly asserts that "Suffolk University" is the sole proper defendant here. Throughout the order, the court refers to the defendant party as "Suffolk" or "the school."

Background

In 2010, Scher enrolled at Suffolk, a Massachusetts school whose principal place of business is in Boston, Massachusetts. Suffolk is registered as a foreign corporation in New Hampshire. Doc. no. 9-3. Pursuant to that registration, the school has appointed an agent to receive service of process in New Hampshire. Id.; see RSA 293-A:15.07(a)(2); 293-A:15.10.

In March 2013, Scher was issued a disciplinary complaint. Notwithstanding the then-pending disciplinary proceedings, the school allowed Scher to complete his degree requirements and participate in his graduation ceremony. However, it refused to bestow a degree. Sometime after graduation, Scher moved to New Hampshire. The disciplinary proceedings were delayed until related criminal proceedings were resolved. Thus, Scher remained in disciplinary proceedings with Suffolk until the school issued “a final denial of [his] disciplinary appeal” and formally dismissed Scher from the school in 2017. Doc. no. 1, ¶ 32. In 2021, Scher attempted to rematriculate for the sole purpose of obtaining his diploma but was ultimately denied. Suffolk then told Scher that he would be ineligible for readmission for another five years. Nevertheless, in 2024, Scher tried to rematriculate once more. Again, he was denied.

This suit followed. Scher brings six claims: Breach of Contract (Specific Performance) (Count I), Breach of Contract (Monetary Relief) (Count II), Breach of Implied Covenant of Good Faith and Fair Dealing (Count III), Unconscionability (Count IV), Unjust Enrichment (Count V), and Declaratory Judgment (Count VI). He seeks \$999,999.00 in damages, declaratory relief, and an injunction requiring Suffolk to bestow a Juris Doctor degree upon him. Doc. no. 1 at 33-34, 36.

Standard of Review

When, as here, the court does not hold an evidentiary hearing on a motion to dismiss for lack of personal jurisdiction, the prima facie approach applies. [Rodríguez-Rivera v. Allscripts HealthCare Sols., Inc.](#), 43 F.4th 150, 160 (1st Cir. 2022). Under that approach, the court acts “as a data collector” but not as a factfinder. [Id.](#) (quotation omitted). As a data collector, the court takes the plaintiff’s “properly documented evidentiary proffers as true and construe[s] them in the light most favorable to [the plaintiff’s] jurisdictional claim.” [A Corp. v. All Am. Plumbing, Inc.](#), 812 F.3d 54, 58 (1st Cir. 2016). Thus, the court “draw[s] the relevant facts from the pleadings and whatever supplemental filings (such as affidavits) are contained in the record, giving credence to the plaintiff’s version of genuinely contested facts.” [Kuan Chen v. United States Sports Acad., Inc.](#), 956 F.3d 45, 52 (1st Cir. 2020) (quotations omitted). The court “also consider[s] facts offered by [the defendant], to the extent that they are not disputed.” [A Corp.](#), 812 F.3d at 58. The plaintiff bears the burden of showing that personal jurisdiction exists. [See Rodríguez-Rivera](#), 43 F.4th at 160.

Discussion

The court first considers Scher’s arguments in favor of jurisdiction and then considers his alternative requests for jurisdictional discovery and transfer to another court.

I. Personal Jurisdiction

Once a defendant challenges the court’s in personam jurisdiction, the burden is on the plaintiff to establish its existence. Because subject matter jurisdiction is based on diversity in this case, the court “must determine whether the defendant’s contacts with the state satisfy both the

state’s long-arm statute as well as the Due Process Clause of the Fourteenth Amendment.”

[Vapotherm, Inc. v. Santiago](#), 38 F.4th 252, 258 (1st Cir. 2022). New Hampshire’s long-arm statute permits personal jurisdiction over an out-of-state defendant to the extent allowed by due process. [Id.](#) The court may thus “march directly to the constitutional inquiry.” [Rodríguez-Rivera](#), 43 F.4th at 160.

A court may exercise either specific or general personal jurisdiction based on the nature of the defendant’s contacts with the forum state. [Carreras v. PMG Collins, LLC](#), 660 F.3d 549, 552 (1st Cir. 2011). General jurisdiction exists when the defendant’s contacts with the forum state are so extensive that it is “essentially at home” in that state and may be sued there for “any and all claims,” even those unrelated to the forum state or the defendant’s activity there. [Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.](#), 592 U.S. 351, 358 (2021) (explaining general jurisdiction) (quoting [Goodyear Dunlop Tires Operations, S.A. v. Brown](#), 564 U.S. 915, 919 (2011)). Specific jurisdiction “exists when there is a demonstrable nexus between a plaintiff’s claims and a defendant’s forum-based activities, such as when the litigation itself is founded directly on those activities.” [Massachusetts Sch. of L. at Andover, Inc. v. Am. Bar Ass’n](#), 142 F.3d 26, 34 (1st Cir. 1998).

Scher argues that Suffolk has consented to general personal jurisdiction in New Hampshire and, in the alternative, that this court has specific personal jurisdiction over Suffolk in this case.

A. Consent to General Personal Jurisdiction

Because the defense of lack of personal jurisdiction is “intended to protect a defendant’s liberty interests . . . it may be obviated by consent or otherwise waived.” [Gen. Contracting &](#)

[Trading Co., LLC v. Interpole, Inc.](#), 940 F.2d 20, 22 (1st Cir. 1991) (citing [Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee](#), 456 U.S. 694, 702–03 (1982)). Scher argues that Suffolk consented to suit in New Hampshire by registering as a foreign corporation and appointing an agent to receive service of process in the state. He relies on two cases: [Pennsylvania Fire Insurance Company of Philadelphia v. Gold Issue Mining & Milling Company](#), 243 U.S. 93 (1917), and [Mallory v. Norfolk Southern Railway Company](#), 600 U.S. 122 (2023). Unfortunately for Scher, the cases are distinguishable in ways that render them incapable of establishing jurisdiction over Suffolk in this case.

In [Pennsylvania Fire](#), the United States Supreme Court held that the Missouri Supreme Court’s construction of a Missouri statute did not violate due process when it required foreign corporations that received a license to do business in Missouri to consent to all suits, even those based on transactions occurring outside of Missouri. 243 U.S. at 94-95; see [Mallory](#), 600 U.S. at 151-52 (Alito, J., concurring in part and concurring in the judgment). In [Mallory](#), the United States Supreme Court reaffirmed [Pennsylvania Fire](#) and held that a Pennsylvania statute that allows Pennsylvania courts to “exercise general personal jurisdiction” over registered foreign corporations comports with due process. [Mallory](#), 600 U.S. at 134 (quoting 42 Pa. Cons. Stat. § 5301(a)(2)(i)).

Scher argues that New Hampshire’s foreign corporate registration statute operates much like the laws at issue in [Pennsylvania Fire](#) and [Mallory](#). The court disagrees. The statute at issue in [Pennsylvania Fire](#) required consent to all suits because the Missouri Supreme Court had construed it to do so. The statute at issue in [Mallory](#) subjected the defendant to general personal jurisdiction in Pennsylvania by its own explicit words. The New Hampshire statutes at issue do not explicitly allow the state’s courts to exercise general jurisdiction over registered foreign

corporations. See RSA 293-A:15.01–.10 (foreign corporate registration statute); RSA 292:8-g (higher education incorporation statute). They are silent as to jurisdiction. They do impose the same type of requirements as those imposed by the Missouri statute in the Pennsylvania Fire case—corporate registration and naming an agent for service of process—but no court has yet interpreted New Hampshire’s laws as consent to general personal jurisdiction.

Instead, the First Circuit has held just the opposite, that corporate registration in New Hampshire, which requires the appointment of a registered agent, “is not alone sufficient to confer general jurisdiction.” Cossaboon v. Me. Med. Ctr., 600 F.3d 25, 37 (1st Cir. 2010).² Scher ignores Cossaboon and relies on an earlier First Circuit case, but he misapprehends the limitations of the court’s holding in Holloway v. Wright & Morrissey, Inc., 739 F.2d 695 (1st Cir. 1984). In that case, the court held that the defendant had consented to jurisdiction under a prior version of the long-arm statute, but it noted the causal connection between the defendant corporation’s acts in New Hampshire and the plaintiff’s injury and specifically declined to reach the question of whether New Hampshire’s foreign corporate registration statute “would authorize a suit on a cause of action that has no relationship to the state of New Hampshire.” Holloway, 739 F.2d at 699. Against this legal backdrop, Suffolk did not consent to general personal jurisdiction in New Hampshire when it registered as a foreign corporation and appointed an agent to receive process in the state.

² Cossaboon addressed a prior version of New Hampshire’s foreign corporate registration statute, see Cossaboon v. Me. Medical Center, No. CIV.1:08-cv-00260-JL, 2009 WL 903826, at *3 (D.N.H. Mar. 31, 2009) aff’d 600 F.3d 25 (1st Cir. 2010); however, the changes to the statute since that case was decided have been merely stylistic.

B. Specific Jurisdiction

Scher also argues that the court may exercise specific personal jurisdiction over Suffolk.³ To establish this, Scher must show that “(1) [his] claim directly arises out of or relates to [Suffolk’s New Hampshire-based] activities; (2) [Suffolk’s] contacts with [New Hampshire] represent a purposeful availment of the privilege of conducting activities in that state . . . ; and (3) the exercise of jurisdiction is ultimately reasonable.” [Cappello v. Rest. Depot, LLC](#), 89 F.4th 238, 244 (1st Cir. 2023) (quotations omitted). The court cannot exercise personal jurisdiction over Suffolk unless Scher can prove all three elements. *See* [Motus, LLC v. CarData Consultants, Inc.](#), 23 F.4th 115, 122 (1st Cir. 2022).

In his objection to Suffolk’s motion to dismiss, Scher does not appear to make an argument that his claims directly arise out of or relate to Suffolk’s New Hampshire-based activities. All of Scher’s claims are either contract-based or are closely tied to contract law. *See* [Composite Co., Inc. v. Am. Int’l Gp., Inc.](#), 988 F. Supp. 2d 61, 71 (D. Mass. 2013) (describing unjust enrichment as an equitable claim related to a contract claim in the personal jurisdiction context). Thus, to prove they relate to or arise out of Suffolk’s New Hampshire contacts, Scher would have to show that Suffolk’s “activity in [New Hampshire] was instrumental either in the formation of the contract or its breach.” [Vapotherm](#), 38 F.4th at 258-59 (quotations omitted); *see*

³ It is unclear whether Scher also intends to argue that the court can exercise general jurisdiction over Suffolk even without its consent. Regardless, the court clearly may not. A court may only assert general jurisdiction over a corporate defendant if it is incorporated in the forum state, maintains its principal place of business in the forum state, or conducts “general business operations” in the forum state that are “so unusually substantial” that the corporation “can fairly be described as at home there.” [Kuan Chen](#), 956 F.3d at 57. Suffolk is incorporated and has its principal place of business in Massachusetts. Further, Scher has not pointed to any series of contacts suggesting that Suffolk’s New Hampshire-based activities are unusually substantial.

[Cappello](#), 89 F.4th at 247 (emphasizing that New Hampshire activity must be “instrumental” in alleged breach). Scher simply offers no facts to meet either requirement.

On the formation front, Scher alleges that he submitted a notice of intention to enroll and a deposit to enroll at Suffolk after reviewing his acceptance letter, the Student Handbook, and the ABA accreditation. See doc. no. 1, ¶¶ 9-10. None of these facts is related to New Hampshire. As for the breach, Suffolk’s decisions to deny Scher a degree and prevent him from re-enrolling both relate to the disciplinary incident, which occurred in Massachusetts. Beginning in 2017, Suffolk did begin directing its communications to Scher in New Hampshire. See doc. no. 9-1 at 9. But these contacts were the result of Scher’s unilateral decision to move to New Hampshire four years after Suffolk had begun the disciplinary proceedings and initially denied Scher his diploma. Therefore, Suffolk’s New Hampshire contacts were not instrumental in the alleged contract breach. See [Dagesse v. Law Firm of Esperti](#), No. Civ.A. 03-380-M., 2003 WL 22871700, at *5 (D.N.H. Dec. 4, 2003) (relatedness prong not satisfied for a contract claim where conduct leading to alleged breach occurred in Florida, even though defendant sent related communications to plaintiffs while they were in the forum state). Scher has failed to carry his burden to show that his claims directly arise out of or relate to Suffolk’s New Hampshire contacts. The court thus lacks specific jurisdiction over his claims.

II. Jurisdictional Discovery

Potentially recognizing the weaknesses of his jurisdictional arguments, Scher requests jurisdictional discovery. A plaintiff may pursue jurisdictional discovery if he “has made a colorable claim of jurisdiction, which requires a plaintiff ‘to present facts to the court which show why jurisdiction would be found if discovery were permitted’ and has been diligent in

preserving their rights.” [SV Athena LLV v. B&G Mgmt. Servs., LLC](#), 671 F. Supp. 3d 77, 83 (D. Mass. 2023) (quoting [U.S. v. Swiss Am. Bank, Ltd.](#), 274 F.3d 610, 626 (1st Cir. 2001)). Even if Scher could satisfy these conditions, the court retains “broad discretion to decide whether discovery is required.” [Swiss Am. Bank, Ltd.](#), 274 F.3d at 626 (quotation omitted).

Scher asserts that discovery would help him establish “business contacts and recruitment activities of students and faculty in New Hampshire as well as marketing directed at affiliates, partners and potential employees through a variety of channels including mail, electronic, telephone and direct contact.” Doc. no. [9-1](#) at 13. Each of these facts might help establish whether, as a general matter, Suffolk purposefully availed itself of New Hampshire. *See* [LP Sols. LLC v. Duchossois](#), 907 F.3d 95, 104 (1st Cir. 2018) (noting that recruitment and solicitation can contribute to a finding of purposeful availment). However, none of these facts would help him establish the aspect of specific personal jurisdiction that Scher has failed to prove—whether his particular claims relate to New Hampshire. The court thus denies his request for jurisdictional discovery.

III. Transfer

Finally, Scher asks the court to transfer the case to a court with jurisdiction rather than dismiss it. Suffolk acknowledges Scher’s request as an alternative to dismissal and further specifies that, should the court transfer the case, it should transfer it to the United States District Court for the District of Massachusetts. Doc. no. [10](#) at 7. A court may transfer a case if it is “in the interests of justice” and the transfer is to a jurisdiction where “the action . . . could have been brought at the time it was filed or noticed.” 28 U.S.C. § 1631; *see also* [Bobola v. Fishing Vessel Expectation](#), Case No. 15-cv-296-PB, 2016 WL 1312529, at *1 (D.N.H. Apr. 4, 2016). The

Supreme Court permits transfer even when the transferring court lacks personal jurisdiction. [See Goldlawr, Inc. v. Heiman](#), 369 U.S. 463, 466 (1962). Furthermore, the First Circuit has interpreted § 1631 to create “a presumption in favor of transfer,” as opposed to dismissal. [Britell v. United States](#), 318 F.3d 70, 73-74 (1st Cir. 2003). With this in mind, the court finds that transfer would serve the interests of justice and transfers the case to the United States District Court for the District of Massachusetts.

Conclusion

For the foregoing reasons, the court grants the defendant’s motion to dismiss (doc. no. 7) in part, finding that the court lacks personal jurisdiction over the defendant. The court concludes, however, that it is in the interests of justice to transfer this matter to a forum with such jurisdiction. The court therefore directs the Clerk’s Office to transfer this case to the United States District Court for the District of Massachusetts.

SO ORDERED.



Samantha D. Elliott
United States District Judge

September 15, 2025

cc: David Scher, pro se
Counsel of Record.