

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JERRY CADIGAN and NANCY CATON CADIGAN, as Co-
Administrators of the Estate of TREVOR NORRIS CADIGAN,
Deceased,

Index No.: 152286/2018

Plaintiffs,

-against-

LIBERTY HELICOPTERS, INC., a New York Corporation, NY
ON AIR LIMITED LIABILITY COMPANY, a New Jersey
Limited Liability Company, FLYNYON LLC, a Delaware
Limited Liability Company, MERIDIAN CONSULTING I
CORPORATION, INC., a Delaware Corporation, RICHARD
ZEMKE VANCE, a Connecticut resident; AIRBUS
HELICOPTERS, S.A.S., a French Corporation, AIRBUS
HELICOPTERS, INC., a Delaware Corporation; And APICAL
INDUSTRIES, INC. d/b/a DART AEROSPACE, a California
Corporation; EUROTEC VERTICAL FLIGHT SOLUTIONS,
LLC, a Kansas Corporation, and EUROTEC CANADA, LTD, a
Canada Limited Corporation,

Defendants.

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**EUROTEC VERTICAL FLIGHT SOLUTIONS, LLC'S AND EUROTEC CANADA,
LTD'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
PURSUANT TO N.Y. CIV. PRAC. L. & R. 3211(a)(8)**

BROWN GAVALAS & FROMM LLP
Attorneys for Defendants, EuroTec Vertical Flight
Solutions, LLC and EuroTec Canada, LTD
555 Fifth Avenue, 3rd Floor
New York, New York 10017
(212) 983-8500

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PRELIMINARY STATEMENT

Defendants, EuroTec Vertical Flight Solutions, LLC (hereinafter “EuroTec Vertical”) and EuroTec Canada LTD. (hereinafter “EuroTec Canada” and collectively with EuroTec Vertical referred to as “Defendants”) are not subject to personal jurisdiction of this Court. EuroTec Vertical is a company formed under the laws of Kansas with its principal and only place of business located in Eudora, Kansas. EuroTec Canada is a company formed under the laws of Canada with its principal place of business located in Ontario, Canada. Neither Defendant conducts any business in New York nor has any offices, property, bank accounts or employees, in New York. Moreover, EuroTec Vertical did not provide any parts or services to the helicopter involved in this tragic accident. Further, the only work performed on the subject helicopter by EuroTec Canada was performed in Canada for a Delaware company with a New Jersey address. Simply stated, as neither Defendant has any contacts with New York, the Court may not exercise personal jurisdiction over them and Defendants’ motion to dismiss, pursuant to N.Y. Civ. Prac. L. & R. 3211(a)(8), should be granted.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. The Lawsuit

On or about March 13, 2018, plaintiffs, Jerry Cadigan and Nancy Caton Cadigan (hereinafter collectively referred to as “Plaintiffs”) commenced this action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of New York. *See* Affirmation of Fred G. Wexler, dated April 10, 2019 (“Wexler Aff.”) at ¶ 3, submitted herewith. In this action, Plaintiffs seek to recover damages for fatal injuries allegedly sustained by the decedent, Trevor Norris Cadigan (“Decedent”). *See* Wexler Aff. at Exhibit 1, Second Amended Complaint. Decedent is alleged to have been a passenger on a 2013 Eurocopter AS350 B2

helicopter, FAA registration number N350LH (“the subject helicopter”), that was involved in a tragic accident two days earlier on March 11, 2018. *Id.*

Since their initial filing, Plaintiffs have amended their Complaint on two separate occasions. Wexler Aff. at ¶ 3. Most recently, on January 25, 2019, Plaintiffs filed a Second Amended Complaint. *Id.* In the Second Amended Complaint, Plaintiffs added as defendants EuroTec Vertical and EuroTec Canada. Wexler Aff. at Exhibit 1, Second Amended Complaint. Essentially, Plaintiffs allege that EuroTec Vertical and EuroTec Canada were negligent in the installation of a flotation kit on the subject helicopter. *Id.* at ¶¶ 411-444.

B. EuroTec Vertical Has No Contacts With New York

EuroTec Vertical is a Limited Liability Company that was formed under the laws of the State of Kansas with its principal and only place of business in Eudora, Kansas. Affidavit of Chad Decker, sworn to on April 9, 2019 (“Decker Aff.”) at ¶ 3, submitted herewith; Wexler Aff. at Exhibit A, ¶ 45. EuroTec Vertical sells and leases helicopters and helicopter engines. Decker Aff. at ¶ 4. It also performs maintenance, repairs and overhaul services for helicopters and its components including Turbomeca gas turbine engines. All service work is performed at EuroTec Vertical’s facility in Eudora, Kansas. *Id.* at ¶¶ 3, 4.

EuroTec Vertical does not conduct any business in the State of New York. *Id.* at ¶ 13. It is not registered or authorized to do business in the State. *Id.* at ¶¶ 5, 6. EuroTec Vertical does not have a registered agent to accept service of process in the State of New York. *Id.* at ¶ 12. EuroTec Vertical has never maintained any offices in the State of New York. *Id.* at ¶ 7. EuroTec Vertical has never owned or leased any real or personal property in the State of New York. *Id.* at ¶¶ 8, 9. EuroTec Vertical has never maintained any bank accounts in the State of New York. *Id.*

at ¶ 10. Since 2015, EuroTec Vertical's employees have not traveled to the State of New York to conduct company business. *Id.* at ¶ 11.

Since 2015, EuroTec Vertical has not derived any revenue from the sale or leasing of helicopters or engines from any customers located in the State of New York. *Id.* at ¶ 14. Since 2015, EuroTec Vertical has not derived any revenue for performing any maintenance, repairs and/or overhauls on helicopters or engines from any customers located in New York. *Id.* at ¶ 15. Since 2015, EuroTec Vertical has occasionally shipped parts to customers in New York. *Id.* at ¶ 16. These sales are less than one percent of EuroTec Vertical's annual revenue. *Id.*

Moreover, EuroTec Vertical did not purchase the flotation kit installed on the subject helicopter, did not install the flotation kit onto the helicopter or otherwise perform any work on the subject helicopter. *Id.* at ¶ 18.

C. **EuroTec Canada Has No Contacts With New York**

EuroTec Canada is a Limited Corporation formed under the laws of Canada and has its principal place of business in Ontario, Canada. Affirmation of Hossein Golanbari, affirmed on April 9, 2019 ("Golanbari Aff.") at ¶ 3, submitted herewith; *See* Wexler Aff. at Ex. 1, Second Amended Complaint at ¶ 50. EuroTec Canada does not conduct any business in the State of New York. Golanbari Aff. at ¶ 13. It is not registered or authorized to do business in New York. *Id.* at ¶¶ 5, 6. EuroTec Canada has never had any offices in the State of New York, has not leased or owned any real property in the State of New York, does not own any personal property in New York and has never maintained any bank accounts in the State of New York. *Id.* at ¶¶ 7, 8, 9, 10. EuroTec Canada employees have not traveled to New York to conduct any business. *Id.* at ¶ 11. Since 2015, EuroTec Canada has not derived any revenue from New York and has not shipped any parts to customers in New York. *Id.* at ¶¶ 14,15,16, 17.

With respect to the subject helicopter, EuroTec Canada was hired by co-defendant, Meridian Consulting I Corporation, Inc. (“Meridian”), a Delaware Corporation with an office in New Jersey, to install a flotation kit onto the subject helicopter resulting in the execution of a Rotorcraft Service Agreement, dated October 21, 2013 (“the Agreement”). *Id.* at ¶ 19 and Exhibit A, Agreement. The Agreement provided that it was to be interpreted by the laws of the Province of Ontario and any disputes regarding the agreement were to be litigated in the Court of the City of Hamilton, Province of Ontario. *Id.* at ¶ 23 and Exhibit A, Agreement, at ¶ 28.

Under the terms of the Agreement, Meridian was responsible for transporting the subject helicopter to and from EuroTec Canada’s facility at 12 Innovation Drive, Unit W, Dundas, Ontario in Canada. *Id.* at ¶ 20 and Exhibit A, Agreement, at ¶ 7. The subject helicopter was then flown to EuroTec’s Canada facility at 12 Innovation Dr., Unit W, Dundas, Ontario, in October 2013, where installation of the flotation kit was completed on or about December 13, 2013. *Id.* at ¶ 27. All work that was performed by EuroTec Canada on the subject helicopter was performed at EuroTec Canada’s facility in Ontario, Canada. *Id.* at ¶ 30. After December 13, 2013, EuroTec Canada performed no other work on the subject helicopter. *Id.* at ¶ 28.

Meridian paid for the installation of the kit by wire transfer to EuroTec Canada’s bank account at Canadian Imperial Bank of Commerce in Ancaster, Ontario. *Id.* at ¶ 22 and see Exhibit A, Rotorcraft Service Agreement, at ¶ 5. Additionally, EuroTec Canada purchased the kit from Dart Aerospace Ltd in Hawkesbury, Ontario. *Id.* at ¶¶ 24, 25, 26 and Exhibit B, Purchase Order, and Exhibit C, Invoice. Accordingly, none of EuroTec Canada’s acts relating to the subject helicopter have any connection to New York.

ARGUMENT**POINT I****NEW YORK'S JURISDICTIONAL STATUTES**

Under New York law, personal jurisdiction may be established over a non-resident defendant using either New York's "doing business" statute, N.Y. Civ. Prac. L. & R. § 301 (general jurisdiction) or long-arm statute, N.Y. Civ. Prac. L. & R. § 302 (specific jurisdiction). Here, and as more fully demonstrated below, the Defendants are not subject to the Court's general jurisdiction. EuroTec Vertical is a Kansas company with a principal place of business in Kansas, not New York. Likewise, EuroTec Canada is a Canadian company with a principal place in Ontario, Canada, not New York. Accordingly, neither company has the type of systematic or continuous contacts with the State that would render it essentially at home in New York.

Additionally, neither Defendant is subject to specific jurisdiction in New York. The Defendants are not registered or authorized to do business in New York. They have no offices, employees, bank accounts or real or personal property in New York and they do not perform any services in the State. Moreover, EuroTec Vertical has no connection with the subject helicopter and the only connection that EuroTec Canada had with the subject helicopter was its installation of the subject flotation kit onto the helicopter in Ontario, Canada after being hired by Meridian, a Delaware company with a New Jersey place of business. Therefore, the Court should grant the Defendants' motion to dismiss, pursuant to N.Y. Civ. Prac. L. & R. 3211(a)(8).

POINT II

**DEFENDANTS ARE NOT SUBJECT TO
GENERAL JURISDICTION**

A foreign corporation is subject to suit in New York under N.Y. Civ. Prac. L. & R. § 301 if it has “engaged in such a continuous and systematic course of doing business in New York as to warrant a finding of its presence in the jurisdiction.” *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 198 (2d Cir. 1990) (citations omitted). However, the exercise of general jurisdiction over a foreign corporation under state law must comport with the due process requirements of the Fourteenth Amendment. *Daimler AG v. Bauman*, 571 U.S. 117, 127, 134 S. Ct. 746, 187 L. Ed.2d 624 (2014). Absent exceptional circumstances, a corporation is at home where it is incorporated or where it has its principal place of business. *Aston v. Algoma Hardwoods, Inc.*, Index No. 160588/2015, 2018 N.Y. Misc. LEXIS 3493 (N.Y. Sup. Ct. Aug. 13, 2018). As a result, New York Courts have refused to exercise general jurisdiction over a corporation that is not formed in New York and does not have its principal place of business in the State. *Stone & Broad Inc. v. Nextel of N.Y., Inc.*, Index No. 156297/2018, 2019 N.Y. Misc. LEXIS 870 (N.Y. Sup. Ct. March 1, 2019) (No general jurisdiction for defendant incorporated in Delaware with its principal place of business in Kansas). *See also Fernandez v. DamilerChrysler A.G.*, 143 A.D.3d 765, 40 N.Y.S.3d 128 (2d Dept. 2016) (German company not subject to the general jurisdiction of New York Courts); *D&R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 128 A.D.3d 486, 9 N.Y.S.3d 234 (1st Dept. 2015) (No general jurisdiction over corporation that is not incorporated in New York and does not have its principal place of business in the state); *Magdalena v. Lins*, 123 A.D.3d 600 (1st Dept. 2014) (lower court reversed as no general jurisdiction over defendant which is not incorporated in New York and does not have its principal place of business in New York); *Aston*, 2018 N.Y. Misc LEXIS at

3493 (No general jurisdiction over defendant incorporated in New Jersey and with its principal place of business in New Jersey).

Here, the same result is warranted as in *Stone & Broad Inc., Fernandez, D&R Global Selections, S.L., Magdalena* and *Aston*. Neither EuroTec Vertical nor EuroTec Canada are incorporated in New York and they both do not have their principal place of business in the State. *See* Decker Aff. at ¶ 3; Golanbari Aff. at ¶ 3. For these reasons alone, EuroTec Vertical and EuroTec Canada are not subject to the general jurisdiction of the court.

Moreover, exceptional circumstances are not present for this Court to exercise general jurisdiction over EuroTec Vertical or EuroTec Canada. “[T]he inquiry under *Goodyear* is not whether a foreign corporation’s in-forum contacts can be said to be in some sense “continuous and systematic,” it is whether that corporations “affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *Damiler AG v. Bauman*, 571 U.S. at 139 quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011). Occasional or casual business will not suffice. *Id.* The corporation must engage in business in New York “with a fair measure of permanence and continuity.” *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 267 (N.Y. 1917).

Here, Defendants are not engaged in the type of continuous and systematic contacts that render them at home in New York. In fact, they do not conduct any business in New York. Decker Aff. at ¶ 13; Golanbari Aff. at ¶ 13. They are not registered or authorized to do business in New York. Decker Aff. at ¶¶ 5, 6, 12; Golanbari Aff. at ¶¶ 5, 6, 12. They also have no offices, employees, bank accounts, or property in the State. Decker Aff. at ¶¶ 7, 8, 9, 10, 11; Golanbari Aff. at ¶¶ 7, 8, 9, 10, 11. Hence, the Court cannot, consistent with due process, exercise general jurisdiction over EuroTec Vertical and EuroTec Canada in this case.

POINT III

**DEFENDANTS ARE NOT SUBJECT TO SPECIFIC
JURISDICTION UNDER NEW YORK'S LONG ARM STATUTE**

New York's long-arm statute, N.Y. Civ. Prac. L. & R. § 302, provides four circumstances under which a New York Court may exercise specific jurisdiction over a defendant, although it is clear that the only basis worth addressing here is §302(a)(3).¹ In this regard, the long-arm statute reads, in relevant part, as follows:

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent:

3. commits a tortious act without the state causing injury to person ... within the state if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonable expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

N.Y. Civ. Prac. L. & R. 302(a)(3). Defendants are not subject to specific jurisdiction under this section of the statute as they have no contacts with New York, do not derive substantial revenue from New York and the only contact that either Defendant had with the helicopter was EuroTec Canada's installation of the flotation kit, which was performed in Ontario, Canada; not New York.

¹ N.Y. Civ. Prac. L. & R. § 302(a)(1) does not apply as Defendants did not transact any business to provide goods or services in New York that are the basis of this lawsuit. *See McGowan v. Smith*, 52 N.Y.2d 268, 271, 419 N.E.2d 321, 437 N.Y.S.2d 643 (1981) (personal jurisdiction under 302(a)(1) requires the business transaction to occur in New York). N.Y. Civ. Prac. L. & R. § 302(a)(2) does not apply as neither Defendant committed or are alleged to have committed a negligent act in New York. Finally, N.Y. Civ. Prac. L. & R. § 302(a)(4) is inapplicable as this lawsuit does not arise out of real property located in New York.

A. Defendants Are Not Subject To Specific Jurisdiction In New York Under N.Y. Civ. Prac. L. & R. § 302(a)(3) Because There Is No Activity In New York That Has A Nexus To Plaintiffs' Claims. Thus, The Exercise Of Jurisdiction Over Defendants Would Violate Due Process

N.Y. Civ. Prac. L. & R. § 302(a)(3) establishes personal jurisdiction where a matter arises from a non-domiciliary defendant's act committed outside of New York provided certain other conditions are met. Although Defendants recognize that the tragic incident giving rise to this lawsuit occurred in New York, Plaintiffs cannot make the requisite showing to establish personal jurisdiction over EuroTec Vertical or EuroTec Canada under N.Y. Civ. Prac. L. & R. §302(a)(3).

Section 302(a)(3)'s jurisdiction extends only to those who have minimum contacts with the State so that it is not unfair to require them to answer for the injuries they cause here by acts done elsewhere; the subdivision necessitates some ongoing activity within the state. *Allen v. Canadian Gen. Elec. Co.*, 65 A.D.2d 39, 40-41, 410 N.Y.S.2d 707 (3d Dept. 1978). The ongoing activity in New York, however, must have a substantial nexus with the plaintiff's claim. *Bristol Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780, 198 L.Ed.2d 395 (2017). *See also Young Adult Inst., Inc. v. Corporate Source, Inc.*, Index No.: 654923/2018, 2018 N.Y. Misc. LEXIS 1305 (N.Y. Sup. Ct. April 11, 2018) (No specific jurisdiction as defendant's alleged acts had no nexus to New York); *NextEngine Ventures, LLC v. Network Solutions, LLC*, Index No.: 153341/2017, 2017 N.Y. Misc. LEXIS 3913 (N.Y. Sup. Ct. October 13, 2017) ("The Supreme Court has made clear that there must also be a connection between the chosen forum and the specific claims at issue for a court to exercise specific jurisdiction over a foreign entity"); *D&R Global Selections, S.L.*, 9 N.Y.S.3d at 235 (No specific jurisdiction as there was no substantial nexus between plaintiff's claim and defendant's New York activities). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Bristol Myers Squibb Co.*, 137 S. Ct. at 1781.

In *Bristol-Myers Squibb Co.*, 137 S. Ct. 1773, 600 Plavix consumers filed suit against the defendant in California, a state in which the defendant had 5 research facilities with 160 employees. Defendant moved to dismiss the case for lack of personal jurisdiction, which was denied by the California Supreme Court. *Id.* at 1778. The United States Supreme Court reversed and held that a defendant's general connections with a forum are not enough; there must be a connection between the defendant's in state activities and the occurrence. *Id.* at 1782.

Indeed, in *NextEngine Ventures, LLC*, 2017 N.Y. Misc. LEXIS 3913 at **8, 10-11, the court applied the holding in *Bristol-Myers Squibb Co.* to conclude that it would violate due process to exercise personal jurisdiction over a defendant, which only had general business contacts in New York and nothing more. Ultimately, the "exercise of personal jurisdiction under the long-arm statute must comport with federal constitutional due process requirements."

Rushaid v. Pictet & Cie, 28 N.Y.3d 316, 45 N.Y.S.3d 276, 68 N.E.3d 1 (2016) *rearg denied* 28 N.Y.3d 1161, 49 N.Y.S.S.3d 89, 71 N.E.3d 581 (2017) *citing LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 216, 735 N.E.2d 883, 713 N.Y.S.2d 304 (2000). "[A] defendant must have "minimum contacts" with the forum state such that the defendant "should reasonably anticipate being haled into court there." *Williams v. Beemiller, Inc.*, 159 A.D.3d 148, 72 N.Y.S.3d 276 (4th Dept. 2018) (internal citations omitted)

The inquiry into minimum contacts must focus upon "the relationship between the defendant, the forum and the litigation." *Walden v. Fiore*, 571 U.S. 277, 284, 134 S. Ct. 1115, 188 L.Ed.2d 12 (2014). "[T]he relationship must arise out of contacts that the 'defendant himself creates with the forum state.'" *Id. quoting Burger King Corp. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed.2d 528 (1985); *See e.g. Williams*, 72 N.Y.S.3d at 283 (defendant lacked minimum contacts with forum state as its contacts were with third parties in its home state; not

New York); *Waggaman v. Arauzo*, 117 A.D.3d 724, 985 N.Y.S.2d 281 (2d Dept. 2014) (Defendant's purported treatment of a New York resident's mother in other states is too attenuated of a connection to New York to permit the exercise of long arm jurisdiction).

In *Williams*, the Court refused to exercise specific jurisdiction over a defendant, who sold a gun in Ohio to a straw buyer that was resold in New York, even though the defendant derived substantial revenue from goods used or consumed in New York. 72 N.Y.S.3d at 283. The Court concluded that “the financial benefits accruing from a collateral relation to the forum State will not support jurisdiction [where, as here,] they do not stem from a constitutionally cognizable contact with that State.” *Id.* at 284 quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).

The Court in *Williams* also concluded that the defendant lacked minimum contacts with New York to exercise specific jurisdiction. *Id.* The Court found that the defendant did not make any effort to reach beyond its home state of Ohio to New York. *Id.* at 283-284. The Court rejected plaintiff's argument that defendant's “awareness” that the straw buyer would likely resell the gun in New York was sufficient to show that defendant intended to serve the New York market. *Id.* at 284. The Court explained that a defendant's amenability to suit does not travel with the chattel. *Id.* Moreover, the Court stated that such an approach would impermissibly allow the contacts of a defendant with a third party to “drive the jurisdictional analysis,” which has been completely rejected by the United States Supreme Court. *Id. See e.g. Walden*, 571 U.S. 277.

Based upon the foregoing, it is clear that EuroTec Vertical and EuroTec Canada do not have minimum contacts with New York that would or should result in them reasonably

anticipating that they may be haled into court here. Accordingly, Defendants are not subject to the specific jurisdiction under N.Y. Civ. Prac. L. & R. § 302(a)(3).

Additionally, as demonstrated below, even if the Plaintiffs could satisfy due process concerns, which they cannot, Defendants are not subject to specific jurisdiction in New York under N.Y. Civ. Prac. L. & R. §§ 302(a)(3)(i) or 302(a)(3)(ii).

1. Plaintiffs cannot satisfy N.Y. Civ. Prac. L. & R. § 302(a)(3)(i)

Under N.Y. Civ. Prac. L. & R. § 302(a)(3)(i), whether a corporation regularly solicits business or engages in a persistent course of conduct in the State depends upon whether it has an office in New York, maintains a bank account or property in New York, or has individuals permanently located in New York to promote its interests. *See Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 98 (2d Cir. 2000). Tellingly, the Defendants do not have an office, a bank account, property or any employees in New York. Decker Aff. at ¶¶ 7, 8, 9, 10, 11; Golambari Aff. at ¶¶ 7, 8, 9, 10, 11. Therefore, Plaintiffs cannot establish a persistent course of conduct by Defendants in New York warranting the exercise of personal jurisdiction over them pursuant to N.Y. Civ. Prac. L. & R. § 302(a)(3)(i).

2. Plaintiffs cannot establish personal jurisdiction over Defendants under N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii)

Jurisdiction under N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii) depends on five elements: 1) that defendant committed a tortious act outside the state; 2) that the cause of action arises from that act; 3) that the act caused injury to a person or property within the State; 4) that defendant expected or should reasonably have expected the act to have consequences in the State; and 5) that defendant derived substantial revenue from interstate or international commerce. *See LaMarca*, 95 N.Y.2d at 214. Plaintiffs cannot establish the applicability of N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii) in this case.

i. EuroTec Vertical is not subject to personal jurisdiction in New York under N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii)

EuroTec Vertical is not subject to personal jurisdiction in New York under § 302(a)(3)(ii). With respect to the first four elements set forth by the Court in *LaMarca*, they cannot be satisfied as EuroTec Vertical performed no work on the subject helicopter. Decker Aff. ¶ 18. As a result, EuroTec Vertical could not have committed a tortious acts outside of New York that caused an injury to the Decedent. As it committed no tortious act, EuroTec Vertical could not reasonably have expected to be haled into court in New York for this tragic incident. *See Ingraham v. Carroll*, 90 N.Y.2d 592, 687 N.E.2d 1293, 665 N.Y.S.2d 10 (1997). *See also Etra v. Matta*, 94 A.D.2d 581, 464 N.Y.S.2d 1001 (1st Dept. 1983). Accordingly, there is no basis upon which section 302(a)(3)(ii) can be used to exercise personal jurisdiction over EuroTec Vertical.

ii. EuroTec Canada is not subject to personal jurisdiction under N.Y. Civ. Prac. L. & R. 302(a)(3)(ii).

EuroTec Canada cannot reasonably have expected to be haled into court in New York for work they performed on the subject helicopter in Ontario, Canada. The analysis of the Court of Appeals of New York in *Ingraham v. Carroll*, is instructive on this issue. In *Ingraham*, a physician provided services to out-of-state patients who entered the state for an appointment with the doctor at his office. 90 N.Y.2d 592. “The diversity of a physician’s pool of patients, without more, cannot convert an otherwise local practice to an interstate activity. . . . Indeed, to the physician, the patient’s residence is largely irrelevant to the provision of medical services” at the physician’s office. *Id.* at 599. Even in the case of a renowned specialist who attracts a substantial portion of his revenue from out-of-state customers, the travel of the customer to the state of the specialist’s residence to procure the specialist’s services will not subject the specialist

to the jurisdiction of the customer's residence. *See Etra v. Matta*, 94 A.D.2d 581, 464 N.Y.S.2d 1001 (1st Dept. 1983).

In this case, EuroTec Canada operates from its facilities in Ontario, Canada. *Golanbari Aff.* at ¶¶ 3, 27. Even if EuroTec's customers come from different states in the United States, it does not change the local nature of their work. *See Mitchell v. Lublin & Associates*, 250 F.2d 253, 258-59 (4th Cir. 1957), *rev'd on other grounds*, 358 U.S. 207 (1958) (operation of two offices in different states does not in and of itself constitute engaging in interstate commerce). Accordingly, EuroTec Canada cannot reasonably anticipate being haled into court in New York based upon the local work it performs in Ontario. Therefore, EuroTec Canada is not subject to personal jurisdiction under section 302(a)(3)(ii).

POINT IV

PLAINTIFFS ARE NOT ENTITLED TO JURISDICTIONAL DISCOVERY

It is anticipated that Plaintiffs may oppose this motion by arguing that they are entitled to jurisdictional discovery. However, to obtain discovery on the issue of personal jurisdiction, Plaintiffs must set forth a "sufficient start" toward proving a *prima facie* case of personal jurisdiction to show that their position is not frivolous. *See Williams v. Beemiller, Inc.*, 100 A.D.3d 143 153, 952 N.Y.S.2d 333 (4th Dept. 2012). Thus, in order to obtain jurisdictional discovery from either EuroTec Vertical or EuroTec Canada, Plaintiffs must first demonstrate that facts exist to justify the exercise of personal jurisdiction. *Id. See also Cato Showing Printing Co. v. Lee*, 84 A.D.2d 947, 949 (4th Dept. 1981).

On the other hand, when plaintiffs are unable to show that defendant's contacts with New York are substantially related to their claims, they are not entitled to jurisdictional discovery. *Latimore v Fuller*, 127 A.D.3d 521, 8 N.Y.S.3d 276 (1st Dept. 2015). *See also Glazer v. Socata, S.A.S.*, 2019 N.Y. App. Div. LEXIS 2263 (4th Dept. March 22, 2019) (Plaintiff failed to make a

nonfrivolous showing that facts may exist to exercise personal jurisdiction); *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Jackson Tr. Auth.*, 127 A.D.3d 490, 4 N.Y.S.3d 527 (1st Dept. 2015) (Speculation as to jurisdictional facts is inadequate to establish a “sufficient start” to obtain jurisdictional discovery); *SunLight Gen. Capital LLC v CJS Invs. Inc.*, 114 A.D.3d 521, 981 N.Y.S.2d 390 (1st Dept. 2014) (Jurisdictional discovery not warranted as plaintiff failed to make a showing with tangible evidence that long arm jurisdiction may exist over defendants); *Ins. Co. of N. Am. v. EMCOR Group, Inc.*, 9 A.D.3d 319, 781 N.Y.S.2d 4, (1st Dept. 2004) (Plaintiff failed to make a “sufficient start” showing that defendant had minimum contacts with New York).

Here, as demonstrated above, Defendants have no offices, employees, property, or bank accounts in New York and do not conduct business in New York. Moreover, Defendants only contact with the subject helicopter was EuroTec Canada’s installation of the flotation kit, which was performed in Ontario, Canada after it was hired by Meridian, a Delaware Corporation with a New Jersey address. As a result, Plaintiffs cannot come forward with tangible evidence showing the Defendants had any connection with New York warranting jurisdictional discovery in this case.

CONCLUSION

For all of the foregoing reasons, Defendants' motion to dismiss for lack of *in personam* jurisdiction should be granted in its entirety.

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Respectfully submitted,



Robert J. Brown, Esq.
David H. Fromm, Esq.
Fred G. Wexler, Esq.
BROWN GAVALAS & FROMM LLP
555 Fifth Avenue, 3rd Floor
New York, New York 10017
(212)983-8500

Attorneys for Defendants, EuroTec Vertical Flight
Solutions, LLC and EuroTec Canada, LTD