

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, :

Plaintiffs, :

Index No. 152286/2018

-against- :

**AFFIRMATION OF
MATTHEW F. SCHWARTZ**

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; :
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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MATTHEW F. SCHWARTZ, an attorney admitted to practice law in New York, affirms
as follows:

1. I am a member of Schwartz, Ponterio & Levenson, PLLC, local counsel for
plaintiffs Jerry Cadigan and Nancy Caton Cadigan in this lawsuit.

2. I respectfully submit this affirmation in in opposition to the motion by Defendants
EuroTec Vertical Flight Solutions, LLC and EuroTec Canada Ltd. to dismiss the complaint for
lack of personal jurisdiction pursuant to CPLR Rule 3211(a)(8) and in support of Plaintiffs’
cross-motion to defer ruling on the motion to dismiss and compel Defendants EuroTec Vertical
Flight Solutions, LLC and EuroTec Canada Ltd. to submit to jurisdictional discovery pursuant to
CPLR Rule 3211(d).

Facts Underlying Plaintiffs' Claims Against Apical

3. On March 11, 2018, Trevor Norris Cadigan was a passenger in a helicopter on an aerial photography tour operated by Liberty Helicopters when the helicopter lost altitude and descended into the East River off Manhattan. *Second Amd. Compl.*, ¶¶ 58-60.¹ The helicopter rolled to its side and sank, drowning Mr. Cadigan. *Second Amd. Compl.*, ¶¶ 61-63. The helicopter was equipped with an emergency flotation system manufactured by Apical Industries, Inc., d/b/a Dart Aerospace (“Apical”). A copy of the Apical Invoice is annexed as Exhibit A. The emergency flotation system was purchased and installed by EuroTec Canada Ltd. Invoice - Annexed as Exhibit A; and a copy of the Purchase Order is annexed as Exhibit B. These documents were produced to Plaintiffs in discovery by EuroTec Vertical Flight Solutions, LLC (“EVFS”) in response to a non-party subpoena before it was named as a party to this case.

4. Trevor Cadigan’s parents, Jerry Cadigan and Nancy Caton Cadigan, as Co-Administrators of his Estate, filed this action against Apical, Meridian Consulting I Corporation (“Meridian”), Liberty Helicopters, EVFS, EuroTec Canada Ltd., and others on March 28, 2018.

5. All defendants, other than EVFS and EuroTec Canada Ltd. have appeared, answered, and waived jurisdictional defenses.

6. On April 23, 2019, Plaintiffs served Requests for Production of Documents on Jurisdictional Issues on Defendants EVFS and EuroTec Canada Ltd. Copies of the requests are annexed as Exhibits C and D. Plaintiffs also served notices for the depositions of Defendants EVFS and EuroTec Canada Ltd., as well as for CEO Chad Decker and Managing Partner Hossain Golanbari. Copies of the deposition notices are annexed as Exhibits E, F, G and H.

¹ A copy of the Second Amended Complaint (“*Second Amd. Compl.*”) is annexed as Exhibit 1 to the Wexler Affidavit.

7. Defendants EVFS and EuroTec Canada Ltd. have failed to provide any jurisdictional discovery. Defendants EVFS and EuroTec Canada Ltd. have not provided any jurisdictional discovery.

Publicly Available Facts Support the Exercise of Jurisdiction or, at the Very Least, the Undertaking of Jurisdictional Discovery

8. Defendant Meridian owned the subject helicopter (Defendants Liberty Helicopters, Inc., Richard Zemke Vance and Meridian Consulting I Corporation, Inc.'s Amended Verified Answer to Plaintiffs' First Amended Complaint, Dkt No. 28). Defendant Liberty Helicopters operated the subject helicopter equipped with Apical's defective flotation system. *Id.* Liberty Helicopters has the largest Airbus Helicopter fleet in New York City.² A copy of the relevant Liberty Helicopters web page at is annexed as Exhibit I.

9. EVFS provides products and services worldwide,³ making this claim on its website:

So whether you are a tour operator in Las Vegas needing an engine or in need of a sliding door kit for a production aircraft in Australia, our knowledgeable and courteous sales staff will deliver on time, every time, with reliable components for every type of operation; anywhere in the world.

A copy of the relevant EVFS web page is annexed as Exhibit J.

10. In 2011, EVFS opened "EuroTec Canada, Inc., EuroTec's newest facility located in Toronto, Canada."⁴ A copy of the Vertical Magazine article, *EuroTec Vertical Flight Solutions, LLC, provider of Eurocopter and Turbomeca service and support, opening EuroTec Canada, Inc.*, dated March 5, 2011 is annexed as Exhibit K. EuroTec Canada is a wholly-owned

² Liberty Helicopters web page at <https://www.libertyhelicopter.com/helicopter-tour-packages-nyc/> (last visited June 20, 2019).

³ EVFS web page at http://www.eurotecvfs.com/airbus_products.php (last visited June 20, 2019).

⁴ Vertical Magazine, <https://www.verticalmag.com/features/eurotec-vertical-flight-solutions-llc-provider-of-eurocopter-and-turbomeca-service-and-support-opening-eurotec-canada-inc-html/> (last visited June 20, 2019).

subsidiary of EVFS and “was formed in partnership with Hoss Golanbari who shall also serve as managing partner.” *Id.* EuroTec Canada was opened to “complement [EVFS’s] existing operations in the U.S.” and serve the Canadian market:

“The site will further enhance our proximity of support,” said EuroTec President and CEO Chad Decker. “Our Canadian customers will have immediate access to our inventory in case of an AOG situation. . . . Our Canadian customers will no longer have to shoulder the expense in dealing with trans-border shipments.”

Id.

11. On EuroTec Canada’s Facebook page, the reader is directed to the website of EVFS.⁵ A copy of the relevant EuroTec Canada web page is annexed as Exhibit L. EVFS, on the other hand, maintains a website, which in the “Contact Information” section contains email addresses for Sales and General Inquiries, MRO Inquiries, Engine and Component Rental Inquiries, Aircraft Sales and Leasing Inquiries, Accounting Inquiries, and Employment Inquiries for EVFS.⁶ A copy of the relevant EVFS web page, “Contact Us” is annexed as Exhibit M. EuroTec Canada has no such listings *Id.*

12. Chad Decker serves as the President and CEO of both EVFS and EuroTec Canada with Hoss Golanbari serving as Vice President and Managing Partner of EuroTec Canada.⁷ A copy of the relevant Helicopters Magazine article dated June 5, 2014 is annexed as Exhibit N; and a copy of the relevant Skies Magazine article dated March 6, 2019 is annexed as Exhibit O. EVFS and EuroTec Canada share a Director of Sales and Business Development,

⁵ EuroTec Canada Facebook page at <https://www.facebook.com/EurotecCanada/> (last visited June 20, 2019).

⁶ EVFS web page at http://www.eurotecvfs.com/contact_us.php (last visited June 20, 2019).

⁷ Helicopters Magazine, <https://www.helicoptersmagazine.com/eurotec-canada-dynamic-solution-systems-inc-sign-key-pact-4760/> (last visited June 20, 2019); Skies Magazine, <https://www.skiesmag.com/press-releases/eurotec-makes-heli-expo-announcements> (last visited June 20, 2019); and Vertical Magazine, <https://www.verticalmag.com/press-releases/eurotec-welcomes-new-director-of-sales-and-business-development/>.

Paul M. Ross Jr. A copy of the relevant EVFS Press Release, “EuroTec welcomes new director of sales and Business Development” dated July 3, 2018 is annexed as Exhibit P.

13. Garmin awarded a single dealership to EVFS and EuroTec Canada.⁸ A copy of the relevant AirMed&Rescue article dated February 28, 2018 is annexed as Exhibit Q, as did Genesys Aerosystems.⁹ A copy of the relevant Vertical Magazine article dated February 6, 2019 is annexed as Exhibit R.

14. EuroTec Canada is also a partner in DART Aerospace’s Approved Maintenance Center network.¹⁰ A copy of the relevant of DART Aerospace News & Press article dated January 12, 2016 is annexed as Exhibit S. DART selected EuroTec Canada and the other partners in the network “based on their market reach and quality of service.” *Id.*

15. In or around October 2013, EuroTec Canada agreed to install Apical’s flotation system on the subject helicopter for Meridian. A copy of the Rotorcraft Service Agreement, Exhibit A to Affirmation of Hossein Golanbari is annexed as Exhibit T. Attachment A to the Rotorcraft Service Agreement for the installation of the flotation system is listed as “Liberty Helicopters Build Sheet.” *Id.* Attachment C to the Rotorcraft Service Agreement is only a cover sheet for a “limited warranty” with no limited warranty attached. *Id.* In addition to EuroTec and Meridian, the Rotorcraft Service Agreement includes EVFS as a party to receive notices under the contract. *Id.* at 5, ¶ 15.

⁸ AirMed&Rescue, <https://www.airmedandrescue.com/story/112714/garmin-deal-eurotec> (last visited June 20, 2019).

⁹ Vertical Magazine, <https://www.verticalmag.com/press-releases/eurotec-becomes-genesys-aerosystems-dealership/> (last visited June 20, 2019).

¹⁰ Dart Aerospace, <https://www.dartaerospace.com/en/blog/news-press/dart-aerospace-launches-its-new-approved-maintenance-center-network-offering-very-competitive-aftermarket-solutions-to-better-serve-the-industry.html> (last visited June 20, 2019).

16. In New York, Liberty Helicopters flies out of the Downtown Manhattan Heliport.¹¹ A relevant copy of NYC The Official Guide web page is annexed as Exhibit U. Liberty Helicopters' maintenance center is located just outside New York City in Kearney, New Jersey.¹² A copy of the relevant Helihub web page is annexed as Exhibit V. That is "only two minutes' flying time away from Manhattan."¹³ A copy of the relevant AINonline web page is annexed as Exhibit W.

17. "Over New York City, there were over 56,000 sightseeing tourist helicopter trips in 2014."¹⁴ A copy of the relevant New York Times article "A Plague of Helicopters is Ruining New York" dated January 30, 2016 is annexed as Exhibit X. Of all the helicopters flying over New York, "[n]one of the helicopters is actually based here."¹⁵ A copy of the relevant AOPA article "Above NY, Helicopter Tours of Manhattan? Priceless" dated September 1, 2011 is annexed as Exhibit Y. The reason for that are "[s]trict hours and regulations allow helicopters in the city during limited times." *Id.* As a result, "[a]ll of the operators—tour, charter, and corporate—keep maintenance and administrative hangars outside of the city, mostly in New Jersey." *Id.* Under the New York City Helicopter Sightseeing Plan, air tours can only operate from 9 a.m. to 7 p.m. on weekdays.¹⁶ A copy of the relevant Mitchell L. Moss and Hugh O'Neill article "Heliports and Their Importance to New York City" dated February 2012 is annexed as Exhibit Z

¹¹ NYC The Official Guide, <https://www.nycgo.com/venues/liberty-helicopters-inc>; (last visited June 20, 2019).

¹² Helihub, <https://helihub.com/2011/04/28/liberty-helicopters-and-analar-corp-relocate-to-hhi-heliport/> (last visited June 20, 2019).

¹³ AINonline, <https://www.ainonline.com/aviation-news/aviation-international-news/2011-02-24/helo-only-fbo-opens-new-jersey> (last visited June 20, 2019).

¹⁴ New York Times, <https://www.nytimes.com/2016/01/31/opinion/sunday/a-plague-of-helicopters-is-ruining-new-york.html> (last visited June 20, 2019).

¹⁵ AOPA, <https://www.aopa.org/news-and-media/all-news/2011/september/01/above-ny> (last visited June 20, 2019).

¹⁶ <https://helenrosenthal.com/wp-content/uploads/2015/11/Industry-Report-Mitchell-Moss-NYU.pdf>, (last visited June 20, 2019).

18. The EuroTec Defendants deny:

- Doing “business in the State of New York;”
- Since 2015, deriving “any revenue from the sale or lease of helicopters from any customers located in the State of New York;”
- Since 2015, deriving “any revenue from performing any maintenance, repairs, and/or overhauls on helicopters or engines from any customers located in New York” [EuroTec Canada: “. . . from any *companies* with a New York address”];
- EuroTec Canada only: Since 2015, shipping “any parts to customers in New York.”

A copy of the Affidavit of Chad Decker is annexed as Exhibit AA; a copy of the Affidavit of Hoss Golanbari is annexed as Exhibit T. EVFS admitted shipping parts “occasionally” to customers “in New York.” A copy of the Affidavit of Chad Decker is annexed as Exhibit AA.

Legal Arguments

19. The legal arguments against dismissal, and in favor of Plaintiffs’ cross-motion to defer ruling on this motion and permit Plaintiffs an opportunity to conduct discovery on jurisdictional issues pursuant to CPLR Rule 3211(d), are set forth in the accompanying Memorandum of Law.

20. In this Response, Plaintiffs provide facts that set forth a sufficient start, showing that facts may exist to support the exercise of personal jurisdiction over the EuroTec Defendants and that its position is not frivolous. The facts also show that EuroTec Canada operates as a “mere department” of EVFS, rendering the contacts of both Defendants relevant to the exercise of jurisdiction over them.

21. The facts provided by the EuroTec Defendants provide no assistance to this Court in ruling on jurisdiction as they are irrelevant or ambiguous. Plaintiffs have served requests for jurisdictional discovery that will provide the relevant facts necessary for this Court to rule on the EuroTec Defendants’ Motion to Dismiss.

22. To the extent the Court deems it insufficient, further, additional information through discovery about efforts to directly or indirectly serve the market here and the subject product is required. Those facts will help this Court reach the correct determination.

Conclusion

23. Plaintiffs respectfully request that this Court enter an Order denying EuroTec Vertical Flight Solutions, LLC's and EuroTec Canada Ltd.'s Motion to Dismiss. In the alternative, the Court should defer the ruling on the motion and permit Plaintiffs an opportunity to conduct discovery on jurisdictional issues and for such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 20, 2019



MATTHEW F. SCHWARTZ