SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
--X
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.
--X

MEMORANDUM OF LAW OF DEFENDANTS, EUROTEC VERTICAL FLIGHT SOLUTIONS, LLC AND EUROTEC CANADA, LTD IN REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS PURSUANT TO N.Y. CIV. PRAC. L. & R. 3211 (A)(8) AND IN OPPOSITION TO PLAINTIFFS' CROSS-MOTION TO COMPEL

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

SUMMARY OF THE ARGUMENT 1

ARGUMENT 2

POINT I
PLAINTIFFS CONCEDE, *SUB SILENTIO*, THAT DEFENDANTS HAVE NO DIRECT CONTACTS WITH NEW YORK AND ARE NOT SUBJECT TO THE COURT'S GENERAL JURISDICTION PURSUANT TO N.Y. CIV. PRAC. L. & R. § 301 OR SPECIFIC JURSIDICTION PURSUANT TO N.Y. CIV. PRAC. L. & R. § 302(a)(1), (2), (3)(a)(i) and (4) 2

POINT II
PLAINTIFFS FAIL TO MEET THEIR BURDEN OF ESTABLISHING THAT EUROTEC CANADA HAS MINIMUM CONTACTS WITH NEW YORK TO SATISFY DUE PROCESS CONCERNS 4

POINT III
PLAINTIFFS FAIL TO ESTABLISH THAT DEFENDANTS ARE SUBJECT TO SPECIFIC JURISDICTION UNDER N.Y. CIV. PRAC. L. & R. § 302(a)(3)(ii) 8

POINT IV
PLAINTIFFS RELY ON INADMISSIBLE EXHIBITS IN OPPOSING THE INSTANT MOTION AND SAID EXHIBITS SHOULD NOT BE CONSIDERED BY THE COURT 13

A. Exhibits K, N, O, Q, R, X and Y, Are Newspaper and/or Magazine Articles and Are Inadmissible Hearsay 13

B. Exhibit S, A Press Release, Is Inadmissible Hearsay 14

C. Exhibits I, J, L, M, U, V, and W, Printouts From Various Websites Are Inadmissible As They Have Not Been Authenticated and Contain Inadmissible Hearsay 15

D. Exhibit Z Was Prepared By A Private Company, Was Not Authenticated and Contains Inadmissible Hearsay 17

POINT V
PLAINTIFFS ARE NOT ENTITLED TO JURISDICTIONAL DISCOVERY 17

CONCLUSION...19

TABLE OF AUTHORITIES

Cases

Bissonnette v. Podlaski,
138 F. Supp. 3d 616 (S.D.N.Y. 2015)..9, 10

Borough Hall-Oxford Tobacco Corp. v. Central Office Alarm Co.,
35 A.D.2d 523, 313 N.Y.S.2d 431 (2d Dept. 1970) 14

Bristol Myers Squibb Co. v. Superior Court,
137 S. Ct. 1773, 198 L.Ed.2d 395..11

Buccellati Holding Italia SPA v. Laura Buccellati, LLC,
935 F. Supp. 2d 615 (S.D.N.Y. 2013)..10

Burger King Corp. v. Rudzewicz,
471 U.S. 462, 105 S. Ct. 2174, 85 L.Ed.2d 528 (1985) 5

Chestnut Ridge Air, Ltd. v. 1260269 Ontario Inc.,
13 Misc. 807, 827 N.Y.S.2d 461 (N.Y. Sup. Ct. 2006) 12

Costa v. Keppel Singmarine Dockyard PTE, Ltd.,
2003 U.S. Dist. LEXIS 16295 2003 WL 24242419
(C.D.Cal. Apr. 25, 2003)..16

Daimler AG v. Bauman,
571 U.S. 117, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014)...12

Deutsche Bank AG v. Vik,
163 A.D.3d 414, 81 N.Y.S.3d 18 (1st Dept. 2018)..6

Grams v. Acanda, Inc. (In Re Eighth Judicial Dist. Asbestos Litig.),
194 A.D.2d 901, 602 N.Y.S.2d 452 (4th Dept. 1993) 14

Hanson v. Denckla,
357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958) 6

Helicopteros Nacionales de Colombia, S.A. v. Hall,
466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984) 5, 6

Hicks v. Charles Pfizer & Company Inc.
466 F. Supp.2d 799 (E.D. Tex. 2005) 14

Kuehne v. Nagel, Inc. v. Baiden,
26 N.Y.2d 539, 330 N.E.2d 624, 369 N.Y.S.2d 667 (1975)..................................2

LaMarca v. Pak-Mor Mfg. Co.,
95 N.Y.2d 210, 735 N.E.2d 883, 713 N.Y.S.2d 304 (2000)................................7, 8

LaSalle Bank, N.A. v. Rodriguez,
Index No. 5129/2007, 2011 N.Y. Misc. LEXIS
1961 (N.Y. Sup. Ct. Apr. 28, 2011)...14

Latimore v. Fuller,
127 A.D.3d 521, 8 N.Y.S.3d 276...18

Matter of New York City Asbestos Litig.,
Index No.: 190084/2016, 2017 N.Y.Misc. 839 (N.Y. Sup. Ct. March 6, 2017)....12

McNamee Constr. Corp. v. City of New Rochelle,
29 A.D.3d 544, 817 N.Y.S.2d 295 (2d Dept. 2006) 4

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) 19

NextEngine Ventures, LLC v. Network Solutions, LLC,
Index No.: 153341/17, 2017 N.Y.Misc. LEXIS
3913 (N.Y. Sup. Ct. Oct. 13, 2017) 11

Novak d/b/a Petswarehouse.com v. Tucows, Inc.,
06 civ. 1909, 2007 U.S.Dist. LEXIS 21269,
(E.D.N.Y. March 26, 2007) 16

People v. Johnson,
51 Misc.3d 450, 28 N.Y.S.3d 783 (N.Y. Cnty Ct. 2015)................................15, 16

Reynolds v. Aircraft Leasing, Inc.,
194 Misc.2d 550, 756 N.Y.S.2d 704 (N.Y. Sup. Ct. 2002). 11

Roseto v. Ground Servs. Intl. Inc.,
Index No. 28776/2013, 2015 N.Y.Misc. LEXIS 3750
(N.Y. Sup. Ct. Sept. 28, 2015)..3, 4, 13

Royalty Network Inc. v. Dishant.com,
638 F. Supp. 2d 410 (S.D.N.Y. 2009)..11

Rush v. Savchuk,
444 U.S. 320, 100 S. Ct. 571, 62 L. Ed.2d 516 (1980)...6

SportsChannel Assocs. v. Sterling Mets, L.P.,
25 A.D.3d 314, 807 N.Y.S.2d 61 (1st Dept. 2006)..2

Teddy St. Clair v. Johnny's Oyster Shrimp, Inc.,
76 F. Supp. 773 (S.D. Tex. 1999) 16

United States v. Jackson,
208 F.3d 633 (7th Cir. 2000) 16

Victaulic Co. v. Tieman,
499 F.3d 227 (3d Cir. 2007) 16

Walden v. Fiore,
571 U.S. 277, 134 S. Ct. 1115, 188 L.Ed. 2d 12 (2014) 5, 7, 11

Weldon v. Rivera,
301 A.D.2d 934, 754 N.Y.S.2d 698 (3d Dept. 2003) 4

Williams v. Beemiller, Inc,
159 A.D.3d 148, 72 N.Y.S.3d 276 (4th Dept. 2018) 8

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286, 100 S. Ct. 559, 62 L.Ed.2d 490 (1980) 6, 7

Young v. Fleary,
226 A.D.2d 454, 640 N.Y.S.2d 593 (2d Dept. 1996) 14

Zayat Stables, LLC v. NYRA, Inc.,
Index No.: 26215/2018, 2013 N.Y.Misc. LEXIS 6319
(N.Y. Sup. Ct. Dec. 17, 2013) 14

Statutes

N.Y. Civ. Prac. L. & R. Article 45 13

N.Y. CIV. Prac. L. & R. § 301 ....2, 3, 12

N.Y. Civ. Prac. L. & R. § 302 1

N.Y. Civ. Prac. L. & R. § 302(a)(1) 2, 3

N.Y. Civ. Prac. L. & R. § 302(a)(2) 2, 3

N.Y. Civ. Prac. L. & R. § 302(a)(3)(a)(i) 2, 3

N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii) 4, 8, 9

N.Y. Civ. Prac. L. & R. § 302(a)(4) 2, 3

N.Y. Civ. Prac. L. & R. 3211 (a)(8)..1

N.Y. Civ. Prac. L. & R. 3214(b)..18

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") hereby submit this Memorandum of Law in: (a) further support of their motion to dismiss for lack of personal jurisdiction pursuant to N.Y. Civ. Prac. L. & R. 3211 (a)(8); (b) in reply to Plaintiffs' opposition to Defendants' motion to dismiss; and (c) in opposition to Plaintiffs' cross-motion compelling jurisdictional discovery from Defendants.

SUMMARY OF THE ARGUMENT

The mere fact that this tragic accident occurred in New York does not warrant the court exercising personal jurisdiction over Defendants. In fact, the exercise of personal jurisdiction over Defendants would violate due process and offend traditional notions of fair play and substantial justice. EuroTec Vertical has no connection whatsoever to the subject helicopter. Although EuroTec Canada worked on the subject helicopter, it did so in Ontario, Canada after it was hired by Meridian Consulting I Corporation, Inc. ("Meridian"), a Delaware corporation with a principal place of business in New Jersey. Additionally, Meridian brought and picked up the helicopter from EuroTec Canada's facility in Ontario and paid for the work by wire transfer to EuroTec Canada's bank in Canada. Plaintiffs do not dispute any of these facts. Under these circumstances, the court cannot exercise specific jurisdiction over Defendants under N.Y. Civ. Prac. L. & R. § 302. Moreover, due process requires the dismissal of the Defendants from this lawsuit. Therefore, Defendants' motion to dismiss this case for lack of personal jurisdiction should be granted.

Additionally, the court should not delay deciding this motion as Plaintiffs have failed to come forward with sufficient evidence to establish a "good start" warranting jurisdictional

discovery from Defendants. Notably, the Second Amended Complaint is completely bereft of any jurisdictional allegations regarding Defendants. Also, Plaintiffs failed to submit an affidavit from anyone with personal knowledge in an effort to establish a "good start" to obtaining jurisdictional discovery. Instead, Plaintiffs submitted inadmissible materials from the internet and newspaper and magazine articles none of which even suggest that there is a scintilla of evidence that the Defendants had contacts with New York let alone contacts with New York that are connected to Plaintiffs' claims against the Defendants. Accordingly, Plaintiffs' cross-motion should be denied in its entirety.

ARGUMENT

POINT I

PLAINTIFFS CONCEDE, *SUB SILENTIO*, THAT DEFENDANTS HAVE NO DIRECT CONTACTS WITH NEW YORK AND ARE NOT SUBJECT TO THE COURT'S GENERAL JURISDICTION PURSUANT TO N.Y. CIV. PRAC. L. & R. § 301 OR SPECIFIC JURSIDICTION PURSUANT TO N.Y. CIV. PRAC. L. & R. § 302(a)(1), (2), (3)(a)(i) and (4)

In their opposition papers, Plaintiffs concede, *sub silentio*, that neither EuroTec Vertical nor EuroTec Canada have any direct contact with New York. *Kuehne v. Nagel, Inc. v. Baiden*, 26 N.Y.2d 539, 330 N.E.2d 624, 369 N.Y.S.2d 667 (1975) (facts appearing in movant's papers which the opposing party does not controvert are deemed admitted). *See also SportsChannel Assocs. v. Sterling Mets*, L.P., 25 A.D.3d 314, 807 N.Y.S.2d 61, 62 (1st Dept. 2006). More specifically, they concede, *sub silentio*, that EuroTec Vertical (1) is not incorporated in New York; (2) does not have its principal place of business in New York; (3) is not registered to do business in New York; (4) is not authorized to do business in New York; (5) does not have a registered agent to accept service of process in New York; (6) has never had offices in New York; (7) has never owned or leased real or personal property in New York; (8) has never

maintained bank accounts in New York; (9) has not had employees travel to New York to conduct company business since 2015; (10) derived no revenue from the sale or leasing of helicopters or engines to customers in New York; (11) derived no revenue for performing maintenance, repairs and/or overhauls on helicopters or engines from any customers in New York since 2015; (12) derived less than one percent of its annual revenue since 2015 by shipping parts to customers in New York; and, most importantly, (13) did not perform any work on the subject helicopter.

Additionally, Plaintiffs concede, *sub silentio*, that EuroTec Canada (1) is not incorporated in New York; (2) does not have its principal place of business in New York; (3) is not registered to do business in New York; (4) is not authorized to do business in New York; (5) does not have a registered agent to accept service of process in New York; (6) has never had offices in New York; (7) has never owned or leased real or personal property in New York; (8) has never maintained bank accounts in New York; (9) has never had employees travel to New York to conduct company business; (10) derived no revenue from New York since 2015; (11) has not shipped any parts to customers in New York since 2015; (12) contracted with Meridian, a Delaware Corporation with a New Jersey principal place of business, to perform work on the subject helicopter; (13) performed work on the subject helicopter in Ontario, Canada after Meridian flew the helicopter to its facilities; (14) received payment for the work they performed on the helicopter at its bank account in Ontario, Canada and (15) delivered the helicopter back to Meridian at its facility in Ontario, Canada.

Plaintiffs also concede that Defendants are not subject to the Court's general jurisdiction pursuant to N.Y. Civ. Prac. L. & R. § 301 or the Court's specific jurisdiction pursuant N.Y. Civ. Prac. L. & R. § 302(a)(1), (2), (3)(i) or (4). *See Roseto v. Ground Servs. Intl. Inc.*, Index No.

28776/2013, 2015 N.Y.Misc. LEXIS 3750 (N.Y. Sup. Ct. September 28, 2015); *McNamee Constr. Corp. v. City of New Rochelle*, 29 A.D.3d 544, 817 N.Y.S.2d 295, 297 (2d Dept. 2006); *Weldon v. Rivera*, 301 A.D.2d 934, 754 N.Y.S.2d 698, 699 (3d Dept. 2003).

Thus, the only issues left to decide are whether the Defendants are subject to the court's specific jurisdiction pursuant to N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii) and whether the exercise of personal jurisdiction satisfies due process. Even so, Plaintiffs concede that they have no evidence that EuroTec Vertical independently satisfies the requirements of N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii). Instead, Plaintiffs speculate that EuroTec Canada is a mere department of EuroTec Vertical and thus, argue that EuroTec Canada's acts may be imputed to EuroTec Vertical. Plaintiffs then argue that EuroTec Canada satisfies all the requirements of N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii) and that the exercise of specific jurisdiction would not violate due process. Plaintiffs, however, are wrong. EuroTec Canada's indirect contact with New York through other parties is too attenuated to satisfy due process or N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii). As the court does not have specific jurisdiction under N.Y. Civ. Prac. L & R. § 302(a)(3)(ii) over EuroTec Canada, then, *ipso facto*, it cannot exercise specific jurisdiction over EuroTec Vertical even if EuroTec Canada is merely one of its departments, which it is not.

POINT II

PLAINTIFFS FAIL TO MEET THEIR BURDEN OF ESTABLISHING THAT EUROTEC CANADA HAS MINIMUM CONTACTS WITH NEW YORK TO SATISFY DUE PROCESS CONCERNS

In their opposition papers, Plaintiffs argue that Defendants have minimum contacts with New York. Specifically, they argue that EuroTec Canada purposely availed itself of the privilege of conducting activities in New York law by virtue of working on a helicopter that was used by co-defendant, Liberty Helicopters, Inc. ("Liberty"), to operate a helicopter tourist

business in New York and said helicopter subsequently crashed in New York causing the decedent's fatal injuries. Plaintiffs contend that restrictions imposed by New York City force all helicopter operators to "keep maintenance and administrative hangars outside" of New York and mostly in New Jersey.[1] Plaintiffs suggest that the subject helicopter being kept by Liberty in Kearney, New Jersey, two miles from New York, is somehow significant for the due process analysis in this case. Plaintiffs then speculate that the Defendants likely have customers in New Jersey who fly their helicopters in New York and thus, imply that these customers are really New York based customers. Plaintiffs' argument regarding minimum contacts is misguided and wrong.

Contrary to Plaintiffs' argument, it is a defendant's conduct that must form the necessary connection with the forum State for the court to exercise specific jurisdiction; not the contacts of third-parties like Liberty. *Walden v. Fiore*, 571 U.S. 277, 284, 134 S. Ct. 1115, 188 L.Ed. 2d 12 (2014). In *Walde*n, the Court held that, "due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous or attenuated' contacts he makes by interacting with persons affiliated with the State." *Id*. at 286 *quoting Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L.Ed.2d 528 (1985).

The relationship must arise out of contacts that the "defendant *himself*" creates with the forum State. *Burger King Corp.* at 475. As a result, the United States Supreme Court has rejected attempts to satisfy the defendant-focused "minimum contacts" inquiry through the contacts of the plaintiff or a third-party. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*,

[1] As more fully set forth in Point IV below, the exhibits relied upon by Plaintiffs to support their argument about the helicopter sight-seeing business in New York are inadmissible and cannot be used to defeat Defendants' motion to dismiss.

466 U.S. 408, 417, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984) (defendants contacts with third party in forum state does not create minimum contacts with that State); *Hanson v. Denckla*, 357 U.S. 235, 253-254, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958) (Florida court could not exercise personal jurisdiction over a trustee in Delaware based solely on the contacts of the trust's settlor, who was domiciled in Florida and had executed powers of appointment there). No matter how significant a third-party's contacts with the forum may be, those contacts cannot be decisive in determining whether the defendant's due process rights are violated. *Rush v. Savchuk*, 444 U.S. 320, 332, 100 S. Ct. 571, 62 L. Ed.2d 516 (1980).

Here, EuroTec Canada does not have minimum contacts with New York. It did not perform any work on the subject helicopter in New York. It was not even hired to perform the work on the helicopter in New York. Instead, EuroTec Canada entered into a contract with Meridian, a Delaware Corporation with a New Jersey principal place of business. Meridian brought the subject helicopter to Ontario, Canada, which is where it was worked on by EuroTec Canada. Additionally, Meridian picked up the helicopter in Ontario, Canada and ultimately paid for the work by wire transfer to EuroTec Canada's bank account in Ontario, Canada. EuroTec Canada work on the subject helicopter had absolutely no connection to New York.

In addition, as in *Rush*, the purported contacts of third-parties such as Meridian and Liberty with New York upon which Plaintiffs rely cannot be decisive in determining EuroTec Canada's due process rights. These types of contacts are precisely the type of attenuated contacts that have been consistently rejected by the United States Supreme Court and, now, courts in New York. *See Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. 408, *Hanson*, 357 U.S. 235; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S. Ct. 559, 62 L.Ed.2d 490 (1980); *Deutsche Bank AG v. Vik*, 163 A.D.3d 414, 81 N.Y.S.3d 18 (1st Dept. 2018)

(where the conduct that forms the basis for plaintiff's claims takes place entirely out of the forum and the only relevant jurisdictional contacts with the forum are the harmful effects suffered by the plaintiff then there must be acts by the defendant that are expressly aimed at the jurisdiction).

In support of their argument, Plaintiffs mistakenly rely upon the case of *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 735 N.E.2d 883, 713 N.Y.S.2d 304 (2000). *LaMarca* was decided 14 years before the United States Supreme Court refined its minimum contacts analysis in *Walden*. Also, in *LaMarca*, defendant was a manufacturer whose product was sold in New York through its New York distributor (*Id*. at 306) whereas EuroTec Canada is not a manufacturer of any products and has no New York distributor. Further, in *LaMarca*, the defendant had a district representative in New York (*Id*.), but EuroTec Canada does not. Based upon its contacts with New York, the Court concluded that the defendant, a manufacturer, "forged" its ties with New York. Here, however, there is no evidence that EuroTec Canada directed any of its activities toward New York.

Plaintiffs also argue that the exercise of jurisdiction over the defendants comports with traditional notions of fair play and substantial justice as it is in New York's interest to have a single forum for the parents of the decedent, a New York resident, to litigate this wrongful death claim. Due process, however, limits a State's adjudicative authority to protect the liberty of the nonresident defendant; not the convenience of the plaintiffs or third parties. *World-Wide Volkswagen Corp.* 444 U.S. at 291-292. Thus, whatever benefit accrues to Plaintiffs by being able to litigate one lawsuit with all potential defendants in New York is far outweighed by the loss of liberty by the Defendants by being forced to litigate a lawsuit in New York, a State in which it has no minimum contacts and has not purposefully availed itself of the privilege of doing business.

Also, Plaintiffs fail to distinguish in any meaningful way the case of *Williams v. Beemiller, Inc*, 159 A.D.3d 148, 72 N.Y.S.3d 276 (4th Dept. 2018), which was cited by Defendants in support of the instant motion and directly on point. It suffices to say that in both *Williams* and the case at bar the defendants had no contacts with New York. Instead, the only connection between defendants and New York in both *Williams* and this case were the acts of third parties. Notably, in *Williams,* the Court held that these contacts were insufficient to satisfy due process concerns. The same result is warranted here.

POINT III

PLAINTIFFS FAIL TO ESTABLISH THAT DEFENDANTS ARE SUBJECT TO SPECIFIC JURISDICTION UNDER N.Y. CIV. PRAC. L. & R. § 302(a)(3)(ii)

In their opposition papers, Plaintiffs argue that EuroTec Canada is subject to the Court's specific jurisdiction pursuant to N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii).[2] More specifically, Plaintiffs argue that the EuroTec Canada should have expected that its work on the subject helicopter would have consequences in New York as it knew or should have known that helicopter was used for a helicopter sight-seeing business in New York.

Plaintiffs, however, are wrong. Mere knowledge that a third party may operate the subject helicopter in New York is not enough to establish that EuroTec Canada knew or should have known that its work on the subject helicopter in Ontario, Canada could have consequences

[2] As more fully set forth in Defendants' moving papers, N.Y. Civ. Prac. L. & R. 302(a)(3)(ii) requires that the defendant satisfy the following 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. *LaMarca*, 95 N.Y.2d at 214. In its motion, EuroTec Canada does not dispute that the first three of the above elements are arguably satisfied in this case for jurisdictional purposes only; to wit, that (1) its alleged negligent acts occurred outside of New York during the installation of the floatation kit in Ontario, Canada; (2) that the cause of action against EuroTec Canada arises from that act; and (3) that the alleged act purportedly caused the decedent's injuries.

in New York and thereby subject it to specific jurisdiction in New York under N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii). As the Court stated in *Bissonnette v. Podlaski*, 138 F. Supp. 3d 616, (S.D.N.Y. 2015):

> With respect to the fourth element [of N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii)], courts have emphasized that '"[t]he test of whether a defendant expects or should reasonably expect his act to have consequences within the State is an objective rather than a subjective one.'" Further, the "mere foreseeability of in-state consequence and failure to avert that consequence is not sufficient to establish personal jurisdiction under New York's long-arm statute." Instead, because "New York courts have sought to avoid conflict with federal constitutional due process limits on state court jurisdiction by applying the "reasonable expectation" requirement in a manner consistent with United States Supreme Court precedent," " foreseeability must be coupled with evidence of a purposeful New York affiliation," such as "a discernible effort to directly or indirectly serve the New York market." Put another way, in order to establish long-arm jurisdiction under Section 302(a)(3)(ii) (not to mention the *Due Process Clause*), "purposeful availment of the benefits of the laws of New York such that the defendant may reasonably anticipate being haled into New York court is required."

Id. at 626 (internal citations omitted).

In *Bissonnette*, the defendant, an attorney, never actively represented plaintiff in any New York proceeding, never agreed that their contract with plaintiff would be governed by New York law and never attended any meetings in New York. *Id*. at 626-27. Nevertheless, the defendant advised plaintiff on two discrete matters relating to a book that was published through a New York publishing house. *Id*. As a result, plaintiff argued that defendant knew or should have expected his activities to have consequences in New York. The court, however, rejected this argument and held that the mere knowledge that the defendant's advice may have consequences in New York was not enough to satisfy N.Y. Civ. Prac. L. & R. § 302(a)(3)(ii).

Here, the contacts are even more attenuated than in *Bissonnette*. EuroTec Canada did not have any relationship with Plaintiffs or Plaintiffs' decedent. Additionally, EuroTec Canada did

not have a relationship with Liberty, the party that was operating the helicopter sight-seeing business on which the Plaintiffs' decedent was traveling when the incident occurred in New York. Instead, and as more fully set forth in its moving papers, EuroTec Canada entered into a contract with co-defendant, Meridian, a Delaware Corporation with a New Jersey principal place of business. Apparently, Meridian then entered into some sort of agreement allowing Liberty to operate the subject helicopter.

More importantly, Meridian brought the subject helicopter to Ontario, Canada for EuroTec Canada to perform the work there, picked up the helicopter in Ontario, Canada and ultimately paid for the work by wire transfer to EuroTec Canada's bank account in Ontario, Canada. Furthermore, there is absolutely no evidence that EuroTec Canada made a discernable effort to serve the New York market. Under these circumstances, there is absolutely no legal or factual basis to find that EuroTec Canada knew or should have known that its work on the helicopter in Ontario, Canada might have consequences in New York.

Nevertheless, Plaintiffs suggest that the statement on Defendants' website that it serves customers worldwide indicates that Defendants were attempting to serve New York customers or New Jersey customers who operate their helicopters in New York and thus, should have reasonably expected that their acts have consequences in New York. Contrary to Plaintiffs' assertion, the characterization of a Defendants' practice as "nationwide" on its website is insufficient to demonstrate purposeful availment of the privilege of doing business in New York and thus, an expectation that its acts would have consequences in New York. *Bissonnette*, 138 F. Supp. 3d at 628. *See also Buccellati Holding Italia SPA v. Laura Buccellati, LLC*, 935 F. Supp. 2d 615 (S.D.N.Y. 2013) (Where only sale of merchandise through defendants' website was to plaintiffs' investigator was insufficient to demonstrate that defendants intended to serve New

York market or reasonably should have expected their conduct to have consequences in New York); *Royalty Network Inc. v. Dishant.com*, 638 F. Supp. 2d 410, 424 (S.D.N.Y. 2009) (Defendant did not purposefully target New York through its website). Here, nothing about Defendants' website indicates that it was attempting to target the New York market or should have expected their conduct to have consequences in New York. Indeed, the website is primarily informational and does not allow the purchase of any products or services. *See* Affidavit of Chad Decker at ¶ 20.[3]

Plaintiffs also rely upon the case of *Reynolds v. Aircraft Leasing, Inc.*, 194 Misc.2d 550, 756 N.Y.S.2d 704 (N.Y. Sup. Ct. 2002). Their reliance on this case is misplaced. It was decided approximately 12 years before the United States Supreme Court refined the minimum contact analysis in *Walden* and thus, it no longer comports with the law. *See NextEngine Ventures, LLC v. Network Solutions, LLC*, Index No. 153341/17, 2017 N.Y.Misc. LEXIS 3913 *6 (N.Y. Sup. Ct. Oct. 13, 2017). Moreover, in *Reynolds*, the trial court found that the defendant had sufficient contacts with New York based upon its sale of thousands of its products in New York. *Reynolds*, 756 N.Y.S.2d at 709. The *Reynolds'* court's reliance upon a defendant's general contacts with a State to find specific jurisdiction over a defendant is precisely what was rejected by the United States Supreme Court in *Bristol Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780, 198 L.Ed. 2d 395 (2017). *See also NextEngine Ventures, LLC*, 2017 N.Y.Misc. LEXIS at *10-11. Moreover, in *Reynold*s, defendant derived approximately 8% of its revenue from New York sales whereas, since 2015, EuroTec Canada derived 0% of its revenue from New York while EuroTec Vertical derived less than 1% of their revenues from New York.

---

[3] The Affidavit of Chad Decker was submitted contemporaneously with Defendants' moving papers.

Equally unavailing is plaintiff's reliance upon the case of *Chestnut Ridge Air, Ltd. v. 1260269 Ontario Inc.*, 13 Misc. 807, 827 N.Y.S.2d 461 (N.Y. Sup. Ct. 2006). In this case, the trial court found that the defendant was subject to general jurisdiction under N.Y. Civ. Prac. L. & R. § 301 and that the exercise of jurisdiction would not offend traditional notions of due process. Here, however, as noted above, plaintiffs have conceded, *sub silentio*, that the defendants are not subject to the court's general jurisdiction pursuant to N.Y. Civ. Prac. L. & R. § 301. Moreover, *Chestnut Ridge Air, Ltd.* was decided approximately 8 years before the United States Supreme Court's decision in *Daimler AG v. Bauman*, 571 U.S. 117, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014), which held that a court could not exercise general jurisdiction over a defendant unless it was incorporated or had its principal place of business in the state where the court was located. Furthermore, in *Chestnut Ridge Air, Ltd.*, the Court's due process analysis relied upon the defendant's contacts with third parties. The reliance upon a defendant's contacts with a third party has been repeatedly rejected as a means of obtaining personal jurisdiction over a defendant by the United States Supreme Court as demonstrated in Point II above.

Furthermore, Plaintiffs argue that the information contained in the affidavits submitted by Defendants is not relevant to the jurisdictional analysis as it does not provide any information about their business activities in New York at the time that it performed work on the helicopter. Plaintiffs suggest that the relevant time period for jurisdictional purposes in this case is a five-year period from 2011 to 2015. Plaintiffs, however, cite no cases to support this argument. Contrary to Plaintiffs' assertion, New York Courts have held that the relevant inquiry for jurisdictional purposes is whether there is some ongoing activity within New York. *See Matter of New York City Asbestos Litig.*, Index No.: 190084/2016, 2017 N.Y.Misc. 839 (N.Y. Sup. Ct. March 6, 2017). "[I]t would be unreasonable to expect a company without current transactions

within a state to respond to a lawsuit there." *Id.* at *16. *See also Roseto*, 2015 N.Y. Misc. LEXIS 3750 (the issue is whether defendant regularly does or solicits business in the State; activities predating the incident does not change that determination). Here, Defendants submitted uncontroverted evidence that, since 2015, they have derived less than 1% of their revenue from New York. Thus, it would be unreasonable to subject Defendants to jurisdiction in New York regardless of what may have transpired before 2015.

POINT IV

PLAINTIFFS RELY ON INADMISSIBLE EXHIBITS IN OPPOSING THE INSTANT MOTION AND SAID EXHIBITS SHOULD NOT BE CONSIDERED BY THE COURT

In opposing defendants' motion, Plaintiffs rely on exhibits that are inadmissible under Article 45 of N.Y. Civ. Prac. L. & R. Specifically, Plaintiffs rely upon documents that contain inadmissible hearsay. Also, many of the documents are not authenticated or self-authenticating. Accordingly, the Court should not consider these exhibits as part of Plaintiffs' opposition papers.

A. Exhibits K, N, O, Q, R, X and Y, Are Newspaper and/or Magazine Articles and Are Inadmissible Hearsay

Plaintiffs submitted documents as exhibits that purport to be printouts of various magazine and newspaper articles. More specifically, Plaintiffs have submitted: (1) Exhibit K, which purports to be a March 5, 2011 magazine article from Vertical Mag; (2) Exhibit N, which purports to be a June 5, 2014 magazine article from Helicopters Magazine; (3) Exhibit O, which purports to be a March 6, 2019 magazine article from Skies Magazine; (4) Exhibit Q, which purports to be a February 28, 2018 magazine article from Air Med & Rescue; (5) Exhibit R, which purports to be a February 6, 2019 article from Vertical Magazine; (6) Exhibit X, a January 30, 2016 newspaper article from The New York Times; and (7) Exhibit Y, which purports to be a September 1, 2011 magazine article from AOPA. Newspaper and magazine articles, however,

are inadmissible hearsay. *Young v. Fleary*, 226 A.D.2d 454, 640 N.Y.S.2d 593 (2d Dept. 1996) (newspaper articles are inadmissible hearsay); *Grams v. Acanda, Inc. (In Re Eighth Judicial Dist. Asbestos Litig.)*, 194 A.D.2d 901, 602 N.Y.S.2d 452 (4th Dept. 1993) (magazine articles are inadmissible hearsay); *Borough Hall-Oxford Tobacco Corp. v. Central Office Alarm Co.*, 35 A.D.2d 523, 313 N.Y.S.2d 431 (2d Dept. 1970); *Zayat Stables, LLC v. NYRA, Inc.*, Index No.: 26215/2018, 2013 N.Y.Misc. LEXIS 6319 (N.Y. Sup. Ct. Dec. 17, 2013) (newspaper articles are inadmissible hearsay); *LaSalle Bank, N.A. v. Rodriguez*, Index No. 5129/2007, 2011 N.Y. Misc. LEXIS 1961 (N.Y. Sup. Ct. Apr. 28, 2011). These articles are not sworn or certified and the authors are not subject to cross-examination, rendering such articles incompetent evidence. *Hicks v. Charles Pfizer & Company* Inc. 466 F. Supp.2d 799, 805 (E.D. Tex. 2005).

Here, Exhibits K, N, O, Q, R, X and Y are newspaper or magazine articles being offered for the truth of the matter asserted therein. They are not sworn or certified and, in some instances, contain double hearsay and information from unnamed sources. Moreover, the authors of the articles are not subject to cross-examination by Defendants. Accordingly, Exhibits K, N, O, Q, R, X and Y should not be considered by the Court.

B. Exhibit S, A Press Release, Is Inadmissible Hearsay

Exhibit S, which purports to be a January 12, 2016 press release from DART Aerpspace [sic], is not sworn or certified, its author is not subject to cross-examination by Defendants and it contains inadmissible hearsay as it is being offered for the truth of the matters asserted therein. Therefore, Exhibit S should not be considered by the Court.

C. Exhibits I, J, L, M, U, V, and W, Printouts From Various Websites Are Inadmissible As They Have Not Been Authenticated and Contain Inadmissible Hearsay

Plaintiffs submitted electronically stored information ("ESI") in opposition to the instant motion. Specifically, they submitted (1) Exhibit I, which purports to be from the website of Liberty; (2) Exhibit J, which purports to come from EuroTec Vertical's website; (3) Exhibit L, which purports to come from EuroTec Canada's Facebook page; (4) Exhibit M, which purports to come from EuroTec Vertical's website; (5) Exhibit U,[4] which purports to come from NYC The Official Guide; (6) Exhibit V, which purports to come from Helihub's website; and (7) Exhibit W, which purports to come from AINonline's website. Although ESI may be properly admitted into evidence, such information must be authenticated according to the same principles governing authentication of other types of evidence. *See People v. Johnson*, 51 Misc.3d 450, 28 N.Y.S.3d 783, 790 (N.Y. Cnty Ct. 2015).

> For example, the creator of such information may testify as to its authenticity. However, although circumstantial evidence of authenticity may, in some cases, be sufficient to provide an adequate foundation upon which digital evidence may be admitted, circumstantial evidence is insufficient foundation for admissibility where there is no evidence establishing the security of a website from which purported information has been accessed or that a purported author has exclusive access thereto. Indeed, "courts have recognized that authentication of ESI may require greater scrutiny than that required for the authentication of "hard copy" documents and that decisions as to the admissibility of such items "are to be evaluated on a case-by-case basis as any other document to determine whether or not there has been an adequate foundational showing of their relevance and authenticity."

[4] Despite its name, NYC The Official Guide is not the website of an agency or department of the City of New York. Instead, it is a 501(c)(6) private corporation that represents the interests of nearly 2,000 member organizations across the spectrum of businesses and organizations in New York City. *See* Affirmation of Fred G. Wexler, dated July 12, 2019 ("Wexler Reply Aff.") at ¶ 3 and Exhibit 1, which is being filed contemporaneously with this Memorandum of Law.

Id. at 790-791 (internal citations omitted). Anyone may purchase an internet address, and so, without some means of authentication, it is premature to assume that a webpage is owned by a company merely because its trade name appears in the uniform resource locator. *Victaulic Co. v. Tieman*, 499 F.3d 227 (3d Cir. 2007). *See also United States v. Jackson*, 208 F.3d 633, 638 (7th Cir. 2000) (information from the internet must be properly authenticated to be admitted).

Here, Plaintiffs have not authenticated these exhibits. Plaintiffs were required to come forward with evidence from a person with personal knowledge who maintains these websites, who authored the documents, knows the accuracy of the contents of these documents or through circumstantial evidencing establishing the security of the website or that a purported author has exclusive access to a particular website, but failed to do so. *People v. Johnson*, 28 N.Y.S.3d at 790-791.

Even if Plaintiffs authenticated these materials, which they have not, these exhibits also contain inadmissible hearsay and thus, should be disregarded. The Internet is "one large catalyst for rumor, innuendo, and misinformation," in large part because it provides no way of verifying the authenticity of the information it presents. *Teddy St. Clair v. Johnny's Oyster Shrimp, Inc.*, 76 F. Supp. 773, 774 (S.D. Tex. 1999). "Moreover … hackers can adulterate the content on *any* web-site from *any* location at *any* time. For these reasons, any evidence procured off the Internet is adequate for almost nothing, even under the most liberal interpretation of the hearsay exception rules…." *Id.* See also *Novak d/b/a Petswarehouse.com v. Tucows, Inc.*, 2007 U.S.Dist. LEXIS 21269, *14-18 (E.D.N.Y. March 26, 2007) (internal material stricken as no testimony or sworn statement attesting to its authenticity); *Costa v. Keppel Singmarine Dockyard PTE, Ltd.*, 2003 U.S.Dist. LEXIS 16295 * 29 n. 74, 2003 WL 24242419 (C.D.Cal. Apr. 25,

2003) (material downloaded from defendant's website stricken as no evidence that the information was placed there by the corporation).

D. Exhibit Z Was Prepared By A Private Company, Was Not Authenticated and Contains Inadmissible Hearsay

Exhibit Z indicates that it was prepared by the Eastern Region Helicopter Council. Plaintiffs, however, failed to submit any evidence from any representatives of the Eastern Region Helicopter Council who can attest to the authenticity of this document. The exhibit also contains hearsay and double hearsay and thus, it cannot be used to establish the truth of the matter asserted therein.

Even assuming, *arguendo*, that the court finds these exhibits admissible, which it should not, none of them establish that the Defendants performed any work in New York or that they reasonably should have expected that EuroTec Canada's work on the subject helicopter in Ontario, Canada would result in consequences in New York based upon the acts of third-parties in operating a helicopter sight-seeing company.

POINT V

PLAINTIFFS ARE NOT ENTITLED TO JURISDICTIONAL DISCOVERY

In their opposition papers, Plaintiffs are critical of Defendants for not responding to the discovery that Plaintiffs served upon them after the instant motion was filed.[5] In serving this

[5] The discovery served by Plaintiffs is attached as Exhibits C-H to the Affidavit of Matthew F. Schwartz, which was submitted in opposition to the instant motion. Notably, the discovery sought by Plaintiffs is far broader than merely "jurisdictional discovery" as suggested by Plaintiffs in their opposition papers. For example, Plaintiffs seek, *inter alia*, documents submitted by Defendants to any United States governmental agency about the crash (Exhibit C at No. 7, Exhibit D at No. 7), documents concerning communications with co-defendants regarding the incident and the helicopter (Exhibit C at No. 24 and Exhibit D at No. 24), documents concerning the helicopter and the incident (Exhibit C at No. 36 and Exhibit D at 36), etc. Similarly, Plaintiffs seek deposition testimony from Defendants regarding any crash investigation in which Defendants participated in the United States since 2008 (Exhibit E at No. 17 and Exhibit F at No. 17), lawsuits in which they were involved in the United States since 2008 (Exhibit E at No. 19 and 23 and Exhibit F at No. 19 and 23), communications with co-defendant, Apical Industries,

discovery, Plaintiffs ignored the long-established rule in New York that discovery is automatically stayed, pursuant to N.Y. Civ. Prac. L. & R. 3214(b), upon the filing of a motion to dismiss. If discovery was truly necessary as suggested by Plaintiffs in their opposition papers/cross-motion, then nothing prevented them from seeking an Order lifting the stay on discovery before they filed their opposition papers. Indeed, Plaintiffs had ample time to file a motion to lift the stay as the instant motion was adjourned 60-days from May 16, 2019 to July 15, 2019 by agreement of the parties after the parties executed a Stipulation a mere 12 days after Defendants filed the instant motion. *See* Wexler Reply Aff. at Exhibit 2.

Plaintiffs also argue that they have made a "good start" in showing that the exercise of personal jurisdiction over the Defendants in this action is not frivolous and thus, they are entitled to jurisdictional discovery from Defendants in order to oppose the instant motion. Plaintiffs are incorrect. Nothing submitted by Plaintiffs in opposition to the instant motion shows a "good start" in demonstrating that Defendants' had any contacts with New York that were connected to the subject incident.

Notably, in their opposition papers, Plaintiffs fail to distinguish any of the cases cited by Defendants in Point IV of their Memorandum of Law that was filed contemporaneously with their motion to dismiss. For instance, in *Latimore v. Fuller*, 127 A.D.3d 521, 8 N.Y.S.3d 276, the Court denied plaintiff's request for jurisdictional discovery as she failed to show that the defendant's contact with New York were substantially related to plaintiff's claims. Here, the same is true. Plaintiffs failed to show that Defendants had any contacts with New York let alone contacts that were substantially related to their claims. Instead, Plaintiffs attempted to show that

---

Inc. d/b/a DART Aerospace regarding the floatation system and any modifications to the floatation system (Exhibit E at 28-29 and Exhibit F at 28-29).

Liberty, a third party, had contacts with New York, which they wrongfully tried to impute to Defendants.

Similarly, in *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) the Court denied plaintiff's request for jurisdictional discovery based upon an attorney's affirmation and speculative allegations concerning defendant's past contacts with New York. Here, Plaintiffs also rely upon an affirmation of their attorney who lacks personal knowledge of any purported facts. Moreover, Plaintiffs submitted inadmissible materials from the internet and newspaper and magazine articles none of which even suggest that there is a scintilla of evidence that the Defendants had contacts with New York let alone contacts with New York that are connected to Plaintiffs' claims against the Defendants.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that the court grant its motion to dismiss for lack of personal jurisdiction and deny Plaintiffs' cross-motion to compel jurisdictional discovery.

Dated: July 12, 2019

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