

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

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JERRY CADIGAN and NANCY CATON CADIGAN, :
as the Proposed Administrators of the Estate of :
TREVOR NORRIS CADIGAN, Deceased, :

Plaintiffs, :

-against- :

LIBERTY HELICOPTERS, INC., a New York :
Corporation; NYONAIR LLC, a New Jersey Limited :
Liability Company; FLYNYON LLC, a New Jersey :
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, :

Defendants. :

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Index No. 152286/2018

**AFFIRMATION OF
MATTHEW F. SCHWARTZ**

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 opposition to the motion by defendant
Apical Industries, Inc. to dismiss the complaint for lack of personal jurisdiction pursuant to
CPLR Rule 3211(a)(8) and in support of their cross-motion to defer ruling on the motion to
dismiss and compel defendant Apical Industries, Inc. to submit to jurisdictional discovery
pursuant to CPLR Rule 3211(d). To date, Apical has refused to provide any discovery as
evidenced by the July 10, 2018 e-mail from its attorney annexed as Exhibit A.

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 of New York City operated by Liberty Helicopters when the helicopter lost altitude and descended into the East River off Manhattan. *Amd. Compl.*, ¶¶ 45-47. The helicopter rolled to its side and sank, drowning Mr. Cadigan. *Amd. Compl.*, ¶¶ 48-50. The helicopter was equipped with an emergency flotation system believed to have been manufactured by Apical. *Amd. Compl.*, ¶¶ 344-399.

4. According to the NTSB Aviation Accident Preliminary Report (the “NTSB Report” - a copy of which is annexed as Exhibit B), the helicopter began listing to one side after it landed on the water. NTSB Report, p. 3. The helicopter ultimately listed “past a 45° roll” and sank. *Id.* The NTSB preliminary report may explain why the helicopter listed and ultimately sank: “Examination of the emergency float system revealed that the three floats installed on the left landing gear skid appeared to be more inflated than the floats on the right landing gear skid.” *Id.* at 4.

5. Plaintiffs have brought this action against Apical Industries, Inc. (hereinafter “Apical”), the company that designed, manufactured and supplied the allegedly defective helicopter emergency flotation system. *Amd. Compl.*, ¶¶ 344-399.¹ Exhibit C submitted with this Affirmation is a photograph taken during the recovery of the helicopter from the East River. The photograph confirms the NTSB’s findings that the floats on the right side of the aircraft were less inflated than those on the left.

6. The photograph also confirms that the floats are identical in appearance to those manufactured by Apical. Exhibit D to this Affirmation is a copy of a screenshot I took today

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

from an Apical web page with links to its catalog of flotation equipment. It should also be noted that Apical (listed as Dart Aerospace) is the only flotation manufacturer known to have participated in the NTSB investigation. NTSB Report, p. 6.

7. Trevor Cadigan's parents, Jerry Cadigan and Nancy Caton Cadigan, as Proposed Administrators of his Estate, filed this action against Liberty Helicopters, Inc., NYONair LLC, FlyNYON LLC and Richard Zemke Vance on March 13, 2018. See Docket No. 1. On March 28, 2018, Plaintiffs filed their First Amended Complaint adding Meridian Consulting I Corporation, Inc., Airbus Helicopters, S.A.S., Airbus Helicopters, Inc. and Apical Industries, Inc. d/b/a DART Aerospace as defendants. *Massamillo Aff.*, Exh. A.

8. Apical has not yet disputed that it designed, manufactured and supplied the helicopter emergency flotation system at issue in this case. Despite this, Apical has now moved to dismiss the complaint on the grounds that it claims this Court may not properly exercise jurisdiction over it. The motion should be denied or at least deferred until discovery can be obtained on this issue.

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

9. Apical is a privately held company² and a subsidiary of DART Helicopter Services, Inc.³ On its website, Apical describes its presence as “worldwide:”

With an impressive line-up of over 850 STC's and 5,000 products, DART offers a comprehensive portfolio of aftermarket products and services for civil and military operators, all major rotorcraft OEMs, completion centers and MRO facilities.

² DART Aerospace, <https://www.dartaerospace.com/en/> (last visited August 30, 2018).

³ Aviation Pros, http://www.aviationpros.com/press_release/10398291/steven-e-joseph-new-general-manager-of-dart-helicopter-services (last visited August 30, 2018); Bloomberg, <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=49437236> (last visited August 30, 2018).

DART Aerospace has extensive experience in collaborating with the widest range of aerospace authorities around the world, such as the FAA, EASA, and TCCA. With 40 new STCs issued annually, DART has the true capabilities and certification expertise you need for your fleet operations.

A copy of the relevant Apical web page is annexed as Exhibit E.

10. Apical has a “Global Presence” in 120 countries and ships “over 27,000 parts” every year. *Id.* Further, Apical advertises that “**[no] matter where you are**, we ensure you get the correct support you need.” *Id.* (emphasis added).

11. On Apical’s website, customers may view products and prices⁴ as well as request quotes and contact Technical Support through the website.⁵ It claims to have a “[c]omprehensive network of Service Centers and approved third-party partners located in America, Europe and Australasia,” and that it “offers a worldwide support network for all your needs” and “[t]rust DART as an important partner, **wherever you are.**” (emphasis added). Copies of the relevant Apical web pages are annexed as Exhibits F and G.

12. Apical’s website also provides evidence that it has a service center in New York. According to an Apical press release, one of its approved maintenance center operators is Uniflight. A copy of the press release - “DART Aerospace Launches New Approved Maintenance Center Network, Offering Very Competitive Aftermarket Solutions to Better Serve the Industry,” published January 12, 2016 – is annexed as Exhibit H. According to Uniflight’s website, one of its service centers is in Rome, New York. A copy of the relevant Uniflight web page is annexed as Exhibit I.

⁴ DART Aerospace, <https://www.dartaerospace.com/en/gear-up/flotation-equipment.html> (last visited August 30, 2018).

⁵ DART Aerospace, <https://dartaerospace.com/en/contact/> (last visited August 30, 2018).

13. Apical has also partnered with Pall Aerospace in Port Washington, New York to develop and produce air filtration systems for helicopters. A copy of the Pall Aerospace press release is annexed as Exhibit J. Apical also promotes itself as “North America’s leader in Emergency Flotation Systems and Liferafts.” A copy of the relevant Apical web page is annexed as Exhibit K.

14. Plaintiffs have also sued Liberty Helicopters, which owned and/or operated the subject helicopter equipped with Apical’s defective emergency flotation system. Liberty Helicopters has the largest helicopter fleet in New York City. A copy of the relevant Liberty Helicopters web page - “Why Fly with Liberty?” – is annexed as Exhibit L. Liberty Helicopters’ maintenance center is located just outside New York City in Kearny, New Jersey.⁶

Apical has Refused to provide Any Jurisdictional Discovery

15. Apical seeks to be dismissed for lack of personal jurisdiction but has refused to provide any discovery to aid the Court in making this determination. This motion sets out the facts that are needed and requests an opportunity to conduct jurisdictional discovery on this issue.

16. On July 18, 2018, Plaintiffs served document requests and a designated agent deposition notice to obtain these facts were served upon Defendant Apical on July 10, 2018. Copies of these discovery requests are annexed as follows: (a) Plaintiffs’ Request for Production of Documents On Jurisdictional Issues to Defendant Apical Industries, Inc., d/b/a DART Aerospace (Exhibit M); (b) Plaintiffs’ Notice of Videotaped Depositions of Defendant Apical Industries, Inc. d/b/a DART Aerospace’s CPLR 3106(d) Designated Agents (Exhibit N).

⁶ Liberty Helicopters, <https://www.libertyhelicopter.com/about-sp-2001052626/contact.html> (last visited August 30, 2018).

17. Further, Plaintiffs noticed the deposition of Alan Madore who is the President and CEO of Apical Industries. A copy of the notice is annexed as Exhibit O. Alain Madore executed an Affidavit in support of Apical's motion.

18. Apical has refused to provide any responses to Plaintiffs' discovery requests and has refused to sit for deposition. A copy of an e-mail from Apical's counsel confirming this is annexed as Exhibit A.

Legal Arguments

19. The legal arguments against dismissal, and in favor 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. The limited facts provided by Apical do not establish conclusively that the Court lacks jurisdiction. To the contrary, the limited information available, before any discovery has been taken, shows that the Apical: (a) manufactured the flotation device that contributed to the sinking of the helicopter and the drowning of Trevor Norris Cadigan; (b) has had substantial sales in New York; (c) has a service center in New York; (d) has partnered with other businesses in New York to develop products; and (e) derives substantial revenues from interstate and international commerce. This is a sufficient basis for jurisdiction over Apical.

21. 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

22. Plaintiffs respectfully request that this Court deny Apical's motion to dismiss the complaint for lack of personal jurisdiction. In the alternative, the Court should defer ruling on the motion and compel Apical to submit to jurisdictional discovery and that the Court grant such other and further relief as it deems just and proper.

Dated: New York, New York
September 6, 2018



MATTHEW F. SCHWARTZ