

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

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

Index No.: 152286/2018

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 COPORATION, 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,

**AFFIRMATION OF ANTHONY W.
ECKERT III IN FURTHER
SUPPORT OF DEFENDANT
APICAL INDUSTRIES, INC.'S
MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION**

Defendants.

Anthony W. Eckert III, an attorney admitted to practice in the Courts of the State of New York, affirms the following under penalties of perjury:

1. I am a member of the law firm KAPLAN, MASSAMILLO & ANDREWS, LLC, attorneys for the Defendant Apical Industries, Inc. d/b/a DART Aerospace (hereinafter "Apical"), and as such am fully familiar with all of the pleadings, facts and circumstances in this matter.

2. This Affirmation is respectfully submitted in further support of Defendant Apical's Motion for an Order dismissing Plaintiffs' First Amended Complaint, pursuant to CPLR

3211(a)(8), filed on June 18, 2018, seeking dismissal of the claims directed at Defendant Apical set forth therein, and for such other and further relief as the Court deems just and proper.

3. After filing the Motion to Dismiss, Apical consented to Plaintiffs' request to adjourn the motion. On July 2, 2018, Apical filed a stipulation to adjourn the return date from July 18, 2018 to September 21, 2018 and that Plaintiffs' opposition would be submitted by September 10, 2018, a true and accurate copy of which is attached hereto as Exhibit A.

4. On July 5, 2018, Plaintiffs' counsel asked for Apical's position on jurisdictional discovery. Apical advised Plaintiffs' counsel that it did not agree to conduct any such discovery and intended to proceed with the Motion to Dismiss. *See* Correspondence attached to the Affirmation of Matthew F. Schwartz ("Schwartz Affirmation") as Exhibit A.

5. On July 10, 2018, Plaintiffs served a Request for Production of Documents on Jurisdictional Issues and Notices of Videotaped Depositions of Apical and Alain Madore upon Apical, true and accurate copies of which are attached to the Schwartz Affirmation as Exhibits M, N, and O, respectively.

6. However, CPLR § 3214 provides, in pertinent part, that "service of a motion under rule 3211...stays disclosure until determination of the motion."

7. Accordingly, on July 23, 2018, Apical sent a letter to Plaintiffs informing them that discovery is automatically stayed while this Motion to Dismiss is pending, a true and accurate copy of which is attached hereto as Exhibit B.

8. On July 24, 2018, Co-Defendants, Liberty Helicopters, Inc., Meridian Consulting I Corporation, Inc., and Richard Zemke Vance (collectively, "Liberty") served a Demand for Discovery and Inspection upon Apical, a true and accurate copy of which is attached to the Affirmation of Gene K. Kaskiw as Exhibit B.

9. In response, on July 26, 2018, Apical sent a letter to Liberty informing them that discovery is automatically stayed while this Motion to Dismiss is pending, a true and accurate copy of which is attached hereto as Exhibit C.

10. As set forth in the Reply Affidavit of Alain Madore, sworn September 14, 2018, and the Reply Memorandum of Law, submitted herewith, this Court lacks personal jurisdiction over Defendant Apical, a nonresident, because its contacts with New York fall short of satisfying the rigorous requirements of CPLR 302, the Long Arm Statute and Constitutional Due Process. Thus, the claims against Apical asserted in the Complaint must be dismissed based on lack of personal jurisdiction.

11. I hereby certify pursuant to 22 NYCRR 130-1.1a that to the best of my knowledge, information and belief as the attorney for Defendant Apical herein, that the submission of the within motion, supporting papers, and contentions herein are not frivolous as defined in 22 NYCRR 130-1.1(c).

WHEREFORE, Defendant Apical Industries, Inc. d/b/a DART Aerospace respectfully requests that this Court issue an Order dismissing Plaintiffs' First Amended Complaint pursuant to CPLR 3211(a)(8), insofar as it asserts claims against this Defendant, and for such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 20, 2018

By: 
Anthony W. Eckert III