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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: CHC GROUP LTD., *et al.*, Debtors.	Chapter 11 Case No. 16-31854 (BJH) (Jointly Administered)
ECN CAPITAL (AVIATION) CORP., Plaintiff, v. AIRBUS HELICOPTERS SAS, Defendant.	Adv. Pro. No. 16-3151 (BJH)

DEFENDANT AIRBUS HELICOPTERS, S.A.S.'S MOTION FOR CONTINUANCE OF TRIAL, STAY OF DEADLINES AND BRIEF IN SUPPORT

TO THE HONORABLE BARBARA J. HOUSER,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Defendant Airbus Helicopters, S.A.S. ("AH"), subject to and without waiving its objections to the Court's subject matter and personal jurisdiction, and its Motion to

Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Ground of *Forum Non Conveniens*, and file this, their Motion For Continuance of Trial, Stay of Deadlines And Brief In Support, and would show the Court the following:

Factual Background

1. On November 17, 2016, ECN Capital (Aviation) Corp. ("Plaintiff" or "ECN") filed an adversary proceeding in this Court against AH [Doc. No. 1].

2. On November 18, 2016, this Court entered a scheduling order ("Scheduling Order") [Doc. No. 4]. The Scheduling Order set the above-referenced adversary proceeding for trial the week of April 10, 2017. Docket call for this trial was originally scheduled for April 4, 2017 at 1:15 p.m. On January 9, 2017, the Court reset the docket call for the trial to March 31, 2017 at 1:15 p.m.

3. On January 3, 2017, AH filed a (a) Motion for Withdrawal of Reference of Adversary Proceeding and Brief in Support ("Motion for Withdrawal of Reference") [Doc. No. 23.], (b) Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of *Forum Non Conveniens* ("Motion to Dismiss") [Doc. No. 24], (c) Brief in Support of Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of *Forum Non Conveniens* [Doc. No. 25][1] and (d) Appendix in Support of AH's Motion to Dismiss [Doc. No. 26]. The Motion to Dismiss is currently set for hearing on February 28, 2017 at 9:00 a.m.

4. On January 3, 2017, pursuant to the Scheduling Order, AH contacted the Court and respectfully requested that the Court set a status conference to discuss the provisions and deadlines of a new scheduling order in lieu of the alternative scheduling order. Counsel for

[1] On January 4, 2017, AH filed an Amended Brief in Support of Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of *Forum Non Conveniens* [Doc. No. 32].

Plaintiff indicated to the Court that Plaintiff would try to see if an agreement could be reached to go to trial no later than September 2017.

5. The Court set a status conference on AH's Motion for Withdrawal of Reference on January 30, 2017 at 1:15 p.m. On January 9, 2017, AH and ECN filed a Joint Motion for Status Conference [Doc. No. 43] whereby the parties requested the Court to (a) re-set the status conference on the Motion for Withdrawal of Reference from January 30, 2017 at 1:15 p.m. to February 6, 2017 at 9:00 a.m. and (2) set a status conference to discuss the provisions and deadlines of a scheduling order on February 6, 2017 at 9:00 a.m. On January 11, 2017, the Court entered an Agreed Order Granting the parties Joint Motion for Status Conference [Doc. No. 49] that (a) re-set the status conference on the Motion for Withdrawal of Reference from January 30, 2017 at 1:15 p.m. to February 6, 2017 at 9:00 a.m. and (2) set a status conference to discuss the provisions and deadlines of a scheduling order on February 6, 2017 at 9:00 a.m.

6. Pursuant to the Scheduling Order, the deadline to serve (a) written discovery was January 13, 2017 (discovery to be completed by February 14, 2017) and (b) the deadline to exchange name and addresses of experts is January 30, 2017.

7. The parties are currently discussing potential agreed new trial dates and deadlines.

Request for Relief

8. AH seeks an order from the Court that (a) continues the trial date in the Adversary Proceeding, (b) stays all deadlines set forth in the Scheduling Order dated November 18, 2016, until further order of the Court and (c) requires an amended scheduling order be submitted to the Court only if the Motion to Dismiss is denied (and if the Motion for Withdrawal of Reference is denied or if the United States District Court requests that this Court handle all pre-trial matters under a Bankruptcy Court scheduling order).

Brief In Support

9. AH requires additional time to comply with the Scheduling Order and prepare for the trial in the Adversary Proceeding should the Motion to Dismiss be denied. The parties should be given more time to comply with the Scheduling Order because the jurisdiction and procedural issues raised in the Motion to Withdraw Reference and Motion to Dismiss should be addressed first.

10. A court must address a motion to dismiss for lack of jurisdiction before considering other challenges or reaching the merits of any case because, without jurisdiction, the court has no power to entertain the case." *Klayman v. Obama*, No. 3:16-CV-2010-L, 2016 WL 5942227, at *5 (N.D. Tex. Oct. 12, 2016) (denying plaintiffs' request to conduct discovery on the merits of their claim because the court had to first determine whether it had subject matter over the action and personal jurisdiction over defendants). "When a party challenges subject matter jurisdiction, the court is given the authority to resolve factual disputes, along with the discretion to devise a method for making a determination with regard to the jurisdictional issue . . . if the court chooses to allow additional discovery, it should be limited to only that which is necessary to determine the preliminary jurisdictional issue." *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994); *see Wyatt v. Kaplan*, 686 F.2d 276, 283-84 (5th Cir. 1982). The production of initial disclosures is premature pending the resolution of the motion to dismiss in this case. *See e.g. Johnson v. PPI Tech. Servs., L.P.*, No. CIV.A. 11-2773, 2012 WL 5449636, at *2 (E.D. La. Oct. 18, 2012) (sustaining defendants' objection to initial disclosures on the ground that various objections to personal jurisdiction and venue remain outstanding).

11. At this point in the case, it is unclear which Court will decide the Motion to Dismiss. Until the Motion for Withdrawal of Reference and Motion to Dismiss are decided, the trial date should be continued and all related deadlines in the Scheduling Order should be stayed.

WHEREFORE, PREMISES CONSIDERED, AH prays the Court enter an order continuing the trial in this proceeding (and resetting the docket call) and staying all deadlines set forth in the Scheduling Order and granting such other and further relief to which Movants may be justly entitled.

Dated: January 20, 2017.

Respectfully submitted,

HIERSCHE, HAYWARD, DRAKELEY & URBACH, P.C.

By: */s/ Jason M. Katz*

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CERTIFICATE OF CONFERENCE

On January 20, 2017, the undersigned attorney had a conference via e-mail with counsel for Plaintiff to discuss the relief sought in this opposed motion. At the time of the filing of the Motion, counsel for Plaintiff had not yet responded to the e-mail or voicemails.

/s/ Jason M. Katz
Jason M. Katz

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on January 20, 2017, a true and correct copy of the above and foregoing document was filed with the court via CM/ECF and served on all parties requesting electronic notification.

/s/ Jason M. Katz
Jason M. Katz