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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
SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER AND PERSONAL JURISDICTION,
AND ON THE GROUNDS OF *FORUM NON-CONVENIENS*

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

COMES NOW, Defendant Airbus Helicopters, S.A.S. ("AH"), and files this, its Supplemental Brief in Support of Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of *Forum Non Conveniens* and, in support thereof, would respectfully show the Court as follows:

INTRODUCTION

1. Currently on file and set for hearing on February 28, 2017 is AH's Motion to Dismiss for Lack of Subject Matter and Personal Jurisdiction, and on the Grounds of *Forum Non Conveniens* [Doc. 24]. At the February 6, 2017 status conference on AH's Motion to Withdraw the Reference to the Bankruptcy Court [Doc. 23], the Court requested that the parties provide supplemental briefing on the question of whether the Bankruptcy Court has the authority to issue an Order granting AH's Motion to Dismiss if it determines that it lacks subject matter jurisdiction over the adversary proceeding brought by Plaintiff ECN Capital (Aviation) LLC ("ECN"). For the reasons discussed below, if this Court finds that it lacks "related to" jurisdiction over the adversary proceeding, the Court can, and should, issue an order dismissing the action for lack of subject matter jurisdiction.

ARGUMENT AND AUTHORITIES

2. The question of this Bankruptcy Court's subject matter jurisdiction to hear this adversary proceeding is separate and distinct from its judicial power, as framed by the Constitution, to adjudicate this dispute under 28 U.S.C. § 157. *See Stern v. Marshall*, 564 U.S. 462, 480 (2011) ("Section 157 allocates the authority to enter final judgment between the bankruptcy court and the district court. *That allocation does not implicate questions of subject*

matter jurisdiction.") (citations omitted and emphasis added). As held in *In re Carroll*, 464 B.R. 293 (N.D. Tex. 2011):

> *Stern* simply clarified bankruptcy courts' constitutional power, not their subject matter jurisdiction. The Court in *Stern* discussed this critical distinction at length . . . and expressly clarified that [Section 157] is not jurisdictional – "Section 157 allocates the authority to enter final judgment between the bankruptcy court and the district court. That allocation does not implicate questions of subject matter jurisdiction.

464 B.R. at 309-10 (internal citations omitted); *see also In re Olde Prairie Block Owner, LLC*, 457 B.R. 692, 700-01 (N.D. Ill. 2011) ("Subject matter jurisdiction over bankruptcy cases is conferred by statute on District Courts, 28 U.S.C. § 1334, who may then refer those cases to Bankruptcy Judges, *id.* § 157(a). *Stern* addressed only what a Bankruptcy Judge may do once a case is referred to it, not whether that judge has jurisdiction to hear the case at all.").

3. Before this Court may exercise adjudicatory power over this dispute under Section 157, it must first find, as a threshold matter, that it even has "related to" bankruptcy jurisdiction. This Court has ample authority to determine whether it has such jurisdiction. A "bankruptcy court has jurisdiction to determine whether it has subject matter jurisdiction over an adversary proceeding filed in a case before the court. The motion to dismiss for lack of subject matter jurisdiction is filed under Federal Rule of Civil Procedure 12, which apples to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7012." *Fairchild Liquidating Trust v. New York (In re Fairchild Corp.)*, 452 B.R. 525, 528 (D. Del. 2011) (citing *In re BWI Liquidating Corp.*, 437 B.R. 160 (D. Del. 2010).

4. In *Fairchild*, the bankruptcy court granted a motion to dismiss for lack of subject matter jurisdiction after finding that it lacked "related to" jurisdiction over an adversary proceeding. *Id.* at 531. The bankruptcy court explained:

> The issue in *Stern* [ ] was when, under the United States Constitution, the bankruptcy court could enter a final judgment as opposed to proposed findings of fact and conclusions of law in a case where subject matter jurisdiction existed under *28 U.S.C. § 1334(a)*. As such, *Stern* [ ] is not a case about subject matter jurisdiction. Rather it addresses the power of the bankruptcy court to enter final orders, *assuming that subject matter jurisdiction exists*. This case is about whether subject matter jurisdiction exists. Thus, this court's power to enter a final order is not implicated.

Id. at 530, n.14 (emphasis in original). *See also In re BWI Liquidating Corp.*, 437 B.R. at 168 (issuing order granting Rule 12(b)(1) motions to dismiss adversary proceeding for lack of subject matter jurisdiction where "related to" jurisdiction found lacking).

5. Thus, if this Court finds that it lacks "related to" jurisdiction over this action, it can, and should, issue an order dismissing the adversary proceeding for lack of subject matter jurisdiction. *See Colvin v. Amegy Mortg. Co. L.L.C.*, 507 B.R. 915, 924 (W.D. Tex. 2014) ("Because the bankruptcy court lacked [subject matter] jurisdiction to adjudicate Colvin's easement claim, it lacked jurisdiction to deny Colvin's Rule 60 Motion and dismiss Colvin's easement claim. *Rather, the court should have dismissed the action for lack of subject-matter jurisdiction*.") (emphasis added).

CONCLUSION AND PRAYER

6. This Court must satisfy itself that it has subject matter jurisdiction over ECN's adversary proceeding. If it finds that it lacks "related to" jurisdiction, under the foregoing authorities the Court should issue an Order dismissing ECN's action for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), as incorporated in this proceeding by Fed. R. Bankr. P. 7012.

WHEREFORE, PREMISES CONSIDERED, Defendant Airbus Helicopters, S.A.S. respectfully requests that the Court grant its Motion to Dismiss, enter an order dismissing the

above-entitled and numbered adversary proceeding and grant such other and further relief to which it may be justly entitled.

Dated: February 20, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on February 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