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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**Chapter 11**
CHC GROUP LTD., *et al.*,	**Case No. 16-31854(BJH)**
Debtors,	**(Jointly Administered)**
ECN CAPITAL (AVIATION) CORP.,	**Adv. No. 16-03151-bjh**
Plaintiff,	**Plaintiff's Supplemental Memorandum on Post-Hearing Developments Related to Personal Jurisdiction and Abstention**
v.	
AIRBUS HELICOPTERS (SAS),	
Defendant.	

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Plaintiff ECN Capital (Aviation) Corp. ("ECN Capital") files this Supplemental Memorandum to bring to the Court's attention new facts critical to the personal jurisdiction and abstention issues raised in Defendant Airbus Helicopters S.A.S.'s ("Airbus") Motion to Dismiss.[1] These new facts, developed after the Court held argument on the Motion to Dismiss, directly contradict representations Airbus made to the Court in briefing and argument.

BACKGROUND

On January 3, 2017, Airbus filed its Motion to Dismiss asking this Court to hold that it lacked personal jurisdiction over Airbus, or to abstain from exercising its jurisdiction. Airbus also submitted a declaration from its executive, Michel Gouraud (the "Gouraud Declaration"), which stated that: Airbus "does not transact its business in the United States," Gouraud Decl. ¶ 5; Airbus "does not sell Super Puma helicopters in the United States," *id.* ¶ 9; and Airbus Helicopters, Inc. ("AHI") "is a separate and independent company from [Airbus]," *id.* ¶ 11. On February 28, 2017, the Court held a hearing on the Motion to Dismiss (the "MTD Hearing"), during which Airbus's counsel Eric Strain stated that "[Airbus] . . . doesn't transact [] business in the United States," and "when [Airbus] sells its helicopters . . . it does so from its place of business in France."[2]

On November 21, 2016, Era Group Inc. ("Era"), a Texas-based owner of ten EC225s, filed a complaint (the "Era Complaint") in Texas state court against Airbus and AHI alleging that the EC225s were defectively designed.[3] On January 12, 2017, Airbus filed a Special

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in ECN Capital's Opposition to Defendant's Motion to Dismiss [Dkt. No. 63] (the "MTD Opposition").

[2] *See* Tr. of 2/28/2017 H'r'g [Dkt. No. 86] 17:23-24; 18:2-3.

[3] *See* Era Complaint (Ex. M to Declaration of Pietro J. Signoracci in Support of Plaintiff's MTD Opposition dated Jan. 27, 2017 [Dkt. No. 64 Attach. 13]).

Appearance (the "SA") in response to the Era Complaint objecting to personal jurisdiction.[4] Airbus stated: "[Airbus] does not have a place of business in Texas and does not transact business in Texas." SA at 1. Airbus attached to the SA a declaration from Michel Gouraud (the "Era Gouraud Declaration").[5] Mr. Gouraud declared that Airbus "does not sell Super Puma helicopters in Texas," *id.* ¶ 7, and that "[Airbus] and AHI are separate and independent companies," *id.* ¶ 9. Airbus relied on the Era Gouraud Declaration in stating that Airbus: "has never – even temporarily – had offices or operational activities in Texas" and "does not sell Super Puma or any other helicopters in Texas." SA at 2. These statements from the Era Gouraud Declaration are nearly identical to statements in the Gouraud Declaration that Airbus filed in this Adversary Proceeding.

On July 28, 2016, Wells Fargo Bank Northwest, National Association ("Wells Fargo") filed breach of warranty and contract claims in Texas state court against AHI regarding three EC225s Wells Fargo purchased from AHI.[6] On February 7, 2017, Wells Fargo added Airbus as a defendant in its Texas state court case by filing an Amended Petition.[7]

ARGUMENT

New facts have developed regarding Airbus's activities in the U.S., including in Texas, and the ability of Texas courts to exercise personal jurisdiction over Airbus—*specifically with regard to product liability claims concerning Super Pumas purchased through an intermediary*.

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[4] *See* Ex. A (Special Appearance of Defendant Airbus Helicopters, S.A.S. [*Era Group Inc.* v. *Airbus Helicopters Inc. et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) filed on Jan. 12, 2017]). Unless otherwise stated herein, all references herein to "Ex. __" are to the accompanying Declaration of Pietro Signoracci dated March 20, 2017.

[5] *See* Ex. B (Declaration of Michel Gouraud in Support of Defendant Airbus Helicopters, S.A.S.'s Special Appearance [*Era Group Inc.* v. *Airbus Helicopters Inc. et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) filed on Jan. 12, 2017]).

[6] *See* Ex. C (Wells Fargo Complaint [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc. et al.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) filed on Jul. 28, 2016]).

[7] *See* Ex. D (Wells Fargo First Amended Petition [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc. et al.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) filed on Feb. 7, 2017]).

These facts directly contradict representations Airbus made to the Court in its Motion to Dismiss briefing and argument. They also demonstrate that this Court has personal jurisdiction over Airbus, which the Court should exercise here.

The following facts developed since the MTD Hearing:

- On March 17, 2017, Airbus withdrew the Era Gouraud Declaration and the SA and consented to the personal jurisdiction of the state court of Texas in the Era case for product liability claims regarding Super Pumas that were not purchased directly from Airbus.[8]

- On March 8 and 9, 2017, Airbus's CEO Guillaume Faury attended Heli-Expo 2017, an industry event at the Kay Bailey Hutchison Convention Center *in Dallas, Texas*. *Id.* The event was sponsored by Airbus and attended by over 15,000 customers from around the world and in the U.S., including Texas.[9] At the event, Airbus showcased to customers four models of Airbus helicopters.[10]

- On March 10, 2017, Mr. Faury stated that 60 Airbus helicopter orders were placed at the Heli-Expo 2017. *Id.* Airbus further reported that new "VIP customers," such as Dallas Cowboys Owner and CEO Jerry Jones and Texas-based oil business executive Mike Wallace, had "testif[ied] to their satisfaction with [Airbus] products and customer service," based on "their experiences operating Airbus helicopters and working with the [AHI] team." *Id.* Airbus pointed to this customer service, provided by AHI, to assert that Airbus is "[e]ver committed to improving customer satisfaction." *Id.*

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[8] *See* Ex. E (Defendant Airbus Helicopters, S.A.S.'s Notice of Withdrawal of Special Appearance [*Era Group Inc.* v. *Airbus Helicopters Inc. et al.*, DC-16-15017 (Tex. Dist. Ct., filed Nov. 21, 2016) filed on Mar. 17, 2017]).

[9] *See* Ex. F (Hai-Heli-Expo, http://heliexpo.rotor.org/ (last visited Mar. 17, 2017)).

[10] *See* Ex. G (Press Release, Airbus, Airbus Helicopters wraps up a successful Heli-Expo 2017 in Dallas (Mar. 10, 2017), *available at* http://www.airbushelicopters.com/website/en/press/Airbus-Helicopters-wraps-up-a-successful-Heli-Expo-2017-in-Dallas_2100.html).

- On March 8, 2017, Mr. Faury was served directly in the State of Texas, while attending the Heli-Expo at the Kay Bailey Hutchinson Convention Center, with a subpoena to attend a deposition in the Wells Fargo case in Dallas, Texas on April 24, 2017.[11]

These newly available facts directly contradict statements in the Gouraud Declaration and representations Airbus made to this Court in an attempt to avoid this Court's jurisdiction. Mr. Gouraud's statement that AHI "is a separate and independent company from [Airbus]" is directly contradicted by the fact that Airbus and AHI appeared together at the Heli-Expo 2017 to market and sell helicopters and meet with "VIP customers" of Airbus *and* AHI.[12] Mr. Gouraud's statement also is undermined by Airbus's consent to personal jurisdiction in Texas in a case brought by a customer of AHI that did not purchase Super Pumas directly from Airbus. Further, Mr. Gouraud's statement that Airbus "does not transact its business in the United States" is directly contradicted by Airbus's recent press release stating that 60 helicopters were sold by Airbus at the 2017 Heli-Expo in Dallas, Texas.[13] The Gouraud Declaration is the only evidence Airbus has advanced in its attempt to avoid this Court's jurisdiction. The record now makes clear the Gouraud Declaration is contradicted by fact, and it should be ignored.

These new facts also support ECN's well-pleaded allegations that this Court has personal jurisdiction over Airbus, which this Court should exercise. *See Glinka* v. *Abraham and Rose Co. Ltd.*, 199 B.R. 484 (Bankr. D. Vt. 1996) (exercising personal jurisdiction over foreign non-debtor

[11] *See* Ex. H (Notice of Deposition of Guillaume Faury [*Wells Fargo Bank Northwest N.A.* v. *Airbus Helicopters Inc. et al.*, DC-16-09090 (Tex. Dist. Ct., filed Jul. 28, 2016) served on Mar. 8, 2017]).

[12] *See* Ex. B. This is consistent with the information ECN Capital obtained from Airbus regarding its corporate structure, which revealed that French-based Airbus and its U.S.-based affiliate AHI share the same ultimate corporate parent, Airbus Group S.E. *See* Ex. I (E-mail from Eric Strain to Pietro Signoracci (Feb. 14, 2017)).

[13] *See* Exs. B, G. These new sales demonstrate personal jurisdiction especially when viewed in context of the evidence ECN Capital obtained through jurisdictional discovery, which shows that from 2011 to 2016 Airbus directly sold 30 helicopters to U.S.-based customers, including six Super Pumas and 22 other helicopters to customers headquartered in Texas; indirectly sold 58 helicopters to Texas-based customers through its U.S.-based affiliate distributor AHI; and sold another 649 helicopters for AHI to distribute to U.S.-based customers outside of Texas. *See* Ex. J. (Order Bookings – AH Group).

defendant in adversary proceeding in light of defendant's extensive participation in the bankruptcy, coupled with its contacts in the relevant forum). In addition to Airbus's extensive participation in the Bankruptcy Cases, this Court's personal jurisdiction over Airbus is evident from Airbus's strong U.S. and Texas contacts. Airbus sold Super Pumas to a foreign subsidiary of CHC. CHC, which is based in Texas, submitted testimony by declaration in the Bankruptcy Cases acknowledging that it manages its businesses from Irving, Texas—including the business of its foreign subsidiaries.[14] CHC entities subsequently sold those Super Pumas to ECN Capital, entered into leases on the Super Pumas, and rejected the leases of the Super Pumas in Texas in the Bankruptcy Cases. Airbus also has a close strategic relationship with AHI for purposes of marketing and selling Super Pumas to U.S.- and Texas-based customers. Airbus even sent its CEO into this forum last week for the purpose of collaborating with AHI to market and sell Super Pumas to U.S- and Texas-based customers. The strength of Airbus's contacts with this forum is demonstrated by the fact that Airbus conceded personal jurisdiction in Texas state court regarding claims brought by a U.S.-based customer that purchased Super Pumas from AHI.

The same facts that give rise to this Court's personal jurisdiction over Airbus also weigh heavily in favor of this Court exercising its jurisdiction over Airbus, rather than abstaining. Airbus has misrepresented its business contacts in the U.S. and Texas in an effort to avoid this Court's personal jurisdiction and to engage in forum-shopping. Airbus has a substantial presence in the U.S. and Texas—despite its misrepresentations to this Court designed to avoid jurisdiction and shop for a more favorable forum. If this Court is inclined to abstain, it should abstain only on the condition that Airbus consents to personal and subject matter jurisdiction in Texas state court for ECN Capital's claims this case. Since Airbus is now litigating in Texas state court,

[14] *See* Ex. K (Declaration of Robert A. Del Genio in Support of the Debtors' Chapter 1 Petitions and First Day Relief [16-31854 Dkt. No. 13]) ¶ 10.

Airbus cannot credibly claim that it would be costly or burdensome to defend this lawsuit in this jurisdiction, especially after Airbus sent its CEO to this jurisdiction to market and sell Airbus helicopters to customers in the U.S. As a result of its concession of jurisdiction, Airbus will be litigating *in this forum* claims nearly identical to those ECN Capital asserts in this Adversary Proceeding. On this newly developed record, there is no basis for Airbus to complain of costs of litigating the claims in this forum, where jurisdiction lies.

In its Brief in Support of its Motion to Dismiss, Airbus stated that Airbus "structures its transactions by conducting them in France . . . specifically to avoid being subject to the general jurisdiction of courts outside of France." Airbus Br. at 13. While Airbus may wish to "avoid being subject to the general jurisdiction of courts outside of France," it must face the consequences of its actions. The Gouraud Declaration is demonstrably false. Airbus transacts business in this district, avails itself of the courts of this district, sends its executives to this district, and has now conceded jurisdiction in this district regarding claims that Super Puma helicopters were defectively designed. Airbus should not be permitted to escape this Court's jurisdiction, and ECN Capital's appropriate choice of venue.

CONCLUSION

For the foregoing reasons, and the reasons stated in ECN Capital's MTD Opposition, Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss, and Second Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss, this Court should deny Defendant's Motion to Dismiss the Complaint.

Dated: March 20, 2017
New York, New York

Respectfully submitted,

By: /s/ *Martin Flumenbaum*
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CERTIFICATE OF SERVICE

I hereby certify that, on March 20, 2017, I caused the foregoing Supplemental Memorandum on Post-Hearing Developments Related to Personal Jurisdiction and Abstention to be filed with the Court via CM/ECF and served on all parties requesting electronic notification, including the following counsel of record for the Defendant:

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