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UNITED STATES BANKRUPTCY COURT
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, S.A.S., Defendant.	Adv. Pro. No. 16-3151 (BJH)

DEFENDANT AIRBUS HELICOPTERS, S.A.S.'S RESPONSE TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM ON POST-HEARING DEVELOPMENTS RELATED TO PERSONAL JURISDICTION AND ABSTENTION

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

COMES NOW, Defendant Airbus Helicopters, S.A.S. ("AH"), and files this, its Response to Plaintiff's Supplemental Memorandum on Post-Hearing Developments Related to Personal Jurisdiction and Abstention and, in support thereof, would respectfully show the Court as follows:

Introduction

ECN Capital (Aviation) Corp.'s ("ECN's") Supplemental Memorandum on Post-Hearing Developments Related to Personal Jurisdiction and Abstention ("Supplemental Memorandum") and exhibits attached to the Declaration of Pietro J. Signoracci ("Declaration") contain no new facts that bear on the issues of personal jurisdiction and abstention, or that contradict statements made by AH in briefing or in oral argument. Where it does not rehash the same arguments already briefed and heard by the Court, the Supplemental Memorandum is based on mischaracterizations of a document – the AH Press Release – which, even if they were true, would not establish personal jurisdiction for the very simple reason that the Court honed in on at the February 28, 2017 hearing – none of the facts alleged show any connection between ECN's claims and contacts between AH and the United States, leaving the "relatedness" requirement for specific jurisdiction still entirely unfulfilled.[1]

[1] The Court should not consider ECN's additional evidence because ECN failed to file a motion to reopen evidence. For this reason, AH has separately moved to strike the Supplemental Memorandum and Declaration. To the extent the Court considers ECN's post-hearing submission as an informal motion to reopen, the Court should deny the motion to reopen because the importance of the probative value of the additional evidence is minimal (i.e. the "new" evidence still does not fulfill the "relatedness" requirement for specific jurisdiction). *Garcia v. Woman's Hosp. of Texas*, 97 F.3d 810, 814 (5th Cir. 1996). While AH is not prejudiced if the Court considers ECN's additional evidence, the Court should not allow ECN to waste the Court's time and resources with voluminous filings that fail to assist the Court in determining AH's Motion to Dismiss. *Id*.

Argument

None of the purported "new" facts[2], even if true, have any bearing on the jurisdictional issue. The facts ECN now proffers are:

1. AH's CEO Guillaume Faury attended the 2017 Heli-Expo conference in Dallas.

This is not a new fact. ECN already argued in its opposition brief and at the hearing on AH's Motion to Dismiss that attendance by AH and its executives, including current CEO Guillaume Faury, at Heli-Expo events in the United States is a basis for this Court to exercise personal jurisdiction. [ECN's Second Supp. Mem. of Law in Opp. To Def's Mtn. to Dismiss, ECF No. 78, at 6; Feb. 28, 2017 Hr'g Tr., ECF No. 86, 48:20-25.] This fact also continues to have no jurisdictional value, as ECN has made no showing or even argument that Mr. Faury's attendance at the Heli-Expo conference in Dallas has any connection to ECN's claims in this lawsuit, as required to satisfy the "relatedness" requirement for specific jurisdiction. Moreover, attendance at trade shows, even when combined with other forum contacts, is insufficient to establish general jurisdiction after *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). *See, e.g., Martinez v. Aero Caribbean*, 764 F.3d 1062, 1069-70 (9th Cir. 2014) (finding that, after *Daimler*, sales of hundreds of millions of dollars of aircraft to purchaser in California, contracts with component suppliers in

[2] ECN erroneously claims that the "new" facts support this Court finding that it has personal jurisdiction over AH by citing to *Glinka v. Abraham and Rose Company LTD*, 199 B.R. 484 (D. Vt. 1996), a case which ECN already cited to the Court in its Second Supplemental Memorandum of Law in Opposition to Defendant's Motion to Dismiss. [ECF No. 78, at 10-11.] *Glinka* is not applicable in this case for a variety of reasons. In *Glinka*, the Court found that it had personal jurisdiction over a non-debtor Defendant that ***intervened*** in an adversary, waived its defense of lack of personal jurisdiction through its extensive participation in the adversary proceeding and failed to raise lack of personal jurisdiction for two years. *Glinka*, 199 B.R. at 496 (emphasis added). Furthermore, the Court in *Glinka* found that it had specific jurisdiction because the adversary arose directly from the alleged fraudulent transactions (shipments of plastic between Vermont and Canada) that created a "substantial connection" with the forum. *Id*. at 497. Unlike the defendant in *Glinka*, in this case (a) AH didn't intervene in this case, (b) AH didn't participate in this adversary for two years before filing its motion to dismiss for lack of personal jurisdiction, and (c) specific jurisdiction does not exist because none of the "new" facts alleged show any connection between ECN's claims and contacts between AH and the United States.

California, attendance at industry conferences in California, and advertising in California was "plainly insufficient to subject [aircraft manufacturer] to general jurisdiction in California").

2. Mr. Faury stated that 60 helicopter orders were "placed" at Heli-Expo, and that "Airbus further reported that new 'VIP' customers", such as Texas-based Jerry Jones and Mike Wallace, were satisfied with their Airbus Helicopters' products and customer service.

Citing the AH Press Release, ECN states: "On March 10, 2017, Mr. Faury stated that 60 Airbus helicopters orders were placed at the Heli-Expo 2017." [Supplemental Memorandum, at 3.] That is not what the Press Release says. What it actually says is, "'This year's Heli-Expo has shown that 2017 is already off to a good start for our best-selling products, with orders for about 60 helicopters . . . announced at the show,' said Guillaume Faury, Airbus Helicopters CEO." [Decl. of Pietro Signoracci, ECF No. 88-7, Ex. G, at 2.] Mr. Faury did not say that 60 orders were "placed" at the Heli-Expo, and his statement did not "directly contradict" the evidence of record that AH sells helicopters from its place of business in France, ***including, most importantly, the five helicopters at issue in this case***. And again, as noted, none of AH's activity at Heli-Expo is alleged by ECN to be related to its claims, making them jurisdictionally immaterial.

ECN also misleadingly states that "Airbus further reported . . ." that certain high profile Texas-based customers were satisfied with Airbus Helicopters products and customer service. [Supplemental Memorandum, at 3.] ECN includes this statement in the sentence right after its misquote of Mr. Faury to create the impression that it came from him. It did not. The Press Release clearly attributes this information to a quote by Chris Emerson, who is the CEO of Airbus Helicopters, Inc., a different company from AH that is located in Texas. [Decl. of Pietro Signoracci, ECF No. 88-7, Ex. G, at 3.] And again, without a connection to ECN's claims, this "fact" provides nothing of jurisdictional value to the analysis.

3. Mr. Faury was served with a subpoena to attend a deposition in a different case filed in Texas state court.

ECN does not explain why it matters that Mr. Faury was served with a subpoena (which AH has moved to quash) for a deposition in a different case filed by a different plaintiff involving transactions that are not at issue in this case. In fact, it does not matter, as it also has nothing to do with ECN's claims, and thus also has no jurisdictional relevance.

4. AH has consented to personal jurisdiction in a different case in a Texas state court.

ECN fails to apprise the Court of the very different facts involved in the case filed against AH by Era Group, Inc. in which AH has consented to jurisdiction in Texas state court. The Era case involves transactions and claims having Texas connections that are completely absent from this case. [Decl. of Pietro Signoracci, ECF No. 88-1, Ex. A, *passim*.] As this Court is well aware, the helicopters at issue in this case were never sold or delivered to anyone in the United States, and were never registered or operated anywhere in the United States – unlike in the Era case, there is absolutely no connection with the forum in this case. AH's decision not to contest jurisdiction in the Era case that involved different law[3] and different facts has no bearing on this Court's independent due process analysis based on the unique facts of this case.

Conclusion

ECN's filing should be disregarded. It presents no new material facts, and simply rehashes facts and arguments already made. None of the arguments made by ECN in any of its briefs or at the February 28 hearing establish that AH is subject to the Court's personal jurisdiction. In addition, should the Court determine it has subject matter and personal jurisdiction, the Court

[3] The jurisdictional question in the Era case was governed by the Texas long-arm statute and Texas case law, while the jurisdictional issue in this case is governed by a federal long-arm statute and federal case law.

(Footnote continued on next page)

should abstain from hearing this matter without any conditions. ECN provides no authority[4] that permits the Court to abstain on the condition that AH consent to personal and subject matter jurisdiction in Texas state Court.

Dated: March 23, 2017.

Respectfully submitted,

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[4] ECN fails to address how its "new" facts change any of the permissive abstention factors discussed at the February 28, 2017 hearing on AH's Motion to Dismiss.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on March 23, 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