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No Personal Jurisdiction Found Over Lessor Based on Crash of Helicopter in Forum State

By Michael J. Holland

In *Bell Helicopter Textron, Inc. v. HeliQwest International, Ltd.*, 2004 WL 2252076 (10th Cir., Oct. 7, 2004), the Tenth Circuit was faced with two jurisdictional questions: 1) whether personal jurisdiction existed over the lessor of a helicopter which crashed in Utah; and 2) whether the District Court had abused its jurisdiction in declining jurisdiction over a declaratory judgment action filed by the manufacturer of the helicopter against the owner and operator, alleging that GARA¹ barred any claims against Bell.

Bell manufactured the model 212 helicopter in October of 1974, a date which is relevant for GARA purposes, and sold it to the Peruvian Air Force. The helicopter was destroyed in service in 1976. It was eventually salvaged and rebuilt. The ownership of the helicopter changed on a number of occasions and, in 1999, a New Mexico corporation, Copter Lease, LLC acquired ownership of the helicopter and registered it with the Federal Aviation Administration. Copter Lease then leased the helicopter to HeliQwest International, a Washington State corporation, pursuant to a lease agreement negotiated in Canada. The lease provided for an Alberta choice of law provision and forum selection clause.

The helicopter crashed in Utah on January 9, 2000 and was completely destroyed. Nearly two years later, Copter Lease and HeliQwest filed an action in Canada against Bell, seeking recovery for the loss of the helicopter and other damages. Two weeks later, Bell filed a Complaint in the United States District Court for the District of Utah against Copter Lease and HeliQwest seeking a declaratory judgment based on the applicability of GARA, which

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generally provides for an 18 year statute of repose on actions for injuries to persons or damage to property arising out of accidents involving general aviation aircraft. If GARA was applicable, the case seeking recovery for loss of the helicopter would be barred by the 18 year GARA statute of repose.

The District Court first dealt with the issue of personal jurisdiction over Copter Lease. Reiterating the familiar language that there must be “minimum contacts” between the defendant (Copter Lease) and the forum state (Utah) to make it fair to require the defendant to be haled into that forum, the Court found that the “minimum contacts” standard in order to make a defendant subject to personal jurisdiction may be met in either two ways: by the defendant’s continuous and systematic general business contacts with the forum state (the exercise of general jurisdiction) or where the defendant has purposely directed his activities at the resident of a forum. In the latter situation, courts in the forum may exercise specific jurisdiction in cases which arise out of or relate to those activities in the forum. Bell asserted specific, not general, jurisdiction over Copter Lease in its declaratory judgment action.

The Court then examined whether there was some act by which Copter Lease had purposely availed itself of the privilege of conducting activities within Utah, thus invoking the benefits and protections of its laws and making it fair to require Copter Lease to defend the declaratory judgment action in Utah. The Court also looked to the Utah Long Arm statute, Utah Code Annotated § 78-27-24, which provided that the specific jurisdiction statute should be applied to the fullest extent possible as permitted by the due process clause of the Fourteenth Amendment.

After examining all of the contacts of Copter Lease with the State of Utah, the Court could not find any actions taken by Copter Lease in Utah which justified the assertion of personal

jurisdiction over it. The real issue, said the Court, was whether Copter Lease’s actions in leasing the helicopter to HeliQwest in Canada for use in Utah constituted a “purposeful availment” of the privilege of conducting business in Utah by Copter Lease.

The Tenth Circuit Court of Appeals affirmed the District Court’s view that there was no personal jurisdiction over Copter Lease in Utah. It concluded that Copter Lease, a New Mexico corporation, had no offices, employees or operations in Utah and that Copter Lease had leased the helicopter pursuant to a transaction taking place in and subject to the law of Canada, where the helicopter was to be delivered at the inception and returned at the end of the lease. The fact that Copter Lease had leased the helicopter to HeliQwest, which did operate the helicopter in Utah, was not a basis for finding personal jurisdiction over Copter Lease in Utah. “At best, Copter Lease could foresee that because HeliQwest had a facility in Utah it might, at some point, take the subject helicopter to Utah. This mere possibility, even if true, does not suggest that Copter Lease purposely availed itself of the protections of Utah laws.” *Bell*, 2004 WL 2252076, at *4. The Tenth Circuit also rejected Bell’s argument that because HeliQwest had attempted to qualify as an official supplier of helicopter services for the 2000 Winter Olympics in Salt Lake City, Copter Lease must have purposely availed itself of Utah’s legal protection when it leased the helicopter to HeliQwest, knowing that it may have been used in Utah. That assertion, said the Tenth Circuit, “to put it mildly, overstates the claim.” *Id.*

Finally, the Court rejected Bell’s argument that because Copter Lease was hoping to lease the helicopter to an entity that could secure contracts with the United States Forest Service, which contracts covered Utah as well as other western states, that activity constituted solicitation of business for purposes of satisfying the personal jurisdiction requirements of the Utah long arm statute. The Tenth Circuit rejected this

assertion, finding that “[a] general hope that a party will use a product in a general region is too remote an aspiration to qualify as purposeful availment in a specific state.” *Bell*, 2004 WL 2252076 at *5.

The Court was also unsympathetic to Bell’s complaints that it had not had an adequate opportunity to conduct jurisdictional discovery to enable Bell to delve into Copter Lease’s activities in Utah. Finding that the Court was vested with broad discretion over the scope of jurisdictional discovery, the Court found that Bell had failed to argue on appeal that the District Court had abused its discretion in refusing Bell Helicopter’s jurisdictional discovery requests. “Given the very low probability that the lack of discovery affected the outcome of this case”, the Tenth Circuit found no abuse of discretion by the District Court in denying jurisdictional discovery. *Bell*, 2004 WL 2252076 at *6.

Bell’s declaratory judgment action was also given short shrift by the Tenth Circuit. It ruled that the District Court correctly declined to assume jurisdiction over the declaratory judgment action since the declaratory judgment action commenced by Bell would not settle the controversy. Since the District Court had found that Copter Lease was not subject to personal jurisdiction in the courts of Utah, any finding made in that Court would not be binding on Copter Lease and hence would not have settled the controversy among the parties. Moreover, since not all of the parties who had sued Bell in Canada had been brought into the Utah

declaratory judgment action by Bell, they too would not be bound by any decision of the District Court. Accordingly, the Tenth Circuit found that since the declaratory judgment sought by Bell would not settle the controversy because all parties were not bound by it, the District Court had correctly dismissed the declaratory judgment action.

While this case is a good primer on personal jurisdiction issues and the constitutional limits of state personal jurisdiction statutes, the interesting issue from the point of view of the practitioner is the Tenth Circuit’s affirmance of the District Court’s decision not to grant Bell jurisdictional discovery on the issue of Copter Lease’s contacts in Utah. While the Court believed that some of those issues had already been explored in the Canadian litigation, it seems that Bell would have been well advised to make a strong showing as to how its opposition to the lack of personal jurisdiction motion was hampered by its inability to obtain discovery. The hint to the practitioner from the Tenth Circuit’s decision is that any discovery requests should be served early in the event a jurisdictional defense is raised, that the need for that discovery to oppose a motion to dismiss should be reiterated at every opportunity, and that the record should be firmly preserved in the event that the motion to dismiss for lack of personal jurisdiction is successful at the District Court level.

Endnote

1. General Aviation Revitalization Act (GARA) 49 U.S.C. § 40801.