LINK: 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-889-GAF	Date	August 13, 2008
Title	Twentieth Century Fox Film Corp. v. Warner Bros. Entertainment, Inc., et al.		

Present: The Honorable	**GARY ALLEN FEESS**	
Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: (In Chambers)

ORDER RE: MOTION TO DISMISS

A. BACKGROUND

In this lawsuit, Plaintiff Twentieth Century Fox Film Corporation ("Fox") contends that it owns the distribution rights to any motion picture based on "Watchmen," a 1980's "graphic novel" written by Alan Moore and illustrated by Dave Gibbons. Fox argues that it has held these rights for almost two decades based on agreements with Lawrence Gordon and his related business entities. This claim is of particular importance at this time because Defendant Warner Brothers Entertainment, Inc. ("Warner Brothers") is producing a motion picture based on "Watchmen" and has posted a two minute trailer on its website announcing its plan to release the film in March 2009. Fox asserts claims against Warner Brothers and its affiliates for copyright infringement and interference with Fox's contract rights under a 1991 agreement with Gordon's affiliate.

Warner Brothers now moves to dismiss the copyright and interference with contract claims. Warner Brothers argues that it has obtained all rights to produce and distribute the movie from Lawrence Gordon or one of his companies, that its acquisition of these rights can be traced through documents that are either attached to or referenced in the pending complaint, and that the Court can and should, on the basis of those agreements, dismiss Fox's claim for copyright infringement and interference with contract. More particularly, Warner Brothers asserts that Fox abandoned any interest it had in "Watchmen" in 1991 when it purportedly quitclaimed its distribution rights to Gordon, and that Fox cannot present an interference with contract claim because the agreement in issue has been assumed by Warner Brothers, which cannot interfere with a contract to which it is a party.

LINK: 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-889-GAF	Date	August 13, 2008
Title	Twentieth Century Fox Film Corp. v. Warner Bros. Entertainment, Inc., et al.		

B. DISCUSSION

1. The Legal Standard

The governing legal standard requires the Court, in assessing a motion to dismiss, to assume the truth of all facts alleged in the complaint and to draw all inferences in favor of the plaintiff, Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996), and to assess whether those facts either directly or inferentially contain "all the material elements necessary to sustain recovery under some viable legal theory." Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1969 (2007). In this case, the issue presented is whether the alleged facts, which include information contained in documents attached to or referenced in the complaint, e.g., Inlandboatmens Union of the Pac. v. Dutra Group, 279 F.3d 1075, 1083 (9th Cir. 2002), establish a basis upon which Fox could obtain relief.

2. The Copyright Claim

The information presented to the Court lays out a very complex, convoluted series of negotiations and agreements which, on detailed reflection and consideration, need not be addressed at length at this stage of the proceedings. The following summary chronology, taken from the complaint, attachments and agreements that the Court may consider in ruling on this motion, establish a basis for the claims.

1986-90: Fox acquires motion picture rights in "The Watchmen." (Compl., ¶ 8; Ex. 2, ¶ 2(b), at 2.)

1990: Fox enters into a domestic distribution agreement with Largo Entertainment, a joint venture of JVC Entertainment Inc., Golar (Lawrence Gordon), and BOH, Inc. This agreement (the "Largo Agreement") established Fox's domestic distribution rights, through a license from Largo, in "subject pictures" as defined in the agreement. (Compl., Ex. 3.)

June 1991: Fox enters into a "Quitclaim Agreement" with Largo International, N.V. (Purchaser), through which Fox "quitclaims to Purchaser all of Fox's right, title and interest in and to the Motion Picture project presently entitled 'WATCHMEN'" which included specifically described literary materials. (Complaint, Ex. 2, at 2.) Notably, the agreement provides that, "if Purchaser elects to proceed to production, the Picture shall be produced by Purchaser ***and shall be distributed by Fox as a Subject Picture pursuant to the terms***

LINK: 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-889-GAF	Date	August 13, 2008
Title	Twentieth Century Fox Film Corp. v. Warner Bros. Entertainment, Inc., et al.		

of the Largo Agreement . . . ." (Id., ¶ 5, at 4.) (Emphasis added.) In consideration for the rights to "Watchmen," Fox was to be reimbursed for its development costs ($435,600) plus interest plus a profit participation in the worldwide net proceeds of any "Watchmen" picture.

Nov. 1991: The Largo Agreement was amended; "Watchmen" was listed as a project quitclaimed to Largo. (Compl., ¶ 12: Ex. 4.)

Nov. 1993: Lawrence Gordon, through Golar, withdraws from the Largo Entertainment joint venture; Largo conveys any rights it has in "Watchmen" to Gordon/Golar. (Compl., ¶ 13.) Based on the 1991 quitclaim, the Court may infer that Gordon now stood in the shoes of Largo with respect to "Watchmen" and held whatever rights it acquired through the 1991 Quitclaim, which left Fox with the distribution rights it retained through that agreement.

1994: Fox negotiated a "Settlement and Release" agreement with Gordon which contemplated that the "Watchmen" project would be put in "perpetual turnaround" to Lawrence Gordon Productions, Inc.. (Compl., ¶ 14; Leichter Decl. Ex. 5, at 116, 119.) The attached "turnaround notice" gave Lawrence Gordon Productions "the perpetual right . . . to acquire all of the right, title and interest of Fox ["Watchmen"] pursuant to the terms and conditions herein provided." (Leichter Decl., Ex. 5, at 127.) The turnaround notice then described the formula for determining the buy-out price in the event that Gordon elected to acquire Fox's interest. Thus, the document suggests that Gordon acquired an option to acquire Fox's interest in "Watchmen" for a price. In fact, the notice obligated Gordon to pay the buy-out price on the commencement of any production of a "Watchmen" film. (Id.) The notice also provided that the agreement was personal to Gordon and that, "prior to payment of the Buy-Out Price," he could not assign rights or authorize any person to take any action with respect to the project. (Id., at 129.) (See generally Compl., ¶ 14.)

May 2006: Warner Brothers, allegedly with knowledge of the 1991 Quitclaim, entered into a quitclaim agreement with Gordon under which it claims to have acquired the rights to the "Watchmen" project. (Compl., ¶ 16; Leichter Decl. Ex. C, at 162.)

LINK: 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-889-GAF	Date	August 13, 2008
Title	Twentieth Century Fox Film Corp. v. Warner Bros. Entertainment, Inc., et al.		

Fox alleges that these facts demonstrate that, at the very least, it retained distribution rights in "Watchmen," that it performed all of its obligations under the relevant agreements, and that while it granted Gordon what amounted to an option to acquire its rights, neither Gordon nor his successors ever fulfilled their contractual obligations to Fox. Indeed, Fox contends that Warner Brothers either knew or turned a blind eye to the fact that Fox had retained distribution rights in the project, and that Gordon had not perfected his interest in the "Watchmen" project before quitclaiming it to Warner Brothers. In any event, Fox now contends that it presently holds rights in "Watchmen" and that Warner Brothers' production of the "Watchmen" film infringes on those rights.

Given the legal standard that governs consideration of motions under Rule 12(b)(6), the Court is satisfied that Fox's complaint adequately states a claim for copyright infringement even if Fox does not hold the entire bundle of rights. 17 U.S.C. § 201(d)(2); Gardner v. Nike, Inc., 279 F. 3d 774, 779 (9th Cir. 2001). Warner Brothers does not contest this principle, but contends that Fox conveyed away all of its rights, including its right to distribute. Warner Brothers focuses its argument on the 1994 settlement agreement between Fox and Gordon and contends that the settlement extinguished Fox's rights under the Quitclaim through the settlement agreement's integration clause. However, this argument ignores a number of facts including that: (1) the Quitclaim was between Fox and Largo International, N.V. and not Fox and Gordon; (2) that Gordon allegedly withdrew from involvement with Largo before entering into the settlement agreement; and (3) that the turnaround notice, which was negotiated as an aspect of the settlement, separately dealt with the "Watchmen" project. Warner Brothers also asserts, in contradiction to the face of the turnaround documents, that the turnaround gave Fox an (unexercised) option in "Watchmen" when the turnaround documents appear in fact to convey an (unexercised) option to Gordon to acquire the "Watchmen" project. It is particularly noteworthy that nothing on the face of the complaint or the documents supplied to the Court establishes that Gordon, the claimed source of Warner Brothers' interest in "Watchmen," ever acquired any rights in "Watchmen." Thus, Warner Brothers' arguments, if they are to succeed at all, will need to find support beyond the face of the complaint and the applicable agreements. The motion to dismiss the copyright infringement claim is **DENIED.**

3. The Interference with Contract Claim

An interference with contract claim contains five elements:

(1) the existence of a valid contract between BONY and a third party, (2) Fremont General's knowledge of the contract, (3) intentional acts designed to induce a breach or to disrupt a contractual relationship, (4) actual breach or disruption of the contractual

LINK: 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-889-GAF	Date	August 13, 2008
Title	Twentieth Century Fox Film Corp. v. Warner Bros. Entertainment, Inc., et al.		

relationship, and (5) resulting damage. [Citations.]

Bank of New York v. Fremont General Corp., 523 F. 3d 902, 909 (9th Cir. 2008).

Here Fox has alleged that Warner Brothers disrupted Gordon's performance of his obligations under the 1991 Quitclaim. Under Fox's theory, Warner Brothers accomplished that result by entering into an agreement with Gordon under which Warner Brothers succeeded to Gordon's interest under the Quitclaim and then, with the objective of defeating Fox's contractual rights, arguing that any obligation Gordon may have had to Fox was extinguished. In sum, these allegations establish the existence of an agreement, Warner Brothers' knowledge of the agreement, Warner Brothers' intentional acts that were designed to, and in fact did, disrupt the relationship between Fox and Gordon, with resulting harm. That is sufficient to state a claim for interference with contract.

Warner Brothers contends that Fox's interference claim must fail because Fox admits that Warner Brothers knew nothing of the obligations due and owing to Fox under the Quitclaim and so that Warner Brothers could not have acted with the intent to induce breach. The Court disagrees. In its complaint, Fox alleged that Warner Brothers, in its 2006 agreement with Gordon, misstated that the Quitclaim conveyed all of Fox's right, title and interest in "Watchmen," but never alleged that Warner Brothers actually believed that that description was accurate. On the contrary, Fox alleged that Warner Brothers had actual knowledge of the agreement and that it reserved rights that Warner Brothers claims to have acquired.

Finally, Warner Brothers contends that it may not be sued for interference because it has assumed obligations under the agreement. Again, no case so holds. While it is correct that one contracting party may not sue another contracting party for interference, Applied Equip. Corp. v. Litton Saudi Arabia, Ltd., 7 Cal. 4th 503, 513-14 (1994), such a claim may be brought against a stranger to the contract. Pacific Gas & Elec. Co. v. Bear Stearns & Co., 50 Cal. 3d 1118, 1126 (1990). That the stranger who is alleged to have interfered with a contractual relationship ultimately claims to assume obligations under the disrupted agreement does not change the analysis. Permitting suit in that circumstance is consistent with the underlying policy of protecting the legitimate expectations of contracting parties against frustration by the actions of those with no legitimate interest in the contractual relationship. Applied Equipment, 7 Cal. 4th at 514.

The motion to dismiss the interference with contract claim is **DENIED.**

C. CONCLUSION

LINK: 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-889-GAF	Date	August 13, 2008
Title	Twentieth Century Fox Film Corp. v. Warner Bros. Entertainment, Inc., et al.		

For the foregoing reasons, the motion to dismiss is **DENIED**. The parties are to meet and confer regarding a Rule 26(f) Scheduling Conference on or before August 22, 2008. The Court **SCHEDULES** a Rule 26(f) Scheduling Conference on **Tuesday, September 2, 2008, at 1:30 p.m.**

IT IS SO ORDERED.