UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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METRO-GOLDWYN-MAYER STUDIOS INC.,

Plaintiff,

-against-

07 Civ. 2918 (DAB)
MEMORANDUM & ORDER

CANAL+ DISTRIBUTION S.A.S., CANAL+ FRANCE S.A., and GROUPE CANAL+ S.A.,

Defendants.
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DEBORAH A. BATTS, United States District Judge.

Plaintiff Metro-Goldwyn-Mayer Studios, Inc. ("MGM" or "Plaintiff") brings the above-captioned action for breach of contract and tortious interference with contract against Defendants Canal+ Distribution S.A.S. ("Canal+ Distribution"), Canal+ France S.A. ("Canal+ France"), and Groupe Canal+ S.A. ("Groupe Canal+") (collectively, "Defendants").[1] The action arises out of a 1996 broadcast licensing agreement (the "Agreement") between American motion picture studio, MGM and TPS Société en Nom Collectif ("TPS"), a French satellite television network. The Agreement contains a forum selection clause

[1] Plaintiff brought its original Complaint, filed April 11, 2007, against Defendants TPS Gestion, S.A. ("TPS Gestion"), TPS Société En Nom Collectif ("TPS"), Groupe Canal+, and Canal+ France. Plaintiff filed the First Amended and Supplemental Complaint ("Amended Complaint" or "Am. Compl.") at issue in this Memorandum and Order on August 22, 2008, naming the above-captioned Defendants.

providing that the parties to the Agreement shall submit to the exclusive jurisdiction of the New York courts in the event of any litigation related to the Agreement.

Plaintiff alleges that Defendants Groupe Canal+ and Canal+ France merged TPS with its sole competitor, CanalSatellite S.A. ("CANALSAT"), and that CANALSAT was renamed "Canal+ Distribution" after the merger. (Am. Compl. ¶ 11.) Plaintiff alleges that Canal+ Distribution is bound by the 1996 Agreement between Plaintiff and TPS as the successor-in-interest to TPS, (id. ¶¶ 11, 64) and that Plaintiff is entitled to compensatory damages for Defendant's breach of the Agreement. Plaintiff alleges that Defendants Canal+ France and Groupe Canal+ intentionally and deliberately induced TPS to repudiate and/or breach its Agreement with Plaintiff, and that Plaintiff is entitled to compensatory and punitive damages from those Defendants for tortious interference with contract.

Now before the Court is Defendants' Motion to Dismiss MGM's First Amended and Supplemental Complaint pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2) is DENIED. Defendants' Motion to Dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED as to Plaintiff's breach of contract claim

against Canal+ Distribution and GRANTED as to Plaintiff's claim for tortious interference with contract against Defendants Canal+ France and Groupe Canal+.

I. BACKGROUND

The following facts alleged in the First Amended and Supplemental Complaint in 07 Civ. 2918 (DAB) ("Amended Complaint" or "Am. Compl.") are assumed to be true for purposes of this Motion to Dismiss.

Plaintiff MGM is a corporation organized under the laws of the State of Delaware, with its principal place of business in Los Angeles, California. (Am. Compl. ¶ 10.) MGM is an independent, privately-held motion picture, television, home video, and theatrical production and distribution company which owns a library of modern films of approximately 4,000 titles, and over 10,200 episodes of television programming. (Id. ¶ 17.) As part of its business, MGM licenses the films and television episodes in its library for display and transmission in a variety of media. (Id. ¶ 18.) To that end, MGM enters into agreements with the owners of broadcast, cable, and satellite television networks in countries around the world that operate pay television ("Pay TV") and pay-per-view ("PPV") services. (Id.) TPS Société en Nom Collectif ("TPS"), a French satellite

television network providing Pay TV and PPV services in France, French overseas departments and territories, and French-speaking portions of other countries (the "Territory") was formed in France at the end of 2006. (Id. ¶ 1.) Until TPS was created, there was only one satellite television platform operating within the Territory, an entity named CanalSatellite S.A. ("CANALSAT"). (Id. ¶ 20.) TPS was created to operate a digital satellite television service that would compete with CANALSAT within the Territory. (Id. ¶ 24.) At the time of its formation, TPS was owned by a consortium of French and Luxemburg media businesses, and was managed by a separate entity, TPS Gestion, which was owned by the same consortium. (Id. ¶ 25.)

Plaintiff alleges that TPS needed quality American motion picture and television series content to compete with CANALSAT, and approached MGM to supply that content. (Id. ¶ 27.) To that end, on November 15, 1996, TPS entered into an agreement with MGM (the "Agreement"). (Id. ¶ 1.) The Agreement consisted of an "Overall Agreement" containing general terms and conditions, and five annexes setting forth specific term sheets, denominated "Annex A" through "Annex E." (Id. ¶ 28, Ex. 1.)[2] Under the Annexes, MGM licensed to TPS the exclusive Pay TV and PPV rights

[2] Only Annex A, Annex B, and Annex C (the "Annexes") are relevant to this litigation. (Id.)

in the Territory to certain motion pictures and television movies and programs, in return for which TPS agreed to pay MGM license fees based upon contractually-specified formulas. (Am. Compl. ¶ 29.) The initial term ("Initial Term") of each of the Annexes was five years, starting on January 1, 1997 and running through December 31, 2001. (Id.) The Annexes contained a variety of conditions under which the Initial Term could be extended for an additional five years, denominated the "Extended Term". (Am. Compl. ¶ 31.)

The Agreement contained a clause whereby the parties to the Agreement agreed to submit to the jurisdiction of courts in New York. Specifically, the clause stated:

> Governing Law/Venue: This Agreement . . . will be governed in all respects by the laws of the State of New York. Each of the parties hereby irrevocably and unconditionally submits itself and its property in any legal action or proceeding relating to this Agreement . . . or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the Courts of New York (whether State or Federal) . . .

(Agreement ¶ 11.)

MGM alleges that, when negotiating the Agreement with TPS, Plaintiff was concerned that TPS would not be able to compete effectively, and would eventually be acquired by CANALSAT, creating a monopoly of satellite television services in the

Territory. (Id. ¶ 32.) Plaintiff alleges that MGM was concerned that if it entered into an exclusive output agreement with TPS, and TPS were later acquired by CANALSAT, MGM could be frozen out of an output agreement relationship with the successor entity, and that to protect its long-term interests, MGM insisted that the Agreement with TPS allow MGM to extend the output terms in the event of an acquisition of TPS by a competitor. (Id. ¶ 33.)

To that end, each of the Annexes to the Agreement contained a controlling provision that:

> ". . . in the event that [TPS] is the subject of a Merger during the Initial Term (regardless whether such Merger is consummated during or after the Initial Term) with an entity or an Affiliate of an entity, provided that such entity or Affiliate is in the business of operating or Controlling any digital television distribution platform, then [MGM] shall have the right in its sole election to extend the Initial Term for an Extended Term. In the event that there is an Extended Term pursuant to the provisions herein, then the terms and conditions contained in this Term Sheet shall apply for such Extended Term."

(Id.) The term "Merger" was defined as:

> "[A]ny sale of assets or shares, joint venture, distribution or liquidation, contribution, merger, spinof [sic], licensing arrangement, joint marketing or cooperative arrangement or other agreement that has the effect of directly or indirectly transferring from [TPS] to any other entity which is in the business of operating a digital platform all or a significant interest in or control of TPS or its major assets (i.e., the assets which are together indispensable for TPS to carry-out its activities as a digital platform operator)."

(Id. ¶ 34.) MGM and TPS began performance under the Agreement and Annexes on January 1, 1997. (Id. ¶ 35.)

In July 1999, MGM and TPS entered into a First Amendment of the 1996 Agreement (the "1999 Amendment"), which extended the output terms of the Annexes of the Agreement for an Extended Term of five years, commencing on January 1, 2002 and terminating on December 31, 2006. (Am. Compl. ¶ 36.) The 1999 Amendment provided that MGM could further extend the terms the Agreement (including the Annexes) and the 1999 Amendment in the event of a Merger between TPS and CANALSAT. Specifically, Paragraph I(2)(a) of the Amendment provided that

> "In the event (and only in such event) of a Merger, consolidation, or reorganization between TPS and Canal + which results in a unified holding, whether direct or indirect, in the hands of a single entity or group of shareholders, of the premium Pay TV service of Canal + . . . and the Premium Pay TV Service of TPS . . . MGM shall have the right to extend the Term of Annex A for an additional five (5) Years beyond the Extended Term thereof ("Pay Merger Extension")."

(Id. ¶ 37; see 1999 Amendment ¶ I(2)(a), at Am. Compl., Ex. 2.). Paragraph II(2)(a) of the Amendment likewise provided:

> "In the event (and only in such event) of a Merger, consolidation, or reorganization between TPS and Canal + which results in a unified holding, whether direct or indirect, in the hands of a single entity or group of shareholders, of the Canal+ PPV service . .. and the TPS PPV service . . . MGM shall have the right to extend the Term of Annex B for an additional five (5) Years beyond the Extended Term thereof ("PPV Merger Extension")."

(Am. Compl. ¶ 38; see 1999 Amendment ¶ II(2)(a), at Am. Compl., Ex. 2.).

In January 2006, the owners of TPS and the owner of CANALSAT, Groupe Canal+, announced in a joint press release that they had signed an "industrial agreement" under which the satellite television operations of TPS and CANALSAT would be combined, and the shares of TPS transferred to a new entity that would be formed and controlled by Groupe Canal+. (Am. Compl. ¶ 40.) On August 31, 2006, the Ministry of the Economy announced its authorization of the merger, and the Chairman of the Board of Groupe Canal+ announced publicly that the TPS-CANALSAT merger would be formally consummated in November 2006. (Id. ¶¶ 40 & 55.) Plaintiff alleges that prior to January 1, 2007, the owners of TPS and Groupe Canal+ undertook corporate restructuring of both entities necessary to effect the merger, shifted the exercise of control of TPS to Groupe Canal+, and entered into joint marketing and cooperative arrangements by which Groupe Canal+ directly or indirectly acquired a significant interest in or control of TPS or its major assets. (Id. ¶¶ 43-45.)

On September 28, 2006, MGM sent a letter notice to TPS that it would exercise its merger extension options under the 1999 Amendment. (Id. ¶ 47, Ex. 3.) TPS responded in a letter dated October 10, 2006 that it did not believe MGM "to be entitled at

this time" to exercise its options. (Id. ¶ 48, Ex. 4.) On November 14, 2006, Groupe Canal+ announced that the formal consummation of the TPS-CANALSAT merger would be postponed to the beginning of January 2007. (Id. ¶ 59.) Additional letters were exchanged between the parties, and on December 20, 2006, MGM sent a letter to TPS reiterating that Plaintiff "has exercised" its merger extension options, and insisting that all conditions precedent to MGM's exercise of said options had occurred. (Id. ¶ 53, Ex. 9.) On January 4, 2007, the merger between TPS and CANALSAT was formally approved. (Id. ¶ 59.) Plaintiff alleges that from January 1, 2007 to the date MGM filed its Amended Complaint, MGM has been ready, willing, and able to perform its obligations under the Agreement, but that TPS and Canal+ Distribution have failed and refused to perform TPS' obligations under the Agreement. (Id. ¶ 62.) Plaintiff alleges, upon information and belief, that this failure and refusal to perform has been at the direction of Groupe Canal+. (Id.)

Plaintiff alleges that Defendant Canal+ Distribution is the successor-in-interest to TPS under the Agreement between TPS and MGM. (Id. ¶ 12.) Plaintiff alleges that Defendant Canal+ France, as TPS Gestion's sole and managing partner, caused TPS Gestion to dissolve in November 2007, as a result of which Canal+ France became the successor-in-interest to TPS Gestion. (Id.)

Plaintiff alleges that Canal+ France now owns 100% of the shares of Canal+ Distribution. (Id.) Plaintiff alleges further that Defendant Groupe Canal+ owned a direct or indirect controlling interest in TPS and TPS Gestion before they ceased to exist, and that Groupe Canal+ currently owns 65% of the shares of Canal+ France and a direct or indirect controlling interest in Canal+ Distribution. (Id. ¶ 13.)

II. DISCUSSION

A. Defendants' Motion to Dismiss for Lack of Personal Jurisdiction under Rule 12(b)(2)

Defendants first move to dismiss the Amended Complaint for lack of personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(2). Defendants argue that because they were not signatories to the 1996 Agreement, which contained the forum selection clause designating New York as the forum for litigation of disputes, they cannot be bound by the Agreement's choice of forum. (Memorandum in Support of Defendants' Motion to Dismiss ("Defs' Memo.")[3] at 9; Defendants' Memorandum in Support of Motion to Dismiss Plaintiff's First Amended and Supplemental Complaint

[3] Defendants Canal+ France and Groupe Canal+, and former Defendants TPS Gestion and TPS initially moved to dismiss the Complaint on June 8, 2007. Plaintiff filed its Amended Complaint on August 22, 2008. Defendants filed the instant Motion to Dismiss the Amended Complaint on October 20, 2008, and rely on both sets of motion papers to support it.

("Defs' Am. Memo.") at 5.) Defendants submit that there is no other basis for personal jurisdiction over them in this Court because they have insufficient contacts with New York to establish personal jurisdiction, and therefore, dismissal of the Complaint against them under Rule 12(b)(2) is appropriate.

Courts typically consider a defendant's jurisdictional motions before considering any other type of motions. See Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 94 (1998) ("'[w]ithout jurisdiction the court cannot proceed at all in any cause'") (quoting Ex parte McCardle, 74 U.S. 506, 514, 19 L. Ed. 264 (1868)). In deciding a pretrial motion to dismiss for lack of personal jurisdiction "a district court has considerable procedural leeway." Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981) (citations omitted). The court may "determine the motion on the basis of affidavits alone or it may permit discovery in aid of the motion; or it may conduct an evidentiary hearing on the merits of the motion."[4] Id. Plaintiff ultimately bears the burden of establishing personal jurisdiction by a preponderance of the evidence, either at an

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[4] After Defendants filed their original Motion to Dismiss, Plaintiff requested leave to cross-move for jurisdictional discovery on July 6, 2007. The Court denied that request on July 12, 2007. Plaintiff has, in its opposition papers to the instant Motion, requested that the Court permit jurisdictional discovery before dismissing the Complaint under Fed. R. Civ. P. 12(b)(2).

evidentiary hearing or at trial, "[b]ut where the issue is addressed on affidavits, all allegations are construed in the light most favorable to the plaintiff and doubts are resolved in the plaintiff's favor." A.I. Trade Fin., Inc. v. Petra Bank, 989 F.2d 76, 79 (2d Cir. 1993). "A plaintiff facing a Fed. R. Civ. P. 12(b)(2) motion to dismiss made before any discovery need only allege facts constituting a prima facie showing of personal jurisdiction." PDK Labs, Inc. v. Friedlander, 103 F.3d 1105, 1108 (2d Cir. 1997).

Defendants do not dispute that the original parties to the Agreement, MGM and TPS, were bound by its forum selection clause. (See Defs.' Am. Memo. at 5.) Defendants argue instead that they cannot be bound by the forum selection clause because they were not signatories to the Agreement. (Id.) Under New York law, a signatory to a contract may invoke a forum selection clause against a non-signatory if the non-signatory is "closely related" to one of the signatories such that "enforcement of the forum selection clause is foreseeable by virtue of the relationship between the signatory and the party sought to be bound." Direct Mail Prod. Servs. Ltd. v. MBNA Corp., 2000 WL 1277597, *3 (S.D.N.Y. 2000) (internal quotation marks and citation omitted). "A non-party is 'closely related' to a dispute if its interests are 'completely derivative' of and 'directly related to, if not

predicated upon' the signatory party's interests or conduct." Cuno, Inc. v. Hayward Indus. Prods., Inc., 2005 WL 1123877, at *6 (S.D.N.Y. May 10, 2005) (quoting Lipcon v. Underwriters at Lloyd's, London, 148 F.3d 1285, 1299 (11th Cir. 1998)). A successor to a signatory to a forum selection clause is a closely related entity that may invoke the clause against another signatory party. Cfirstclass Corp. v. Silverjet PLC, 560 F.Supp.2d 324, 328-329 (S.D.N.Y. 2008) (citations omitted).

Plaintiff alleges that TPS was merged by Defendants Groupe Canal+ and Canal+ France with CANALSAT, that CANALSAT changed its name after that merger to Canal+ Distribution, and that Defendant Canal+ Distribution is the successor-in-interest to TPS under the Agreement with MGM. (Am. Compl. ¶ 11.) Plaintiff alleges further that Canal+ France owns 100% of the shares of Canal+ Distribution, (Id. ¶ 12) and that Groupe Canal+ owns 65% of the shares of Canal+ France and a direct or indirect controlling interest in Canal+ Distribution. (Id.) While the precise corporate relationships between the Defendants remain unclear at this early stage of the litigation, before any discovery has taken place, the facts alleged provide a sufficient basis for this Court to conclude that MGM may invoke the forum selection clause in its Agreement with TPS against Defendants as entities that are "closely related" to TPS under New York law. See

Cfirstclass Corp., 560 F.Supp.2d at 328-329. Defendants' Motion to Dismiss for lack of personal jurisdiction is DENIED.

B. Defendants' Motion to Dismiss for Failure to State a Claim under Rule 12(b)(6)

1. Legal Standard for a Motion to Dismiss

For a complaint to survive dismissal under Rule 12(b)(6), the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility," the Supreme Court has explained,

> "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 556-57). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotation marks omitted). "In keeping with these principles," the Supreme Court has stated,

> "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."

Iqbal, 129 S.Ct. at 1950.

In ruling on a 12(b)(6) motion, a court may consider the complaint as well as "any written instrument attached to the complaint as an exhibit or any statements or documents incorporated in it by reference." Zdenek Marek v. Old Navy (Apparel) Inc., 348 F.Supp.2d 275, 279 (S.D.N.Y. 2004) (citing Yak v. Bank Brussels Lambert, 252 F.3d 127, 130 (2d Cir. 2001) (internal quotations omitted)).

2. Breach of Contract

Plaintiff alleges that Defendant Canal+ Distribution, as the successor-in-interest to TPS, breached the 1996 Agreement with MGM by refusing to extend the output terms of the Agreement subsequent to the alleged merger between TPS and CANALSAT. (Am. Compl. ¶ 65.) Defendants argue that Plaintiff has failed to state a claim for breach of contract because the condition precedent to the extension of the contract under the 1999

Amendment - "a Merger . . . which results in a unified holding" of the services of TPS and CANALSAT - did not take place during the term of the Agreement as extended by the 1999 Amendment.

In New York, a claim for breach of contract must allege: (1) the existence of a contract; (2) that claimant has performed his or her obligations under the contract; (3) that defendant failed to perform his or her obligations thereunder; and (4) that damages resulted to the plaintiff. W.B. David & Co., Inc. v. DWA Communications, Inc., 2004 WL 369147 at *2 (S.D.N.Y. 2004); Global Intellicom, Inc. v. Thomson Kernaghan & Co., 1999 WL 544708, at *18 (S.D.N.Y. 1999). "In pleading these elements, a plaintiff must identify what provisions of the contract were breached as a result of the acts at issue." Wolff v. Rare Medium, Inc., 171 F.Supp.2d 354, 358 (S.D.N.Y. 2001).

The Court's primary objective in reviewing a written contract is to give effect to the intent of the parties as revealed by the language they chose to use. Seiden Assocs. v. ANC Holdings, Inc., 959 F.2d 425, 428 (2d Cir. 1992). When the words of a contract convey a definite and precise meaning upon which reasonable minds could not differ, the contract may be interpreted by the court as a matter of law. See id. at 429. However, "if a contract is ambiguous as applied to a particular set of facts, a court has insufficient data to dismiss a

complaint for failure to state a claim." AXA Corporate Solutions Ins. Co. v. Lumbermens Mut. Cas. Co., 241 Fed. Appx. 718, 720 (2d Cir. 2007) (quoting Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co., 375 F.3d 168, 178 (2d Cir. 2004)). Ambiguous language is that which is "capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." Seiden, 959 F.2d at 428 (internal quotation marks and citation omitted). Conversely, language is not ambiguous when it has "a definite and precise meaning, unattended by danger of misconception in the purport of the [contract] itself, and concerning which there is no reasonable basis for a difference in opinion." Hunt Ltd. v. Lifschultz Fast Freight, Inc., 889 F.2d 1274, 1277 (2d Cir. 1989). If ambiguity is found, "it must be resolved - as well as all inferences drawn - against the moving party, which has the burden of establishing that no facts material to the outcome of the litigation are in dispute." Seiden, 959 F.2d at 429 (citation omitted).

Under the 1999 Amendment to the 1996 Agreement between MGM and TPS, "[i]n the event (and only in such event) of a Merger, consolidation, or reorganization between TPS and [CANALSAT] which

result[ed] in a unified holding, whether direct or indirect, in the hands of a single entity or group of shareholders, of" the services of TPS and CANALSAT, MGM had the option to extend the output terms of the Agreement for an additional five years. (See 1999 Amendment at Am. Compl., Ex. 2.) While it is undisputed that a formal merger between TPS and CANALSAT did not occur during the period covered by the 1999 Amendment, that is, before December 31, 2006, the parties to the Agreement and Amendment defined "Merger" as encompassing:

> "any sale of assets or shares, joint venture, distribution or liquidation, contribution, merger, spin-of [sic], licensing arrangement, joint marketing or cooperative arrangement or other agreement that has the effect of directly or indirectly transferring from [TPS SNC] to any other entity which is in the business of operating a digital platform all or a significant interest in or control of TPS or its major assets (i.e., the assets which are together indispensable for TPS to carry-out its activities as a digital platform operator)."

(Am. Compl. ¶ 34.) Plaintiff maintains that the parties' definition of Merger contemplates the transfer of control over TPS that took place within the period covered by the 1999 Amendment, and therefore, MGM was entitled to extend the output terms of the Agreement. Plaintiff argues further that, under the language of the 1999 Amendment, a "unified holding" of services, not of stock, was required to extend the Agreement, and control

over TPS' services was transferred during the contract period, before the formal merger. (Pl.'s Opp. at 17.)

Given the broad terms set by the parties to the 1996 Agreement, and the various stages of restructuring between TPS and CANALSAT alleged to have taken place within the contract period, the Court finds that the relevant terms of the Agreement and the 1999 Amendment are ambiguous as applied to the facts alleged in this case at this stage of the litigation. The Court therefore has insufficient data to dismiss the Amended Complaint for failure to state a claim for breach of contract, see AXA Corporate Solutions Ins. Co. v. Lumbermens Mut. Cas. Co., 241 Fed. Appx. 718, 720 (2d Cir. 2007), and Defendants' Motion to Dismiss on this ground is DENIED.

3. Tortious Interference With Contract

Plaintiff alleges that Defendants Canal+ France and Groupe Canal+ intentionally and deliberately induced TPS to repudiate or breach the Agreement with Plaintiff and are liable for tortious interference with that contract. Defendants counter that their economic interest in the Agreement defeats any claim to tortious interference with contract under New York law.

The elements of a tortious interference claim are: (1) that

a valid contract exists; (2) that a "third party" had knowledge of the contract; (3) that the third party intentionally and improperly procured the breach of the contract; and (4) that the breach resulted in damage to the plaintiff. Finley v. Giacobbe, 79 F.3d 1285, 1294 (2d Cir. 1996). Under New York law, "economic interest is a defense to an action for tortious interference with a contract unless there is a showing of malice or illegality." Foster v. Churchill, 87 N.Y.2d 744, 750 (N.Y. 1996).

Plaintiff has alleged nothing in the Amended Complaint to suggest that Canal+ France and Groupe Canal+ acted with any motivation beyond their own economic interest when furthering a merger between CANALSAT and TPS. Defendants' business strategy, without some additional showing of malice or illegality, does not rise to the level of tortious interference with contract. Defendants' Motion to Dismiss Plaintiff's tortious interference with contract claim against Canal+ France and Groupe Canal+ for failure to state a claim is GRANTED.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss the Complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) is DENIED. Defendants' Motion to Dismiss

pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED as to Plaintiff's breach of contract claim against Canal+ Distribution and GRANTED as to Plaintiff's claim for tortious interference with contract against Defendants Canal+ France and Groupe Canal+. Defendant Canal+ Distribution shall answer the sole remaining count of the Amended Complaint within thirty (30) days of the date of this Memorandum and Order.

SO ORDERED.

Dated: New York, New York

February 5, 2010

Deborah A. Batts

Deborah A. Batts
United States District Judge