UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S.A.R.L. GALERIE ENRICO NAVARRA AND ENRICO NAVARRA,

Plaintiffs,

v.

MARLBOROUGH GALLERY, INC., PHILIPPE KOUTOUZIS, and PIERRE LEVAI,

Defendants.

10-cv-7547 (KMW)

OPINION and AMENDED ORDER

KIMBA M. WOOD, District Judge:

Plaintiffs S.A.R.L. Galerie Enrico Navarra and Enrico Navarra (collectively, "Plaintiffs") filed the above-captioned lawsuit against Marlborough Gallery, Inc. ("Marlborough"), Marlborough's director for Asia, Philippe Koutouzis ("Koutouzis), and Marlborough's president, Pierre Levai ("Levai") (collectively, "Defendants") seeking damages for tortious interference with contract, and aiding and abetting the same.

Currently before the Court is Koutouzis's motion for summary judgment (Doc. No. 142), as well as Marlborough and Levai's joint motion for summary judgment (Doc. No. 146). For the reasons set forth below, Koutouzis's motion for summary judgment, as well as Marlborough and Levai's motion for summary judgment, are GRANTED. The Court vacates its Order dated March 31, 2017. (Doc. No. 185).

I. BACKGROUND

The parties appear to agree on few, if any, of the facts material to this dispute. The following background represents the parties' version of the events based on their Rule 56.1 submissions and the record evidence; the Court endeavors to note where a fact is disputed.

A. The Production Agreement between Navarra and Mr. Chu

In 2003, the Chinese-born French artist Chu Teh-Chun ("Mr. Chu") entered into a production agreement (the "Production Agreement") with the S.A.R.L. Galerie Enrico Navarra (the "Navarra Gallery"), and the ceramics factory La Tuilerie, to produce ceramic plates. (Rosberger Dec. Ex. G). Under the Production Agreement, La Tuilerie was to reproduce 24 of Mr. Chu's original designs into limited editions, for a total of 1,152 ceramic plates (the "Plates"). Mr. Chu hand-painted each of the 24 original designs. (Pls. 56.1 ¶ 18, Defs.' 56.1 ¶ 18). The 1,152 Plates were to be divided among Mr. Chu, La Tuilerie, and the Navarra Gallery, to be exhibited and sold; Mr. Chu retained ownership of the 24 originals. La Tuilerie was scheduled to produce 240 Plates a year. The Navarra Gallery agreed to pay Mr. Chu a 14% royalty on Plates it sold, based on a minimum agreed-upon price, three times a year.

Before any of the 24 original plates could be reproduced into editions of 40 Plates, Mr. Chu needed to give his "*bons à tirer*," which is French for "okay to print"—his approval of the original Plates, that are then ready to be reproduced.

B. Agreement between Marlborough Gallery and Mr. Chu

On July 23, 2007, Mr. Chu signed an agreement with the Marlborough Gallery and Sèvres, a porcelain factory, to produce 57 hand-painted ceramic vases (the "Vases"). Mr. Chu painted on each of the Vases produced by Sèvres. (Pls. 56.1 ¶ 42, Defs.' 56.1 ¶ 42). Plaintiffs

first learned of the existence of the Vases from a magazine article in September of 2008. (Defs.' 56.1 ¶ 47).

C. Alleged Bad Faith Acts

Plaintiffs allege in the Amended Complaint that Defendants tortiously interfered with the Production Agreement by causing or encouraging Mr. Chu to violate that Agreement. Plaintiffs claim they suffered financial, reputational, and emotional damage as a result. (Amended Complaint ¶ 82).

During this time, Plaintiffs allege, Defendants engaged in a campaign with Mr. Chu to discredit the Plates. (Defs.' 56.1 ¶ 50). This campaign included four significant actions by Mr. Chu, described more fully below: sending a cease and desist letter, filing a lawsuit, sending an email to the Christie's auction house in Hong Kong, and publishing an advertisement in a widely-read arts journal. Defendants do not contest that the events took place; rather, Defendants deny that they had any involvement in them.

First, Plaintiffs allege the following regarding the cease and desist letter: Defendant Koutouzis introduced Mr. Chu to William Bourdon, Koutouzis's friend, and, at times, his lawyer. (Defs.' 56.1 ¶ 55; Wallison Aff., Ex. 22 (Bourdon Tr. 54:15–23)). Bourdon sent Plaintiffs a cease and desist letter on or about February 19, 2007 (the "Cease and Desist Letter"). The Cease and Desist Letter states that the Navarra Gallery failed to pay Mr. Chu for the year 2006, failed to submit all the *bons à tirer*, and failed to produce a minimum number of 240 Plates each year. In the Cease and Desist Letter, Mr. Bourdon asks the Navarra Gallery to cease producing the Plates, cancel current and future exhibitions, and return the Plates that were not yet sold. (Rosberger Decl. Ex. H).

The parties dispute whether or not Defendants played any role in sending the Cease and Desist Letter. (Pls. 56.1 ¶ 60, Defs.' 56.1 ¶ 60). They disagree on whether Mr. Chu had legitimate concerns over the Navarra Gallery's performance under the Agreement, and whether Koutouzis introduced Bourdon to Mr. Chu in order to interfere with the Agreement. (Pls.' 56.1 ¶¶ 363–64).

Second, in April of 2007, Bourdon's law firm filed a lawsuit against the Navarra Gallery in France (the "French Lawsuit"), on behalf of Mr. Chu, alleging the Gallery's failure to perform its obligations under the Production Agreement. (Amended Complaint ¶ 71). The lawsuit made allegations similar to those stated in the Cease and Desist Letter, and sought judicial termination of the Production Agreement and damages for Plaintiffs' alleged breach. (*Id.*; Defs.' 56.1 ¶ 54). The Navarra Gallery responded to the French Lawsuit, arguing that it was frivolous, because the Gallery had complied with its obligations under the Production Agreement. The District Court of Paris issued a decision on March 30, 2012, holding that the Navarra Gallery was not at fault for its delay in paying royalties, in light of to Mr. Chu's eight-month delay in creating the artwork for the Plates.

Third, on May 16, 2008, Bourdon sent an email to the Hong Kong Christie's auction house (the "Christie's Email"), informing Christie's of the ongoing legal proceedings against Navarra. The Christie's Email claimed that certain plates were unauthorized, or perhaps inauthentic,[1] and demanded the removal of the 12 plates set to be auctioned on May 25, 2008. Christie's canceled the sale of the Plates. Defendants deny any involvement in prompting

[1] The Navarra Gallery contends that the Plates' authenticity was not in question, because each Plate appears to have a *bon-à-tirer* on the back. Defendants dispute who inscribed that label.

Bourdon to send the Christie's Email. (Defs.' 56.1 ¶ 68).

Finally, from October 3 through 16, 2008, an advertisement appeared in *Le Journal des Arts*, a trade publication for the European art world, questioning the authenticity of the Plates (the "Journal Ad").[2] Entitled "Warning from M. Chu Teh-Chun," the Journal Ad alerts readers to the French Lawsuit and the withdrawal of the Plates from Christie's in Hong Kong, due to a question of authenticity. (Pls.' 56.1 ¶ 290). The Journal Ad also warns any owners or sellers of the Plates to be suspicious of their authenticity. (*Id.*). Navarra described the effect of the Journal Ad as "disastrous," and stated that it rendered the Plates "unsalable." (Navarra Tr. 230:5–8; Amended Complaint ¶¶ 109, 117).

In the French Lawsuit, Plaintiffs brought counterclaims against Mr. Chu for disparagement, based on the Christie's Email and the Journal Ad. The District Court of Paris denied these counterclaims in its March 30, 2012 decision, and held that Plaintiffs had not shown a campaign of disparagement. (Rosberger Dec. Ex. Z). The Plaintiffs appealed the decision. The Court of Appeals of Paris affirmed the lower court's decision, and held, in part, that Mr. Chu could not be accused of disparagement; therefore, the disparagement claim was rightfully dismissed. (*Id.* Ex. BB).

In January of 2009, Mr. Chu suffered a stroke, and became unable to communicate. He died on March 26, 2014.

D. Procedural History

On October 4, 2010, Plaintiffs filed a Complaint in this Court against Marlborough

[2] Mr. Chu's son purchased the ad, which Bourdon's firm and Mr. Chu drafted. (Amended Complaint ¶ 100; Defs.' 56.1 ¶ 68).

Gallery, claiming attempted monopolization, false advertising and trade disparagement, defamation, product disparagement, and tortious interference with contract.[3] The Complaint was dismissed on June 21, 2011, for failure to state a claim of monopolization under the Sherman Act, failure to state a claim of false advertising and trade disparagement under the Lanham Act, and failure allege wrongdoing sufficient to support the ten claims under state law. *Navarra v. Marlborough Gallery, Inc.*, 820 F. Supp. 2d 477 (S.D.N.Y. 2011) (Jones, J.). The Court held that Plaintiffs had not pled a false statement or any wrongdoing by Marlborough to sustain a claim of defamation or product disparagement. The Court also held that Plaintiffs had not pled an underlying tort to sustain a claim of tortious interference with contract. *Id.* at 489.

On April 18, 2012, Plaintiffs filed the Amended Complaint in this action against Marlborough and also Koutouzis and Levai, (*see* Doc. 30), alleging (1) common law tortious interference with contract, and (2) aiding and abetting tortious interference with contract. Koutouzis argued that the claims were time-barred, and contested being added to the Amended Complaint. The Marlborough Gallery and Levai moved for a Judgment on the Pleadings, incorporating the arguments Koutouzis made in his Motion to Dismiss. On March 26, 2013, Koutouzis's Motion to Dismiss and Marlborough and Levai's Motion for Judgment on the Pleadings were denied. *Navarra v. Marlborough Gallery, Inc.*, 2013 WL 1234937 (S.D.N.Y. Mar. 26, 2013) (Wood, J.).

On April 9, 2013, Koutouzis filed a Motion for Reconsideration, or in the alternative, permission to file an interlocutory appeal. (Doc. 59). On October 18, 2013, this Court denied the

[3] Plaintiffs also alleged causes of action for conspiracy to commit defamation, tortious interference with contract, and product disparagement, as well as aiding and abetting defamation and product disparagement.

Motion for Reconsideration, underscoring its reasoning in the Motion to Dismiss, and denied permission to file an interlocutory appeal. *Navarra v. Marlborough Gallery, Inc.*, 2013 WL 5677045 (S.D.N.Y. Oct. 18, 2013) (Wood, J.).

Presently before the Court are two motions for summary judgment. Koutouzis's motion is GRANTED, and Marlborough Gallery and Levai's motion is GRANTED, as well.

II. LEGAL STANDARD

Summary judgment is appropriate where the materials in the record demonstrate that there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden lies with the moving party to establish that no genuine issue of material fact exists. *Miller v. Wolpoff & Abramson, L.L.P.*, 321 F.3d 292, 300 (2d Cir. 2003). When reviewing the record and considering a motion for summary judgment, the Court must "construe the evidence in the light most favorable to the nonmoving party," drawing reasonable inferences in its favor. *Jeffreys v. City of N.Y.*, 426 F.3d 549, 553 (2d Cir. 2005); *Tufariello v. Long Island R.R. Co.*, 458 F.3d 80, 85 (2d Cir. 2006).

Once the moving party has carried its burden, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts" to defeat a finding of summary judgment. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, the nonmoving party must also demonstrate "significant probative evidence" that a reasonable factfinder could use to decide in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). If the nonmoving party's evidence is "insufficient to establish an essential element of the nonmoving party's claim," the Court should grant summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986).

A fact issue is genuine if a "reasonable jury could return a verdict for the nonmoving party." *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003) (quoting *Anderson*, 477 U.S. at 248); *Bruce Lee Enterprises, LLC v. A.V.E.L.A., Inc.*, 2013 WL 822173, at *10 (S.D.N.Y. Mar. 6, 2013) (Wood, J.); *see also* Fed. R. Civ. P. 56(e). The Court's role is not to weigh the evidence or determine its truth, but instead determine whether there remain any genuine issues for trial. *Virgin Atl. Airways Ltd. v. British Airways PLC*, 257 F.3d 256, 262 (2d Cir. 2001).

III. KOUTOUZIS'S MOTION FOR SUMMARY JUDGMENT

Koutouzis has moved for summary judgment claiming, as he did in his Motion to Dismiss, that Plaintiffs' claims are time-barred, as the claims in the Amended Complaint adding Koutouzis as a defendant cannot relate back to the Original Complaint.

A. Navarra's Letters from 2010 Preclude the Amended Complaint from Relating Back

Koutouzis argues, as he did in his Motion for Reconsideration, that Plaintiffs could not have been mistaken about Koutouzis's involvement in the alleged scheme to induce Mr. Chu to breach the Production Agreement. In the opinion denying Koutouzis's Motion for Reconsideration, this Court rejected this argument and reaffirmed the decision to allow the claims to relate back to the Amended Complaint, following the Supreme Court's precedent in *Krupski. Navarra*, 2013 WL 5677045, at *3 (quoting *Krupski v. Costa Crociere S. p. A.*, 130 S. Ct. 2485 (2010)). Under Rule 15(c)(1)(C) of the Federal Rules of Civil Procedure, an amended complaint may relate back to date of the original complaint if there was "a mistake concerning the proper party's identity." Plaintiffs claimed that they were mistaken in understanding the Defendants' involvement in the alleged scheme, and this Court held that the Plaintiffs'

misunderstanding qualified as a "mistake" under Rule 15, therefore allowing the claims to relate back. *Navarra*, 2013 WL 1234937, at *6.

In his Motion for Reconsideration, Koutouzis cited, for the first time, letters that Navarra sent to Koutouzis in 2010, to rebut Plaintiffs' claim of "mistake" under Rule 15. He argued that these letters reflect Navarra's belief that Koutouzis was involved, before Plaintiffs filed their Original Complaint. This Court noted that Koutouzis's argument was "inappropriate to address in the first instance on reconsideration of a motion to dismiss," but welcomed Koutouzis to use the 2010 letters at summary judgment, or at trial. *Navarra*, 2013 WL 5677045, at *2–*3. The Court will now address these letters.

On January 19, 2010, Enrico Navarra wrote to Philippe Koutouzis, at the Marlborough Gallery, addressing Koutouzis in his individual capacity.[4] Navarra wrote:

> You demonstrated your interest in the Navarra gallery's commissioning of ceramics by personally following the different stages of the unreasonable quarrel Mr. Chu Teh Chun sought with us.
>
> You received real-time information from Mr. Yvon Chu, the artist's son, namely, through the document he conveyed to you on October 5, 2007. As a professional in the art world, you are therefore aware of the existence of 24 ceramic objects numbered F1 to F24....
>
> Calling into question the authenticity of ceramics commissioned by the Navarra gallery was therefore not reasonable.
>
> Nevertheless it has emerged that, on several occasions, you have told different stakeholders that the Navarra gallery had produced fake works.

[4] Although Navarra claims that at the time he sued Marlborough, he did not have enough information regarding Koutouzis's personal involvement in the wrongful acts alleged in the Original Complaint, the wording of Navarra's January 19, 2010 letter to Koutouzis belies that contention. Navarra's letter states, "[G]iven your role as a special assistant" at the Guimet Museum in Paris, "you were even authorized to issue press releases...in the museum's name." (Miodonka Dec. Ex. 7 at 1). Navarra's letter also asked, "Could you inform us whether **you or the Marlborough Gallery** of New York has an establishment or even an office in France?" (*Id.* at 3) (emphasis added).

(Miodonka Dec. Ex. 7 at 3).

On May 27, 2010, Navarra wrote to "Marlborough Gallery, For the attention of the Director for Asia, Mr. Philippe Koutouzis," stating:

> Thanks to the documents and works which we have discovered recently, we have managed to fill in gaps in the story of Marlborough Gallery New York's involvement, with your assistance and that of Mr. Jean-Paul Desroches, in its constant preying on the edition of ceramics produced by the Navarra Gallery, going as far as the organization of a smear campaign, in which you are playing a role that is more than significant.
>
> [I]t seems that Mr. Chu Teh-Chun was convinced that it would be expedient not to let the edition[s of Plates] decorated by the artist and financed by the Navarra Gallery coexist with the project you had *"prepared"* for him and which was to be carried out at Manufacture de Sèvres....
>
> Indeed, since 02/2007, Maître William Bourdon has acted on behalf of the artist to eliminate the "Navarra edition" and, in response to our strongest protests and justifications, took legal action, of which you were kept informed in real time by Mr. Yvon Chu.

(Miodonka Dec. Ex. 8 at 5).

These letters directly refute Navarra's claim that he was mistaken about Koutouzis's involvement, independent of Marlborough, in the alleged scheme to "question the authenticity of ceramics commissioned by the Navarra [G]allery." (Miodonka Dec. Ex. 7 at 3; Pls.' Opp'n to Koutouzis MSJ at 10). Navarra's accusations do not support his claim that he "harbor[ed] a misunderstanding about [Koutouzis's] status or role in the events giving rise to the claim at issue." *Krupski*, 560 U.S. at 549. Nor do the accusations support Navarra's statement that he did not know he "had a grievance with Mr. Koutouzis independent of [his] grievance with Marlborough." (Opp'n to Koutouzis MSJ at 10).

In sum, Plaintiffs do not meet their burden of establishing a "mistake" under Rule

15(c)(1)(C), which would allow the Amended Complaint to relate back to the Original Complaint, and thus Plaintiffs' claims against Koutouzis are time-barred. *See Navarra*, 2013 WL 5677045, at *3. Accordingly, Koutouzis's motion for summary judgment is GRANTED.

IV. MARLBOROUGH AND LEVAI'S MOTION FOR SUMMARY JUDGMENT

The Court grants Marlborough and Levai's Motion for Summary Judgment, because Plaintiffs have not offered any evidence that Marlborough or Levai deliberately induced a breach of the Production Agreement, and thus Plaintiffs' claims against Marlborough and Levai for tortious interference with contract and aiding and abetting tortious interference with contract fail as a matter of law.

A. Tortious Interference with Contract

To prove that Marlborough and/or Levai tortiously interfered with a contract, Plaintiffs must show: (1) the Navarra Gallery has rights under a valid contract with Mr. Chu; (2) Marlborough and Levai knew about the contract; (3) Marlborough and Levai acted deliberately in inducing Mr. Chu to breach the agreement, or were substantially certain that their actions would induce a breach; (4) Mr. Chu breached; (5) Mr. Chu would not have breached but for Marlborough and Levai's conduct; and (6) Plaintiffs sustained damages, as a result. Aiding and abetting tortious interference with contract requires evidence of "substantial assistance" to the tortfeasors. *P. Kaufmann, Inc. v. Americraft Fabrics, Inc.*, 232 F. Supp. 2d 220, 224 (S.D.N.Y. 2002). With respect to the claim against Marlborough and Levai, Plaintiffs have failed to offer evidence that they deliberately induced a breach. Thus, Plaintiffs fail to state a claim against Marlborough and Levai for tortious interference with contract.

B. Plaintiffs' Proof of Deliberate Inducement

Plaintiffs present four disjointed pieces of evidence to claim that Marlborough and Levai deliberately maligned the Navarra Gallery and discredited the Plates; Plaintiffs allege that Marlborough and Levai's actions caused Mr. Chu to breach his contract with the Navarra Gallery in two ways: (1) by inducing Mr. Chu to publicly deny the authenticity of the Plates, and (2) by inducing Mr. Chu to contract with Marlborough to create and sell the Vases, which Plaintiffs contend violates certain exclusivity restrictions in the Production Agreement.[5] These actions allegedly rendered the Plates valueless. Plaintiffs claim that they suffered financial and reputational damages as a result of this campaign. (Amended Complaint ¶ 117, 123).

The four pieces of evidence, described more fully below, are: (1) an email from Koutouzis to Levai, in which Koutouzis says that he referred Mr. Chu to Bourdon, Koutouzis's friend and lawyer; (2) the fact that an undated draft of the Cease and Desist Letter was found in Marlborough's files; (3) the fact that Koutouzis was copied on an email from Mr. Chu's son to Bourdon; and (4) a list of phone calls among Koutouzis, Bourdon, and Mr. Chu's family.

First, Plaintiffs cite an email from Koutouzis to Levai, in which Koutouzis states that he looked at the Production Agreement, noticed a potential "flaw" in that Agreement, and referred Mr. Chu to Bourdon. (Wallison Aff. Ex. 13). Plaintiffs contend that this is evidence of Defendants' plan to tortiously interfere with the Production Agreement. Plaintiffs claim that

[5] Plaintiffs have changed their theory as to how Defendants tortiously interfered with the Production Agreement. (*See* Marlborough and Levai Reply at 9–10). In the Amended Complaint, Plaintiffs argued that the Defendants' scheme was to discredit the Plates, to bolster the market for the Vases. Plaintiffs failed to allege that Mr. Chu breached the Production Agreement, which is required to satisfy the elements of a tortious interference with contract claim. Now, in the Opposition to Marlborough and Levai's Motion for Summary Judgment, Plaintiffs claim that the Defendants' plan was to purchase and resell all of the Plates. They argue that this caused Mr. Chu to breach the underlying Production Agreement, when he caused the Christie's Email to be sent.

Koutouzis recruited Bourdon, who authored the Cease and Desist Letter, filed the French Lawsuit, authored the Christie's Email, and authored the Journal Ad. However, the mere introduction to a lawyer, after having noticed a potential "flaw" in the Production Agreement, does not suffice to show that Marlborough and Levai enlisted Bourdon to instigate their campaign against the Navarra Gallery.

Second, Plaintiffs found an annotated draft of the Cease and Desist Letter in Marlborough's files, without a date.[6] This has little, if any, probative value.

Third, Plaintiffs found *one* email that they contend supports their claim that Defendants were behind the effort to breach the Production Agreement: Mr. Chu's son copied Koutouzis on an email to Bourdon, attaching images of the 24 creations used to create the Plates. (Rosberger Dec. Ex. FF).[7] The email contains no text supporting Plaintiffs' claim.

Fourth and finally, Plaintiffs point to Koutouzis's phone records, which Plaintiffs claim show a pattern of calls among Koutouzis, Bourdon, and Mr. Chu's son. Plaintiffs argue that the "sequence and timing of calls" are suspicious, because Koutouzis called Bourdon often before or after he called Mr. Chu's son. These calls are contemporaneous with the Cease and Desist Letter, the French Lawsuit, and the Journal Ad. (Opp'n to Marlborough and Levai at 9–11).[8] The fact that Koutouzis was in frequent contact with both Bourdon and Mr. Chu's family does not suggest

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[6] Defendants point out the possibility that they received the document "long after it was sent or even after the commencement of this action." (Levai Aff. ¶¶ 16–19).

[7] Plaintiffs allege that Mr. Chu's son, Bourdon, and Koutouzis did not produce their emails in full, but never objected to that production.

[8] In his deposition, Bourdon states that he met with Mr. Chu only in the company of Mr. Chu's sons or wife; that no third party ever paid for his representation of Mr. Chu; and that he never discussed with Defendants his representation of Mr. Chu, whom Bourdon found to be perfectly competent. "[A]s a lawyer who's been practising [sic] for 35 years, [if] I had let a third party intervene in the handling of a case, that would have been against my professional oath and/or my obligations." (Bourdon Tr. 17:21–24).

that the Marlborough Gallery, Levai, and Koutouzis were behind the campaign to induce a breach.

This circumstantial evidence, taken as a whole, fails to provide sufficient support for the inference that Marlborough and Levai either knew that their actions were certain, or substantially certain, to induce a breach, or that they acted with the primary purpose of inducing a breach. *See Union Carbide Corp. v. Montell N.V.*, 944 F.Supp. 1119, 1137 (S.D.N.Y.1996) (Scheindlin, J.) (quoting the Restatement (Second) of Torts § 766, comment j (1979)); *see also High Falls Brewing Co., LLC v. Boston Beer Corp.*, 852 F. Supp. 2d 306, 311–12 (W.D.N.Y. 2011) (Siragusa, J.).

Plaintiffs contend that all that is required to prove deliberate inducement is to show either that Defendants had advised Mr. Chu "on how to attack the authenticity of the Plates," or alternatively, "offered him a more attractive deal for selling the Plates." (*Id.* at 16).[9] Plaintiffs are wrong. The evidence they cite does not render plausible Plaintiffs' claim that Marlborough or Levai instructed Mr. Chu on how to attack the authenticity of the Plates. None of the evidence explains why Marlborough or Levai would help discredit the Plates if they wished to offer Mr. Chu a more attractive deal.

These disjointed pieces of evidence—Koutouzis introducing Bourdon to Mr. Chu, the a draft of the Cease and Desist Letter found in Marlborough's files, an email to Bourdon copying Koutouzis, and the various documentations of Koutouzis's communications with Bourdon and Mr. Chu's family—are not sufficient to support a claim that Marlborough and Levai tortiously

[9] Plaintiffs have not presented evidence that Marlborough offered Mr. Chu a "more attractive deal" on the Plates; Plaintiffs merely speculate that Marlborough was interested in the Plates. (Opp'n to Marlborough and Levai MSJ at 4–7).

interfered with Plaintiffs' Production Agreement. As the Supreme Court has held: "if the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Azurite Corp. v. Amster & Co.*, 52 F.3d 15, 19 (2d Cir. 1995) (quoting *Anderson*, 477 U.S. at 249–50) (citations omitted).

For the reasons stated above, Plaintiffs' claims against Marlborough and Levai for tortious interference with contract and aiding and abetting tortious interference with contract fail, as a matter of law.

IV. CONCLUSION

For the foregoing reasons, Koutouzis's Motion for Summary Judgment and Marlborough and Levai's Motion for Summary Judgment are GRANTED.

The Court vacates its March 31, 2017 Order. (Doc. No. 185). This opinion resolves Docket Nos. 142, 146, 173, and 176. The Clerk of Court is directed to close this case. All pending motions are moot.

SO ORDERED.

Dated: New York, New York
April 5, 2017

Kimba M. Wood

THE HON. KIMBA M. WOOD
United States District Judge