SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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WARNERMEDIA DIRECT, LLC,

Plaintiff,

- v -

PARAMOUNT GLOBAL, SOUTH PARK DIGITAL STUDIOS LLC, and MTV ENTERTAINMENT STUDIOS

Defendants.

INDEX NO. 651001/2023

MOTION DATE 05/31/2024

MOTION SEQ. NO. MS 003

DECISION + ORDER ON MOTION

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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 94, 95, 96, 97, 98, 99, 100, 115, 116, 118, 119, 120, 121, 122, 123

were read on this motion to/for PARTIAL SUMMARY JUDGMENT (AFTER JOINDER).

Plaintiff WarnerMedia Direct LLC (plaintiff or WarnerMedia) brings this action against defendants Paramount Global (Paramount), MTV Entertainment Studios (MTV, and together with Paramount, Paramount/MTV), and South Park Development Studios LLC (SPDS) in connection with defendants' purported repudiation of plaintiff's contractual streaming rights to the popular animated comedy series *South Park* (NYSCEF # 1, Complaint). This court previously granted defendants' motion to dismiss to the extent that two of plaintiff's five claims were dismissed (NYSCEF # 70, Order dated 11/13/23). Plaintiff's surviving claims are (1) breach of contract against SPDS, (2) tortious interference with contract against Paramount/MTV, and (3) unjust enrichment against Paramount/MTV. Presently before the court is Paramount/MTV's motion for partial summary judgment pursuant to CPLR 3212 to dismiss plaintiff's unjust enrichment claim as duplicative of its breach of contract and tortious interference claims, and for failure to allege all essential elements.

Oral arguments were heard on this motion on December 10, 2024. Based on the parties submissions and oral arguments, Paramount/MTV's motion for partial summary judgment is denied.

Facts[1]

The undisputed facts are simple. On October 22, 2019, plaintiff and nonmoving defendant SPDS entered a binding Term Sheet giving plaintiff the right and license to stream certain episodes of *South Park* on plaintiff's HBO Max streaming service (NYSCEF # 120, Pltf's Response to Undisputed Facts, ¶¶ 1, 3-4; *see also* NYSCEF # 99, Term Sheet). Specifically, the Term Sheet gave plaintiff the right to stream all "long-form episodes" from the forthcoming Seasons 24 through 26 provided those episodes met certain premiering requirements, and the "option but not obligation" to stream any Season 24-26 episode that did not meet the "long-form" or premiering requirements (NYSCEF # 99 ¶ 3). There is no dispute that Paramount/MTV are not parties to the Term Sheet.

While Paramount/MTV's Statement of Undisputed Facts also repeatedly states there is no dispute that *plaintiff makes certain allegations* (*see e.g.* NYSCEF # 100 ¶ 13 ["WarnerMedia alleges that the Term Sheet . . ."]; *id.* ¶ 14 ["WarnerMedia alleges that SPDS has breached the Term Sheet . . . "]; *see also id.* ¶¶ 16-22), it does not appear that Paramount/MTV endorses the factual content of the allegations; they merely accept that plaintiff made them.

This is where the disputes begin. Plaintiff makes multiple allegations that defendants deny but at this time have neither been proven nor disproven. As detailed in the court's prior order on motion to dismiss, plaintiff alleges that SPDS announced in 2019 that it was making three new seasons of 10 episodes each (Seasons 24-26) (NYSCEF # 70 at 2; NYSCEF # 22, Answer & Counterclaims, ¶ 24). SPDS then solicited bids for the exclusive right to stream those seasons plus all prior seasons (NYSCEF # 22 ¶ 25). Plaintiff had the winning bid and memorialized the agreement in a binding Term Sheet (*id.* ¶¶ 43-45). Plaintiff calculated its bid based on the assumption that there would be 10 new episodes per season (*id.* ¶¶ 36, 39). However, the Term Sheet did not mention how many episodes there would be per season, how to decide that content was part of Seasons 24-26, or how to recover should SPDS allow third-parties to stream content instead of plaintiff (*see* NYSCEF # 99, Term Sheet). The parties planned to draft a full contract that perhaps would have ironed out these wrinkles, but SPDS convinced plaintiff to stick with the Term Sheet (NYSCEF # 22 ¶ 45). Defendants deny all of this.

Plaintiff alleges that over the next several years SPDS took advantage of the Term Sheet's ambiguity to advance its own interests. For instance, plaintiff describes a series of events in which SPDS repeatedly changed its mind about

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[1] The below facts are taken from the Statements of Undisputed Facts (NYSCEF #s 100, 120, 123) and supporting documents. However, because this is a pre-discovery motion for summary judgment, there are only two sources of "undisputed" facts: a binding Term Sheet between plaintiff and non-moving defendant SPDS (NYSCEF # 99), and the allegations from the complaint that Paramount/MTV admitted in their answer (NYSCEF # 22). The motion is therefore very much on Paramount/MTV' terms.

whether two extra-long COVID-themed specials ("the COVID Episodes") were part of Seasons 24-26. SPDS first informed plaintiff in March 2020 that SPDS would not go forward with production of Season 24 due to the COVID pandemic (*id.* ¶ 53). SPDS nevertheless proceeded to make the two 50-minute-long COVID Episodes, each of which aired in late 2020 and early 2021 respectively (*id.* ¶ 54). Prior to airing, SPDS told plaintiff that the COVID Episodes were not part of Season 24 but were nevertheless "Licensed Content" (*id.* ¶ 55). Over a year later in or around October 2021, SPDS back-tracked and decided the COVID Episodes were part of Season 24 but would count as four (not two) of the ten episodes for the season (*id.* ¶¶ 70, 77-78). Two months later, SPDS changed its mind again and decided the COVID Episodes would be the *only* episodes in Season 24 (*id.* ¶ 86). Defendants deny all of this.

Plaintiff alleges SPDS undermined the Term Sheet in other ways. For one, SPDS slashed the episode counts for Seasons 25 and 26 from ten to six (*id.* ¶¶ 86, 90). At the same time, SPDS contracted with Paramount and MTV to produce more *South Park* content exclusively for streaming on the new Paramount+ streaming service (*id.* ¶¶ 64-71). SPDS followed through on that contract by producing four 50-minute-long special episodes (the Specials) similar in format and run-time to the COVID Episodes (*id.* ¶¶ 71, 91, 107-109). SPDS decided that these Specials were not part of Seasons 24-26 and thus did not give plaintiff the option to stream them. All the while, SPDS promised plaintiff that episodes of Seasons 24 through 26 were forthcoming (*id.* ¶¶ 57, 78, 86, 89-90). Defendants again deny all of this.

On February 24, 2023, plaintiff brought a complaint stating five causes of action against SPDS, Paramount, and MTV (NYSCEF # 1, Complaint). However, defendants moved to dismiss two of those causes of action pursuant to CPLR 3211, and by Decision and Order dated November 13, 2023, this court granted the motion (NYSCEF # 70). Plaintiff has three surviving causes of action: (1) breach of contract against SPDS based on SPDS's failure to make 10 episode's per season and instead creating and offering four extra-long Special episodes (the Specials) to Paramount and MTV instead of plaintiff; (2) tortious interference with contract against Paramount and MTV for causing SPDS to breach the Term Sheet; and (3) unjust enrichment against Paramount and MTV because they benefitted from streaming the Specials that rightfully should have been offered to plaintiff. At no point did defendants move to dismiss the unjust enrichment claim under CPLR 3211.

Based on the undisputed facts, Paramount/MTV now move for partial summary judgment on the unjust enrichment claim only. They argue that the unjust enrichment claim is duplicative of both breach of contract and tortious interference, or alternatively that plaintiff failed to allege the essential element of a benefit conferred at plaintiff's expense. Paramount/MTV first raised these arguments in a Commercial Division Rule 14 pre-motion letter requesting stay of discovery in order to file the present motion (*see* NYSCEF # 88, Paramount/MTV Letter May 6, 2024; NYSCEF # 90, Pltf's Letter May 6, 2024). Plaintiff opposed

because Paramount/MTV failed to raise these arguments in their earlier motion to dismiss as required under CPLR 3211(e)'s "Single Motion Rule," which prohibits multiple motions to dismiss (*see* NYSCEF # 92, Pltf's Response Letter May 10, 2024; *see also* CPLR 3211 [e] [Single Motion Rule]). The court denied the stay of discovery but granted Paramount/MTV's request to file the motion (*see* NYSCEF # 93, Conference Order May 15, 2024), which is addressed here.

Legal Standard

"The proponent of a motion for summary judgment must establish that there are no material issues of fact in dispute and that it is entitled to summary judgment as a matter of law" (*Mazurke v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]). Once a movant makes such a showing, the burden shifts to the opposing party to produce evidentiary proof sufficient to raise an issue of fact (*CitiFinancial Co (DE) v McKinney*, 27 AD3d 224, 226 [1st Dept 2006]).

Discussion

Paramount/MTV argue that the unjust enrichment claim is duplicative of the breach of contract claim because there is a valid and binding Term Sheet defining the relationship between the parties. Paramount/MTV further argue that the unjust enrichment claim is duplicative of tortious interference with contract because the two claims rehash one another and because plaintiff does not challenge the validity of the Term Sheet. Paramount/MTV argues that tortious interference and unjust enrichment cannot be pled in the alternative. Finally, Paramount/MTV argue that even if unjust enrichment is not duplicative, plaintiff nevertheless failed to allege all the elements of unjust enrichment. Specifically, plaintiff was required to plead that Paramount/MTV received a benefit at plaintiff's expense, but the only benefit alleged was that Paramount/MTV received payments from third-party subscribers and advertisers rather than from plaintiff.

Plaintiff opposes. Plaintiff first argues that this motion violates the Single Motion Rule. Plaintiff argues that Paramount/MTV's focus on plaintiff's allegations rather than documentary evidence reveals this to be a thinly disguised motion to dismiss. Plaintiff argues the motion should therefore be denied because it should have been brought as part of defendants' earlier-decided motion to dismiss. Plaintiff further argues that unjust enrichment is not duplicative of breach of contract because the parties dispute the scope of the Term Sheet and particularly whether the Specials are covered by its terms. Plaintiff also points to case law holding that breach of contract and unjust enrichment are not duplicative where, as here, Paramount/MTV are not parties to the Term Sheet. Plaintiff next argues that unjust enrichment is not duplicative of tortious interference given that the claims have different elements. Finally, plaintiff argues it has adequately alleged a benefit conferred at plaintiff's expense in the form of the right to stream the Specials and the resulting subscribers and advertising fees that should have gone to plaintiff.

Paramount/MTV reply that this court already rejected plaintiff's Single Motion Rule argument by allowing Paramount/MTV to file this motion over plaintiff's objection. As for the duplicative issue, Paramount/MTV argues that a dispute about the scope of the Term Sheet is, in fact, a contract dispute under the case law, making unjust enrichment duplicative of breach. Paramount/MTV also reply that plenty of other cases say unjust enrichment and breach are duplicative even where defendants are non-parties to the contract. Paramount/MTV also point out that tortious interference and unjust enrichment can be duplicative despite their differing elements. Finally, Paramount/MTV reiterate that third-party fees cannot be considered a benefit conferred at *plaintiff's* expense.

I. The Single Motion Rule

As a threshold matter, plaintiff argues that this motion violates the "Single Motion Rule" (CPLR 3211[e]) because it is merely a thinly-disguised motion to dismiss under CPLR 3211(a) (NYSCEF # 119, Pltf's Opp at 8). Plaintiff points out that Paramount/MTV "assert[] no material 'facts' except allegations from the Complaint and [] repeatedly assert[] that [p]laintiff's claim, as alleged, fails 'as a matter of law'" (*id.* at 8-9, quoting NYSCEF # 95, Paramount/MTV mol at 1-2, 6, 10). Paramount/MTV reply that the court already rejected this reasoning simply by allowing them to file this motion (NYSCEF # 122, Reply at 2, citing NYSCEF # 93).

On the law, this motion does not violate the Single Motion Rule, although it borders on inappropriate gamesmanship. Plaintiff is correct that Paramount/MTV's motion for summary judgment is a thinly-disguised CPLR 3211(a) motion to dismiss. Much of Paramount/MTV's Statement of Undisputed Facts fail to offer facts about the underlying events of the case and instead merely state that plaintiff made certain allegations (*e.g.* NYSCEF # 100 ¶ 13 ["WarnerMedia *alleges* that the Term Sheet . . ." (emphasis added)]; *id.* ¶ 14 ["WarnerMedia *alleges* that SPDS has breached the Term Sheet . . . " (emphasis added)]; *see also id.* ¶¶ 16-22). Most of Paramount/MTV's arguments challenge the sufficiency of these allegations rather than apply evidence to law (*e.g.* NYSCEF # 95 at 8 [discussing "the real thrust of WarnerMedia's *allegations*" (emphasis added)]; *id.* at 9 ["WarnerMedia's *claim* for unjust enrichment against Paramount 'simply rehashes' the *claim* for tortious interference" (emphasis added)]; *id.* at 10 ["in cases like this, where the plaintiff *alleges* the existence and the breach of an enforceable contract . . . the unjust enrichment claim must be dismissed as a matter of law" (emphasis added)]). Paramount/MTV even cite primarily to cases involving motions to dismiss, not summary judgment (*e.g. id.* at 10-11 [collecting cases about motions to dismiss duplicative unjust enrichment and breach of contract claims]). All of this indicates Paramount/MTV is trying to make a summary judgment mountain out of a motion to dismiss molehill despite already having made a motion to dismiss.

However, there is no legal authority for the premise that a summary judgment motion can violate the Single Motion Rule. The rule "only applies to motions to dismiss [under CPLR 3211(a)] and not to motions for summary judgment, even when the CPLR 3212 [summary judgment] motion asserts similar grounds" (*Massoumi v Ganju*, 227 AD3d 504, 504 [1st Dept 2024]; *see also Oakley v County of Nassau*, 127 AD3d 946, 946-947 [2d Dept 2015] ["Even though the defendant may not raise the defense of failure to state a cause of action in another CPLR 3211 (a) motion, 'it may be later raised in another form,' such as a summary judgment motion pursuant to CPLR 3212"]).

Additionally, plaintiff has not cited a single case in which a court converted a motion for summary judgment into a CPLR 3211(a) motion to dismiss. Three of plaintiff's cases are from other jurisdictions and in any event did not involve converting a summary judgment into a motion to dismiss (*see Lucido v Mancuso*, 49 AD3d 220, 227 [2d Dept 2008]; *In re Adelphia Commc'ns Corp.*, 376 BR 87, 98–99 [Bankr SDNY 2007] [cited for quote that what walks and quacks like a duck is a duck]; *BMC Indus., Inc. v Barth Indus., Inc.*, 160 F3d 1322, 1337 n 28 [11th Cir 1998] [same]). The one binding case is about multiple CPLR 3211(a) motions to dismiss, not a summary judgment following a motion to dismiss (*see Landes v Provident Realty Partners II, L.P.*, 137 AD3d 694 [1st Dept 2016] ["Given that defendants had the full opportunity to raise their current CPLR 3211(a) arguments on their original CPLR 3211(a) motion to dismiss, the IAS court correctly denied the motion as violative of the 'single motion rule' "). Indeed, even the statute itself only contemplates converting motions in the opposite direction (*see* CPLR 3211 [c] [treating motion to dismiss as motion for summary judgment]).

Thus, the Single Motion Rule does not technically prohibit this summary judgment motion.

II. Unjust Enrichment Claim as Duplicative of Breach of Contract Claim

Paramount/MTV, invoking the existence of the parties' Term Sheet, argues that plaintiff's unjust enrichment claim should be dismissed as duplicative of the breach of contract claim. However, whether the Term Sheet covers the dispute in issue needs to be addressed in determining this argument.

"The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in 'equity and good conscience' should be paid to the plaintiff" (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790 [2012], quoting *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]). However, "unjust enrichment is not a catchall cause of action to be used when others fail" (*id.*). "It is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff" (*id.*, citing *Markwica v Davis*,

64 NY2d 38 [1984], and *Kirby McInerney & Squire, LLP v Hall Charne Burce & Olson, S.C.*, 15 AD3d 233 [1st Dept 2005]). "Typical cases are those in which the defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled" (*id.*, citing *Clark–Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388-389 [1987] and others).

"While the existence of a valid and enforceable contract governing a particular subject matter ordinarily precludes recovery in quasi-contract for events arising out of the same subject matter, where there is a bona fide dispute as to the existence of a contract or where the contract does not cover the dispute in issue, plaintiff may proceed upon a theory of quantum meruit and will not be required to elect his or her remedies" (*IIG Capital LLC v Archipelago, L.L.C.*, 36 AD3d 401, 404-405 [1st Dept 2007], citing both *Clark–Fitzpatrick*, 70 NY2d at 388, and *Joseph Sternberg, Inc. v Walber 36th St. Assoc.*, 187 AD2d 225, 228 [1st Dept 1993]).

Whether a contract "covers the dispute in issue" is key to this motion. The case *Joseph Sternberg, Inc. v Walber 36th St, Associates* serves as a useful example of a contract that fails to cover the dispute. There, the plaintiff real estate broker and the defendant building owner entered into a contract providing that the broker plaintiff would earn a commission if he arranged to sell a building for at least $11.5 million (*Sternberg*, 187 AD2d at 226). The broker found a buyer, but then the buyer and the defendant owner conspired to deprive the broker of commission by selling at a lower price (*id.* at 227-228). The broker sued for unjust enrichment and breach of contract (*id.*). The trial court dismissed both claims because "the contract barred recovery of [any] commission" in unjust enrichment since it governed the dispute and only provided for commission upon sale of $11.5 million or more (*id.* at 227). The First Department reversed, finding that the contract did not include any provision expressly barring commission for lesser prices and was in fact "silent as to the plaintiff's entitlement to a commission in the event a sale occurred for a lesser price" (*id.* at 228).

In contrast, Paramount/MTV reply with two federal cases. The first is *RCA Trademark Management. S.A.S. v VOXX International Corp.* (2015 WL 5008762, *6-7, 2015 US Dist [SDNY Aug. 24, 2015, No. 14CV6294 (LTS/HBP)]). There, the counter-claim defendant assigned several trademarks to the counter-claim plaintiff, but then proceeded to grant licenses in those same trademarks to two non-parties (*id.* at *6). The plaintiff argued that unjust enrichment was not duplicative of breach of the assignment agreements because it was unclear whether these trademarks fell within the scope of the agreements (*id.* at *7). The District Court disagreed, finding that this "clearly 'arises out of the same subject matter' as [the] claims for breach of contract" because "[Plaintiff] would have no rights in [the] trademarks but for the . . . agreements . . . and [defendant] would have [no] obligation to refrain from licensing those marks in the absence of those agreements" (*id.*).

The second case Paramount/MTV point to is *Watson v Suffolk Federal Credit Union* (2022 WL 523543, *1, 2022 US Dist LEXIS 30786, *1 [ED NY, Feb 22, 2022, Ni, 20CV1531 (LDH/CLP)]). There, a customer and a bank entered a contract detailing the bank's policies on overdrafts (*id.*). The policy required charging an overdraft on each "item . . . drawn on an insufficient available account balance" (*id.*). At some point, the customer made a purchase with insufficient funds, and the non-party merchant attempted to process the transaction three separate times (*id.*). The bank charged three separate overdraft fees despite the fact that it was a single transaction (*id.*). The customer sued for unjust enrichment and breach of contract, arguing that the bank could not charge three fees for a single transaction (*id.* at *4-5). The bank argued that each attempt to process the transaction was a separate "item" and therefore was subject to a separate overdraft fee (*id.*). The district court concluded that both the unjust enrichment and breach of contract claims arose from the same question about the contractual interpretation of the word "item" in the contract, and therefore were duplicative (*id.* at *5).

Paramount/MTV argue that this case is exactly the same as *RCA* and *Watson.* Like *RCA*, plaintiff would have no license to stream *South Park* content but for the Term Sheet, and SPDS would have no obligation to refrain from licensing *South Park* content to third parties like Paramount/MTV in the absence of the Term Sheet. Like *Watson*, the entire dispute is about whether the Specials should be considered part of Seasons 24-26 as defined in the contract. However, Paramount/MTV do not cite any binding First Department or other New York state cases that rely on *RCA* or *Watson* or that use the same logic.

Contrary to Paramount/MTV's argument, there is a legitimate dispute over the scope of the Term Sheet and the scope of the issues in this case. Based on the *disputed* allegations, the critical issue is that after an extensive bidding process, plaintiff believed it was contracting for the exclusive right to stream all the then-announced *South Park* content coming out between 2019 and 2025 (as long as that content was part of Seasons 24-26). Plaintiff was then blind-sided when SPDS made content which SPDS claimed was not within Seasons 24-26. At the time of the Term Sheet and negotiations, the *only* content announced was Seasons 24 through 26, each with ten episodes (NYSCEF # 22 ¶¶ 24-25, 43-45). The parties then drafted a Term Sheet that did not clarify what counted as episodes of those seasons, how many episodes would be in each season, or whether disgorgement against any third-parties who received streaming rights would be appropriate (NYSCEF # 99 § 3). Plaintiff accepted SPDS' suggestion and agreed to treat the draft Term Sheet as the full contract despite this lack of clarity (NYSCEF # 22 ¶ 45).

As plaintiff alleges, taking advantage of the Term Sheet's ambiguity, SPDS (1) decided not to make 30 episodes for Seasons 24-26; (2) instead make Specials that they unilaterally and arbitrarily decided were not part of Seasons 24-26; and (3) give those episodes to Paramount/MTV. Paramount/MTV then unjustly

benefitted by getting to stream the Specials and reap any advertisers, subscribers, and other profits resulting from streaming those episodes, all without going through the same bidding process as everyone else. Of concern also is the back and forth by SPDS in fitting the COVID Episodes into the final episode count for Season 24.

In view of these disputed allegations, this case is more akin to *Sternberg*. (187 AD2d 225). There is an ambiguous contract (the Term Sheet) that is silent on vital details (how to decide what is in Seasons 24-26 and whether plaintiff can pursue disgorgement against third-parties who stream content before plaintiff). As such, the dispute is not properly addressed by the contract.

Given the ambiguity in the Term Sheet, parol evidence will likely be necessary to determine whether and how the Term Sheet applies—parol evidence that is unavailable at this early stage of litigation. Thus, summary judgment is denied as premature (*see* CPLR 3212 [f] [summary judgment is premature where it is clear that "facts essential to justify opposition may exist but cannot (yet) be stated"]).

Given the reasons for denying Paramount/MTV's motion for summary judgment on the unjust enrichment claim as duplicative of the breach of contract claim, plaintiff's argument about Paramount/MTV being non-parties to the Term Sheet, which Paramount/MTV disputes, will not be addressed on this motion. However, it is noted that the First Department's *most* recent cases held that there is no duplication where the unjust enrichment claim is brought against non-signatories to the contract (*compare Richmond Glob. Compass Fund Capital Mgt. GP, LLC v Nascimento*, 224 AD3d 558, 559 [1st Dept 2024]; *245 E. 19 Realty LLC v 245 E. 19 St. Parking LLC*, 223 AD3d 604 [1st Dept 2024] [ruling that unjust enrichment is not duplicative of breach of contract with non-signatories] *with Bd. of Managers of 15 Union Sq. W. Condominium v Azogui*, 220 AD3d 405, 405 [1st Dept 2023]; *Maor v Blu Sand Intern. Inc.*, 143 AD3d 579 [1st Dept 2016]; *Randall's Is. Aquatic Leisure, LLC v City of New York*, 92 AD3d 463, 464 [1st Dept 2012] [ruling unjust enrichment is duplicative even against non-signatories]).

III. Tortious Interference Claim as Duplicative on Unjust Enrichment Claim

For similar reasons, it is premature to determine whether unjust enrichment is duplicative of tortious interference with contract. It is true that "[a]n unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim" and that "unjust enrichment is not a catchall cause of action to be used when others fail" (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790 [2012]). Here, however, the two claims share little overlap. In the tortious interference claim, plaintiff claims Paramount and MTV actively convinced SPDS to breach the Term Sheet by failing to offer plaintiff the opportunity to stream the Specials, shrinking the episode counts for Seasons 24-26 from 30 episodes to significantly less, and diverting the Specials and other episodes to

Paramount and MTV (NYSCEF # 1 ¶ 127). In the unjust enrichment claim, plaintiff claims that whether or not Paramount and MTV induced a breach, they still received a benefit they should not in fairness retain: the right to stream the Specials (and the resulting profits).

To the extent the two claims may be pled in the alternative, there is no reason for plaintiff to elect between the two remedies at this stage. In the breach of contract context, plaintiff can plead in the alternative and does not have to "elect his or her remedies" (i.e., pick one of the claims) until summary judgment or trial (*see Wilmoth v Sandor*, 259 AD2d 252, 254 [1st Dept 1999]). However, even on summary judgment, unless the relevant facts are undisputed, plaintiff still does not have to elect remedies (*id.* [finding no election necessary where plaintiff had not brought the summary judgment motion and there was still a question of fact about the existence of an agreement]). There is no reason that same analysis should not apply to tortious interference with contract.

Because there are still disputed facts regarding the scope of the parties' relationships and the rights to the Specials, plaintiff is not required to elect between tortious interference and unjust enrichment at this stage. After discovery, when the facts are no longer in dispute, plaintiff can choose a claim.

IV. Sufficiency of the Unjust Enrichment Claim

Finally, Paramount/MTV argue that even if unjust enrichment is not duplicative of any claims, the claim should nevertheless be dismissed because plaintiff failed to plead the essential element that Paramount/MTV received a benefit *at plaintiff's expense*.

"To state a claim for unjust enrichment, a plaintiff must allege that: '(1) the [defendant] was enriched, (2) at [plaintiff's] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered' " (*Schroeder v Pinterest Inc.*, 133 AD3d 12, 26 [1st Dept 2015] [brackets in original], quoting *Georgia Malone & Co., Inc. v Rieder,* 19 NY3d 511, 516 [2012]).

Paramount/MTV argue that plaintiff fails to plead the second element because Paramount/MTV did not receive money directly from plaintiff, but instead received "fees paid by third-party subscribers and advertisers" (NYSCEF # 95 at 13). Paramount/MTV's argument is flawed. "It does not matter whether the benefit is directly or indirectly conveyed" by plaintiff (*Manufacturers Hanover Tr. Co. v Chem. Bank*, 160 AD2d 113, 117 [1st Dept 1990]). As long as defendant receives a benefit at plaintiff's expense, unjust enrichment has been pled.

Here, Paramount/MTV again define the dispute too narrowly. Paramount/MTV did not receive third-party fees in the abstract; Paramount/MTV received the right to stream the Specials, and people who wanted to watch or

advertise during the Specials gave Paramount/MTV money. That money would have gone to plaintiff if plaintiff were the one streaming the Specials. Thus, a benefit has been alleged.

Conclusion

For the forgoing reasons, it is hereby

ORDERED that defendants Paramount Global and MTV Entertainment Studios' Partial Motion for Summary Judgment dismissing the cause of action for unjust enrichment (Count 5) is denied; and it is further

ORDERED that defendants shall serve a copy of this Decision and Order with notice of entry on the Clerk of the Court in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page and on the court's website at the address www.nycourts.gov/supctmanh).

01/17/2025
DATE

MARGARET A. CHAN, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
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