

**S.A.R.L. Galerie Enrico Navarra v Marlborough
Gallery Inc.**

2025 NY Slip Op 34680(U)

December 8, 2025

Supreme Court, New York County

Docket Number: Index No. 153934/2019

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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

- v -

MARLBOROUGH GALLERY INC., ROSEMARY LEVAI
 Defendants.

INDEX NO. 153934/2019
MOTION DATE 05/30/2025,
 05/30/2025,
 06/03/2025
MOTION SEQ. NO. 007 007 008

**DECISION + ORDER ON
 MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 438, 444, 448, 449, 450, 451, 452, 453, 494, 507 were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 438, 444, 448, 449, 450, 451, 452, 453, 494, 507 were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 435, 436, 437, 445, 446, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 495, 508, 509, 510, 511, 512, 513, 514, 515, 516, 528, 529, 530 were read on this motion for SUMMARY JUDGMENT.

This action arises from a 2003 Production Agreement among Plaintiff S.A.R.L. Galerie Enrico Navarra (“Plaintiff” or “Navarra”), non-party artist the late Chu Teh-Chun (“Chu”), and non-party ceramics foundry La Tuilerie, by which Navarra paid Chu and La Tuilerie to create over a thousand pieces of ceramic plates (the “Plates”). Several years later, Chu accused Plaintiff of breaching the Production Agreement, and called into question the authenticity of the Plates, allegedly damaging the reputation of the Plates as well as Plaintiff’s ability to sell the Plates. Plaintiff claims that Chu’s conduct—and in particular his public airing of his complaints,

which purportedly blocked or hindered Navarra's sales of the Plates—was undertaken at the behest of Defendants Marlborough Gallery, Inc. (“Marlborough”) and the late Pierre Levai (“Mr. Levai”) and collectively with Marlborough, “Defendants”). Navarra asserts claims against Defendants for tortious interference with contract and aiding and abetting tortious interference with contract.

More than twenty years have passed since the Production Agreement was signed. In that time, several important players (Mr. Chu, Mr. Delille (La Tuilerie), and Mr. Levai) have passed away, and litigation among the parties has proceeded in French trial and appellate courts, the Southern District of New York, the Second Circuit, this Court, and the Appellate Division. The parties now move for summary judgment.

For the following reasons, Plaintiff's motion for partial summary judgment is granted with respect to the timeliness of its claims (dismissing Defendants' statute of limitations defense). Defendants' motion for summary judgment is granted solely with respect to Plaintiff's claim for punitive damages (which is dismissed) and is otherwise denied. Trial will proceed on Plaintiff's claims for compensatory damages for tortious interference with contract and aiding and abetting tortious interference with contract.

BACKGROUND

For the general background facts, the Court refers in part to the parties' Rule 19-a Statements filed in connection with the parties' first summary judgment motions (NYSCEF 17 [Defendants' Rule 19-a Statement]; NYSCEF 55 [Plaintiff's Response & Counterstatement; and NYSCEF 91 [Defendants' Response to Counterstatement]), which in some cases are not repeated in the parties' submissions on the instant motions.

In 2003, Navarra, Chu, and Francis Delille (“Delille”) on behalf of La Tuilerie entered into an agreement (the “Production Agreement”) by which Navarra paid for Chu and La Tuilerie to create over a thousand pieces of ceramic plates (the “Plates”) (NYSCEF 17 ¶¶1-2).

Under the Production Agreement, Chu worked with Delille and La Tuilerie to create 24 ceramic plate designs for editions of 40 exemplars plus eight artist proofs, for a total of 1,152 Plates, which then were produced by La Tuilerie following Chu’s authorization. Under the arrangement, Chu authorized the production of finished Plates by writing the words “*bon-a-tirer*” (“good to print,” hereinafter “BATs”) in his own hand on the back of each final trial proof of the 24 designs. Ultimately, the Plates were allotted as follows: Chu would receive 96 Plates, Delille would receive 240 Plates (and pay royalties to Chu on eight series of the 24 designs), and Navarra would receive 816 Plates (and pay royalties to Chu on 32 series of the 24 designs) (*see* NYSCEF 17 ¶¶2-4; NYSCEF 55 ¶¶2-4 [undisputed]).

From 2003 through the end of 2006, Plates were created and displayed at various exhibitions by Delille. At a Christie’s auction on December 5, 2006, one of the Plates sold for \$9,594, 140% over Christie’s pre-auction high estimate; one sold for \$7,995, 100% over the pre-auction high estimate; and the third sold for \$6,396, 60% over the pre-auction high estimate (NYSCEF 62; NYSCEF 516 [Defendants’ Response to Plaintiff’s Counterstatement] ¶21 [undisputed]). At an Artcurial auction on December 12, 2006, two of the Plates sold for \$8,156 each, more than 400% over the pre-auction high estimate, and two sold for \$4,567, 180% higher than the pre-auction estimate (NYSCEF 516 ¶22 [undisputed]). By December 31, 2006, Navarra had begun to make plans to market the Plates through a gallery partner in Bali, Jais Darga (“Darga”), as part of an overall plan to exhibit [Chu] works—including paintings and lithographs—in Asia (NYSCEF 55 ¶73; NYSCEF 91 ¶73 [undisputed]).

In February 2007, Navarra and Delille received a letter from Chu’s attorney (the “Cease and Desist Letter”), accusing them of breaching the Production Agreement, “specifically the obligation of payment, which you assumed towards my client, as well as the obligation to produce a minimum quantity of pieces each year. Other essential provisions of the tripartite agreement were not fulfilled: amongst others, not all final trial proofs were submitted to Mr. CHU TEH CHUN,” and demanding that Navarra cease all production, exhibitions, and sales of the Plates (NYSCEF 26 [translated from French]). Thereafter, Navarra “put on hold” the project or sale it had planned with Darga involving the Plates and other Chu works (NYSCEF 55 ¶¶75; NYSCEF 91 ¶75). Both Delille and Navarra responded to the Cease and Desist Letter, rejecting Chu’s contentions (NYSCEF 27, 64). Subsequently, on or around April 10, 2007, Chu’s lawyer filed a lawsuit in France (the “French Lawsuit”) naming Navarra as one of the defendants, repeating similar breach allegations as in the Cease and Desist Letter, and seeking judicial termination of the Production Agreement on that basis (NYSCEF 71 ¶¶7-9; NYSCEF 55 ¶¶7-9 [undisputed]).

Both Delille and Navarra continued performing their obligations under the Production Agreement (although the extent of Navarra’s performance is disputed). On February 22, 2007, and June 27, 2007, Navarra sent Chu installments of prepaid royalties due under the Production Agreement. Delille and La Tuilerie continued producing the remaining Plates and delivering them to the parties. On April 14, 2007, four Plates were sold at Leclere auction house in Marseille, France. Throughout 2007, notwithstanding Chu’s lawsuit, Plates were offered at public auctions in France (NYSCEF 55 ¶¶89-91, 93-97, 100-102; NYSCEF 91 ¶¶89-91, 93-97, 100-102 [undisputed]).

On July 9, 2007, Navarra received a letter from an artbook publisher working on a book about Chu's ceramics, including the Plates, who asked Navarra to prepare photographs of the Plates for inclusion in the book (NYSCEF 468). According to the publisher, they had reached out to Navarra at Chu's request (NYSCEF 469).

On October 29, 2007, Navarra sent Chu two "final" checks for € 16,240 and € 9,744 (NYSCEF 55 ¶98). Navarra submits that these checks completed the performance of its royalty obligations under the Production Agreement as Chu was now paid in full for Navarra's 32 series allotment (NYSCEF 55 ¶98). Defendants dispute this based on the allegations made in the French lawsuit, wherein Chu complained that Navarra did not pay the required royalties based on sales above the minimum prices as required under the Production Agreement (NYSCEF 91 ¶98).

In May 2008, Navarra planned to auction twelve Plates at Christie's in Hong Kong (NYSCEF 55 ¶112; NYSCEF 91 ¶112 [undisputed]). Ten days before the planned auction, Chu's attorney sent an email to Christie's regarding the French Lawsuit (the "Christie's Email") (NYSCEF 78; NYSCEF 55 ¶114; NYSCEF 91 ¶114 [undisputed]). The email referenced Chu's assertions that he "has never given written authorization to reproduce these ceramics," that he "has never received any information allowing him to check the exploitation of his oeuvre," and that he "has the greatest reservations about the authenticity of the ceramics at present in circulation which were produced by the Francis Delille factory and bear the mark of Enrico Navarra," and concluded by stating that "[t]aking these proceedings into consideration, prudence consequently obliges you to withdraw the 12 ceramics in question from the sale which will take place on the 25th of May, 2008" (NYSCEF 78). Christie's thereafter withdrew the Plates from the sale (NYSCEF 55 ¶115; NYSCEF 91 ¶115 [undisputed]). Delille testified that, after the

Christie's Email, clients began demanding that he take back Plates he had previously sold them (NYSCEF 55 ¶119; NYSCEF 91 ¶119 [undisputed]).

On October 3, 2008, an advertisement appeared in the *Journal des Arts*, a French art publication, titled "Warning from M. Chu Teh-Chun" (the "JDA Ad") (NYSCEF 79; NYSCEF 55 ¶124; NYSCEF 91 ¶124 [undisputed]). The JDA Ad informed readers of the French Lawsuit and Mr. Chu's allegations against Navarra and Delille (*id.* at ¶ 125 [undisputed]). Additionally, it provided that "in order to safeguard his rights and in the hypothetical case that other ceramics coming from the workshops of the Navarra gallery, and which were not authentic because they were not the subject of a bon à tirer, were put up for sale, Mr Chu Teh Chun warns whomever may be concerned against putting in the market ceramics lacking authenticity and notes that, in this context, it is everyone's responsibility [sic] for making all necessary verifications before putting up for sale, buying or marketing such ceramics" (NYSCEF 79 [translated]). At his deposition, Mr. Navarra described the effect of the *Journal des Arts* advertisement as "disastrous." (NYSCEF 55 ¶129; NYSCEF 91 ¶129 [undisputed]). Thereafter, Navarra received a warning from the professional art dealers' association of France that, because of the JDA Ad, "we may henceforth be obliged to suspend your membership in our professional organization[.]" (NYSCEF 516 ¶56 [undisputed]; NYSCEF 16).

According to the Complaint, in 2009 Mr. Chu suffered a debilitating stroke that left him unable to work or speak. He passed away in 2014, at the age of 94 (NYSCEF 1 [Compl.]" ¶¶31-32).

Defendants' Alleged Involvement

On November 28, 2006, Gilbert Lloyd, Marlborough's co-director at the time, forwarded Levai auction lots "of interest" in an upcoming Christie's auction taking place on December 5,

2006 (NYSCEF 83). Of the 20 lots of interest, three were Chu Plates (NYSCEF 516 ¶19 [undisputed]). Later that day, Philippe Koutouzis (“Koutouzis”), Marlborough’s then “Director of Asia,” emailed Levai about three more Plates coming up for auction on December 12, 2006, at Briest auction house (now Artcurial) (NYSCEF 84). Levai and Koutouzis were the two people at Marlborough handling the Chu relationship (NYSCEF 516 ¶62 [undisputed]).

Delille testified that sometime in 2006 or 2007, Chu stated to Delille: ““why are we doing this with Navarra? Why aren’t we just doing this amongst ourselves? I mean I have a client and I believe he would buy the whole thing, and [Navarra’s] not paying me, or he’s paying me late’ or something like that.” (NYSCEF 460 [“Delille Tr.”] 42:23-44:4).

On February 22, 2007, Koutouzis wrote to Levai that Chu had shown him the Production Agreement and that, “[w]hen I read it, I saw that there was a flaw and referred Chu to William Bourdon, a lawyer friend . . . [who] saw that Navarra had not fulfilled his contractual obligations and Chu should recover half if not all of the rights for the ceramics production. The contract was for 24 models to be produced, 10 copies of each, for 4 years > 24x10x4= 960 ceramics. Navarra has produced few. One ceramic was sold the day before yesterday for 3,500 euros.” (NYSCEF 61).

In response to a draft letter by Bourdon, Koutouzis responded: “I’m wondering if we shouldn’t make the adversary understand – even if only orally – that in the absence of reliable information on the existing stock, the works sold etc... The CHU workshop will be obliged to make it known through publicity (journal, art magazine, interest) that an undetermined number of editions of ceramics in circulation, produced by the Francis Delille workshop, bearing the mark of the Enrico Navarra gallery and the signature of CHU the Chun have not been stamped or approved by the artist and therefore cannot be considered as authentic.>on this point, of course I

am asking you for your opinion on the possible consequences that the publication of such a notice could have, but I think it is very important to give a strong signal about Mr. CHU's determination in this case and the sooner the better. We have no idea what Navarra/Delille are up to right now." (NYSCEF 215).¹

On October 5, 2007, Yvon Chu, Chu's son, sent Bourdon and Koutouzis an email with pictures of all 24 Plate designs, stating that these were "the 24 ceramics that were used for the multiples. They were given to my parents by Delille at the end of 2003." (NYSCEF 476).

On May 4, 2008, three weeks before the scheduled Christie's auction in Hong-Kong, Koutouzis, Levai, and Yvon exchanged multiple phone calls (NYSCEF 477 at Marlborough 004438; NYSCEF 516 ¶81 [undisputed in relevant part]). On May 14, 2008, Koutouzis again talked with Marlborough's main number NYSCEF 516 ¶82 [undisputed in relevant part]). The next day, Bourdon issued a demand to Navarra for evidence of the BATs (NYSCEF 478; NYSCEF 516 ¶83 [undisputed in relevant part]).

On May 23, 2008, Navarra responded to the demand with its evidence, including photographs of the BATs (NYSCEF 479). That same day, Levai called Yvon, Yvon later called Levai again, and then Yvon called him again the next day (NYSCEF 477 at Marlborough 004442-43, 004455).

Throughout July and September 2008, extensive phone calls were made among Yvon, Levai, and Koutouzis (NYSCEF 477). Yvon signed the "ordre d'insertion" for the JDA Ad on September 26, 2008 (NYSCEF 85). After the JDA Ad was published on October 3, 2008, on October 6, 2008, Levai called Yvon and talked to him for 2 minutes, tried to reach Yvon twice

¹ While Defendants dispute that this document is admissible, they do not explain their objection (*see* NYSCEF 516 ¶31).

the next day, and then twice tried to reach Yvon the next day, after which Yvon called Levai back and they spoke for 3 minutes (NYSCEF 477 at Marlborough 004525, 004526, 004527).

The French Lawsuits

Chu filed a lawsuit (Case No. 07/06237) with the District Court of Paris (the “Chu French Lawsuit”) in April 2007 naming Navarra as a defendant. The lawsuit sought judicial termination of the Production Agreement based on purported breaches by Navarra and Delille (NYSCEF 28). Chu alleged that some trial proofs of the Plates (*i.e.*, the BATs) had not been delivered to him for his approval prior to their reproduction, nor had he received a proper accounting of sales in violation of Article L 132-13 of the French Code of Intellectual Property (NYSCEF 28 at PLS 113). On December 14, 2007, Navarra filed an answer and counterclaims (NYSCEF 29).

The District Court of Paris, on March 30, 2012, rendered judgment dismissing the claims of both Chu and Navarra (NYSCEF 430). On Chu’s claims, the court found that “[i]t is clear from these facts that GALERIE NAVARRA, whose principal undertakings consisted in paying the minimum guaranteed by the production contract as well as a proportional royalty in the event of sales to the public (which, as it happens, did not occur), and preparing a catalogue, performed all of its contractual obligations . . . Therefore, Mr. CHU TEH CHUN’S motion for judicial termination of the contract and his claims resulting therefrom should be denied” (NYSCEF 430 at 9). As to Navarra’s counterclaims, which sought indemnification, an extension of the exclusivity rights in the Production Agreement, repudiation of certain statements in Mr. Chu’s pleadings, and an award of damages for bringing this action in bad faith, the court denied each of those, finding that there was no grounds for indemnification, the Production Agreement had no term limit so an extension was unnecessary, repudiation was not warranted for statements that appear in pleadings, and that Navarra had not demonstrated that bringing a legal action was bad

faith because Chu “may legitimately have misunderstood the extent of his rights” (NYSCEF 430 at 9-10). On appeal, the Court of Appeals of Paris (the “CAP”), by judgment dated November 5, 2015, largely affirmed the lower court’s dismissal (NYSCEF 428).

Chu’s wife appealed the judgment of the CAP, which ultimately proceeded to the Court of Appeals of Versailles (the “CAV”). On December 3, 2024, the CAV issued its decision (the “Versailles Decision”). In relevant part the CAV concluded that Article L 132-13 of the Intellectual Property Code required Navarra to produce a statement of accounts. The CAV referenced a preliminary decision, in which the court found that “Navarra failed to provide evidence that it had met the obligations prescribed by Article LI32-13.” Thus, “an appraisal was ordered to determine the number of copies produced, the number of copies in stock and number of copies sold, as well as their sale price.” The CAV found that the appraisal “made it possible to establish that 960 pieces had been manufactured and that 731 pieces are still in the various storage locations, which leads to the conclusion that 229 pieces have been put up for sale. However, the appraiser was unable to obtain the actual sale price of the 229 copies no longer in stock from Galerie Navarra and Mr. Delille. In a letter dated March 15, 2007 (exhibit No. 3 from Ms. Chu), Galerie Navarra states that it sold 16 series by the artist in November 2006. However, it did not provide any proof of the prices at which the ceramics were sold either to the appraiser or to the court.” Of most relevance here, the CAV concluded that “[i]t should therefore be considered that Chu Teh Chun’s co-contractors are unable to produce accounts, which constitutes a serious breach of contractual obligations that alone justifies the termination of the production contract entered into in 2003” (NYSCEF 427 at 31-32). In connection with this ruling, the CAV also directed Navarra to pay variable fees to Mrs. Chu for 37 pieces that Navarra could not account for, for a total of €25,900 (*id.* at 34-35).

In a related French action brought by Navarra against Chu for disparagement (the “Navarra French Disparagement Action”) based on statements made in the Christie’s Email and JDA Ad (Case No. 12/09512), by judgment dated November 5, 2015, the French court dismissed Navarra’s disparagement claims because Navarra had not proven “disparagement of a product” which “consists in devaluing it compared to any other which it competes with” and found that “while Mr. Chu wrongly implicated the Navarra Gallery, in particular by referring to an ongoing proceeding, he cannot be accused of disparagement” (NYSCEF 429 at 10).

Procedural History

In 2010, Navarra filed a complaint in the Southern District of New York (*S.A.R.L. Galerie Enrico Navarra v Marlborough Gallery, Inc.*, 10 Civ 7547 (SDNY) [the “Federal Action”]). Navarra argued that Defendants tortiously induced Chu to breach the Production Agreement. The Federal Action proceeded for five years, resulting in (a) grant of summary judgment in favor of Defendants dismissing the tortious interference claims for failure to establish sufficient evidence of intentional inducement (*S.A.R.L. Galerie Enrico Navarra v Marlborough Gallery, Inc.*, 2017 WL 1314121 [SDNY 2017]), (b) a vacatur and remand by the Second Circuit Court of Appeals to the District Court for further proceedings, finding that disputed questions of fact precluded summary judgment (*S.A.R.L. Galerie Enrico Navarra v Marlborough Gallery Inc.*, 751 Fed Appx 39 [2d Cir 2018]), and finally (c) dismissal by the District Court for lack of subject-matter jurisdiction in November 2018 (*see* docket for *S.A.R.L. Galerie Enrico Navarra et al v Marlborough Gallery Inc.*, 1:10CV07547).

Within six months of the federal court’s dismissal on jurisdictional grounds, on April 16, 2019, Navarra re-filed its claims in this Court pursuant to CPLR 205(a) alleging tortious interference with contract and aiding and abetting tortious interference with contract (NYSCEF

1), thus preserving an effective filing date for statute of limitations purposes of October 4, 2010 (*id.* ¶29).

Defendants moved for summary judgment to dismiss the complaint as untimely based on discovery that had been taken in the Federal Action (NYSCEF 455 ¶ [undisputed]). This Court denied that motion because “[t]he defendant has not satisfied its burden of establishing a statute of limitations defense as a matter of law,” finding there were fact issues as to when the alleged breach occurred (NYSCEF 112 at 48:5-7; NYSCEF 109). The First Department affirmed, noting that “[w]e agree with Supreme Court that there is a question of fact as to when the claims accrued. As noted by the [Federal] District Court, despite the 2007 acts, the parties continued to perform their obligations under the contract, and plaintiff’s contractual right to sell the Chu ceramic plates was merely suspended or put on hold while awaiting the outcome of the French lawsuit. The record supports plaintiff’s argument that it suffered damages by the 2008 acts when it was deprived of its contractual rights to sell the plates” (*S.A.R.L. Galerie Enrico Navarra v Marlborough Gallery Inc.*, 194 AD3d 452, 454 [1st Dept 2021]).

After completing discovery in this proceeding, the Court granted both parties another opportunity to seek summary judgment (NYSCEF 390). Plaintiff moved for partial summary judgment in its favor dismissing Defendants’ statute of limitations defense as a matter of law (Mot. Seq. 007), and Defendants moved for summary judgment dismissing the Complaint based (i) on the statute of limitations and (ii) the Versailles Decision. Defendants also moved for summary judgment to dismiss the tortious interference claims asserted against the Levai Estate and to partially dismiss Plaintiff’s damages claims (Mot. Seq. 008).

At oral argument on these summary judgment motions, the Court requested supplemental briefing on the following issues: (1) “is the breach of contract portion of the [tortious

interference] cause of action to be determined under French law or New York law”; and (2) “whether under French law, what, if any burden does the plaintiff have to establish that it complied with the contract, that it performed its obligations under the contract or was prepared to perform its obligations under the contract? And contrast that, if necessary, with ... New York law ... on that same point.” (NYSCEF 531 [Tr. 09.24.25] at 40:10-17). The Court received the parties’ supplemental submissions (NYSCEF 527-531) and addresses them below.

PRELIMINARY ISSUES

Before turning to the parties’ specific claims and defenses, the Court will first address threshold questions raised by the parties concerning French law and the impact of decisions of the French courts in litigation between Chu and Plaintiff.

1. French Law Controls Whether Chu Breached the Production Agreement

As an initial matter, the parties agree that French law governs the breach of contract element of Plaintiff’s tortious interference claim (*see* NYSCEF 527 at 1-2; NYSCEF 528 at 1-2; *see Weizmann Inst. of Science v Neschis*, 229 F Supp 2d 234, 249 [SDNY 2002] [applying Liechtenstein law to breach of contract issue despite fact that, as here, acts giving rise to alleged interference occurred in New York]). Here, the place of negotiation and performance is France; the location of the subject matter is France; and the domicile or place of business of the contracting parties—i.e., the Navarra Gallery, Chu, and Francis Delille (acting for La Tuilerie)—is also France.

Accordingly, the Court will look to French law in determining whether Chu breached the Production Agreement.

2. *French Law does not Require that Plaintiff Prove it Complied with the Contract*

Under French law, the party that seeks enforcement of a contractual obligation must prove the existence of such obligation, and the counterparty that claims it is not bound by an obligation has the burden to prove that its obligations have been extinguished (*see* Article 1353 of the French Civil Code [formerly Article 1315] “[a] person who claims to be discharged must justify the payment or the fact which proved the extinction of his obligation”) [translated]; NYSCEF 529, *Cour de Cassation*, December 18, 1990, No. 89-14,975 [party that seeks discharge of its own performance in a reciprocal contract must establish the counterparty’s non-performance]). According to the parties’ submissions on French law, there is no burden placed on the plaintiff to prove its own performance of the contract upon which it is suing (NYSCEF 527, 528).

Relatedly, the parties both note that that in the face of a serious breach permitting termination, a party can, among other things, seek to terminate or continue the contract. The French doctrine of *l’exception d’inexécution* (in Latin, the *Exceptio non adimpleti contractus*) allows a contracting party to halt carrying out its obligations as long as its co-contractor has not performed its own (NYSCEF 528; NYSCEF 530 [Dahl, Henry Saint, *Dahl’s Law Dictionary/Dictionnaire Juridique Dahl* (3d Ed.), at 133]). Alternatively, a party can seek judicial termination. However, according to Defendants’ French law expert, Professor Pierre-Yves Gautier, when “termination occurs only as a result of the judicial decision, the agreement remains in force until the decision has been rendered.” (NYSCEF 103 ¶ 8). In other words, until a contract is judicially terminated, a breach by a first party does not protect the second party from liability for any subsequent breaches the second party commits (NYSCEF 527).

Consistent with that rule, a judge in a case involving breaches by both parties must determine “the share of liability attributable to each of the parties, taking into account the seriousness of the faults found, and then the extent of the damage suffered by each” (*see* Com. 15 mai 2024, n° 23-13.990 [translated]) as well as whether “the respective breaches of the parties’ contractual obligations caused each of them equal damage such as to result in total compensation between the damages to which they are mutually entitled” (*see* Com. 17 mars 1998, n° 95-17.466 [translated]).

3. The Versailles Decision is Persuasive Authority, not Preclusive

It appears to be common ground among the parties that under French law, the various decisions by French courts in the disputes between Chu and Navarra, including the Versailles Decision terminating the Production Agreement, have no formal preclusive effect in this dispute. According to Plaintiff’s expert, Maître Frédéric Thiriez, under French law, the CAV decision would not be preclusive in a French litigation between Navarra and a party other than Chu, or even in a case against Chu involving new claims (Thiriez Declaration ¶¶ 110-20). Since French law governs, if a French court “would permit a collateral attack on its own judgment, a New York court will do the same” (*see Nippon Emo-Trans Co., Ltd. v Emo-Trans, Inc.*, 744 F Supp 1215, 1227 [EDNY 1990]).

That said, given that the Versailles Decision involved the same contract at issue in this case, the Court obviously may consider the decision to be persuasive, and it does. In particular, the Court finds persuasive the Versailles Court’s determination that, under French law, Navarra “committed a serious breach of contractual obligations that alone justifies the termination of the production contract entered into in 2003.” The CAV decision does not state explicitly whether the termination of the Chu/Navarro contract was “as of” the Court’s decision in 2024 or instead

is retroactive to 2007 when the French action was commenced (and thus prior to any purported “tortious interference”) or to some other date in between.

According to Thiriez, the CAV decision terminates the Production Agreement only as of the date of the decision—December 3, 2024—and only prospectively (Thiriez Decl. ¶¶ 6-63). He explains that the new Article 1229 of the Civil Code “provides that rescission takes effect on the date set by the court or, if no date is set, on the date on which the summons is served” (Thiriez Decl. ¶21). However, the new Article 1229 only applies to contracts entered into after October 1, 2016, and contracts entered into prior to that date “will still be subject to the former law, ‘including for their legal effects and for provisions of public policy’” (Thiriez Decl. ¶22).

Under prior law, “a distinction was traditionally made between immediate performance contracts and successive performance contracts, with rescission deemed to take effect *ex tunc* (for past effects) in the former and *ex nunc* (with immediate effect) in the latter” (Thiriez Decl. ¶24). Thiriez explains that “[t]he high court thus ruled that ‘the termination of a successive contract only applies for the future’ (see Com. October 1, 1996, No. 94-18.657, B. No. 332), whereas it was considered that ‘subject to practical impossibility, the rescission of an immediate performance contract has the effect of nullifying the contract and returning the parties to their previous state’” (see, for example, Com. June 10, 2020, No. 18-15.560)” (Thiriez Decl. ¶26). Thiriez submits that based on his analysis, “[t]he ceramics production contract is a successive performance contract insofar as the obligation to use the work is “permanent and continuous” within the meaning of Article L. 132-12 of the Intellectual Property Code” and thus, the principles established by the Court of Cassation should be applied, being “that the judicial termination of a successive performance contract takes effect on the date of the decision

pronouncing it and not on the date on which the proceedings are initiated” (Thiriez Decl. ¶¶30-32). The Court finds this reasoning to be persuasive.

Defendants’ expert, Professor Gautier contends that the CAV’s termination of the Production Agreement should be considered retroactive to the date of Navarra’s material breach of the Production Agreement occurring prior to 2008, meaning that the relationship of Chu and Navarra would not be “contractual” at the time of the 2008 Acts, and thus the 2008 Acts at issue in this case could not have breached the already-terminated Production Agreement. Gautier’s position appears to be based on the Court’s use of the word *resolution* (“rescission”). However, Professor Gautier admits that “[i]n the operative part (*dispositif*) of its judgment, the Court used the term “termination” (*résiliation*), as opposed to the term “rescission” (*résolution*) (*id.* at 2) but reasons that the CAV must be using those terms interchangeably based on the wording of statute relied on by the CAV. As noted by Thiriez, however, “it is difficult to understand how Professor Gautier can claim that the Court of Appeal, which expressly ruled in its operative part that judicial **termination** was appropriate, actually intended to pronounce a judicial **rescission** with retroactive effect” (Thiriez Decl. ¶17 [emphasis in original]). In response, Gautier’s reply affidavit focuses more on what Gautier (and other professors) believes the law should be, rather than what the law is (NYSCEF 509).

Moreover, even if the Court were to adopt Gautier’s partially retroactive termination analysis, Gautier provides no basis for determining that the breach occurred prior to the 2008 Acts that form the basis of the claims in this case. The CAV decision does not state when Navarra’s failure to account actually took place, or when Navarra should have provided such performance. Rather, the decision focuses on the appraisal ordered by the CAV *during the French litigation*, and the fact that “the appraiser was unable to obtain the actual sale price of the

229 copies no longer in stock from Galerie Navarra and Mr. Delille” (NYSCEF 427 at 32). The decision refers to a March 15, 2007 letter, wherein Navarra states that it sold 16 series by the artist in November 2006, but that Navarra did not provide any proof of the prices at which the ceramics were sold “either to the appraiser or to the court” (*id.*). Further, the CAV decision only awarded Mrs. Chu variable fees for 37 plates that Navarra either sold, gave away, or broke, but there is no indication in the decision as to when those fees should have been paid (which, in any event, was not the basis for termination).

In sum, while the Court considers the Versailles Decision to be persuasive, it does not lead to the outcome suggested by the Defendants (*i.e.*, that there could be no breach by Chu because the agreement had already terminated prior to the 2007 or 2008 Acts as a matter of law). Therefore, the Court is not persuaded that Plaintiff’s case can or should be dismissed based solely on the Versailles Decision or any other French decision.

With these principles in mind, the Court now turns to the rest of the parties’ summary judgment motions.

DISCUSSION OF CLAIMS IN THIS CASE

A. Statute of Limitations

Both parties move for summary judgment with respect to Defendants’ affirmative defense that Plaintiff’s claims are barred by the statute of limitations. To dismiss a cause of action on the ground that it is “barred by the applicable statute of limitations, a defendant bears the initial burden of demonstrating, *prima facie*, that the time within which to commence the action has expired. Only then does the burden shift to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or was otherwise inapplicable, or whether it actually commenced the action within the applicable limitations period” (*Stewart v GDC Tower at*

Greystone, 138 AD3d 729, 729-30 [2d Dept 2016]). Since both parties are moving for summary judgment on Defendants' affirmative defense, they each must "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

The applicable statute of limitations for a tortious interference with a contract claim is three years (*see* CPLR § 214(4); *see also* *Kenneth D. Laub & Co., Inc. v Bear Stearns Companies, Inc.*, 262 AD2d 36, 37 [1st Dept 1999]). "[T]he claim is not enforceable until damages are sustained' and that point, 'rather than the wrongful act of defendant or discovery of the injury by plaintiff, is the relevant date for marking accrual'...." (*Andrew Greenberg, Inc. v Svane, Inc.*, 36 AD3d 1094, 1099 [3d Dept 2007], quoting *Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 94 [1993]).

Given that the effective filing date of the instant lawsuit is October 4, 2010, the question presented is whether Plaintiff's claims arose before or after October 4, 2007. In a nutshell, Defendants argue that the 2007 Acts (which occurred prior to October 4, 2007) and 2008 Acts (which occurred after that date) were so similar that they should be considered a "continuous tort" and therefore, Plaintiff's cause of action accrued as of the 2007 Acts and is therefore untimely. As an initial matter, generally "[t]ortious interference with contract is not a continuing tort" (*Spinap Corp., Inc. v Cafagno*, 302 AD2d 588 [2d Dept 2003]). But even assuming it could be a continuing tort in certain circumstances, based on the summary judgment record here the

Court concludes that there was no actionable tort (including damages sustained by Plaintiff) until the 2008 Acts.²

While the parties dispute whether Chu challenged the authenticity of the Plates in the 2007 Acts, that issue is ultimately immaterial. The focus is on when Plaintiff was purportedly *damaged* by the acts and when Plaintiff would have first been able to bring a cause of action for tortious interference. There is no evidence that the 2007 Acts caused any harm to Plaintiff. Instead, the record clearly reflects that the alleged harm upon which Plaintiff's claims are based was triggered by the public-facing communications in 2008, which purportedly led to the cancellation of the Hong Kong auction, clients requesting refunds, and cessation of further sales of Plates. While Defendants argue that the 2007 Acts were no different than the 2008 Acts, the record reflects that the purported impact was markedly different. Most importantly, the parties (Narrava, Delille, and Chu) continued to perform their obligations under the Production Agreement after initiation of litigation in 2007, and plates were sold by Delille and others after the French lawsuit was filed. While Defendants argue that Plaintiff temporarily halted sale of the Plates in 2007, there is nothing in the record that indicates Plaintiff were required to do so or that any specific sales were halted. By contrast, there is evidence of concrete adverse impacts on the business following the 2008 Acts.

² While Plaintiff affirmatively moved for partial summary judgment on the statute of limitations defense based on various other grounds, the Court did not find those to be persuasive summary judgment arguments. However, Plaintiff's opposition to Defendants' motion did set forth the arguments and evidence upon which the Court now relies. Accordingly, upon searching the record, the Court finds summary judgment for Plaintiff on this issue to be appropriate (CPLR 3212(b) ["If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion"]; *Donaldson v Port Auth. of New York and New Jersey*, 240 AD3d 140, 145 [1st Dept 2025]).

Defendants speculate that Plaintiff may have suffered damages *if* Plaintiff had informed potential buyers of Chu's allegations in the Cease and Desist Letter and French Lawsuit, but there is nothing in record to suggest that ever occurred. And as the Complaint alleges, "[b]y April 2008, however, having heard nothing more from Chu in the French Lawsuit for over a year, having seen that Chu had cashed all the Navarra Gallery's royalty payments in the interim, and with all of the auctions of the Plates going forward without incident, the Navarra Gallery restarted preparations for a first show of the Plates" and "decided to test the market by having 12 Plates put up for sale at Christie's in Hong Kong" (Compl. ¶¶ 119-120). It was this decision that led to the 2008 Acts and in turn to the purported damages on which Plaintiff's claims are based.

Even the cases upon which Defendants rely support the conclusion that the purportedly damage-inducing 2008 Acts (rather than the 2007 Acts) triggered the start of the statute of limitations (*see Andrew Greenberg, Inc. v Svane, Inc.*, 36 AD3d 1094, 1099 [3d Dept 2007] [finding that the allegations in the complaint "necessarily imply that plaintiff was damaged by the tortious interference beginning in January 1998"]; *Monex Fin. Services Ltd. v Dynamic Currency Conversion, Inc.*, 19 Misc 3d 1113(A) [Sup Ct, Nassau County 2008] [finding that "Plaintiffs concede in this case that the *first time* they suffered any damages as a result of Nahor's alleged tortious interference with the Teaming Agreement was in December 2003 when Dynamic signed a contract with Princess. All of the facts necessary to the causes of action sounding in tortious interference with contract existed by December 2003"] [emphasis in original], *affd as mod*, 62 AD3d 675 [2d Dept 2009]).

Accordingly, the Court finds that the tortious interference claim was timely asserted in 2010 and Defendants' statute of limitations defense is therefore dismissed.

B. Claims against the Levai Estate

Defendants' motion for summary judgment dismissing Plaintiff's claims against the Levai Estate is denied. Although the estate challenges the sufficiency of the evidence of Levai's "participation in any purported acts of interference," Defendants do not dispute that "Levai and Koutouzis were the two people at Marlborough handling the Chu relationship" (NYSCEF 516 ¶62). And as Plaintiff points out, there are numerous allegations against "Defendants," a defined term that includes Levai as working through the Marlborough Gallery (NYSCEF 1 ¶¶ 160- 63, 176, 179-80, 187, 189-90, 193, 197, 199, 200, 203, 205, 207, 216, 222, 241-43, 247, 250, 253, 261, 265, 273).

In addition, the record contains at least some evidence that Levai was at the origin of the initial legal strategy (NYSCEF 455 ¶¶ 16-29, 62-68), as well as the purported tortious conduct thereafter, including when the strategy shifted in November 2007 to public attacks on the Plates' authenticity (*id.* ¶¶ 69-80), the Christie's Email (*id.* ¶¶ 81-85), the fallout from the Christie's Email (*id.* ¶¶ 86-90), and the JDA Ad (*id.* ¶¶ 91-95). As noted by the Second Circuit, "defendants deny that they referred Chu to Bourdon intending such actions or that they had any involvement in developing that strategy. The record, however, contains circumstantial evidence that could allow a jury to find otherwise" (*S.A.R.L. Galerie Enrico Navarra v Marlborough Gallery Inc.*, 751 Fed Appx 39, 41 [2d Cir 2018]). While not binding, the Court finds the Second Circuit's reasoning persuasive. Therefore, the motion for summary judgment dismissing Levai from this action is denied.

C. Damages

Finally, Defendants seek partial summary judgment circumscribing Plaintiff's damages claims. As noted above, this motion is granted as to punitive damages (which are dismissed) but is otherwise denied.

Beginning with compensatory damages, Plaintiff seeks an amount “no less than \$18,000,000” (Compl. ¶¶ 268, 273). A plaintiff in an action for tortious interference is entitled to “the full pecuniary loss of the benefits of the contract with which [the defendant] interfered,” including but not limited to lost profits (*Guard-Life Corp. v S. Parker Hardware Mfg. Corp.*, 50 NY2d 183, 197 [1980]). Unlike a breach of contract action, in “an action ... for tortious interference, ... the elements of damages ... would be those recognized under the more liberal rules applicable to tort actions” (*Potempa v Potempa*, 229 AD3d 1191, 1193 [4th Dept 2024]). Moreover, Defendant's actions need not have been the “sole proximate cause” of plaintiff's damages (*Natl. Fin. Partners, Corp. v USA Tax and Ins. Services, Inc.*, 145 AD3d 440, 441 [1st Dept 2016]). Thus, the issue before the Court is how to measure “the full pecuniary loss of the benefits of the contract with which [the defendant] interfered” in this case.

Defendants argue that Plaintiff's damages must be capped by any diminution in the value of the Plates directly before and after the alleged tortious interference (*see generally* Restatement [Second] of Torts § 928: Harm to Chattels [1979 [“When one is entitled to a judgment for harm to chattels not amounting to a total destruction in value, the damages include compensation for (a) the difference between the value of the chattel before the harm and the value after the harm”]; *see also Credit Suisse First Boston v Utrecht-Am. Fin. Co.*, 84 AD3d 579, 580 [1st Dept 2011] [“Where . . . the breach in question involves the failure to deliver an asset, damages are determined by the difference between the contract price for the asset and the fair market value of

the asset at the time of the breach”]; *Cristallina S.A. v Christie, Manson & Woods Intern., Inc.*, 117 AD2d 284, 295 [1st Dept 1986] [“The measure of damages is the difference between the paintings’ preauction value and their value after the auction”]). Relying upon cases discussing conversion and replevin, Plaintiff argues that damages here should be measured by the value the property would have had at the time of trial minus its value in its destroyed condition. Generally, in conversion cases, “the value of the goods at issue are generally determined at the time of the conversion. However, ‘the New York courts have held that where the property converted is ‘unique and irreplaceable ... as are works of art,’ the appropriate measure of damages corresponds to ‘the value of the item at the time of trial.’” (*Hicks v Leslie Feely Fine Art, LLC*, 2021 WL 982298, at *5 [SDNY 2021] [internal citations omitted] [“Artwork is *sui generis*, ‘unique and irreplaceable’”]). Plaintiff argues that the 2008 Acts “converted” the Plates through the art market equivalent of smashing them to shards because artworks believed to be inauthentic are worthless.

However, as Defendants point out, unlike a conversion case, this is not a case where a unique object was taken by a third party or is no longer in an owner’s hands and where, through litigation, such dispossessed owner seeks its return or value if not returned (*see e.g., Will of Rothko*, 56 AD2d 499, 503 [1st Dept 1977] [“[W]here the property involved is unique and irreplaceable, such as the works of art in the case at bar, then ***failure to return the property*** must result in the wrongdoer’s responding in damages to the extent of the value of the item at the time of trial”] [emphasis added], *affd sub nom. Matter of Rothko’s Estate*, 43 NY2d 305 [1977]). Rather, Plaintiff kept the plates during this litigation and theoretically could have sold them.

However, at this stage the Court is not persuaded that the principle behind the conversion and replevin cases would not apply here since there appears to be no dispute that the Plates were

rendered valueless through Chu's actions. In Will of Rothko, the First Department held that the principal stated in Menzel v List (24 NY2d 91, 92 [1969])—that “in a replevin action, or in an action where restitution or specific performance is allowed, the measure of damages is the value at the time of the trial, on the theory that the true owner had a continuing right to possession of the painting and can be made whole only by return of the item or by payment of its value at the time of trial” —was applicable to that case, despite the fact that it involved a claim for breach of fiduciary duty, not replevin (Will of Rothko, 56 AD2d at 502). The First Department stated, “[i]t may be as well to remark here as anywhere, that the rule of damages should not depend upon the form of the action. In civil actions the law awards to the party injured a just indemnity for the wrong which has been done him, and no more ... the inquiry must always be, what is an adequate indemnity to the party injured, and the answer to that inquiry cannot be affected by the form of the action in which he seeks his remedy.” (Will of Rothko, 56 AD2d at 502-03 [citation omitted]). Therefore, Defendant's motion to cap the damages is denied. Plaintiff will have the burden of proving its measure of damages at trial.

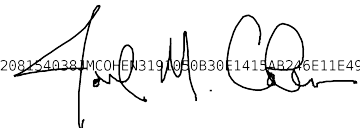
However, the Court dismisses Plaintiff's claim for punitive damages. Punitive damages are “a social exemplary remedy, not a private compensatory remedy” (Macy's Inc. v Martha Stewart Living Omnimedia, Inc., 127 AD3d 48, 57 [1st Dept 2015]). “In order to be entitled to punitive damages, a private litigant “must not only demonstrate egregious tortious conduct by which he or she was aggrieved, but also that such conduct was part of a pattern of similar conduct directed at the public generally” (Rocanova v Equitable Life Assur. Socy. of U.S., 83 NY2d 603, 613 [1994]). There is no evidence of either here. Nor is the Court persuaded that Defendants' purported discovery abuses should result in punitive damages. Accordingly, the request for punitive damages is dismissed from the case.

Accordingly, it is

ORDERED that Plaintiff's motion for Partial Summary Judgment (Mot. Seq. 007) dismissing Defendants' statute of limitations defense is **GRANTED**; it is further

ORDERED that Defendants' Motion for Partial Summary Judgment (Mot. Seq. 008) is **GRANTED IN PART** insofar as the request to dismiss Plaintiff's claim for punitive damages is granted, and the motion is otherwise denied.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

12/8/2025
DATE

CHECK ONE:

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<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

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APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

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