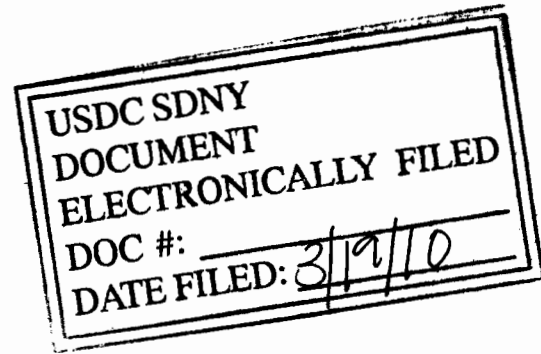


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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:
JAMES J. HAYES, Individually and On :
Behalf of All Others Similarly :
Situating, :
:
Plaintiff, :
:
v. :
:
HARMONY GOLD MINING COMPANY LTD, :
:
Defendant. :
-----x

08 Cv. 3653 (BSJ)
Order

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

On April 16, 2008, Plaintiff James Hayes filed a class action suit against Defendant Harmony Gold Mining Company Limited alleging violations of Sections 10(b) and 20(a) of the Securities and Exchange Act on 1934 on behalf of purchasers of Defendant's American Depository Receipts and call options, and sellers of Defendant's put options, between April 2, 2007 and August 7, 2007. On March 6, 2009, Defendant filed a Motion to Dismiss the Amended Complaint. For the reasons stated below, Defendant's Motion to Dismiss the Amended Complaint (Docket #23) is DENIED.

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief can be granted," a district court must accept the allegations contained in the complaint as true and draw all

reasonable inferences in favor of the non-moving party. Burnette v. Carothers, 192 F.3d 52, 56 (2d Cir. 1999). To survive a motion to dismiss, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (U.S. 2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (U.S. 2009). A court need not defer to sweeping and unsupported allegations and conclusions of law in evaluating the sufficiency of a complaint. See Hirsch v. Arthur Anderson & Co., 72 F.3d 1085, 1092 (2d Cir. 1996); First Nat'l Bank v. Gelt Funding Corp., 27 F.3d 763, 771-72 (2d Cir. 1994).


In deciding a 12(b)(6) motion, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Villager Pond, Inc. v. Town of Darien, 56 F.3d 375, 378 (2d Cir. 1995) (quoting Scheuer v. Rhodes, 416 U.S. 232, 235-36 (1974)). Thus, "the office of a motion to dismiss is merely to assess the legal feasibility of a complaint, not to assay the weight of the evidence which might be offered in support thereof." Eternity Global Master Fund Ltd. V. Morgan Guar. Trust Co. of N.Y., 375

F.3d 168, 176 (2d Cir. 2004) (quoting Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980)).

In this case, Plaintiff has sufficiently pled each element of its claims in the Amended Complaint and provided sufficient factual basis to demonstrate the legal feasibility of its allegations.

Therefore, Defendant's Motion to Dismiss the Amended Complaint (Docket #23) is DENIED.

SO ORDERED:


BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
March 19, 2010