

**Kar-El Demir Tel San Ve Ticaret Ltd. v Tulkoff**

2026 NY Slip Op 30082(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 653521/2023

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

KAR-EL DEMIR TEL SAN VE TICARET LTD.,

Plaintiff,

- v -

JONATHAN M TULKOFF, LYNETTE TULKOFF, DANIEL DEUTSCH

Defendant.

-----X

INDEX NO. 653521/2023

MOTION DATE 01/04/2024, 01/05/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 69, 70, 71, 73, 75, 77, 79, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 159, 161, 162, 163, 164, 165, 201, 203, 205, 207, 211, 212, 213, 215, 216, 219, 221, 223, 227, 229, 230, 233, 234, 238

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 72, 74, 76, 78, 81, 83, 85, 87, 89, 91, 93, 95, 97, 150, 151, 152, 153, 154, 155, 156, 157, 158, 160, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 202, 204, 206, 208, 209, 210, 214, 217, 218, 220, 222, 224, 225, 226, 228, 231, 232, 235, 236, 239

were read on this motion to/for DISMISSAL

Motion sequence numbers 001 and 002 are consolidated for disposition.

Plaintiff Kar-El Demir Tel San Ve Ticaret Ltd. (Karelsan), a judgment creditor's assignee, seeks to enforce a judgment in the amount of \$729,904.18 rendered in Kardemir Ithalat Ihracat Ltd. Sti. v Uniwire Trading, LLC, index No. 652946/15 (Sup Ct, NY County).

Defendants Jonathan M. Tulkoff and Lynette Tulkoff (the Tulkoff defendants) move, pursuant to CPLR 3211 (a) (1), (3), (5), and (7), to dismiss the complaint as against them (motion sequence number 001).

Defendant Daniel Deutsch (Deutsch) moves, pursuant to CPLR 3211 (a) (3), (5), and (7), to dismiss the complaint as against him (motion sequence number 002)<sup>1</sup>.

### BACKGROUND

The following is taken from the complaint and must be assumed as true for purposes of these motions. Karelsan is an iron and steel producer located in Turkey (NY St Cts Elec Filing [NYSCEF] Doc No. 34, complaint ¶¶ 1, 41). The Tulkoff defendants were husband and wife at all relevant times (*id.*, ¶ 2). The Tulkoff defendants were the sole and managing members of Uniwire Trading LLC (Uniwire Trading), a Delaware limited liability company (*id.*, ¶ 6). Jonathan Tulkoff was the sole shareholder of Uniwire International Ltd. (Uniwire International), a Delaware corporation (*id.*, ¶ 7). At all relevant times, Deutsch was Uniwire Trading's purchasing manager (*id.*, ¶ 13).

In this action, Karelsan seeks to enforce a judgment entered on December 21, 2016, in the amount of \$729,904.18 (*id.*, ¶¶ 15-16; NYSCEF Doc No. 35). The judgment creditor was Kardemir Ithalat Ihracat Ltd. Sti. (Kardemir), and the judgment debtors were Uniwire Trading and Uniwire International (the Uniwire Companies) (NYSCEF Doc Nos. 18, 34 ¶¶ 17, 18). The judgment stems from Uniwire Trading's unpaid purchases of galvanized wire products from 2013 to 2014, and the Uniwire Companies' promissory note to Kardemir dated March 28, 2014 (NYSCEF Doc No. 34, ¶ 21). Karelsan alleges that the judgment remains unsatisfied (*id.*, ¶ 20).

According to Karelsan, on or about October 31, 2017, Kardemir merged with "Kozan," and thereby succeeded to Kardemir's claims against third parties, including defendants (*id.*, ¶¶ 45-46). On or about December 13, 2018, Kozan merged with "Kardemir Haddecilik," and thereby succeeded to all of Kozan's and thus Kardemir's claims against third parties, including

---

<sup>1</sup> The Court would like to thank Robert Gatto Esq., for his assistance in this matter.

defendants (*id.*, ¶¶ 48-49). On October 7, 2019, Kardemir Haddecilik executed an Amended and Restated Assignment (the Amended Assignment), pursuant to which Kardemir Haddecilik conveyed to and vested onto Karelsan “the Judgment together with all causes of action, known or unknown, whether sounding in tort, fraud, breach of fiduciary duty, statutory or at common law, and however arising” (*id.*, ¶ 52; NYSCEF Doc No. 12 at 6-7). On October 17, 2022, Kardemir Haddecilik executed an Addendum to the Amended Assignment (the Addendum), pursuant to which it conveyed “all title, ownership, and rights to all the torts and fraud claims against the Defendants, including those under the New York Debtor and Creditor Law” to Karelsan (*id.*, ¶ 55; NYSCEF Doc No. 14).

Karelsan alleges that defendants defrauded Kardemir and other foreign manufacturers and suppliers of metal products of collectively millions of dollars which the Tulkoffs spent on themselves (*id.*, ¶ 60). According to Karelsan, the Tulkoff defendants created a business and operational structure over which they exercised complete domination and control and used it to syphon off Uniwire Trading’s assets to themselves and Deutsch, leaving Uniwire Trading unable to pay many of its creditors, including Kardemir (*id.*, ¶¶ 61, 62).

Karelsan alleges that Kardemir and Karelsan’s principals met Jonathan Tulkoff and Deutsch at Uniwire International’s booth at the Wire Fair in Atlanta, Georgia between April 23 and April 25, 2013 (*id.*, ¶¶ 73-74). Karelsan claims that Jonathan Tulkoff and Deutsch made false representations as to where the Uniwire Companies had opened offices, that the Uniwire Companies’ employees had 10 employees, and that the Uniwire Companies had six contracted agencies in various cities (*id.*, ¶¶ 76-77). In May 2023, Deutsch arrived in Izmir, Turkey, and met with Kardemir and Karelsan’s representatives (*id.*, ¶ 80). Karelsan alleges that, in emails dated May and June 2023, Deutsch represented, among other things, to Kardemir and Karelsan’s

representatives that “We are very optimistic about this new partnership,” “our policy is always to be very open and transparent with our suppliers,” and “We are about to enter a partnership and there must be a trust developed” (*id.*, ¶¶ 84, 85, 87). On September 17, 2013, Deutsch arrived in Izmir, Turkey to meet with Kardemir and Karelsan’s representatives (*id.*, ¶ 92). Deutsch highlighted that his employer was a fast-growing company, that it was rapidly expanding in Latin America, and that Kardemir/Karelsan and Uniwire Trading should increase their volume of business, when Uniwire Trading was already insolvent (*id.*, ¶¶ 95-96).

From 2013 through 2016, the Tulkoff defendants allegedly engaged in a “bleed-out,” a fraudulent scheme to siphon off and conceal Uniwire Trading’s assets (*id.*, ¶ 98). Karelsan alleges that the Tulkoff defendants received withdrawals and distributions from Uniwire Trading (*id.*, ¶¶ 112-203). According to Karelsan, Uniwire Trading also paid unnecessary management fees to Uniwire International in order to line Jonathan Tulkoff’s pockets (*id.*). Karelsan alleges that defendants used their American Express charge cards linked to the Uniwire Companies’ bank accounts, which they used to spend tens of thousands of dollars on their personal purchases and expenses, including luxury trips, expensive clothing, meals, and cinema outings (*id.*, ¶¶ 206-207).

#### Procedural History

Karelsan previously brought an action in Supreme Court, Westchester County pertaining to the same subject matter (the Westchester Action) (*id.*, ¶ 25). As relevant here, by decision and order dated July 18, 2022, Justice Linda S. Jamieson dismissed without prejudice Karelsan’s fraud, tort, and Debtor and Creditor Law claims based upon its lack of standing (NYSCEF Doc No. 53 at 7, *Kar-El Demir Tel San Ve Ticaret Ltd. v Tulkoff*, Sup Ct, Westchester County, July 18, 2022, Jamieson, J., index No. 52415/19). Justice Jamieson held that “plaintiff neither

amended the complaint timely to allege standing, nor did plaintiff commence a new action timely. Accordingly, the Court finds that all tort claims were not assigned to plaintiff and must be dismissed without prejudice” (*id.*). Justice Jamieson, however, also wrote that “[a]ny claims that are not barred by the statute of limitations may be the subject of a new action if applicable” (*id.*). Additionally, Justice Jamieson dismissed the claim for conversion because “conversion applies only to money when it can be specifically identified, such as when a specific amount is segregated in a specific fund” (*id.* at 4 n 3). Justice Jamieson also dismissed the direct claims under Business Corporation Law § 720 to the extent they sought money damages, but denied dismissal of Karelsan’s request for an accounting to the extent that the complaint alleged wrongdoing that was not untimely (*id.* at 11-12).

On May 8, 2023, Karelsan voluntarily discontinued the Westchester Action “without prejudice to recommencement of a new action pursuant to CPLR 205 (a)” (NYSCEF Doc No. 37).

Karelsan subsequently commenced this action on July 18, 2023, asserting the following 14 causes of action: (1) fraudulent inducement against Jonathan Tulkoff and Deutsch; (2) fraudulent inducement against Deutsch; (3) fraudulent misstatement against Jonathan Tulkoff and Deutsch; (4) fraudulent misstatement against Deutsch; (5) a claim under Debtor and Creditor Law § 273 against the Tulkoff defendants; (6) a claim under Debtor and Creditor Law § 274 against the Tulkoff defendants; (7) a claim under Debtor and Creditor Law § 275 against the Tulkoff defendants; (8) a claim under Debtor and Creditor Law § 276 against the Tulkoff defendants; (9) a claim under Debtor and Creditor Law § 276-a against the Tulkoff defendants; (10) a claim under Debtor and Creditor Law § 278 against all defendants; (11) aiding and abetting fraud against Deutsch; (12) conversion against all defendants; (13) a claim under

Business Corporation Law § 720 (a) against Jonathan Tulkoff; and (14) a derivative claim on behalf of Uniwire International against the Tulkoff defendants under Business Corporation Law § 720 (b) (NYSCEF Doc No. 34, ¶¶ 288-367).

By interim order dated June 20, 2025, the court permitted the parties to file sur-replies and sur-sur-replies (NYSCEF Doc Nos. 219, 220).

## DISCUSSION

### A. Karelsan's Standing to Assert Fraud and Tort Claims

Defendants argue that Karelsan lacks standing to assert its fraud, tort, or Debtor and Creditor Law causes of action under the Amended Assignment or Addendum because they were specifically limited to the Westchester Action and did not assign fraud or tort claims. In addition, defendants contend that Karelsan lacks standing because the assignment lacks a credible chain of authority. The Tulkoff defendants maintain that the court should dismiss the tort and fraud claims based upon res judicata and collateral estoppel based upon Justice Jamieson's decision dismissing those claims for lack of standing.

In response, Karelsan argues that the Amended Assignment and the Addendum are not limited to a specific action. Karelsan contends that the Amended Assignment effectively assigned the fraud-based claims by expressly conveying "all causes of action . . . sounding in tort, fraud, or otherwise" (NYSCEF Doc No. 54 at 2, 7). Karelsan also relies on an affirmation of its Turkish counsel, who states that at the time this action was filed, Karelsan had all rights to commence this action under Turkish law as the result of mergers between Kardemir and Kozan and Kozan and Kardemir Haddecilik, Kardemir Haddecilik's name change to Kardemir Celik, and pursuant to the Amended Assignment and Addendum (NYSCEF Doc No. 161, Aydođdu affirmation).

“On a defendant’s motion to dismiss the complaint based upon the plaintiff’s alleged lack of standing, the burden is on the moving defendant to establish, prima facie, the plaintiff’s lack of standing. To defeat a defendant’s motion, the plaintiff has no burden of establishing its standing as a matter of law; rather, the motion will be defeated if the plaintiff’s submissions raise a question of fact as to its standing” (*Golden Jubilee Realty v Castro*, 196 AD3d 680, 682 [2d Dept 2021] [internal quotation marks and citations omitted]; see also *Brunner v Estate of Lax*, 137 AD3d 553, 553 [1st Dept 2016]).

“[T]he right to assert a fraud claim related to a contract or note does not automatically transfer with the respective contract or note” (*Commonwealth of Pennsylvania Pub. Sch. Employees’ Retirement Sys. v Morgan Stanley & Co., Inc.*, 25 NY3d 543, 550 [2015]). “Thus, where an assignment of fraud or other tort claims is intended in conjunction with the conveyance of a contract or note, there must be some language—although no specific words are required—that evinces that intent and effectuates the transfer of such rights” (*id.*). “Without a valid assignment, ‘only the . . . assignor may rescind or sue for damages for fraud and deceit’ because the representations were made to it, and it alone had the right to rely on them” (*id.* [citations omitted]).

Contrary to defendants’ contention, the Amended Assignment and Addendum were not limited to any specific action. The Amended Assignment states:

“**WHEREAS**, in assigning to KARELSAN all sum or sums of money that may be had or obtained by means of the JUDGMENT, on any proceedings to be had thereupon, and on appointing KARELSAN, to inter alia, take all lawful ways for the recovery of the money due or to become due on said JUDGMENT, it was at all times KARDEMIR’S intention to accomplish in the broadest possible way, and without any limitation or reservation of rights, the transfer, conveyance and assignment to KARELSAN, of all means of obtaining payment on the JUDGMENT; the said means to include enforcement actions against the Judgment Debtors; and moreover to include as well, the transfer, conveyance and assignment to KARELSAN, of any and all rights that KARDEMIR ever had or would have, known or known or unknown, to assert *any claims, actions, causes of action, of any nature whatsoever, whether sounding in tort, fraud, or otherwise, in any lawsuits and/or proceedings against any other party*

“WHEREAS, accordingly on or about February 11, 2019, KARELSAN subsequently commenced an action against Jonathan M. Tulkoff, Lynette Tulkoff, and Daniel Deutsch, captioned KAR-EL DEMIR TEL SAN VE TICARET LTD. STI., for itself as well as derivatively on behalf of Uniwire LLC, and Uniwire International, against JONATHAN TULKOFF, LYNETTE TULKOFF and DANIEL DEUTSCH, Defendants, in the Westchester County Supreme Court (Index No. 52415/2019, Hon. Linda S. Jamieson) (hereafter the ‘Westchester Action’). . .

“NOW THIS AMENDMENT WITNESSETH, that KARDEMILK HADDECILIK, in consideration of ten dollars (\$10.00) duly paid and received, has sold, and by these presents does convey, assign, transfer, and set over, unto KAR-EL-SAN, its administrators, successors and assigns:

1. The JUDGMENT, and all enforcement actions thereon;
2. All of the causes of action asserted in KARELSAN’S COMPLAINT *or otherwise*, against the Westchester County Action Defendants; and
3. ALL RESIDUAL RIGHTS” (NYSCEF Doc No. 54 at 2, 7 [emphasis added]).

The Addendum further states:

“All title, interest and ownership to all such causes of action including without limitation, all title, interest and ownership to all causes of action sounding in tort, fraud, or pursuant [to] the New York Debtor Creditor Law, or otherwise, in the action pending in the Westchester County Supreme Court, Index No. 52415/2019, (Hon. Linda S. Jamieson) or otherwise, to the extent not previously conveyed, are hereby conveyed, transferred and vested onto KARELSAN” (NYSCEF Doc No. 42 at 2 [emphasis added]).

Moreover, the court finds that this language, which explicitly references tort, fraud, and Debtor and Creditor Law causes of action, is sufficient to evince an intent to assign fraud-based claims (*see Commonwealth of Pennsylvania Pub. Sch. Employees’ Retirement Sys.*, 25 NY3d at 550; *cf. Royal Park Invs. SA/NV v Morgan Stanley*, 165 AD3d 460, 462 [1st Dept 2018], *lv denied* 32 NY3d 1143 [2019] [plaintiff lacked standing where a purchase agreement pursuant to which plaintiff bought “all of the Sellers’ right, title, and interest in and to the Portfolio property” did not evince an intent to assign fraud or other tort claims]; *Fox v Hirschfeld*, 157 App Div 364, 368 [1st Dept 1913] [“the language employed in the assignment of the contract was not

appropriate to assign a cause of action arising, not under the contract, but for the fraudulent representations of the defendant *dehors* the contract”).

Although defendants argue that Karelsan fails to allege a chain of authority from Kardemir to Karelsan, Karelsan’s Turkish counsel has raised a question of fact as to its standing (*see Golden Realty Jubilee*, 196 AD3d at 682; *cf. Rizack v Signature, N.A.*, 169 AD3d 612, 612 [1st Dept 2019] [“Plaintiff’s lack of standing at the commencement of this action was not cured by this subsequent assignment of the claim”]; *Varga v McGraw Hill Fin., Inc.*, 147 AD3d 480, 481 [1st Dept 2017], *lv denied* 29 NY3d 908 [2017] [“Plaintiffs’ lack of standing was not cured by the master funds’ subsequent assignment of their claims . . .”]). Karelsan’s counsel explains that, at the time Karelsan commenced this action, all rights had passed to it by virtue of two mergers and a name change and pursuant to the Amended Assignment and/or Addendum (NYSCEF Doc No. 158, Aydođdu affirmation, ¶¶ 74-78, 80-81, 83). The court may “freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint” (*Leon v Martinez*, 84 NY2d 83, 88 [1994], citing *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]).

The Tulkoff defendants have failed to show any preclusive effect based upon Justice Jamieson’s dismissal of the tort and fraud claims. “[C]ollateral estoppel . . . precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same” (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). “The proponent of collateral estoppel must show identity of the issue, while the opponent must demonstrate the absence of a full and fair opportunity to litigate” (*Jeffreys v Griffin*, 1 NY3d 34, 39 [2003]). Justice Jamieson’s decision dismissing the tort claims for lack of standing was not

on the merits (*see Ricatto v Mapliedi*, 133 AD3d 737, 739 [2d Dept 2015] [“The dismissal of the prior action for lack of standing was not made on the merits . . .”]; *Tak Shing David Tong v Hang Seng Bank, Ltd.*, 210 AD2d 99, 100 [1st Dept 1994] [where original complaint was dismissed for lack of standing . . . “collateral estoppel does not apply . . . since the issues of fact or law raised herein were not necessarily raised and decided in the prior action”]). Justice Jamieson also specifically noted that “[a]ny claims that are not barred by the statute of limitations may be the subject of a new action, if applicable” (NYSCEF Doc No. 53 at 7).

Under New York’s transactional approach to res judicata, “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*O’Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). Res judicata is likewise inapplicable because there was no final determination on the merits in the Westchester Action (*see Landau, P.C. v LaRossa, Mitchell & Ross*, 11 NY3d 8, 14 n 8 [2008] [“At the opposite end of the spectrum, dismissal for . . . lack of standing . . . [is] not intended to have any determinative effect ‘on the merits’ of the action”]; *see also Tak Shing David Tong*, 210 AD2d at 100 [where original complaint was dismissed for lack of standing, “[t]hat dismissal did not preclude the present derivative suit and reassertion of the same claims” since “[i]t was not a judgment on the merits conclusive of the issues of fact and questions of law raised in the complaint and therefore, the res judicata doctrine (or claim preclusion) does not apply”]).

Therefore, defendants are not entitled to dismissal of Karelsan’s fraud, tort, and Debtor and Creditor Law claims based upon its lack of standing.

**B. Karelsan’s Standing to Bring a Claim Pursuant to Business Corporation Law § 720 (b)**

The Tulkoff defendants argue that Karelsan lacks standing to pursue its fourteenth cause of action, a derivative claim pursuant to Business Corporation Law § 720 (b) on behalf of Uniwire International as against them. They argue that Karelsan is limited to pursuing claims after Kardemir became a judgment creditor. The Tulkoff defendants maintain, citing *Brooks v Weiser* (57 FRD 491, 494 [SD NY 1971]), that prior to December 21, 2016, Karelsan was a mere creditor, and creditors do not have standing to sue under section 720.

For its part, Karelsan asserts that the statute permits a judgment creditor to pursue such a claim.

In reply, the Tulkoff defendants argue that the fourteenth cause of action should be dismissed because: (1) Business Corporation Law § 720 specifically uses the term “judgment creditor,” and (2) it is not logical to assume that New York intended that all of a corporation’s creditors are able to sue derivatively. The Tulkoff defendants maintain that all of Karelsan’s section 720 claims should be dismissed to the extent that they are based upon acts that occurred before entry of judgment on Kardemir’s claims.

In its sur-reply, Karelsan contends that case law demonstrates that it was not required to be a judgment creditor at the time of the wrongful acts.

Section 720 (a) of the Business Corporation Law provides, in relevant part, that:

“(a) An action may be brought against one or more directors or officers of a corporation to procure a judgment for the following relief:

“(1) Subject to any provision of the certificate of incorporation authorized pursuant to paragraph (b) of section 402, to compel the defendant to account for his official conduct in the following cases:

“(A) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge.

“(B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.”

The First Department has held that “BCL 720 embraces common-law and statutory causes of action imposing liability on directors and covers every form of waste of assets and violation of duty whether as a result of intention, negligence, or predatory acquisition” (*Amfesco Indus. v Greenblatt*, 172 AD2d 261, 265 [1st Dept 1991], citing *Rapoport v Schneider*, 29 NY2d 396, 400 [1972]).

Here, the Tulkoff defendants have failed to establish that Karelsan lacks standing under Business Corporation Law § 720 (b). The statute specifically authorizes a judgment creditor to bring an action for the relief provided in that section (Business Corporation Law § 720 [b]; *see also Planned Consumer Mktg. v Coats & Clark*, 127 AD2d 355, 369 [1st Dept 1987], *affd* 71 NY2d 442 [1988]).

Additionally, there is no merit to the Tulkoff defendants’ argument that Karelsan or Kardemir had to be a judgment creditor at the time of the underlying transaction. As noted by the Second Department, “[u]nlike Business Corporation Law § 626, which authorizes a shareholder to bring a derivative action in the right of the corporation, Business Corporation Law § 720 (b) authorizes a corporation, or an officer or director thereof, to commence an action to redress corporate waste or breach of fiduciary duty owed by officers and directors of the corporation” (*Gabel v Gabel*, 104 AD3d 910, 911 [2d Dept 2013]). “While Business Corporation Law § 626 (b) requires the plaintiff to be a shareholder at the time of the transaction of which he or she complains, there is no similar rule when a corporation, a director, or an officer commences an action pursuant to Business Corporation Law § 720 (b)” (*id.* at 911-912; *see also Conant v Schnall*, 33 AD2d 326, 328 [3d Dept 1970] [“An action under [Business Corporation Law] section 720 differs from an action under [Business Corporation Law] section 626 in many crucial respects. It is not derivative but original, being a statutory right of action rather than an

equitable one. . . Thus, . . . , none of the traditional rules . . . surrounding a derivative action apply to an action under section 720”]; *see also Tenney v Rosenthal*, 6 NY2d 204, 210-214 [1959]).

Accordingly, the branch of the Tulkoff defendants’ motion seeking to dismiss the thirteenth and fourteenth causes of action for lack of standing is denied.

### C. Whether Karelsan’s Claims Are Barred by the Statute of Limitations

““On a motion to dismiss a cause of action pursuant to CPLR 3211 (a) (5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff””

(*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011], quoting *Island ADC, Inc. v Baldassano Architectural Group, P.C.*, 49 AD3d 815, 816 [2d Dept 2008]). “To meet its burden, the defendant must establish, inter alia, when the plaintiff’s cause of accrued” (*Lebedev v Blavatnik*, 144 AD3d 24, 29 [1st Dept 2016] [internal quotation marks and citation omitted]). “If the defendant meets that burden, then the burden shifts ‘to aver evidentiary facts establishing that the cause of action was timely or to raise a question of fact as to whether the cause of action was timely”” (*Lake v New York Hosp. Med. Ctr. of Queens*, 119 AD3d 843, 844 [2d Dept 2014], quoting *Lessoff v 26 Ct. St. Assoc., LLC*, 58 AD3d 610, 611 [2d Dept 2009]).

The Court of Appeals has held that “if a timely brought action has been terminated for any reason other than one of the . . . reasons specified in [CPLR 205 [a]], the plaintiff may commence another action based on the same transactions or occurrences within six months of the dismissal of the first action, even if the second action would otherwise be subject to a Statute of Limitations defense, so long as the second action would have been timely had it been commenced when the first action was brought” (*George v Mt. Sinai Hosp.*, 47 NY2d 170, 175

[1979]; see also *Bread & Butter, LLC v Certain Underwriters at Lloyd's, London*, 78 AD3d 1099, 1101 [2d Dept 2010]).

#### Fraud and Aiding Abetting Fraud

Deutsch moves to dismiss the first cause of action for fraudulent inducement, arguing that “[i]nasmuch as these specific representations are the basis of the first cause of action they took place almost ten years ago and thus any such claims are time barred” (NYSCEF Doc No. 68 at 9-10). Additionally, Deutsch moves to dismiss the second cause of action for fraudulent inducement and the third and fourth causes of action for fraudulent misstatement because these claims are “predicated upon representations which occurred during May and June 2013 (almost ten years ago)” (*id.* at 10). Deutsch also moves to dismiss the eleventh cause of action for aiding and abetting fraud because the “statements . . . identified by plaintiff as made between April and June 2013 . . . occurred almost ten years ago” (*id.* at 11).

Karelsan argues, in opposition, that Deutsch has failed to demonstrate when these causes of action accrued, inasmuch as he has failed to demonstrate when Karelsan had actual knowledge of the facts underlying the fraud.

“[A] fraud-based action must be commenced within six years of the fraud or within two years from the time the plaintiff discovered the fraud or ‘could with reasonable diligence have discovered it’” (*Sargiss v Magarelli*, 12 NY3d 527, 532 [2009], quoting CPLR 213 [8]). The Court of Appeals has held that “plaintiffs will be held to have discovered the fraud when it is established that they were possessed of knowledge of facts from which it could be reasonably inferred, that is, inferred from facts which indicate the alleged fraud” (*Erbe v Lincoln Rochester Trust Co.*, 3 NY2d 321, 326 [1957]). “Generally, knowledge of the fraudulent act is required and mere suspicion will not constitute a sufficient substitute” (*id.* [internal quotation marks

omitted]). “Where it does not conclusively appear that a plaintiff had knowledge of facts from which the fraud could reasonably be inferred, a complaint should not be dismissed on motion and the question should be left to the trier of the facts” (*id.*, quoting *Trepuk v Frank*, 44 NY2d 723, 725 [1978]).

Applying these principles, Deutsch has failed to establish that the first, second, third, and fourth causes of action are time-barred. Deutsch does not argue, and thus has failed to demonstrate, that Karelsan had actual knowledge of the facts underlying the fraud or that the fraud could have been discovered with reasonable diligence (*see Trepuk*, 44 NY2d at 725; *Vilsack v Meyer*, 96 AD3d 827, 829 [2d Dept 2012] [defendants “failed to establish that the action was time-barred pursuant to CPLR 213 (8)” where they “did not make a prima facie showing that the fraud could have been discovered earlier with reasonable diligence”]). For the same reasons, Deutsch has failed to establish that the aiding and abetting fraud claim is untimely, as he has failed to demonstrate when Karelsan discovered the fraud or had knowledge of the facts from which the fraud could be inferred (*see Wimbledon Fin. Master Fund, Ltd. v Hallac*, 192 AD2d 617, 618 [1st Dept 2021]).

### Conversion

The Tulkoff defendants move to dismiss the conversion claim as untimely on the ground that Karelsan merely alleges the conversion of an account payable in 2013 or 2014. Deutsch also argues that “[i]nasmuch as [the] alleged transfers took place between eight and almost ten years ago, the cause of action for conversion is time barred as to Deutsch” (NYSCEF Doc No. 68 at 12). Karelsan argues, in response, that a six-year statute of limitations applies to its conversion claim, and that defendants have failed to show that the conversion claim is time-barred.

Given that the complaint asserts causes of action for fraud and conversion, the longer statute of limitations applies (*D. Penguin Bros. Ltd. v City Natl. Bank*, 158 AD3d 432, 433 [1st Dept 2018], citing *Petro v Ehmer Intl. Foods*, 167 AD2d 338, 339 [2d Dept 1990] [noting that “[w]hen a plaintiff asserts causes of action sounding in both fraud and conversion, the longer Statute of Limitations period for fraud . . . will apply, provided that the complaint sets forth at least a semblance of the elements of fraud at that stage”]; cf. *Garber v Ravitch*, 186 AD2d 361, 362 [1st Dept 1992], *lv denied* 81 NY2d 707 [1993] [“Where an allegation of fraud is not essential to the cause of action pleaded, its only purpose being to avoid an anticipated defense of the Statute of Limitations . . . , courts ‘look for the reality, and the essence of the action and not its mere name’”] [citation omitted]). Thus, the limitations period for fraud, i.e., “the greater of six years from the date the cause of action accrued or two years from the time the plaintiff . . . discovered the fraud, or could with reasonable diligence have discovered it” applies to Karelsan’s conversion claim (*D. Penguin Bros Ltd.*, 158 AD3d at 433, quoting CPLR 213 [8]). Here, the Tulkoff defendants and Deutsch have failed to make a prima facie showing that Karelsan had knowledge of the facts from which the fraud could have been inferred (*see Benn*, 82 AD3d at 548). Accordingly, Tulkoff defendants and Deutsch have failed to demonstrate that the conversion claim is untimely.

Business Corporation Law § 720 (b)

The Tulkoff defendants move to dismiss the fourteenth cause of action as time barred. The Tulkoff defendants argue that this claim is subject to a three-year statute of limitations, and any acts of wrongdoing that occurred before 2016 are untimely. They submit that “[t]heoretically, the wrongdoing alleged in the Complaint spans through 2016, but [it] is highly

unlikely that Plaintiff has any basis for a claim based upon the last nine days of the year during the holiday season” (NYSCEF Doc No. 56 at 18 n 10).

Karelsan counters that under CPLR 205 (a), the applicable statute of limitations relates back to the Westchester Action, and the instant action is timely because the Westchester Action was brought timely.

In reply, the Tulkoff defendants assert that, even if a six-year statute of limitations applies, it would begin to run when Kardemir became a judgment creditor.

“Direct and derivative claims under § 720 are governed by different statutes of limitations. When a judgment creditor sues directly on a claim of officer or director misconduct, it is ‘an action to recover upon a liability imposed by statute,’ subject to the three-year statute of limitations of N.Y. C.P.L.R. § 214(2), which runs from the date that the plaintiff became a judgment creditor” (*JSC Foreign Economic Assn. Technostroyexport v International Dev. & Trade Servs., Inc.*, 295 F Supp 2d 366, 383 [SD NY 2003]). “By contract when a judgment creditor sues derivatively on a claim under B.C.L. 720, it is an action by or on behalf of a corporation, subject to the six-year statute of limitations of N.Y. C.P.L.R. § 213(7)” (*id.*, citing *Rupert v Tigue*, 259 AD2d 946, 946-947 [4th Dept 1999] [six-year statute of limitations applied to judgment creditor’s action against a corporation and its director and secretary, seeking an accounting, recovery of funds and assets allegedly diverted from the corporation by its officers and directors]; *see also Toscano v Toscano*, 285 AD2d 590, 591 [2d Dept 2001] [applying a six-year statute of limitations to cause of action alleging diversion of corporate assets]; *accord Owen v Hurlbut*, 80 Misc 3d 1234[A], 2023 NY Slip Op 51161[U], \*7 [Sup Ct, Monroe County 2023], *affd as mod* 240 AD3d 1199 [4th Dept 2025]).

The Tulkoff defendants have failed to demonstrate that Karelsan's direct or derivative claims under Business Corporation Law § 720 are time-barred. Karelsan's direct claim was brought within three years of the underlying judgment, which was entered on Kardemir's claims on December 21, 2016 (NYSCEF Doc No. 35). Karelsan commenced the Westchester Action on February 11, 2019 (NYSCEF Doc No. 52).

Additionally, with respect to Karelsan's derivative claim, it has alleged wrongful conduct by defendants occurring within six years prior to the commencement of the Westchester Action (*see Rupert*, 259 AD2d at 946-947 [denying dismissal where “[t]he instant action seeks an accounting, recovery of funds and assets allegedly wrongfully diverted from the Agency by defendants, and damages allegedly incurred by the Agency and its creditors as a result of the wrongful acts of defendants” and “Because plaintiff has alleged wrongful conduct by defendant occurring less than six years prior to the commencement of the action against her, the action is not time-barred”]). Indeed, Karelsan alleges that the Tulkoff defendants made distributions to themselves from Uniwire Trading and used Uniwire Companies' American Express charge cards for personal expenses in 2014, 2015, and 2016 (NYSCEF Doc No. 34, ¶¶ 112-118, 137-142, 159-164, 208-216). Thus, the Tulkoff defendants are not entitled to dismissal of Karelsan's section 720 claims.

#### Debtor and Creditor Law § 278

Deutsch only makes a conclusory statement that “[i]nasmuch as claims under former Debtor Creditor Law § 278 appear to be analogous to tort claims . . . they would be subject to the three-year statute of limitations set forth in CPLR § 214” (NYSCEF Doc No. 68 at 11). Thus, Deutsch has failed to establish that the tenth cause of action is untimely (*see Benn*, 82 AD3d at 548).

#### D. Whether Karelsan's Claims Fail to State a Cause of Action

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141 [2017], quoting *Leon*, 84 NY2d at 87-88). However, “bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence are not presumed to be true and accorded every favorable inference” (*Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], *affd* 94 NY2d 659 [2000] [internal quotation marks and citation omitted]). Where extrinsic evidence is submitted in connection with the motion, the appropriate standard of review “is whether the proponent of the pleading has a cause of action, not whether [the proponent] has stated one” (*Dollard v WB/Stellar IP Owner, LLC*, 96 AD3d 533, 533 [1st Dept 2012] [internal quotation marks and citation omitted]).

#### Whether Karelsan's Fraud and Tort Claims Are Duplicative of Any Breach of Contract Claim

The Tulkoff defendants argue that Karelsan's fraud and tort causes of action are “fatally duplicative” in that “Plaintiff's alleged fraud and tort claims spring from the same source: the breach of contract claim against the Uniwire Entities” (NYSCEF Doc No. 56 at 13).

Contrary to the Tulkoff defendants' contention, Karelsan's fraud and tort claims are not duplicative of any breach of contract claim (*cf. Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 389 [1987] [“It is a well-established principle that a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated”]). As argued by Karelsan, defendants were neither parties to the promissory note nor any of the wire purchase contracts (NYSCEF Doc No. 8, *Kardemir Ithalat Ihracat Ltd. Sti. v Uniwire*

*Trading LLC*, 2016 NY Slip Op 31681U], \*1 [Sup Ct, NY County 2016]; NYSCEF Doc No. 48, promissory note). Moreover, Karelsan does not assert any claim for breach of contract in this action; rather, Karelsan alleges that defendants looted and dissipated Uniwire Trading's assets (NYSCEF Doc No. 34, ¶¶ 98-108, 205-250).

### Conversion

Defendants also argue that Karelsan's conversion claim must be dismissed because it improperly transformed a breach of contract claim into a tort claim. They further contend that the conversion claim fails because Karelsan merely alleges unspecific transfers of money.

Karelsan counters that it has properly alleged that the Tulkoff defendants unlawfully transferred and/or used specific corporate funds for themselves and used Uniwire International's corporate credit card to pay for their personal expenses. Karelsan contends that has identified the funds that were due to it at the time of the transfers.

"A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession" (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 [2006]). "Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights" (*id.* at 50). It is well settled that "[m]oney, if specifically identifiable, may be the subject of a conversion action" (*Peters Griffin Woodward, Inc. v WCSC, Inc.*, 88 AD2d 883, 883 [1st Dept 1982]). Stated differently, "[a]n action for conversion of money may be made out 'where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question'" (*Thys v Fortis Sec. LLC*, 74 AD3d 546, 547 [1st Dept 2010], quoting *Manufacturers Hanover Trust Co. v. Chemical Bank*, 160

AD2d 113, 124 [1st Dept 1990], *lv denied* 77 NY2d 803 [1991]). While “an action for conversion of money ‘must be recovery for a particular and definite sum of money, the specific bills need not be identified’” (*Family Health Mgt., LLC v Rohan Devs., LLC*, 207 AD3d 136, 139 [1st Dept 2022] [citation omitted]).

In the instant case, although Karelsan alleges that the Tulkoff defendants took corporate funds for themselves (NYSCEF Doc No. 34, ¶¶ 182-193), it fails to allege that the funds were “specifically identifiable and . . . subject to an obligation to be returned or to . . . otherwise treated in a particular manner” (*Matter of Clark*, 146 AD3d 495, 496 [1st Dept 2017], *lv denied* 29 NY3d 907 [2017]; *see also Selinger Enters., Inc. v Cassuto*, 50 AD3d 766, 768 [2d Dept 2008] [“The mere right to payment cannot be the basis for a cause of action alleging conversion; the essence of such a cause of action is the “unauthorized dominion over the thing in question”] [citation omitted]). Consequently, Karelsan’s conversion claim must be dismissed.

#### Debtor and Creditor Law Claims

The Tulkoff defendants argue that Karelsan was required to plead all of its Debtor and Creditor Law claims with heightened particularity. This argument is without merit. Only former Debtor and Creditor Law § 276, which concerns actual fraud, is subject to the heightened pleading requirements of CPLR 3016 (b) (*Hudson Spring Partners, L.P., v P+M Design Consultants, Inc.*, 210 AD3d 553, 554 [1st Dept 2022]; *Carlyle, LLC v Quik Park 1633 Garage LLC*, 160 AD3d 476, 477 [1st Dept 2018]).

To the extent that the Tulkoff defendants argue that Karelsan fails to plead actual intent with particularity, this contention is unpersuasive. With respect to former Debtor and Creditor Law § 276, the First Department has held that “[d]ue to the difficulty of proving actual intent to hinder, delay, or defraud creditors, the pleader is allowed to rely on ‘badges of fraud’ to support

[the pleader's] case, i.e., circumstances so commonly associated with fraudulent transfers that their presence gives rise to an inference of intent" (*Wall St. Assoc. v Brodsky*, 257 AD2d 526, 529 [1st Dept 1999] [internal quotation marks and citation omitted]). These include "a close relationship between the parties to the alleged fraudulent transaction, a questionable transfer not in the usual course of business, inadequacy of the consideration, the transferor's knowledge of the creditor's claim and the inability to pay it, and retention of control of the property by the transferor after the conveyance" (*id.*; see also *HBE Leasing Corp. v Frank*, 48 F3d 623, 625 [2d Cir 1995] ["Actual fraudulent intent must be proven by clear and convincing evidence, but it may be inferred from the circumstances surrounding the transaction, including the relationship among the parties and the secrecy, haste, or unusualness of the transaction"]).

Viewing the allegations in the light most favorable to Karelsan, it has alleged that Uniwire Companies were closely held companies, the Tulkoff defendants dissipated the Uniwire Companies' assets for purely personal reasons, and the Tulkoff defendants knew the fraudulent scheme and bleed-out left Uniwire Trading insolvent and unable to pay its creditors (NYSCEF Doc No. 34, ¶¶ 334-342). These are sufficient "badges of fraud" to support this claim (see *Hudson Spring Partners, L.P.*, 210 AD3d at 555; *Wall St. Assoc.*, 257 AD2d at 529).

**E. The Tulkoff Defendants' Request that Karelsan Post a Bond Pursuant to CPLR 8501 (a)**

The Tulkoff defendants argue that, as a foreign entity, Karelsan should be required to post a bond of \$25,000 pursuant to CPLR 8501 (a). Karelsan asserts, in opposition, that the Tulkoff defendants' demand for a \$25,000 bond is unreasonable and should be denied.

CPLR 8501 (a) provides that "upon motion by the defendant without notice, the court or a judge thereof shall order security for costs to be given by the plaintiffs where none of them is a domestic corporation, a foreign corporation licensed to do business in the state or a resident of

the state when the motion is made.” “By directing a nonresident plaintiff to post a bond for costs, the defendant is protected from frivolous suits, and is assured that, if [the plaintiff] eventually wins the action, the defendant will be able to recover costs from the nonresident plaintiff” (Vincent C. Alexander, *Prac Commentaries*, McKinney’s Cons Laws of NY, CPLR 8501). CPLR 8503 provides that the security “shall be given by an undertaking in an amount of five hundred dollars in counties within the city of New York . . . or such greater amount as shall be fixed by the court.” The court finds the amount of security proposed by the Tulkoff defendants to be excessive, and finds that \$5,000 is an adequate amount (*see Yarwood v County of Suffolk*, 174 AD3d 954, 954 [2d Dept 2019]; *Beatty v Williams*, 227 AD2d 912, 912 [4th Dept 1996]; *Royal Warwick, S.A. v Hotel Representative, Inc.*, 34 Misc 3d 1232[A], 2012 NY Slip Op 50336[U], \*9 [Sup Ct, NY County 2012], *affd* 106 AD3d 451 [1st Dept 2013]).

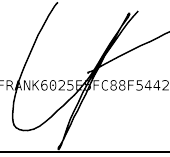
Accordingly, it is hereby

**ORDERED** that the branch of the motion (sequence number 001) of defendants Jonathan M. Tulkoff and Lynette Tulkoff to dismiss the complaint is granted to the extent of dismissing the twelfth cause of action (conversion), and said cause of action is dismissed; and it is further

**ORDERED** that the branch of the motion (sequence number 001) of defendants Jonathan M. Tulkoff and Lynette Tulkoff requesting that plaintiff Kar-El Demir Tel San Ve Ticaret Ltd. post a bond is granted; and it is further

**ORDERED** that the motion (sequence number 002) of defendant Daniel Deutsch to dismiss the complaint is granted to the extent of dismissing the twelfth cause of action (conversion), and said cause of action is dismissed, and the motion is otherwise denied; and it is further

**ORDERED** that plaintiff Kar-El Demir Tel San Ve Ticaret Ltd. post security for costs in the amount of \$5,000 within 60 days of this decision and order.

  
20260112144847LFRANK602559FC88F54428B76583C207A7C818

1/12/2026  
DATE

\_\_\_\_\_  
LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE