

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: _____

COÖPERATIEVE RABOBANK U.A.,
NEW YORK BRANCH, BROWN
BROTHERS HARRIMAN & CO., BANK
HAPOALIM B.M., MITSUBISHI
INTERNATIONAL CORPORATION,
ICBC STANDARD BANK PLC,
TECHEMET METAL TRADING, LLC,
WOODFOREST NATIONAL BANK and
BANK LEUMI USA,

Plaintiffs,

v.

LINDSEY RUBIN,

Defendant.

COMPLAINT

Plaintiffs Coöperatieve Rabobank U.A., New York Branch (“Rabobank”), Brown Brothers Harriman & Co. (“BBH”), Bank Hapoalim B.M. (“Hapoalim”), Mitsubishi International Corporation (“Mitsubishi”), ICBC Standard Bank Plc (“ICBCS”), Techemet Metal Trading, LLC (“Techemet”), Woodforest National Bank (“Woodforest”) and Bank Leumi USA (“Leumi” and, together with Rabobank, BBH, Hapoalim, Mitsubishi, ICBCS, Techemet and Woodforest, the “Senior Lenders”), by and through their undersigned attorneys, for their Complaint against Defendant Lindsey Rubin, allege as follows:

PRELIMINARY STATEMENT

1. This is an action arising out of a fraudulent scheme perpetrated by Defendant Lindsey Rubin, her family members, and other insiders of her family-owned companies, to enrich Defendant Rubin and her family through multiple fraudulent transfers and payments from family-

owned and controlled related corporations. This Complaint challenges certain transfers made in 2014 totalling more than \$6 million and characterized as “bonuses”.

PARTIES

2. The Plaintiffs are a group of financial institutions that extended nearly \$200 million in credit to Republic Metals Corporation (“Republic”) pursuant to certain secured credit and lease agreements.

3. Plaintiff Rabobank is a foreign branch office of a financial institution incorporated and existing under the laws of the Netherlands with its principal place of business located at 245 Park Avenue, New York, New York 10167.

4. Plaintiff BBH is a New York limited partnership with its principal place of business located at 140 Broadway, New York, New York 10005.

5. Plaintiff Hapoalim is a foreign branch office of a financial institution incorporated and existing under the laws of the State of Israel with its principal place of business in the United States located at 1120 Avenue of the Americas, New York, New York 10036.

6. Plaintiff Mitsubishi is a New York corporation with its principal place of business located at 655 Third Avenue, New York, New York 10017.

7. Plaintiff ICBCS is a corporation incorporated and existing under the laws of England and Wales with its principal place of business located at 20 Gresham Street, London, EC2V 7JE, United Kingdom.

8. Plaintiff Techemet is a Texas corporation with its principal place of business located at 6025 Genoa Red Bluff Road, Pasadena, Texas 77507.

9. Plaintiff Woodforest is a national banking association with its principal place of business located at 1330 Lake Robbins, Suite 100, The Woodlands, Texas 77380.

10. Plaintiff Leumi is a New York chartered bank with its principal place of business located at 579 Fifth Avenue, New York, New York 10017.

11. Upon information and belief, Defendant Rubin is the Corporate Secretary of Republic and was a director of Republic and has, since at least 2012, and possibly earlier, received an annual salary and bonuses from Republic. Upon information and belief, she has managed the diamond inventory at Republic, which has historically been a de minimis percentage of the overall inventory of the company and generally valued at less than \$1 million. Her compensation level is far in excess of her job solely because she is an inside party and member of the Rubin family.

12. Upon information and belief, Defendant Rubin is a resident of Miami-Dade County, Florida.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1332(a)(2) because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States and foreign states.

14. This Court has personal jurisdiction over Defendant Rubin because she is a resident of the State of Florida.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1291(b)(2) because Defendant resides in this jurisdiction and because a substantial part of the events and omissions giving rise to this claim occurred within this judicial district.

FACTUAL ALLEGATIONS

16. On November 2, 2018, Republic and certain of its affiliates commenced chapter 11 cases (the “Bankruptcy Cases”) under title 11 of the United States Code that are presently pending in the United States Bankruptcy Court for the Southern District of New York.

17. Prior to the Bankruptcy Cases, Republic, founded in 1980 by Richard Rubin, was a precious metals refinery and mint located in south Florida. According to Republic's website, by 1990, Republic had grown large enough to move into a 40,000 square foot headquarters. The company installed a new assay lab there in 2003, and as of 2009, had developed and installed an "advanced refining circuit" which double[d] refinery throughput." In 2010, Republic acquired a "75,000 square foot facility directly adjacent to the existing refinery" to expand its "silver circuit," which was completed in 2012.

18. According to its management, Republic had the capacity to produce approximately 80 million ounces of silver and 350 tons of gold, along with over 55 million pieces of minted products, per annum. Suppliers shipped unrefined precious metals to Republic for refining and sale from all over the United States and the Western Hemisphere. Precious metal was refined and, depending on the arrangement with the applicable customer, Republic paid for the metal either by check or wire transfer or by delivery of refined product (physical metal) in "metals credit" on the London metals exchange.

19. Defendant Rubin is a member of the Rubin family that has controlled Republic since its inception. Her brother, Jason Rubin, is currently President and Chief Executive Officer of Republic, a position he assumed after the death of Richard Rubin, Defendant Rubin's and Jason Rubin's father, on June 24, 2013. Defendant Rubin's and Jason Rubin's mother (and Richard Rubin's widow), Rose Rubin, was a director of Republic until shortly after the filing of the Bankruptcy Cases.

20. Republic's sole shareholder is the Amended and Restated Richard Rubin Revocable Trust u/a/d 12/8/2008 (the "Rubin Trust"). Upon information and belief, Rose Rubin is the sole Trustee of the Rubin Trust and is also its sole beneficiary.

21. According to Republic's management, the capital investment required by the new silver refinery beginning in 2010 and the subsequent increase in volume at Republic resulted in additional working capital needs and increased operational and financial complexities, all of which placed a stress on liquidity at the company.

22. Upon information and belief, and as explained in further detail below, Republic was insolvent as early as 2012 after it expanded into the silver refining business and has continued to be insolvent to the present day.

23. In order to mask its operating losses, Republic obtained substantial cash loans and precious metal leases from the Senior Lenders.

24. With the exception of Mitsubishi and ICBCS, each of the Senior Lenders entered into credit and lease agreements with Republic and its affiliates between January 2016 and October 2017. Mitsubishi and ICBCS first entered into credit and lease documents with Republic in December 2008 and January 2011, respectively.

25. The obligations under the credit and lease agreements are secured by liens on substantially all of Republic's assets, including Republic's inventory and cash.

26. The Senior Lenders are party to a certain Second Amended and Restated Intercreditor Agreement, dated as of February 19, 2016 (as amended from time to time, the "Intercreditor Agreement"), which governs the respective rights and interests of the Senior Lenders in the assets of Republic. Republic acknowledged and agreed to the Intercreditor Agreement.

27. In June 2018, the Senior Lenders were first advised by Republic of significant discrepancies in the value of the Senior Lenders' collateral as disclosed in the borrowing base reports periodically delivered to the Senior Lenders. Specifically, the borrowing base report delivered to the Senior Lenders on May 30, 2018 listed eligible inventory of \$219,570,312.54 as

of May 25, 2018 and a borrowing base excess of \$11,124,342.34. However, the subsequent borrowing base report delivered to the Senior Lenders on June 20, 2018 listed eligible inventory of \$144,157,698.29 as of June 8, 2018 and a borrowing base shortfall of \$39,486,098.03—a loss of over \$75 million in asset value from one borrowing base report to the next—delivered only three weeks later. The loss remains unaccounted for today. As a result of this precipitous drop in collateral value, numerous defaults were triggered under the Senior Lenders’ various credit and lease agreements.

28. The draft financial statements delivered to the Senior Lenders in June 2018 for the fiscal quarter ending March 31, 2018 further confirmed the apparent massive loss of collateral, reflecting a decrease in inventory value from \$252,322,502 as of March 31, 2017 to \$171,319,259 as of March 31, 2018, a drop of over \$80 million.

29. Republic has attributed the collateral disappearance to a significant discrepancy in Republic’s inventory accounting.

30. Upon information and belief, Republic’s officers and directors used accounting contrivances and inventory manipulation to persuade the Senior Lenders to lend cash and lease precious metals to the company. One method of overstating Republic’s inventory was assigning a significant, wholly unsubstantiated value to barrels of “hydroxides,” which are byproducts generated from refining and line clean-ups that contain unknown amounts of precious metal.

31. Upon information and belief, during the same period that Republic was obtaining millions in funding from the Secured Lenders, the company’s insiders caused Republic to transfer substantial sums to themselves through extravagant salaries, bonuses, and dividends to fund their lavish lifestyles, including luxury homes and automobiles, boats, travel, clothing, and entertainment.

32. Upon information and belief, on October 22, 2014, Republic paid Defendant Rubin a “bonus” of \$5,738,508 (the “\$5,738,508 Transfer”) which consisted of a payment to her of \$3.3 million and a transfer of the balance to various taxing authorities to cover Defendant Rubin’s projected personal tax liability arising out of the bonus. Upon information and belief, Defendant Rubin received and used approximately \$3 million of the \$5,738,508 Transfer to purchase her current residence on the same day she received the \$3.3 million payment.

33. Upon information and belief, at some time in 2014 after the \$5,738,508 Transfer, Republic paid Defendant Rubin an additional bonus of \$306,000 (the “\$306,000 Transfer”).¹

34. Upon information and belief, in 2015, Defendant Rubin also received a \$2.6 million bonus from Republic, which she used to purchase a commercial warehouse with her brother Jason Rubin through an entity they created for that purpose.² Upon information and belief, part of that commercial property was then leased back to Republic, and the lease payments from Republic as well as the lease payments from other tenants in the property went to the benefit of Defendant Rubin and Jason Rubin.

35. Upon information and belief, Defendant Rubin also received extraordinary payments characterized as “bonuses” in 2016 and 2017, in the amounts of \$94,786 and \$136,355 respectively.³

36. Upon information and belief, Defendant Rubin has not performed any significant work on behalf of Republic other than occasionally signing documents as a director and the

¹ To the extent the \$306,000 Transfer occurred on or after November 2, 2014, any claims for avoidance of the \$306,000 Transfer would be property of Republic’s bankruptcy estate and are not included in the relief sought herein by Plaintiffs.

² Avoidance of this transfer is not the subject of the relief sought in this Complaint; the foregoing allegations are included only as factual support for avoidance of the transfers that are the subject of this Complaint.

³ Avoidance of these transfers is not the subject of the relief sought in this Complaint; the foregoing allegations are included only as factual support for avoidance of the transfers that are the subject of this Complaint.

company's corporate secretary, and managing the company's diamond inventory. None of the services she provided entitled her to the \$5,738,508 Transfer, the \$306,000 Transfer, or the other bonuses she received.

37. Upon information and belief, Republic made the \$5,738,508 Transfer and the \$306,000 Transfer directly to Defendant Rubin as a gift and received nothing close to their value in exchange.

38. Upon information and belief, at the time the \$5,738,508 Transfer and the \$306,000 Transfer were made, Republic's remaining assets were unreasonably small in relation to the amount of the transfers.

39. Upon information and belief, at the time of the \$5,738,508 Transfer and the \$306,000 Transfer, Republic and its officers and directors knew or should have known that Republic was indebted to certain Senior Lenders and other creditors and would continue to need and seek financing from various lenders and otherwise seek credit and incur additional obligations from others, including the Senior Lenders, and would be unable to repay those loans as they became due.

40. Upon information and belief, at the time of the \$5,738,508 Transfer and the \$306,000 Transfer, Republic was insolvent, and has remained so.

COUNT I

(Actual Fraudulent Transfer Under FUFTA § 726.105(1)(a))

41. Plaintiffs reallege and incorporate each of the allegations in paragraphs 1 through 40 as though set forth in full.

42. Florida Statutes § 726.105(1)(a) provides that:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the

transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor

43. The \$5,738,508 Transfer and the \$306,000 Transfer to Defendant Rubin were made with the actual intent to hinder, delay, and/or defraud one or more of Republic's then-present or future creditors, including without limitation, Plaintiffs.

44. In making and causing to be made the \$5,738,508 Transfer and the \$306,000 Transfer, Republic intended to defraud one or more of its then-present or future creditors, including without limitation, Plaintiffs.

45. Various factors, some of which are enumerated in Florida Statutes § 726.105(2) as "badges of fraud," demonstrate such intent, including the following:

- a. The \$5,738,508 Transfer and the \$306,000 Transfer were to or for the benefit of an insider;
- b. At the time of the \$5,738,508 Transfer and the \$306,000 Transfer, Republic was insolvent or became insolvent shortly after those payments;
- c. Republic did not receive reasonably equivalent value for the \$5,738,508 Transfer or the \$306,000 Transfer;
- d. There was a continuing pattern of excessive compensation and other payments to insiders and Rubin family members by Republic for at least five years beginning in 2012, if not earlier;
- e. Republic's inventory was grossly inflated in financial documents and reporting with the knowledge and assistance of Republic's officers and directors, and possibly others; and

- f. Defendant Rubin knew or should have known of these “badges of fraud” by reason of her close relationship with Republic’s management, her participation in management, the size and use of the \$5,738,508 Transfer and the \$306,000 Transfer, and her knowledge of the company’s financial situation.

46. The \$5,738,508 Transfer and the \$306,000 Transfer are avoidable pursuant to Florida Statute § 726.105(1)(a), and Plaintiffs are entitled to recover the \$5,738,508 Transfer and the \$306,000 Transfer, or the value of the assets transferred, from Defendant Rubin.

WHEREFORE, Plaintiffs pray for judgment on Count I of their Complaint as follows:

- (a) Determining that the \$5,738,508 Transfer and the \$306,000 Transfer are avoidable;
- (b) Avoiding the \$5,738,508 Transfer and the \$306,000 Transfer and entering judgment in favor of Plaintiffs and against Defendant Rubin in the amount of at least \$6,044,508, or in such amounts as are determined at trial, or the value thereof, and as otherwise detailed in the amounts set forth herein, plus pre-judgment interest from the date of the transfers and post-judgment interest, and costs of suit to the full extent permitted by law; and
- (c) Awarding them such other and further relief as may be deemed just, proper, and equitable.

COUNT II
(Constructive Fraudulent Transfer Under FUFTA § 726.105(1)(b))

47. Plaintiffs reallege and incorporate each of the allegations in paragraphs 1 through 40 as though set forth in full.

48. Florida Statutes § 726.105(1)(b) provides that:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

49. At the time of the \$5,738,508 Transfer and the \$306,000 Transfer, Republic had incurred debts beyond its ability to pay as they became due and was insolvent or became insolvent shortly after the \$5,738,508 Transfer and the \$306,000 Transfer.

50. Republic did not receive reasonably equivalent value for the \$5,738,508 Transfer and the \$306,000 Transfer.

51. The \$5,738,508 Transfer and the \$306,000 Transfer are avoidable pursuant to Florida Statute § 726.105(1)(b), and Plaintiffs are entitled to recover the \$5,738,508 Transfer and the \$306,000 Transfer, or the value of the assets transferred, from Defendant Rubin.

WHEREFORE, Plaintiffs pray for judgment on Count II of their Complaint as follows:

- (a) Determining that the \$5,738,508 Transfer and the \$306,000 Transfer are avoidable;
- (b) Avoiding the \$5,738,508 Transfer and the \$306,000 Transfer and entering judgment in favor of Plaintiffs and against Defendant Rubin in the amount of at least \$6,044,508, or in such amounts as are determined at trial, or the value thereof, and as otherwise detailed in the

amounts set forth herein, plus pre-judgment interest from the date of the transfers and post-judgment interest, and costs of suit to the full extent permitted by law; and

(c) Awarding them such other and further relief as may be deemed just, proper, and equitable.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment on the claims of their Complaint as follows:

- (a) Awarding them the relief requested above;
 - (b) Awarding them compensatory damages in an amount to be determined at trial;
 - (c) Awarding them reasonable costs and attorneys' fees to the full extent permitted by law;
- and
- (d) Awarding such other and further relief as may be deemed just, proper, and equitable.

Dated: February 1, 2019

Respectfully submitted,

/s/ Avi Benayoun

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