EXHIBIT “A”

DEFENDANTS' MOTION FOR DIRECTED VERDICT

People of the State of New York v. Donald J. Trump, et al.

November 9, 2023

CONTINENTAL PLLC
ATTORNEYS-AT-LAW

Directed Verdict - Legal Standard

CPLR § 4401 provides that "[a]ny party may move for judgment with respect to a cause of action or issue upon the ground that the moving party is entitled to judgment as a matter of law, after the close of the evidence presented by an opposing party with respect to such cause of action or issue, or at any time on the basis of admissions."

A motion for a directed verdict is fully available in a non-jury trial. *See, e.g., Eion Michael Properties, LLC v. 102 Bruckner Blvd. Realty LLC*, 143 A.D.3d 622, 622, 40 N.Y.S.3d 378, 379 (2016).

Criminal Statutes predicate for § 63(12) claims so standard = "clear and convincing evidence"

AG cannot possibly meet this rigorous standard – or any evidentiary standard

What The Evidence Has Established

- Claims involve only successful and profitable loan transactions
- No late/missed payments, loans all paid back timely with $100mm+ interest
- SOFCs and certifications were submitted in connection with those loan transactions
- Only the specific parties involved in those transactions made any submissions
- Certifications were true and accurate when made – loan covenants not violated
- SOFCs and certifications accurate in all ***material*** respects
- SOFC values lower than actual values
- SOFCs had valid and obvious disclaimers negating intent, materiality and reliance
- No evidence of agreement to support conspiracy claims
- Banks relied on their own independent valuation analysis not SOFC values
- No intent to defraud, no default, no breach, no reliance, no unjust profits, no victims

No Real-World Impact

- All profitable loan transactions
- No evidence anything would have been different
- No party complaining or alleging fraud
- No fraud victim = just banks satisfied with profitable loans
- AG converts standard commercial real estate loan transactions into "fraud"
- *Exxon Mobil*, 2019 WL 6795771, at *2 (finding no violation of § 63(12) where the NYAG had "produced no testimony . . . from any investor who claimed to have been misled by any disclosure").

No Proof of Intent and/or Materiality

As this Court held, the Attorney General must demonstrate "some component of intent and materiality" to establish the second through seventh causes of action. *People v. Alamo Rent A Car, Inc.*, 174 Misc 2d 501, 505 (Sup. Ct. N.Y. Cty. 1997) (NYSCEF No. 1541, p. 20) (Summary Judgment Order).

Attorney General has completely failed to introduce evidence of materiality or intent and instead simply relies on this Court's summary judgment decision.

That decision specifically determined intent and materiality must be established at trial.

Defendants are therefore entitled to judgment as a matter of law on the remaining causes of action and as to the issue of disgorgement.

Materiality is an Essential Element

As Court recognized - for Counts II-VII Materiality is an essential element

Statutes make this clear:

Issuance of a false financial statement occurs when an individual, with intent to defraud, "knowingly makes or utters a written instrument which purports to describe the financial condition . . . which is inaccurate in some ***material*** respect" or "represents in writing that a written instrument purporting to describe a person's financial condition . . . is accurate . . . whereas he knows it is ***materially inaccurate*** in that respect."

Insurance fraud = "causes to be presented" a "written statement as part of, or in support of, an application for the issuance of" a "commercial insurance policy," which he "knows" to "contain ***materially false*** information" with an intent to defraud. *Id.* § 176.05.

The Compliance Certificates Incorporate Materiality

"The foregoing presents fairly in all **material respects** the financial condition of Guarantor at the period presented."

(May 10, 2016 Compliance Certificate)

"All of the representations and warranties made by Guarantor under Section 9(i)-(vi) and Section 9(ix)-(xxi) of the Guaranty remain true and correct in **all material respects** as of the date hereof . . . ."

(May 10, 2016 Compliance Certificate)

Guarantor made only this representation

Material inaccuracy is the standard – cannot read this out of Certificate

Representation made as part of a contractual obligation

Bank (contracting party) did not assert any breach claim

AG cannot now step into shoes of private party and enforce contract terms

OPO Loan

"Guarantor shall have delivered to Lender his (i) Statement of Financial Condition prepared by Guarantor as of June 30, 2013, (ii) Excess Reserve over Disbursement Schedule dated June 30, 2013 prepared by Guarantor and Schedule of Contingent Liabilities dated June 20, 2013, and (iii) the first (2) pages of recent filed tax returns . . . , **together with a representation from Guarantor that there has been no material change** in any of the foregoing that would result in Guarantor not being able to meet covenants applicable to Guarantor as set forth in Guaranty." (OPO Loan, Section 6.1)

In connection with the complying with certain financial covenants under the loan, the guaranty provided: "Guarantor shall deliver to Lender his Compliance Certificate" (OPO Guaranty, Section 10)

40 Wall Street Loan: No Material Adverse Effect or Change

"Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a **Material Adverse Effect**, except as referred to or reflected in said financial statements. Since the date of the financial statements, there has been no **material adverse change** in the financial condition, operations or business of Borrower, Guarantor or the Property from that set forth in said financial statements." (40 Wall Loan, Section 3.1.10)

"'**Material Adverse Effect**' shall mean any material adverse effect upon (i) the business operations, economic performance, assets, condition (financial or otherwise) or results of operations of Borrower, Guarantor or the Property, (ii) the ability of Borrower or Guarantor to perform their respective obligations under any of the Loan Documents, (iii) the enforceability or validity of any of the Loan Documents, the perfection or priority of any Lien created under any of the Loan Documents or the rights, interests or remedies of Lender under any of the Loan Documents, or (iv) the value, use or operation of, or cash flows from, the Property." (40 Wall Loan, Page S-I-16)

40 Wall Street Loan: No Material Adverse Effect or Change

"Until the Debt and Guaranteed Obligations have been paid in full, Guarantor . . . shall deliver to Lender not later than September 30th of each calendar yar, Guarantor's annual financial statements prepared in a form previously provided to Lender by Guarantor from an independent firm of certified public accountants acceptable to Lender . . . and prepared in accordance with GAAP in all **material respects (except as disclosed therein**), including a balance sheet, and **certified by Guarantor as being true, correct and complete and fairly presenting the financial condition** and results of such Guarantor and [ ] shall deliver to Lender, not later than April 30th of each year, a certificate signed by Guarantor certifying to the fact that as of March 31st of each year, there has been **no material adverse change** in Guarantor's financial condition from that shown on Guarantor's annual financial statements . . . " (Guaranty of Recourse Obligations, Section 5.2)

NYAG's Own Complaint Incorporates Materiality

- **Total Number of Paragraphs Referencing Materiality:** 48

- **Complaint Paragraphs:** 15, 19, 57, 61, 258, 261, 290, 399, 406, 407, 421, 431, 449, 452, 471, 475, 589, 590, 591, 593, 594, 608, 609, 610, 611, 618, 635, 636, 637, 639, 640, 642, 643, 650, 658,668, 675, 699, 701, 728, 735, 744, 759, 795, 806, 821, 832, and 833.

- **Total Number of Paragraphs Referencing Materiality in Loan Covenants:** 25

- **Paragraphs that Deal With Loan Covenants:** 19, 290, 589, 590, 591, 593, 594, 608, 609, 610,611, 618, 635, 636, 637, 639, 640, 642, 643, 650, 658, 668, 728, and 735.

NYAG's Own Complaint Incorporates Materiality

For example:

"In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of that statement. In particular, the agreement contained a provision entitled, "Full and Accurate Disclosure." This provision required Mr. Trump to make a representation that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of a ***material*** fact or omits to state a ***material*** fact necessary to make any ***material*** statements contained herein or therein not misleading in light of the circumstances under which they were made." (Compl. ¶ 589.) (emphasis added)

May 10, 2016

LENDER: **Deutsche Bank Trust Company Americas**

GUARANTOR: **Donald J. Trump**

BORROWER: **Trump Endeavor 12 LLC, a Delaware limited liability company**
401 North Wabash Venture LLC, a Delaware limited liability company
Trump Old Post Office LLC, a Delaware limited liability company

***

1. ***Financial Information***. As applicable (please check applicable box below and insert the applicable date below):

- [X] Attached hereto is Guarantor's Statement of Financial Condition as of June 30, 2014 (Section 11(A) of the Guaranty).
- [X] Attached hereto is Guarantor's Schedule of Contingent Liabilities as of June 13, 2014 (Section 11(B) of the Guaranty).
- [X] Attached hereto is Guarantor's Excess Revenue over Disbursement Schedule for the twelve (12)-month period ended June 30, 2014 (Section 11(C) of the Guaranty).

The foregoing presents fairly in all material respects the financial condition of Guarantor at the period presented.

4. ***Net Worth of Guarantor.*** In respect of Section 10(iii) of the Guaranty, the "Net Worth" of Guarantor for the period ending on June 30, is not less than (x) Two Billion Five Hundred Million ($2,500,000,000) Dollars times (y) the applicable Step-Down Percentage on the date hereof.

***

IN WITNESS WHEREOF, Guarantor has executed this Compliance Certificate as of the date set forth above.

GUARANTOR:

DONALD J. TRUMP

Falsifying Business Records - Intent

Falsification of business records in the second degree requires making or causing a false entry in the business records of an enterprise or the making or causing of the omission of true entries in the business records of an enterprise with an "***intent to defraud***." N.Y. Penal Law § 175.05 (emphasis added).

The intent to defraud is "commonly understood to mean" to act with intent "to cheat someone out of money, other property or something of value." *People v. Hankin*, 175 Misc. 2d 83, 89 (N.Y. Crim. Ct. Kings Cnty. 1997) (*citing People v. Saporita*, 132 A.D.2d 713, 715 (2d Dep't 1987)). It involves "frustrat[ing] the legal rights of another," *see S. Indus. v. Jeremias,* 66 A.D.2d 178, 181 (2d Dep't 1978), or misleading with the purpose of "leading another into error or to disadvantage," *People v. Briggins*, 50 N.Y.2d 302, 309 (1980) (Jones, J., concurring). Thus, it is more than an intent to deceive. *See Hankin*, 175 Misc. 2d at 89.

Falsification of business records in the first degree requires the additional element that the defendant intends to commit another crime or "to aid or conceal the commission thereof." *Id.* § 175.10; *see also People v. Reyes*, 69 A.D.3d 537, 538 (1st Dep't 2010).

No evidence of "another crime" in the record

Issuing False Financial Statements – Intent/Materiality

Issuance of a false financial statement occurs when an individual, with ***intent to defraud***, "knowingly makes or utters a written instrument which purports to describe the financial condition . . . which is inaccurate in some ***material*** respect" or "represents in writing that a written instrument purporting to describe a person's financial condition . . . is accurate . . . whereas he knows it is ***materially*** inaccurate in that respect." N.Y. Penal Law § 175.45 (emphasis added).

President Trump – No Evidence of Intent

This Court stated it is "not here to hear what [President Trump] has to say." (Tr. 3510:3).

See also Tr. at 3509:19-21 ("Well, Mr. Kise, I think you said several times we should hear what he did, what the witness has to say. No, I am not here, and these people are not here, and the Attorney General is not here to hear what he has to say." (Tr. at 3509:19-21)

However, Court cannot ignore President Trump's testimony

Already prejudged him earlier in the proceedings

Must evaluate that testimony determine if AG has sufficient evidence to prove intent

President Trump – No Evidence of Intent

Q. How did you know that the banks did not pay much attention to your statements?

A. **Because I have been dealing with banks for 50 years, and I probably know banks as well as anybody. And I have borrowed a lot of money, I have paid back a lot of money, and I know what they look at. They look at the deal. They look at the location. They don't want to get involved in financial statements because that's not what they are after. If a deal goes bad, they want to be able to take the deal back over and, you know, have it. They want you to be able to put up some cash or whatever it is you may be -- including expertise. But they don't want to be fighting for ten years over a personal financial statement. They want to take over the deal.**

(Tr. 3480:8–3481:11)

Negates fully any intent to mislead or defraud

Establishes no such intent in fact existed

President Trump – No Evidence of Intent

Q. That's not my question. My question is whether you would actually use them to obtain financing.

A. **I would give them, but I don't think anybody paid much attention to them because of the disclaimer clause, and because generally that's not the way to do it. Again, I have been doing it for 50 years and they look at the property**.

(Tr. at 3584:1–7).

Negates fully any intent to mislead or defraud

Establishes no such intent in fact existed

Knowledge of disclaimers and 50 years industry experience cannot be ignored

President Trump – No Evidence of Intent

President Trump testified that he "gave [Mr. Weisselberg and Mr. McConney] total authority to work with a very expensive accounting firm, … [a]nd they worked with the accounting firm and they came up with a statement." (Tr. at 3561:5–9).

New York courts have held that plaintiffs failed to produce credible evidence of intent to defraud ***where there was no evidence to suggest that defendants' reliance on accounting professionals "was other than in good faith.***" *Abrahami,* 224 A.D.2d at 233–34; *see also People v. Dillard*, 271 N.Y. 403, 414 (1936) (finding defendant had a "right to rely" on agreement drafted by subordinate employees and the facts disclosed to him and that plaintiff had not shown he "knowingly made a false statement or a statement intended to deceive the public.")

Beyond reasonable for CEO to rely on multi-million dollar accountants

Again no evidence of intent

Disclaimers Alone Establish No Intent

Inclusion of Disclaimers negates intent

Intent = conscious state of mind

President Trump: 50 years' experience + disclaimers = no intent

President Trump = telling users up front to conduct their own analysis

Very straightforward that SOFC values are opinions – no attempt to conceal

Compilations are by definition an uncorroborated opinion

Disclaimers told the banks what was being provided – and what was ***not*** being provided

Disclaimers notified SOFC users (like DB and Zurich) they needed to conduct their own analyses

No Proof of Materiality

AG cannot ignore materiality – permeates Complaint/Documents/Law

But from her opening statement (Tr. at 13:17–25), AG makes clear that "[t]he Court has already found that the People submitted conclusive evidence that between 2014 and 2021, the defendants overvalued the assets in the statements between $812 million and $2.2 billion per year. ***There's no world in which that an overstatement of that size is not material.***"

In fact, the AG's position is that the ruling by this Court on summary judgment meant that "what the banks thought and did just didn't matter." (Tr. at 87:5–10).

However, the standard under New York law for materiality is not whether there is a large discrepancy but requires a showing ***"that in all probability the omitted or misrepresented facts would, in view of the circumstances, have assumed actual significance in the deliberations of a reasonable shareholder."*** *See People v. Essner*, 124 Misc. 2d 830 (Sup. Ct., N.Y. Cnty. 1984).

Here the banks had a different view – and accepted fully a $2 billion variance

No Proof of Materiality

Testimony from bank employees (*e.g.*, Nicholas Haigh and Jack Weisselberg) makes clear that the Attorney General cannot, and did not, demonstrate materiality.

AG never asked Haigh (DB) if anything would have been done differently

AG never asked Jack Weisselberg (Ladder) if anything would have been done differently

Bank also considered many factors (not just SOFC) in determining loan approval and pricing:

Those factors included (1) nature of the collateral associated with the loan, (2) quality of collateral associated with the loan, (3) loan's value ratio, (4) bank's lending history, (5) actual lending experience with the specific customer, (6) bank's experience in a particular industry, (7) client's experience in a particular industry, (8) client's performance in a particular industry, (9) guarantor's liquidity, (10) unpledged access owned by the guarantor, and (11) economic climate.

No Proof of Materiality

Materiality must be viewed through the lens of the bank, not the AG and not the Court

What is material to the bank

Haigh testified that all approvals were based on DB adjusted values, not SOFC values

The DB adjusted values reduced SOFC values by @ $2BB

DB approved the loans anyway as DB did not view this as material – Court cannot simply ignore

DB satisfied with their adjusted values

No even theoretical argument approvals/rates/terms any different

Cannot simply ignore the bank's own analysis and rationale

AG cannot now simply substitute her valuations and claim "material"

PX-294: DB 2014 Credit Memo (Page 10)

Recommendation:

Approval of i) the Annual Review for Facility A (Doral), (ii) the Modification/Increase to Facility B (Trump Chicago Hotel) and (ii) origination of Facility C (Trump Old Post Office) are being recommended based on:

All Facilities

- *Financial Strength of the Guarantor* - The financial profile of the Guarantor includes, on an adjusted basis, a net worth of $2.6 billion with $154.5 million in unencumbered liquidity.
- *Operating Experience* – DJT's extensive experience in operating private golf/country clubs. His current portfolio includes 13 such clubs with a reported value of $1.66 billion and DB adjusted value of $680.6 million.
- *DB Relationship* - DJT continues to develop his relationship with DB as Facility C will be the fourth credit facility we have originated with him or his family (3 with DJT, 1 with DJT Jr.). DJT has transferred $40 million in liquidity to DB and has indicated he is interested in continued to grow his non-credit relationship with the firm. The AWM Banking team has been introduced to each of DJT's three adult children and two have established relationships with the firm. In addition, the CB&S Real Estate Team has had a successful history with the family.

PX-294: DB 2014 Credit Memo (Page 14)

II - Financial Analysis – Guarantor

It should be noted that the Guarantor, DJT, is required to provide financials within 120 days of 6/30 FYE. Thus the most recent financials available are as of 6/30/13. We are not aware of any material changes to the Guarantors financial profile.

Guarantors – Financial Summary: Although all three Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor. As part of this underwriting we have met with several members of the family office to update our due diligence on the client reported financial information, as prepared by WeiserMazars, an independent public accounting firm. Based on the results of this due diligence we have made certain assumptions that have resulted in adjustments to reported values. Details on such adjustments are included in the analysis that follows. Additional details are included in the Guarantor's financial statements which are attached as Exhibit V.

Financial Summary *($ in millions)* **Source:** *Client provided financials*	**DJT 6/30/2011** (Client Reported)	**DJT 6/30/2012** *(Client Reported)*	**DJT 6/30/2012** *(DB Adjusted)*	**DJT 6/30/2013** *(Client Reported)*	**DJT 6/30/2013** *(DB Adjusted)*
Cash & Marketable Securities	$258.9	$169.7	$146.3	$339.1	$154.5
Escrow & Reserve Deposits	$9.1	$10.8	--	$15.2	--
Real Estate – Net Equity	$2,996.9	$3,184.2	$1,707.5	$3,268.7	$1,834
Partnerships & Joint Ventures	$720.0	$823.3	$411.7	$869.3	$434.7
Real Estate Licensing	$89.3	$65.2	$32.6	$174.7	$87.3
Other Assets	$199.2	$318.5	$159.3	$352.0	$176.0
Total Assets	$4,273.4	$4,563.9	$2,448.8	$5,019.0	$2,686.2
Personal Mortgage other Debt	$8.4	$8.3	$8.3	$20.5	$20.5
Other Liabilities	$3.7	$4.4	$4.4	$20.4	$20.4
Net Worth	**$4,261.3**	**4,559.0**	**2,436.1**	**4,978.0**	**2,645.2**
Contingent Obligations	$114.0	$195.7	277.7	$197.2	$420.5
Net Cash Flow *	$82.4	($89.2)	$13.4	$169.7	($25.2)
Key Ratios – Unsecured Lending Guidelines (excludes Swap PFE)					
Leverage Ratio (<= .30)	.13	.14	.13	.01	0.16
Cash Flow Ratio (>= .35)	.57	-0.67	.05	0.45	-0.05
Liquidity Ratio (>= .25)	2.04	1.32	.47	0.90	0.41
Asset Coverage Ratio (>=6.0)	31.7	33.32	8.43	13.27	7.10

PX-294: DB 2014 Credit Memo (Page 15)

Property Type	DJT Valuation	DB Valuation	Reported Debt	DJT Net Equity	DB Adjusted Net Equity
Trump Tower – 725 5th Ave	$526.8	$480.0	$100.0	$426.8	$380.0
Niketown – East 57th St	$287.6	$175.0	$39.2	$248.4	$135.8
40 Wall Street	$530.7	$500.0	$160.0	$370.7	$340.0
Trump Park Ave	$346.1	$173.0	$21.8	$324.3	$151.2
Subtotal – 4 Trophy Properties	***$1,691.2***	***$1,328.0***	***$321.0***	***$1,370.2***	***$1,007.0***
Club Facilities	$1,656.2	$828.1	$147.5	$1,508.7	$680.6
Other Property Interest	$412.3	$168.6	$22.5	$389.8	$146.1
Total – Portfolio	***$3,759.7***	***$2,324.7***	***$491.0***	***$3,268.7***	***$1,833.7***

- *4 Trophy Properties* – The valuations for each of these properties were discussed with DB Valuation Services Group ("DBVSG") who advised on adjustments for each.
  - Trump Towers – The 68 story building contains residential and condominiums that are owned by residents along with 178,000 square feet in commercial space and 114,000 square feet of retail space. As of 6/30/13 the property had associated debt of approx $100MM. The loan is non-recourse and matures in 2022. A recent appraisal performed in conjunction with the refinance valued the property at $480MM resulting in a roughly 21% LTV.
  - Niketown – The Guarantor is the lessee with respect to 2 long-term ground leasehold estates related to the land and the building located on 57th street between Madison and 5th Avenue. Since 1994 the building has been leased to Nike Retail Services. The current lease is scheduled to expire in May 2017. The space includes 65,000 square feet of retail space. Based on sq foot assumption DBVSG has indicated an adjusted value of $175 million. Financing on the space is in the form of long-term bonds which are scheduled to fully amortize by June 1, 2017.
  - 40 Wall Street – The 72 floor tower consist of 1.3 million in premier office space. Based on a SF assumption DBVSG has indicated an adjusted value of $500 million. The existing debt in the amount of $160 million, of which the Guarantor currently guarantees $20 million, is scheduled to mature in November 2017.
  - Trump Park Avenue – The property located on 59th Street and Park Avenue consists of 134 condominium units coupled with 30,000 square feet of retail space has a reported value based on unsold units and retail rates of $346.1 million. The unsold condominium units have been pledged as collateral for the mortgage which, as of 6/30/13, had an outstanding balance of 21.84MM and matures 8/1/15. Based on discussions with DBVSG we elected to take an approximate 50% haircut on the reported value.

No Proof of Materiality

William Kelly, General Counsel of Mazars, testified that "Mazars never determined that there were any material discrepancies with respect to the Statement of Financial Condition that it prepared for President Trump from 2011 to 2018?" (Tr. at 2164-2165).

Mr. Larson, an appraiser from Cushman and Wakefield, testified that there was absolutely nothing to prohibit President Trump from conducting his own valuations of his property and that the valuations do not need to be conducted by an appraiser (Tr. at 1613:5–8, 1610:6–18).

Mr. Larson agreed that an appraisal is an art not a science and requires considering numerous factors in coming to a determination (Tr. at 1629:19–25; 1630:1–3).

No Proof of Materiality

Nothing in the record to establish materiality

Ignored completely by the AG

MSJ decision by its own language does not satisfy burden

Materiality measured in the real world by the real participants

Here there is simply no evidence of materiality and the claims therefore fail

No Proof of Insurance Fraud

No evidence SOFCs were material to underwriting decisions

No evidence of false written statement submitted to insurers

Markarian	=	AW allegedly "told her" SOFC values based on appraisals
Holl	=	verbal representations during a meeting no attribution of statement to any specific person cannot hold "defendants" liable

No Proof of Conspiracy

Conspiracy requires "(1) an ***agreement*** between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury." *Abacus Fed. Sav. Bank v. Lim*, 75 A.D.3d 472, 474 (1st Dep't 2010); *see also Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999) ("[A]greement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy.")

No proof of any agreement to commit criminal act

Agreement to prepare/submit SOFCs not agreement to commit criminal act

No evidence of intentional participation in plan/purpose

No Proof of Conspiracy

No evidence of resulting damage or injury

No dispute = no defaults

no late/missed payments

no victim

all profitable transactions

No Proof of Conspiracy

No evidence of agreement

AG star witness: Michael Cohen – showcased in opening statement

AG herself now retreats from his pathetic performance

Cohen = Not Credible

Admitted to Perjury – lied in every Court he has ever appeared in

Admitted DJT never told him to inflate statements

Re-direct preposterous = DJT speaks in code

No Proof of Conspiracy

No testimony to support AG's claim that DJT directed anyone to overstate SOFC values

Cohen said Trump ***did not*** direct him to inflate SOFC values

Birney statement about what AW told him is inadmissible

No prima facie proof of conspiracy ***without*** statement

Statement itself not proof of any agreement/criminal act

"Mr. Trump wanted his net worth to go up."

This is not evidence of guilt or criminal conduct

Who does not want it to go up?

AG Failed to Establish Individual Claims Against Each Defendant

No specific proof of liability and/or specific conduct (*i.e.*, Seven Springs, the Trust, DJT Holdings, DJT Managing Member, the Trump Organization Inc. and LLC)

Parties to loans/guaranty very specific – set forth in the governing documents

Seven Springs/DJT Holdings/Trump Org Inc & LLC did not prepare/submit the SOFCs

The Trust did not prepare/submit the SOFCs at loan inception

None of the Defendants specified as to insurance fraud claim

AG cannot simply conflate all of the defendants together

No basis to disregard the corporate form

AG has failed completely to attribute specific criminal conduct to specific defendants

AG Failed to Establish Specific Defects

AG = each SOFC submission/certification constitutes a separate act

But no evidence specific to each act

AG instead conflates 2011-2021 period without specific proof as to each year

No specific proof as to defects year by year

Evidence has wandered from year to year and statement to statement without correlation

Meandering presentation – spaghetti method

No attempt to establish materiality of alleged defects for each separate SOFC/certification

AG cannot simply conflate all of the SOFCs/certifications together

No basis for establishment of criminal liability without specific delineation

AG has failed completely to attribute specific criminal conduct to specific SOFCs/certifications

Disgorgement

Disgorgement not available under § 63(12) or underlying statutory claims (Counts II-VII)

Even if available AG has not established any gains were ill-gotten, *i.e.,* demonstrate a causal link between the purported gains to Defendants and the purported fraudulent conduct. *J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.,* 91 A.D.3d 226, 232-233 (1st Dep't 2011), *rev'd on other grounds*, 21 N.Y.3d 324 (2013) ("[T]he disgorged amount must be causally connected to the violation.")

As noted, there is no evidence the loan approvals/terms/rates would have actually differed

Disgorgement must be directed at "ill-gotten gains for recompense of investors or some entity other than the prosecuting agency." *Access Point Medical LLC v. Mandell*, 106 A.D. 3d 40 (1st Dep't 2013).

Statute of Limitations

Application of First Department mandate and appropriate accrual date under that decision based on the NYAG's stated basis for the claims results in dismissal of at least seven of the ten lending-based claims.

Simple non-discretionary process – any transactions closed before July 13, 2014

Chart provides summary

Only remaining loan claims relate to OPO Loan and/or the 40 Wall Street Loan

Cannot seek disgorgement as to transactions closed before July 13, 2014

Cannot seek disgorgement as to contracts awarded (OPO/FP) before July 13, 2014

Transaction	Date Transaction Closed (Accrual Date)	Defendants For Which NYAG'S Claims Are Timely
Seven Springs Loan	July 17, 2000	None
Trump Park Avenue Loan	July 23, 2010	None
Ferry Point Contract	2012	None
GSA OPO Bid Selection and Approval	February 2012	None
Doral Loan	June 11, 2012	None
Chicago Loan	November 9, 2012	None
OPO Contract & Lease	August 5, 2013	None
OPO Loan	August 12, 2014	Only Defendants Bound by The Tolling Agreement.
Buffalo Bills Bid	Transaction never consummated.	None
40 Wall Street Loan	November 2015	Only Defendants Bound by The Tolling Agreement.

Robert Aff. at Ex. AAF

Disgorgement

AG disgorgement claim based on total speculation

No record evidence of any "ill-gotten" gains

No bank testimony or evidence that approvals/terms/rates would have in fact been different

Ignores the multiple factor underwriting analysis

Ignores the realities of the marketplace

No proof loans would have ever been agreed at higher rates

Disgorgement

No proof OPO loan would not have been made

No proof OPO loan terms would have actually differed

No proof 40 Wall loan would not have been made

No proof 40 Wall loan terms would have actually differed

No proof OPO/Ferry Point contracts would not have been awarded

No proof any of the certifications could have possibly impacted approvals/rates/terms

Disgorgement

AG's only remaining theory relates to the certifications

No proof post-closing certifications could possibly impact approvals/rates/terms

Even Court agrees:

Court: "Well, I agree with your logic that a certification, we will agree to that term, in 2017, doesn't affect the -- anything directly about the original loan, how it was negotiated, how it was finalized." (Tr. at 3741:10-13)

AG also completely ignores Guaranty step-downs/elimination

Doral and Chicago = certifications moot

Doral 10% and Chicago eliminated

No possible basis for disgorgement on Doral/Chicago after step down/elimination

Disgorgement

McCarty = Disconnected from reality

No evidentiary support

Develops own absurd construct

Ignores bank officer testimony

Ignores plain language of loan agreements – step downs/eliminations/default rate

Substitutes his judgment for that of sophisticated counterparties

AG seeking to backfill gaping hole in case – cannot prove so make it up

Disgorgement

Gathers v. New York City Transit Auth., 242 A.D.2d 506, 506-07 (1st Dep't 1997) (reversing admission of expert testimony which was "based on speculation, lacked competent factual support and was beyond the proper scope of expert testimony")

"[A]n expert may not reach a conclusion by assuming material facts not supported by the evidence, and may not guess or speculate in drawing a conclusion." *Quinn v. Artcraft Const., Inc.*, 203 A.D.2d 444, 445 (2d Dep't 1994).

In *Ortiz*, the First Department held that the trial court properly precluded expert testimony reconstructing the accident where eyewitnesses to the accident testified at trial. *Ortiz v. Variety Poly Bags, Inc.*, 19 A.D.3d 239, 240 (1st Dep't 2005).

In re 91st St. Crane Collapse Litig., 154 A.D.3d 139, 151 (1st Dep't 2017) ("The trial court properly precluded the proposed testimony of defense expert . . . , which not only was not based on facts in the record, but also contradicted facts in the record").

Disgorgement

McCarty's simply adopted the Court's position on summary judgment (Tr. at 3047-3049) on interest rates increasing as risk increases and assumed facts not in evidence with respect to what Deutsche Bank would have done (Tr. at 3060–3061).

McCarty offers only to substitute his judgment for the judgment of the sophisticated private actors that underwrote and negotiated highly successful business transactions.

Frye standard simply does not permit this kind of expert-by-speculation.

Nothing in the record to suggest the banks would have denied or altered the terms of the loan based on additional information *because the attorney general never asked the banks that question.*

Even McCarty stated he could ***not*** testify with any reasonable degree of certainty as to what banks actually would have done:

> **THE COURT:** It is a yes-or-no question. Are you certain that they would or not have, whatever, offered a loan on those terms? Are you certain?
>
> **THE WITNESS:** It is a hypothetical question. I can't be certain.
>
> (Tr. at 3137).

Disgorgement

McCarty even confirmed there was no violation of 40 Wall Loan Covenants.

Q. You would see here that the covenant that it describes is that the key principles must maintain a net worth equal to at least $160 million and a liquidity of at least $15 million?
A. That's correct.

Q And the key principle described in this document is Donald John Trump?
A .That's correct.

Q. Do you have any reason to believe during the life of this loan Mr. Trump didn't maintain a net worth equal to at least $160 million in liquidity of at least $15 million?
A. No, I don't think there was any violation of this covenant.

(Tr. 3117:19–3118:5).

Defendants Entitled to Directed Verdict

- AG has failed to establish *prima facie* case
- No proof of intent
- No proof of materiality
- No specifically attributable conduct to each Defendant
- No entitlement to disgorgement
- AG seeks to impose liability for profitable transactions
- AG seeks to substitute her judgment for that of banks
- AG not pursuing any wrongdoer – just pursuing a political opponent
- No fraud – No victim
- No liability as to Counts II–VII