

LAW OFFICES
ROBERT & ROBERT PLLC

526 RXR PLAZA
UNIONDALE, NEW YORK 11566
(516) 832-7000
FACSIMILE (516) 832-7000

ONE GRAND CENTRAL PLACE
60 EAST 42ND STREET, SUITE 4600
NEW YORK, NEW YORK 10165*
(212) 858-9270

*NOT FOR MAIL OR SERVICE OF PROCESS

WWW.ROBERTLAW.COM

December 1, 2023

VIA NYSCEF

Hon. Arthur F. Engoron
Supreme Court of the State of New York
New York County
60 Centre Street
New York, New York 10007

Re: *People of the State of New York, et al. v. Donald J. Trump, et al.*,
Index No. 452564/2022 (Sup. Ct. New York County) – Shubin Testimony

Dear Justice Engoron:

This firm represents Defendants Donald Trump, Jr. and Eric Trump in the above-referenced matter. We write this letter on behalf of Defendants President Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC's (collectively, "Defendants") to alert the Court that Defendants intend to call John K. Shubin, Esq. ("Mr. Shubin") as a witness. Mr. Shubin was properly disclosed as an expert on Defendants' witness list and has provided a detailed report summarizing the subject matter, facts, and opinions about which he will testify. Mr. Shubin's testimony is both material and necessary to Defendants' case, as he will provide further evidence that Defendants lacked any intent to defraud or mislead in their valuation of Mar-a-Lago.

It is uncontested that Mr. Shubin possesses the requisite experience, training, and skill to qualify as an expert under CPLR § 3101.¹ Mr. Shubin's opinions are based on the documents he reviewed as well as his personal knowledge, expertise, observations, and experience in real-estate litigation. Mr. Shubin is a Florida-based land use lawyer with over thirty years of experience in real-estate litigation and complex land use and zoning matters. He is well-versed in the intersection of private and public covenants relative to property development. Mr. Shubin's curriculum vitae is attached hereto as **Exhibit A**.

As set forth in his June 30, 2023, report, Mr. Shubin intends to offer his expert opinion regarding which covenants, deeds, restrictions, and zoning are applicable to the Mar-a-Lago property located

¹ The Attorney General, on September 19, 2023, in her original motion *in limine* to strike Shubin's testimony did not contest Mr. Shubin's expert qualifications.

LAW OFFICES
ROBERT & ROBERT PLLC

Hon. Arthur F. Engoron
Supreme Court of the State of New York
December 1, 2023
Page 2

at 1100 South Ocean Boulevard, Palm Beach, Florida.² A copy of that report is annexed hereto as **Exhibit B**. In his report, Mr. Shubin identifies the relevant governing documents (1) the Mar-a-Lago Special Use and Preservation Plan, including the Application for Special Exception 11-93; (2) the Declaration of Use Agreement by the Town of Palm Beach, the Mar-a-Lago Club, Inc., and Donald J. Trump dated August 10, 1993; (3) the Deed of Conservation and Preservation Easement from Donald J. Trump to National Trust for Historic Preservation in the United States dated March 26, 1995; (4) the Warranty Deed recorded on April 6, 1995; (5) the Deed of Development Rights recorded on October 17, 2002; (6) the restated By-Laws of Mar-a-Lago Club, Inc.; (7) the Rules of the Mar-a-Lago Club and the Rules and Regulations of the Mar-a-Lago Club; (8) Applications of Membership for Mar-a-Lago Club; (9) Memorandum of the Town Attorney of the Town of Palm Beach, regarding the Mar-a-Lago Club/Trump Residence; (10) letter from John Marion, Esq.; (11) Town of Palm Beach Minutes of Town Council Meeting held of February 9, 2021; and (12) the Code of Ordinances of the Town of Palm Beach, including the Town Beach Zoning Code. Mr. Shubin reviewed these documents in formulating his opinions. Mr. Shubin then explains that, considering all the governing documents, application of the various different provisions demonstrates that Mar-a-Lago may be used as an exclusive private residence and that the property's residential use rights are freely transferable by the owner.

The Attorney General, in its motion *in limine* to strike Mr. Shubin's testimony, contended that Mr. Shubin's expert report is nothing more than a "brief on behalf of Defendants" containing bare legal conclusions.³ This is incorrect. Mr. Shubin identifies the relevant governing documents and describes and explains both how they intersect and the application of their complex provisions to the subject property. Pursuant to rule 7.01 of the Guide to New York Evidence, this subject matter is unquestionably "beyond the knowledge or understanding, or will dispel misconceptions, of a typical finder of fact." Guide to N.Y. Evid., rule 7.01(1)(a), Opinion of Expert Witness, <https://www.nycourts.gov/JUDGES/evidence/7-OPINION/ARTICLE-7-RULES.pdf>. While, as developed below, Mr. Shubin does not opine on a seminal legal issue to be decided in this case, his testimony would nonetheless be admissible "even if it embraces an ultimate issue to be decided by the trier of fact." *Id.*, rule 7.01(3).

Moreover, although New York courts have held that experts cannot testify to offer legal conclusions that effectively usurp the Court's role, expert witnesses may offer opinions on the applicability of documents and regulatory schemes pertaining to land use. *See, e.g., Zohar v. 1014*

² That report also indicated that he would rebut the opinion testimony of the Attorney General's expert, Laurence Hirsh relating to his analysis of the zoning restrictions at Mar-a-Lago. Although Mr. Hirsh has not been called to testify in the Attorney General's case-in-chief, the Attorney General nonetheless has made the covenants, deeds, and restrictions a centerpiece of her case and cannot limit the defense presentation of evidence.

³ Testimony regarding purely legal questions involve, for example, the meaning of a specific contract term or the meaning of a specific term in a statute. Here, Mr. Shubin's testimony addresses facts (the governing documents) and the application of those facts to the subject property. There is no legal opinion offered, but rather an explanation of the complex facts herein at issue.

LAW OFFICES
ROBERT & ROBERT PLLC

Hon. Arthur F. Engoron
Supreme Court of the State of New York
December 1, 2023
Page 3

Sixth Ave. Realty Corp., 24 A.D.3d 125, 125 (1st Dep’t 2005) (holding that an expert’s testimony as to the general application of a building code was proper); *see also People v. Lurie*, 249 A.D.2d 119 (1st Dep’t 1998) (holding that expert testimony was proper where the witness never testified as to the ultimate issue and her testimony was necessary to explain a complicated regulatory scheme governing co-op conversions, including the conversion process and the statutory requirements); *LoScalzo v Town of Huntington*, 137 A.D.2d 660, 661 (2d Dep’t 1988) (permitting an expert to opine that the zoning of a plaintiff’s property was not in accordance with the comprehensive plan).

Additionally, the cases precluding experts from offering legal conclusions involved situations where the expert opined on a seminal legal issue to be decided by the court. *See Good Hill Master Fund L.P. v. Deutsche Bank AG*, 146 A.D.3d 632, 637 (1st Dep’t 2017) (precluding testimony related to interpretation of the disputed contract provision at issue); *Measom v. Greenwich and Perry St. Hous. Corp.*, 268 A.D.2d 156, 159 (1st Dep’t 2000) (holding it was improper for an expert to opine as to the legality of an apartment, as “the apartment’s legality presented a pure question of law involving statutory interpretation, which, in the first instance, is the responsibility of the court.”); *Colon v. Rent-A-Ctr., Inc.*, 276 A.D.2d 58, 61 (1st Dep’t 2000) (precluding expert testimony relating to the interpretation of a contract and statute at issue).

Here, Mr. Shubin is not being called to opine on the seminal issues to be decided by this Court or as to any questions of valuation. Those seminal issues involve, *inter alia*, Defendants’ intent to defraud or lack thereof as to the second through seventh causes of action. Mr. Shubin’s testimony is germane to exactly that issue of intent but he does not offer an opinion determinative of such issue. Rather, Mr. Shubin’s testimony assists the finder of fact in identifying and understanding the relevant, complex facts and the application of those facts to the subject property. Mr. Shubin has very specialized knowledge, and these matters fall well outside the knowledge or understanding of a typical finder of fact (or even a typical lawyer for that matter). Such expert testimony is appropriately admitted. *See United States v. Clardy*, 612 F.2d 1139 (9th Cir. 1980) (expert testimony regarding application of tax laws to particular facts admissible where intent is at issue).

As this Court knows, in a bench trial, it is permitted to accord whatever weight to testimony it sees fit. However, Defendants have a constitutional right to present a complete defense, which necessarily requires that Defendants be permitted to call witnesses whose testimony is material and favorable to their defense and failure to admit expert testimony may amount to a reversible error. *See, e.g., Chanler v. Manocherian*, 151 A.D.2d 432 (1st Dep’t 1989) (precluding expert’s testimony and failure to properly apprise the jury of the relevant law constituted reversible error). As set forth above, Mr. Shubin’s testimony does not usurp this Court’s role as either arbiter of

LAW OFFICES
ROBERT & ROBERT PLLC

Hon. Arthur F. Engoron
Supreme Court of the State of New York
December 1, 2023
Page 4

disputed questions of law or as factfinder. Defendants therefore respectfully request that Mr. Shubin's testimony must and should be admitted.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record (via NYSCEF)