SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** 37

Justice

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

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, SEVEN SPRINGS LLC,

Defendants.

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INDEX NO. 452564/2022

Decision and Order
Denying Defendants'
Motions for a Directed Verdict

At least five times during the recently concluded ten-and-a-half-week trial of this matter, defendants moved for a directed verdict. The first such time was at the close of plaintiff's case, which is when defendants normally move for such relief. This court took that motion, and most of the others, under advisement. It denied two of them on the spot. At the close of plaintiff's rebuttal case, defendants requested permission to move, yet again, pursuant to CPLR 4401, for a directed verdict. Plaintiff opposed the request. Not wanting to impose an undue prior restraint, this Court granted the request. The instant letter-motion ensued. This Court hereby denies that motion and, furthermore, denies all the prior motions that the Court previously took under advisement.[1]

Rather than marshal and detail, yet again, the evidence in support of plaintiff's prima facie case, and defendants' failure to do more than raise issues of fact, this court will highlight some of the fatal flaws in the instant motion.

The most glaring flaw is to assume that the testimony of defendants' experts, notably Messrs. Jason Flemmons and Eli Bartov, is true and accurate, or at least that the Court, as the trier of fact, will accept it as true and accurate. Bartov is a tenured professor, but all that his testimony proves is that for a million or so dollars, some experts will say whatever you want them to say. His overarching point was that the subject statements of financial condition were accurate in every

[1] One such motion came immediately after the close of the testimony of Michael Cohen, whom defendants wishfully denominated "plaintiff's star witness." In denying that motion, this Court noted that the evidence of wrongdoing already admitted into evidence was voluminous.

respect. As this Court discussed in excruciating detail in its September 26, 2023 summary judgment decision, the Statements of Financial Condition ("SFCs") contained numerous obvious errors. By doggedly attempting to justify every misstatement, Professor Bartov lost all credibility.[2]

Mr. Flemmons acknowledged that he had never valued property, much less was he a valuation "expert," but he attempted to opine on values. The crux of Mr. Flemmons' testimony was that so long as defendants selected one of the "methods" that ASC 274 permits, then any numbers may be entered into such methodology, regardless of their accuracy or relationship to reality.

Mr. Flemmons also, inexplicably, acknowledged that future income had to be discounted to present value on a financial statement, while at the same time stating there were no Generally Accepted Accounting Principles ("GAAP") departures where defendants failed to apply a discount rate to future income. He opined that Mazars should have followed up on items in the SFCs but then stated, adamantly, that it would have been "highly unusual" for Mazars to make an inquiry for any appraisals in the client's possession.[3] He was reluctant to acknowledge that an asset controlled by a third-party cannot be considered "cash," while also acknowledging that it was a "red flag."

Defendants persist in arguing that if a loan closes prior to the period during which the statute of limitations allows suit, than any required follow-up SFCs made during that period is somehow sacrosanct. That contention is belied by a plain reading of Executive Law Section § 63(12), by the law of the case doctrine, and, perhaps most importantly, by common sense. Closing is not a get-out-of-jail-free card for future misstatements. All that § 63(12) requires is a false statement used in business; the subject financial statements fit that definition "to a T."

In their zeal to "protect the record," defendants yet again raise the specter that plaintiff has no standing and no capacity to bring the instant action. This Court has confidence that the Court of Appeals can easily reach and determine those arguments, which personify frivolity.

Defendants' arguments against disgorgement fall short in three respects: disgorgement does not depend on damages (a different concept); the testimony showed that the lenders did rely, in part, on Donald J. Trump's SFCs; and § 63(12) contemplates disgorgement. Disgorgement is the return of "ill-gotten gains." If you pay a lower interest rate on a loan by overstating the value of any of your assets, thus lowering the perceived risk to the lender, your gains are ill-gotten. The lender has lost money, although the loss is not out-of-pocket, and so the loss is not what the law traditionally thinks of as damages. That the instant lenders made millions of dollars and were happy with the transactions does not mean that they were not damaged by lending at lower

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[2] Dr. Bartov suffered essentially the same fate testifying before the Hon. Barry Ostrager in People v Exxon Mobil Corp., 65 Misc 3d 1233(A) (Sup Ct, NY County 2019) ("the Court rejects Dr Bartov's expert testimony as unpersuasive and, in the case of his testimony about the Mobile Bay facility, finds Dr. Bartov's testimony to be flatly contradicted by the weight of the evidence").

[3] In any event, there is documentary evidence, previously submitted to the Court on the parties' summary judgment motions, conclusively establishing that Mazars did, in fact, make inquiries for appraisals, and were told there were none. NYSCEF Doc. No. 1262 at 243.

interest rates than they otherwise would have. Michiel McCarty's testimony credibly supported this.

Moreover, as this Court detailed in its September 26, 2023 decision, it is well-settled that the State has an interest in protecting the integrity of the marketplace. People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021) (holding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

Furthermore, the lenders relied, in part, on the subject financial statements, as was made clear in the testimony of Nicholas Haigh and Michiel McCarty. Indeed, many of the lenders' calculations used the SFCs as their starting point, to which they often applied a standard "haircut."

Defendants also trot out two of their standard canards, that valuations are subjective and that the law only penalizes "material" deviations. These both fall into the category of "Let no one be fooled." Valuations, as elucidated *ad nauseum* in this trial, can be based on different criteria analyzed in different ways. But a lie is still a lie. Valuing occupied residences as if vacant, valuing restricted land as if unrestricted, valuing an apartment as if it were triple its actual size, valuing property many times the amount of concealed appraisals, valuing planned buildings as if completed and ready to rent, valuing golf courses with brand premium while claiming not to, and valuing restricted funds as cash, are not subjective differences of opinion, they are misstatements at best and fraud at worst.

Defendants are correct that discrepancies in amounts must be material to be actionable. However, the evidence in the record is replete with examples of material misstatements: the size of the triplex, the discrepancies between the appraised values and the amounts on the SFCs, the discrepancy in value between restricted property and unrestricted property, the undisclosed addition of brand value, the amount of "cash" that was illiquid, future value listed as present value without discounting to current value, etc.

Finally, defendants attempt to fall back on alleged disclaimers in the SFCs. As analyzed in the September 26, 2023 decision, the words at issue were simply Mazars' practice of ensuring that the issuer was responsible for the accuracy of the statements. They are not disclaimers at all, they are not defendants' statements, and they certainly do not shield defendants from liability; if anything, they expose defendants to liability.

As previously ordered, post-trial briefs are due by January 5, 2024, and closing arguments will be held on January 11, 2024.

HON. ARTHUR F. ENGORON

DEC 18 2023

DATE: 12/18/2023

ARTHUR F. ENGORON, JSC

Check One: ☐ Case Disposed ☒ Non-Final Disposition

Check if Appropriate: ☐ Other (Specify _____)