UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA v. MAX MCDERMOTT, Defendant.	**INDICTMENT** 25 Cr. _____ 25 CRIM 427

COUNT ONE
(Wire Fraud)

The Grand Jury charges:

OVERVIEW

1. MAX MCDERMOTT, the defendant, is the founder and owner of several companies in the real estate industry. In or about late 2020, MCDERMOTT learned that he was under investigation by the U.S. Securities and Exchange Commission ("SEC") for his actions in connection with one of his real estate investment companies. In an effort to dissuade the SEC from taking enforcement action, MCDERMOTT sought to quickly repay investors of the company under investigation and borrowed money under false pretenses in order to do so. Specifically, MCDERMOTT made false and misleading representations to obtain a $10 million loan purportedly to grow his other businesses. MCDERMOTT also hid the existence of the SEC's investigation from his lender and lied about his use of the loan proceeds. Once MCDERMOTT received the $10 million loan, he laundered the funds to conceal the fact that he was using the money to benefit himself and to repay investors, and not to grow his other businesses as he had falsely claimed.

The SEC Investigation and MCDERMOTT's Attempt to Avoid Liability by Repaying Investors

2. Beginning in or about at least 2017, MAX MCDERMOTT, the defendant, owned and operated a private real estate lending and investment firm ("Investment Firm-1"). MCDERMOTT raised tens of millions of dollars from investors (the "Investors") for Investment Firm-1's "Secured Debenture" offering and represented to Investors that their investments would be used to make loans, including to real estate developers, and generate a stream of interest payments for Investors.

3. In or about October 2020, MAX MCDERMOTT, the defendant, learned that the SEC was investigating him and Investment Firm-1 for violations of the securities laws (the "SEC Investigation"). Shortly after learning about the SEC Investigation, MCDERMOTT began winding down Investment Firm-1's operations and attempting to repay Investors. Indeed, in an effort to dissuade the SEC from filing a civil enforcement action, MCDERMOTT represented to the SEC that, beginning in January 2021, Investment Firm-1 had begun a "prepayment program" for Investors that aimed "to retire [Investment Firm-1's] debenture obligations on an accelerated basis by paying investors all principal and all accrued interest ahead of the maturity dates of their debentures." MCDERMOTT further represented to the SEC that Investment Firm-1 had repaid tens of millions of dollars to hundreds of Investors.

4. Beginning in or about December 2021—in the midst of the SEC Investigation and the commitment to the SEC by MAX MCDERMOTT, the defendant, to "pay[] investors all principal and all accrued interest ahead of the maturity date of their debentures"—MCDERMOTT sought to obtain a loan on behalf of two other companies that he owned and operated: an escrow company ("Escrow Company-1"), and a commercial real estate brokerage ("Real Estate Company-1). Through a third-party broker ("Broker-1"), MCDERMOTT identified a particular financial

institution ("Lender-1") that focused on real estate investing and corporate loans, and, among other things, acted as a direct lender to companies.

MCDERMOTT Obtains $10 Million Loan Based on False Pretenses and Misrepresentations

5. MAX MCDERMOTT, the defendant, represented to Lender-1 that the loan would be used only to grow Escrow Company-1 and Real Estate Company-1, specifically, by acquiring smaller companies in the escrow and real estate brokerage industries. MCDERMOTT simultaneously concealed from Lender-1 the fact that he and his Investment Firm-1 were under investigation by the SEC, *i.e.*, the SEC Investigation, and that MCDERMOTT had committed to repaying tens of millions of dollars to Investors. Indeed, MCDERMOTT failed to disclose the SEC Investigation during Lender-1's diligence process, despite being asked multiple questions about any "governmental, quasi-governmental, or regulatory agency" investigations of himself or of any company for which he had served as an officer or board member. Likewise, when Lender-1 asked MCDERMOTT, "Why [Investment Firm-1] is winding down," MCDERMOTT again concealed the SEC Investigation and responded, "To focus 100% on Escrow and Realty business."

6. As a result of MAX MCDERMOTT, the defendant, successfully concealing the SEC Investigation from Lender-1 and of MCDERMOTT misrepresenting to Lender-1 that the loan funds would be used only to grow Escrow Company-1 and Real Estate Company-1, on or about May 5, 2022, Lender-1 extended a $10 million loan to Escrow Company-1 and Real Estate Company-1 (the "Loan") pursuant to a lending agreement (the "Loan Agreement"). On behalf of Escrow Company-1 and Real Estate Company-1, MCDERMOTT agreed that the Loan funds would be used only for (i) acquisitions solely approved by Lender-1, such as acquiring other brokerage services, (ii) working capital for Escrow Company-1, and (iii) transaction expenses such as closing costs.

7. Upon the Loan closing on or about May 5, 2022, Lender-1 transferred the Loan funds[1] into an Escrow Company-1 bank account that MAX MCDERMOTT, the defendant, had designated and whose account activity Lender-1 was granted authority to monitor as part of the Loan Agreement ("Bank Account-1").

8. On or about July 6, 2022, MAX MCDERMOTT, the defendant, transferred approximately $3.5 million of the Loan funds ("Transfer-1") from Bank Account-1 into a particular bank account held in the name of a family trust for which MCDERMOTT and a family member were signatories ("McDermott Trust Account-1"). Approximately one week later, on or about July 13, 2022, MCDERMOTT transferred the remaining approximately $6.5 million worth of Loan proceeds remaining in Bank Account-1 into McDermott Trust Account-1 ("Transfer-2"). Both Transfer-1 and Transfer-2 were prohibited under the Loan Agreement and conducted without Lender-1's prior knowledge or consent. While Lender-1 had the ability to monitor account activity for Bank Account-1, Lender-1 did not have the ability to monitor account activity for any other bank account that MCDERMOTT controlled, such as McDermott Trust Account-1.

<u>MCDERMOTT Misappropriates Loan Funds for Unauthorized Use</u>

9. On or about July 6, 2022, on the same day that McDermott Trust Account-1 received the $3.5 million transfer, *i.e.,* Transfer-1, MAX MCDERMOTT, the defendant, transferred those funds again, in their entirety, to a particular bank account held in the name of another company that MCDERMOTT wholly owned ("McDermott Bank Account-1"). From McDermott Bank Account-1, MCDERMOTT further disbursed the $3.5 million worth of Loan proceeds to bank accounts belonging to family members and to MCDERMOTT's other companies.

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[1] Lender-1 transferred a sum of approximately $9.8 million which represented the $10 million loan less closing costs.

MCDERMOTT Misappropriates Loan Funds to Investment Firm-1 and to Repay Investors

10. On or about July 14, 2022, one day after McDermott Trust Account-1 received the remaining $6.5 million transfer, *i.e.*, Transfer-2, MAX MCDERMOTT, the defendant, transferred those funds again, in their entirety, from McDermott Trust Account-1 to a particular Investment Firm-1 bank account ("Investment Firm Account-1"). Between on or about July 14, 2022, and on or about September 12, 2022, MCDERMOTT further disbursed more than $5.6 million from Investment Firm Account-1 to repay Investors, explicitly noting for many transactions that the payments were a "return of principal" or "principal return/cancellation." MCDERMOTT spent hundreds of thousands of dollars of additional Loan funds towards other expenses related to Investment Firm-1.

MCDERMOTT Highlights Investor Repayments to Avoid SEC Enforcement Action

11. Both in the months leading up to the Loan closing, Transfer-1, and Transfer-2, and in the months thereafter, MAX MCDERMOTT, the defendant, provided the SEC with regular and detailed updates about his efforts to repay Investors.

12. On or about June 24, 2022, the SEC issued a "Wells Notice" to MAX MCDERMOTT, the defendant, and Investment Firm-1, notifying them in substance and in part that the SEC was contemplating an enforcement action against MCDERMOTT and Investment Firm-1 for specific violations of the securities laws and would potentially seek remedies such as permanent injunctions, disgorgement, monetary penalties, and a bar against MCDERMOTT from service as an officer or director of a registered company. Approximately two weeks later, on or about July 6, 2022, MCDERMOTT conducted Transfer-1 of the Loan funds, and on or about July 14, 2022, MCDERMOTT conducted Transfer-2 of the Loan funds. more than $5.6 million of which was subsequently used to repay Investors.

13. Days after Transfer-2, on or about July 19, 2022, MCDERMOTT touted to the SEC that he had repaid the vast majority of Investors and urged the SEC against taking its contemplated enforcement action.

MCDERMOTT Admits Misappropriation of Loan Funds to Lender-1

14. For months after Transfer-1 and Transfer-2, MAX MCDERMOTT, the defendant, continued to conceal from Lender-1 that he had misappropriated virtually all of the $10 million Loan funds for purposes other than what he had represented to Lender-1, *i.e.*, claiming that he would use the money to grow Escrow Company-1 and Real Estate Company-1 by acquiring other companies. Indeed, MCDERMOTT continued to misrepresent that he would use the Loan funds towards suitable acquisitions into at least approximately October 2022. For example, on or about October 5 and 6, 2022, Broker-1 and MCDERMOTT engaged in text message communications in which Broker-1 asked MCDERMOTT whether he had gotten his "first round of acquisitions in place." MCDERMOTT responded, "still working on it." Broker-1 asked MCDERMOTT to keep him updated on when MCDERMOTT "closes his first one," to which MCDERMOTT agreed he would.

15. On or about October 12, 2022, MAX MCDERMOTT, the defendant, met with a Lender-1 executive and admitted for the first time, in substance and in part, that he had been under investigation by the SEC and that he had used Loan funds to repay Investors.

STATUTORY ALLEGATIONS

16. From at least in or about December 2021 through at least in or about October 2022, in the Southern District of New York and elsewhere, MAX MCDERMOTT, the defendant, knowingly having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television

communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, MCDERMOTT engaged in a scheme to fraudulently obtain a $10 million loan from Lender-1 based on false pretenses and material misrepresentations, and in furtherance thereof, sent and received, and caused others to send and receive, interstate communications, including emails, telephone calls, text messages, and interstate wire transfers to and from the Southern District of New York and elsewhere, in furtherance of his fraud.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT TWO
(Money Laundering)

The Grand Jury further charges:

17. The allegations contained in paragraphs 1 through 15 of this Indictment are repeated and realleged as if fully set forth herein.

18. From at least in or about July 2022 through at least in or about October 2022, in the Southern District of New York and elsewhere, MAX MCDERMOTT, the defendant, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted and attempted to conduct such a financial transaction, which transaction affected interstate and foreign commerce and involved the use of a financial institution which was engaged in, and the activities of which affected, interstate and foreign commerce, and which in fact involved the proceeds of specified unlawful activity, to wit, the wire fraud charged in Count One of this Indictment, in violation of Title 18, United States Code, Section 1343, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity.

(Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.)

FORFEITURE ALLEGATIONS

19. As a result of committing the wire fraud offense alleged in Count One of this Indictment, MAX MCDERMOTT, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

20. As a result of committing the money laundering offense alleged in Count Two of this Indictment, MAX MCDERMOTT, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any and all property, real and personal, involved in said offense, or any property traceable to such property, including but not limited to a sum of money in United States currency representing the amount of property involved in said offense.

SUBSTITUTE ASSETS PROVISION

21. If any of the above described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981 and 982; Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461.)

[redacted]
FOREPERSON

Jay Clayton
JAY CLAYTON
United States Attorney