The relief described hereinbelow is SO ORDERED.

SIGNED this 25th day of February, 2022.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

KENT LINDEMUTH,

Debtor.

Case No. 12-23060
Chapter 11

ORDER GRANTING MOTION TO ENFORCE PLAN INJUNCTION

Eight years ago, Debtors' Chapter 11 bankruptcy cases were headed toward conversion or dismissal—mainly due to debtor Kent Lindemuth's obstructionist behavior and secured creditors' resulting distrust. Debtors' Chapter 11 plans would not have been confirmed but for Kent's agreement to transfer his authority to implement the Chapter 11 plans—including his control over Debtors' real property—to a third party, Jim Lloyd. If not for that agreement, Debtors would

have been placed into involuntary liquidation years ago. Because of that agreement, the cases were salvaged, Debtors' Chapter 11 plans were confirmed in 2015, and Kent has since enjoyed the benefits of Chapter 11 reorganization.

This Court's 2015 confirmation order permanently enjoins Kent from taking any actions to interfere with the implementation or consummation of Debtors' Chapter 11 plans (the "**Injunction**").[1] Unfortunately, Kent's obstructionism has continued—particularly as to Lloyd's efforts to repair and sell a certain piece of real property in Topeka. This matter now comes before the Court on Lloyd's motion to enforce the Injunction against Kent vis-à-vis that property.[2] For the reasons stated below, Lloyd's "**Motion to Enforce**" will be granted. Having accepted the benefits of bankruptcy for nearly a decade, Kent is not free to reject its concomitant obligations.

I. Procedural Background

Kent Lindemuth, his late wife Vikki, and five of their companies (the "**Corporate Debtors**,"[3] and together with Kent and Vikki, "**Debtors**") all filed for bankruptcy in 2012. At the time of filing, Debtors collectively owned around 200 pieces of real property that served as collateral for tens of millions of dollars in

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[1] Order Confirming Plan of Reorganization ¶ 24, Case No. 12-23055, ECF 652.

[2] Expedited Mot. for Order Enforcing Ch. 11 Plan Inj., ECF 453.

[3] The Corporate Debtors are Lindemuth, Inc.; Lindy's, Inc.; KDL, Inc.; Bellairre Shopping Center, Inc.; and K. Douglas, Inc.; their bankruptcy cases are jointly administered under case number 12-23055 (Lindemuth, Inc.).

loans. One of those properties is the one at issue here: a commercial building at 125 Southwest Gage Boulevard in Topeka (the "**Gage Property**"). Debtor Lindemuth, Inc., owns the Gage Property; Kent owns half of Lindemuth, Inc. The other half of Lindemuth, Inc., is in a trust established by Vikki prior to her death in 2019.[4]

Not long after Debtors filed their Chapter 11 petitions, their secured lenders began to complain that Kent was mismanaging the mortgaged properties and obstructing Debtors' bankruptcy cases. According to Jim Lloyd:

> In or around early 2013, a number of the lenders to the [Corporate Debtors] began to express to Chapter 11 counsel their frustration and complete lack of confidence in Mr. Lindemuth due to his persistent actions in blocking and/or attempting to block several proposed sales of the real property securing their loans and Mr. Lindemuth's general mismanagement of the subject properties. The lenders did not want Mr. Lindemuth to be a debtor-in-possession and have control of the [Corporate Debtors'] assets. He constantly attempted to block the Chapter 11 debtors' efforts to develop and implement a plan of reorganization.[5]

Debtors filed their joint Chapter 11 plans (the "**Joint Plans**") in March 2014.[6] However, the Joint Plans would not have been confirmable over the secured

[4] The successor trustee of Vikki's trust is Shannon Mesker (née Lindemuth), one of Kent and Vikki's two daughters.

[5] ECF 453 ¶ 9.

[6] *See* Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (No Substantive Consolidation) (March 14, 2014), Case No. 12-23055, ECF 443.

lenders' objection.[7] To assuage the lenders' concerns, and in exchange for the secured lenders' acceptance of the Joint Plans, Kent and Vikki executed an agreement that transferred certain powers (including exclusive authority over Debtors' real property) to third-party Jim Lloyd (the "**Agreement**").

Although styled as a "power of attorney," the Agreement is broader than that. It provides:

> [Kent and Vikki] hereby give [Jim] Lloyd *full, exclusive authority* to perform every necessary and proper act as fully as I could if I was personally present and during the pendency of this power of attorney *Lloyd's rights shall be exclusive and shall supersede and divest Us of the above described powers*. The rights, power and authority to Lloyd that I now grant shall become effective as soon as I sign below and *shall not terminate until further Bankruptcy Court order terminating this instrument*.[8]

The Agreement authorizes Lloyd, among other things:

1. To administer and preserve all assets of the Bankruptcy Estates.

2. To exercise authority and control of the financial affairs, including but not limited to real properties, owned by Kent, Vikki or any entities owned by Kent and Vikki, with the express goal and direction to *maximize the value of the entire bankruptcy estate*.

3. To draft, negotiate and *implement a plan of reorganization* in the consolidated bankruptcy cases. [and]

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[7] *Cf.* 11 U.S.C. §§ 1124 ("Impairment of claims or interests"), 1126 ("Acceptance of plan"), 1129 ("Confirmation of plan").

[8] Pre and Post Confirmation Bankr. Power of Attorney, ECF 453-4 (emphases added)

4. To *sell, lease, transfer or exchange any of Debtors' real or personal property as the above mentioned attorney-in-fact considers correct at reasonable prices* and with other terms and conditions that may be required.[9]

This Court entered an order confirming Lloyd's exclusive authority under the Agreement on May 6, 2014.[10]

Following that transfer of authority from Kent to Lloyd, the Joint Plans were confirmed (in the "**Confirmation Order**").[11] Both the Joint Plans and the Confirmation Order contain provisions relevant here:

- Section 7.01 of the Joint Plans provides that the plans will be funded through the sale of real property;
- Paragraph 31 of the Confirmation Order provides that Lloyd's powers under the Agreement remain in effect; and
- Paragraph 24 of the Confirmation Order permanently enjoins Kent (among others) from taking any actions to interfere with the implementation or consummation of the Joint Plans.

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[9] *Id.* (emphases added).

[10] *See* Order Approving Mot. to Confirm Jim Lloyd's Binding Authority, Case No. 12-23055, ECF 502..

[11] *See* Order Confirming Plan of Reorganization, Case No. 12-23055, ECF 652.

Upon confirmation of the Joint Plans, the Debtor Companies received a discharge, but Kent and Vikki individually did not. *See* Joint Plans §§ 11.04-.05 (providing for discharge "to the fullest extent permitted by section 1141 of the Bankruptcy Code"). With exceptions not relevant here, an individual Chapter 11 debtor does not receive a discharge until one is granted by the bankruptcy court "on completion of all payments under the plan." *See* 11 U.S.C. § 1141(d)(5)(A). In contrast, a non-individual Chapter 11 debtor typically receives a discharge at plan confirmation. *See* 11 U.S.C. § 1141(d)(1)(A).

Debtors' bankruptcy cases were administratively closed after the Joint Plans were confirmed.[12]

In 2016, Kent was indicted on 103 counts of bankruptcy fraud arising out of his omission of 103 firearms from his bankruptcy schedules and monthly Chapter 11 operating reports.[13] Superseding indictments charged him with additional counts of bankruptcy fraud as well as money laundering, perjury, and receipt of firearms and ammunition while under indictment.[14]

Three months after Kent's indictment, Vikki filed for divorce. The family court entered a stipulated order—reviewed and approved by Kent's counsel—providing that (1) Lloyd continued to have the powers granted to him under the Agreement and that (2) Lloyd's exercise of such powers was "integral" to the preservation of the Lindemuths' assets and the completion of the Joint Plans.[15]

On March 10, 2017, the United States Trustee moved to reopen the Lindemuths' individual bankruptcy case under 11 U.S.C. § 350(b),[16] alleging that Kent owned 2,166 undisclosed firearms (including the 103 for which he was

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[12] *See* Final Decree, Case No. 12-23055, ECF 690.

[13] *See Indictment*, D. Kan. Case No. 16-cr-40047-DDC, ECF 1.

[14] *See Superseding Indictments*, D. Kan. Case No. 16-cr-40047-DDC, ECF 32, 56, and 71.

[15] *See* Temp. Order for Appt. of Bus. Manager for the Parties' Bus. Interests ¶ 8, Adv. No. 21-6001, ECF 1-4.

[16] ECF 47. Section 350(b) provides that "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

originally indicted). This Court granted the motion to reopen that same day.[17] Vikki's individual bankruptcy case was deconsolidated from Kent's two months later.[18]

On June 22, 2017, this Court ordered the appointment of a Chapter 11 trustee in Kent's individual case.[19] Later that year, the Chapter 11 trustee, Bruce Strauss, filed a motion requesting that Kent be ordered to turn over five unregistered, untitled, and uninsured vehicles that were found on Kent's property by the Topeka police following a report of a break-in.[20]

A jury acquitted Kent of all bankruptcy-related criminal charges in December 2017.[21] He was acquitted on the remaining charge—willful receipt of firearms while under indictment—following a 2018 bench trial.[22]

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[17] ECF 48.

[18] ECF 66.

[19] ECF 75, 76.

[20] ECF 139.

[21] *See* Verdict, *United States v. Lindemuth*, No. 16-40047-01-DDC (D. Kan. Dec. 2, 2017), ECF 139.

[22] *See* Special Verdict, *United States v. Lindemuth*, No. 16-40047-01-DDC (D. Kan. Aug. 2, 2018), ECF 187. Kent had been charged with violation of 18 U.S.C. §§ 922(n) and 924(a)(1)(D) for willful "receipt" of two firearms while under felony indictment. *Id.* at 9. The government proved that while under indictment for bankruptcy fraud, Kent attended an auction with one Ledford, to whom he gave cash and asked "to bid on and, as the winning bidder, purchase the two guns at issue." *Id.* at 15. Kent then directed Ledford to deliver the guns to Ledford's in-laws. *Id.* at 16. The court reasoned that although Kent had "[c]learly . . . engaged in some sort of subterfuge at the auction," *id.* at 17, the government had not proved that Kent "received" the guns under the meaning of § 922(n). *See id.* at 15-16 (reasoning that § 922(n) "does not criminalize ownership interests that do not result in receipt").

At a 2018 hearing on Strauss's motion for turnover, this Court ordered Kent to turn over all documents in his possession regarding his acquisition of the five vehicles at issue (which Kent argued were owned by Lindy's Auto Sales, a non-debtor entity).[23] The Court also directed Kent to cooperate with Lloyd in preparing sworn, accurate balance sheets and cash flow statements for each of the debtors. At that hearing, Kent's counsel acknowledged the agreement with the secured lenders regarding Lloyd's authority over Debtors' real property:

> [T]hey made a deal, they made an agreement. And in order—and in return for *Mr. Lindemuth giving his agreement to give Mr. Lloyd a—a complete irrevocable power of attorney that gave him complete control over all the real estate*, Mr. Lindemuth got to keep those non-real estate businesses. *That was the deal.* And that's what Mr. Deines' affidavit says and that's what his testimony at trial was. And that's the fundamental reason why the government's case failed at trial.[24]

The affidavit he cited—from Kent's former bankruptcy attorney—explains that Kent executed the Agreement in exchange for the secured lenders' consent to the Joint Plans:

> In connection with seeking confirmation of the plan, *the creditors wanted, among other things, Debtor to execute an irrevocable power-of-attorney in favor of Jim Lloyd. . . . In return for Jim Lloyd having more control and authority and other concessions, the creditors agreed and consented to Debtor's proposed plan* and that plan provided for full repayment of debts from the revenues of the real estate businesses.[25]

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[23] ECF 188; *see* ECF 163.

[24] Hearing Tr. 52:15-23, Feb. 15, 2018, ECF 201 (emphases added).

[25] Deines Aff. ¶¶ 8-9, ECF 162-4 (emphasis added).

In September 2018, Strauss moved to set the motion for turnover back onto this Court's docket, alleging that "[t]o date Mr. Lindemuth has not provided the Trustee with anything."[26] At the hearing on that motion, the Court reminded Kent's counsel that the court's orders to provide documents and information remained outstanding.

Later in the year, after receiving a terminal cancer diagnosis, Vikki established the Vikki Lindemuth Revocable Trust dated November 9, 2018. She died on November 11, 2019.

Three weeks after Vikki's death, Kent filed two motions in his individual bankruptcy case against Lloyd—the first seeking damages for alleged violations of the automatic stay and the second seeking a TRO and preliminary injunction.[27] Both motions related to Lloyd's proposed sale of two properties (one owned by debtor KDL, Inc., the other co-owned by Kent and Vikki's trust) occupied by two of Kent's non-debtor businesses. This Court denied Kent's motions; in the order, the Court specifically held that the Agreement remained in effect.[28]

On December 7, 2020, Kent's counsel sent Lloyd a letter purporting to terminate the Agreement.[29]

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[26] ECF 211.

[27] ECF 349; ECF 351.

[28] ECF 407.

[29] Letter from Neil Sader to James B. Lloyd & Philip Krause, (Dec. 7, 2020), Respondent's Ex. K at 0055-58.

To date, Kent has not complied with the Court's orders to cooperate with Lloyd in preparing sworn financial statements and to provide documentation regarding the five unregistered vehicles found on his property. According to Strauss:

> And I don't think—and I would hope Mr. Sader [Kent's current bankruptcy attorney] would not deny telling me that—two things that Mr. Lindemuth was never doing to do. He was never going to sell the firearms and he was never going to provide the financial statements that the court had ordered in its earlier order, that he just told me those were off the table, he is never going to do that, and—and Mr. Sader made a comment whether he thought that was wise or not. But that's where we came from, and that's why we never reached a resolution.[30]

II. Motion to Enforce

Lloyd filed the Motion to Enforce on June 18, 2021. In that motion, he argues:

> One of [debtor] Lindemuth, Inc.'s assets is certain commercial property located at 125 SW Gage Boulevard, Topeka, Kansas 66606 (the "Gage Property"). Pursuant to Lloyd's authority and in exercise of his business judgment, Lloyd has determined to sell the Gage Property as part of his obligation to implement the Debtors' confirmed Chapter 11 Plan and to maximize the value of the entire bankruptcy estate. As is detailed below, for over a year, Mr. Lindemuth has persistently and intentionally interfered with Lloyd's efforts to gain access to the Gage Property and to do what needs done in order to maximize its value and further implement the Chapter 11 Plan. Mr. Lindemuth's interference is in direct violation of the existing injunction contained in the Court's *Order Confirming Plan of Reorganization* . . . that

[30] Hearing Tr. 30:7-16, Mar. 14, 2019, ECF 242.

> enjoined Mr. Lindemuth from "*taking any actions to interfere with the implementation or consummation of the Plan*" . . . (the "Plan Injunction"). . . . [T]he existing Plan Injunction must be enforced to enjoin Mr. Lindemuth from further interfering with Lloyd's efforts with the Gage Property.[31]

III. Evidentiary Hearing

The first day of the evidentiary hearing on the Motion to Enforce took place on August 26, 2021.

A. Jim Lloyd

Jim Lloyd testified first. Lloyd, whose work is based in Kansas City, explained that he began his career as a commercial lender and has worked as a financial consultant with his own firm since 1987. Most of his work has involved functioning as CFO for various entities, including (for the past eight years) the Corporate Debtors.

Lloyd testified that when the Agreement was executed in 2014, Debtors' collective real estate portfolio comprised around 200 properties worth (as measured by county appraisals) a total of $61 million.[32] Most of the properties were commercial real estate in Topeka; all but one of the properties were in Kansas. Since that time, under the Agreement and in implementation of the Joint Plans, Lloyd has sold properties generating $41 million in net proceeds for Debtors'

[31] ECF 453.

[32] All of the dollar amounts in this paragraph are approximate.

bankruptcy estates. In so doing, he has reduced Debtors' secured debt from $44 million to $2.7 million.

Lloyd explained that his strategy for selling Debtors' properties has generally been to wait for "active interest in a given property" rather than "dumping" Debtors' portfolio onto the market, and that waiting for a "motivated buyer" places him in a stronger position as a seller. When asked whether selling the Gage Property was "necessary" to complete the Joint Plans, Lloyd responded that until all lenders are repaid and other obligations incurred in execution of the Joint Plans have been met, his goal is to continue selling all properties for which demand exists and good value can be had. When asked for examples of such obligations, Lloyd cited income taxes (explaining that three of the Debtors had exhausted tax loss carryforwards and could owe in the "high six figures" for the 2020 and 2021 tax years) and possible demolition costs of the White Lakes Mall, an asset owned by debtor KDL. These obligations, Lloyd continued, mean that Debtors will need "cash . . . in the bank" at the time of plan completion.

Returning to the Gage Property, Lloyd explained that it consists of a 3,000-square-foot commercial building on a 40,000-square-foot plan near I-70 in Topeka.[33] The property is currently vacant and generating no income. However, it does generate around $12,000 in annual carrying costs, mostly for taxes and insurance.

[33] *See also* Property Record Card, Movant's Ex. 18 (reflecting 3,087-square-foot building and 42,206-square-foot lot)

It is also the subject of a number of code violations issued by the City of Topeka.[34] Accordingly, Lloyd has decided to sell it.[35]

Lloyd's testimony about his decision to sell the Gage Property was consistent with his affidavit:

> [I]n exercise of my business judgment, I determined last year that selling the Gage Property would maximize the value of Lindemuth, Inc. and its assets. Several parties have expressed an interest in buying the Gage Property. In the event of a sale, the sale proceeds will be applied to pay the existing bank debt that is secured by the Gage Property.
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> . . . In order to maximize the value of the Gage Property, it is imperative that I and persons engaged by me or otherwise acting under my direction have unfettered access to the Gage Property so that I can clean it up, promptly address the City's Code violations . . . , and do what is necessary to be able to show the property to interested parties.[36]

Lloyd clarified that the Motion to Enforce also applies to thirteen vacant parcels, known collectively by the parties as "**Southwest Emland Drive**," that adjoin the Gage Property and could be sold with it.[37] On cross-examination, Lloyd

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[34] *See* Notices of Violation, Movant's Ex. 14 (citing a number of unregistered vehicles with flat tires on the property's exterior along with "[c]ar parts, appliances, construction waste and miscellaneous household items").

[35] Lloyd had not attempted to sell the Gage Property earlier, he explained, because Kent was apparently living there, the property was not a priority, there was no market interest in the property, and Lloyd had other opportunities to pursue.

[36] Lloyd Aff. ¶¶ 13-14, Movant's Ex. 1.

[37] Southwest Emland Drive is co-owned by Kent and Shannon Mesker (née Lindemuth; successor trustee of Vikki's trust) as tenants-in-common.

acknowledged that Kent had offered to buy the Gage Property for $65,000 and Southwest Emland Drive for $10,330.

The second day of the hearing on the Motion to Enforce was continued to September.

B. Motion to Introduce Evidence of Mortgage

A few days before the continued hearing, Kent filed a motion to introduce evidence of a mortgage in favor of non-debtor AL & SL, LLC, on the Gage Property, arguing that such evidence demonstrated Lloyd's bias in favor of Shannon Mesker, the successor trustee of Vikki's trust and co-owner (with Kent) of Lindemuth, Inc., and Southwest Emland Drive.[38] This Court denied Kent's motion, reasoning:

> Lloyd is not, as Lindemuth argues, "seeking permission" to sell the Gage Property; he already has it. The [Agreement], which has never been terminated by order of the bankruptcy court and therefore remains in effect, gives Lloyd exclusive authority to sell Debtors' property. The Plan Injunction enjoins Lindemuth from interfering with Lloyd's efforts to do so. The only issues raised by the Motion to Enforce are therefore (1) whether the Gage Property belongs to a debtor and (2) if so, whether Lindemuth is interfering with Lloyd's efforts to sell it. Lindemuth's supplemental exhibits do not make any fact of consequence to either of those issues more or less probable than it would be without the exhibits; they are therefore not relevant to the Motion to Enforce.[39]

C. Dale Banker

[38] ECF 480 ¶¶ 1, 20.

[39] ECF 482 at 4-5 (citing Fed. R. Evid. 401, Fed. R. Bankr. P. 9011(b), and Fed. R. Evid. 403).

On the second day of the continued hearing, witness Dale Banker testified first. Banker, who is the sole owner of Comprehensive Maintenance and Repair, LLC, and has worked in the field for 30 years, explained that Lloyd had engaged him "to ascertain what would be required to clean the [Gage Property] and prepare it to maximize its sale value."[40] Banker testified that on March 25, 2020, during his first visit to the Gage Property, he observed more than 30 vehicles "strategically placed around the property forming a barricade."[41] None of the vehicles appeared operational or had a license plate.[42]

When Banker entered the building, he was greeted by mold, water damage, and "putrid" odors.[43] He observed two or three freezers "stocked full of expired food" and "physically saw rodents live and active as well as the results of their habitating there."[44] Banker described one room in particular, which he "believe[d] was Mr. Kent's quarters," as "a combination of homeless style mixed with hoarding."[45] He elaborated: "There was trash, feces, animal feces, expired items. The restrooms

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[40] Hearing Tr. 158-61, Sept. 28, 2021, ECF 488.

[41] *Id.* at 161-62; *see id.* at 162 ("Everything from personal vehicles, a few trailers, but mainly box trucks, sir, 16 to 18-and-a-half footers I think would be the majority of it.").

[42] *Id.*

[43] *Id.* at 164; *see id.* ("[T]he roof has obviously failed. . . . There were buckets set around the property to collect the water.").

[44] *Id.* at 165.

[45] *Id.*

looked like they had been used continually without the benefit of a running water system. It was an elaborate mess, sir."[46]

Based on his initial observations, Banker determined that he could not safely remain in the building without "PPE equipment, face respirators, hazmat suits," and left the Gage Property to pick up the requisite gear.[47] When he returned about an hour and a half later, Kent arrived. According to Banker:

> He immediately ordered us off the property, sir. He was not listening to anything. I was trying to explain to him why we were there. He was very argument [sic], foul language, berating Jim Lloyd's authority, my place there. It just turned into an unattainable situation to continue with our mission.[48]

Banker and his crew left the property shortly after Kent's arrival.[49]

Banker returned to the Gage Property with a work crew on May 14, 2020, "to begin to clean out and clean up the building."[50] Because the vehicle barricade prevented them from bringing their equipment directly onto the property, they placed the equipment (including a dumpster, Bobcat, grapple bucket, air handlers, trash cans, shovels, rakes, and full PPE) next door, onto a property owned by the VFW.[51] After Banker's crew began removing the parking bumpers that separated the two properties, Kent arrived. Banker recalled:

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[46] *Id.* at 165.

[47] *Id.* at 170.

[48] *Id.* at 171.

[49] *Id.*

[50] *Id.*

[51] *Id.* at 171-72.

> That encounter was not pleasant, sir. He immediately ordered us off, against a barrage of unpleasant stream of things against myself, Jim Lloyd, threatening litigation against us, against me personally. We were not allowed to access the building, sir, or the property.[52]

When Banker tried to explain why they were there, Lindemuth "called the police on us for trespassing" and told Banker to "get a court order."[53] After the Topeka police arrived on the scene, Banker and his crew left the Gage Property.

Banker returned to the property with the Kansas Highway Patrol on March 14, 2021, to conduct VIN checks on the vehicles parked outside.[54] However, similarly to Banker's prior visits:

> Mr. Lindemuth arrived, ordered us off the property, said we're not authorized on the property. Told us to go get a court order and restricted our access for KHP and myself from entering the property and conducting the VIN checks.[55]

During this visit, Banker observed approximately 30 vehicles on the property; as before, none of the vehicles had a license plate or appeared operational.[56] When asked if he feared for his safety during this or any other visit to the Gage Property, Banker testified:

> I would say, sir, there was reason to have fear of the unknown. Mr. Lindemuth sometimes when we meet is very cordial. Other times it's the exact opposite. Not knowing what kind of response we would get, I felt it's not

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[52] *Id.* at 172.

[53] *Id.* at 172-73.

[54] *Id.* at 173.

[55] *Id.* at 174.

[56] *Id.* at 174-75.

> worth the safety of my crew or the team to push a situation that's only going to become more volatile as it goes down.[57]

Banker next visited the property on August 20, 2021, when he observed eight vehicles being towed away by the City of Topeka.[58] Approximately 20 vehicles remained; as before, none appeared operational.[59] Banker looked through a window on the east side of the building and found that the interior "looked exactly like it did a year before with the rubbish and debris."[60] He saw no evidence that any business was being operated there.[61]

Banker's last visit to the Gage Property was on September 27, 2021.[62] There were fewer vehicles there than on his prior visits and the grounds "looked like they had been mowed."[63] While "do[ing] a physical security check to make sure the building was secure," Banker looked in the same east-side window and saw that the building's interior condition remained the same.[64]

When asked what would need to happen for the Gage Property to be repaired, Banker explained:

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[57] *Id.* at 175.

[58] *Id.* at 176-77.

[59] *Id.* at 177 (estimating that "99 percent of them were probably non-operational by their appearance").

[60] *Id.* at 178.

[61] *Id.* at 179.

[62] *Id.*

[63] *Id.*

[64] *Id.* at 179-80.

> In my experience, the Gage Property -- we need to do a few things, sir. The first is to reposition vehicles so we can gain unrestricted access. We must have unrestricted access to ascertain and complete a project of this scope. We must do a complete interior clean-out and a complete interior -- or I should say a selective interior demo to find out and ascertain what actually the condition of the structure, the frame, the HVAC, the plumbing of such would be, sir.
>
> . . .
>
> Once all the items of property, personal property, trash, debris, whatever are removed, we would have to do -- the demo is the demolition of moldy areas, walls, things so we can gain access to ascertain whether the structure has been damaged. We can't really tell the condition of the roof, although it's obvious it's failed. But we really can't get an assessment of what it would take to put that property back to gain its best market value until we have it removed and we basically get it down to bare bones, sir.
>
> . . .
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> When a property has been in that condition for a long time with the accumulation of the water from the roof leakage, the moisture in the air, a lack of ventilation system, and there was obviously mold that could be seen, so you've got mold issues, we've got varmint and pest issues in that structure, it generally just deteriorates to -- you've got to remove all the damaged areas before you could ascertain what is required to put it back together.[65]

Banker estimated that such work—enough to "figure out what needs to be done to repair" the Gage Property—would cost between $24,000 and $26,000 and take about two weeks to complete.[66]

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[65] *Id.* at 181-83.

[66] *Id.* at 183.

On cross-examination, Banker stated that his company, CMR, has "negotiated different contracts . . . to perform different services" for both Lloyd and Mesker.[67] Small tasks are billed at a given rate; larger projects involve competitive bids against other companies.[68] Banker estimated that the work CMR performs for Lloyd and Mesker generates "annually anywhere from 60 to 90,000 a year . . . in total revenue," and that he has billed Lloyd $1,100 or $1,200 for his limited work at the Gage Property so far.[69]

D. Brian Lensing

Next, the Court heard testimony from witness Brian Lensing, an independent real estate agent with United Country Commercial.[70] Lensing has been a licensed commercial real estate broker since 2008; he has "diverse" experience in Topeka.[71] He testified that he has worked with Lloyd in the sale and leasing of Debtors' real estate (the "Lindemuth portfolio") since 2014.[72] Since that time, Lensing has closed 88 property sales from the Lindemuth portfolio totaling over $30 million in proceeds.[73] Those aggregate proceeds, Lensing said, exceeded the county's total appraised values for the properties.[74]

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[67] *Id.* at 188.

[68] *Id.* at 189.

[69] *Id.* at 189-91.

[70] *Id.* at 195.

[71] *Id.* at 195, 197.

[72] *Id.* at 197-98.

[73] *Id.* at 197.

[74] *Id.* at 200.

According to Lensing, the first step in selling a vacant property "is to be sure it's clean, any trash, debris, rubble, and then evaluate the physical condition and make a determination as to whether it's worth spending money to make improvements to it."[75] He explained that cleaning is important not just for repair purposes, but also as "a psychological approach to potential buyers. If -- if a property is -- is dirty, filthy or debris-ridden, it -- you're at an immediate disadvantage in negotiation."[76] Lensing confirmed that a clean property can be listed for sale at a higher price and that it is "absolutely" advisable, from a cost-benefit standpoint, to clean up the Gage Property.[77]

Lensing explained that the concept of "absorption" informed how many properties could be sold at any given time:

> Topeka's not a large city.[78] And so in the case of a portfolio this size, 200 properties, first of all, it was commonly known -- the bankruptcy was commonly known in the market. And if -- if too many properties of one type were exposed to the market too quickly, the term absorption means -- is how quickly and effectively at a market price can that property be absorbed and basically be purchased in that market with not impairing the value of additional properties.
>
> So, so to speak, if you have five properties of the same type and the market appears to only have three buyers at that moment in time, the assumption would be that the

[75] *Id.* at 200.

[76] *Id.* at 201.

[77] *Id.* at 201, 207.

[78] According to the Census Bureau, Topeka had around 125,000 residents in 2019. *See* https://www.census.gov/quickfacts/fact/table/topekacitykansas/PST045219.

> remaining two properties would not bring a fair market value.[79]

Lensing testified that although a number of prospective buyers—including the VFW next door—have expressed interest in buying the Gage Property, he has not listed it for sale because he has not been allowed access to perform a thorough inspection.[80] Lensing has personally observed "moving vans, moving trucks end to end" forming a "barricade" that blocks access to the property.[81]

During his testimony, Lensing looked at Movant's Exhibit 19, a "property report card" issued for the Gage Property by Shawnee County (Kansas) in 2021. According to Exhibit 19, the property's appraised value for the 2022 tax year is $148,450: $110,790 for the land and $37,660 for the building. When asked about Kent's offer to buy the Gage Property as-is for $65,000, Lensing testified that he did not consider that a fair price "for a variety of reasons" that included the county valuation, acknowledging that he was "somewhat handicapped from not being able to do a thorough inspection of the property."[82]

Lensing also looked at Movant's Exhibit 20, another property report card issued by Shawnee County in 2021—this one for property across the street at 230 Southwest Gage Boulevard. According to Exhibit 20, the appraised value of this "230 Southwest Gage" property, which consists of a 1,574-square-foot building on a

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[79] *Id.* at 201-02.

[80] *Id.* at 207, 211.

[81] *Id.* at 216-17.

[82] *Id.* at 212.

26,876-square-foot lot, is $152,100 for the 2022 tax year. Lensing testified that the property sold for $110,000 at a public auction in 2015.[83] According to Lensing, extrapolating from that price would suggest that the current value of the Gage Property is "closer to [$]200,000."[84]

On cross-examination, Lensing testified that he had "done 100 million in transactions in the same period that [he'd] been engaged in the Lindemuth estate."[85] When asked again about Kent's $65,000 offer for the Gage Property, Lensing responded that the offer "is under the real estate value":

> I have not had access to the property. The real estate value is a hundred thousand dollars. Indications are it's not a tear-down. So if it's not a tear-down, indications would be that the property is worth at least a hundred thousand dollars.[86]

Lensing explained why Lloyd hadn't countered Kent's $65,000 offer: "The conclusion in the conversation that Mr. Lloyd and I had was that he didn't have near enough information to -- to move forward with anything."[87]

E. Kent Lindemuth

The final witness to testify was Kent Lindemuth. Kent testified that when he entered into the Agreement with Lloyd, he (Kent) was using the Gage Property as "a home-office combination business," and that he has used the Gage Property both

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[83] *Id.* at 214-15.

[84] *Id.* at 216.

[85] *Id.* at 223.

[86] *Id.* at 259.

[87] *Id.* at 267.

"personally . . . and for business" since that time.[88] He understood the Agreement to mean that "Jim Lloyd was an agent and I, and at the time Vikki, was the principals."[89] According to Kent: "My understanding was there that he has the ability to sign and to make transactions and hold and receive money and maintain real estate only."[90]

Kent testified that although he was initially "on the same page" with Lloyd regarding the management and sale of Debtors' real property, Lloyd stopped communicating with him after he (Kent) was indicted in 2016.[91] Kent decided after Vikki's death in 2019 that he wanted to dismiss Lloyd and "informed him that his services was no longer needed."[92] At that point, he said, it had been "more than four, probably closer to five" years since Lloyd had consulted with him about any decision regarding Debtors' bankruptcy estates.[93]

Respondent's Exhibit T is a proposed purchase agreement for the Gage Property that Kent hired real estate agent Dick May to send to Lloyd. Kent explained how he arrived at his $65,000 offer to buy the property "as-is":[94]

> Well, you know, being a real estate developer and purchaser for all these years, I -- I went in there and evaluated what the cleanup was going to be, and that consisted of ceilings, plaster board, carpet, wiring and

[88] *Id.* at 281-82, 285.

[89] *Id.* at 285.

[90] *Id.* at 298.

[91] *Id.* at 288-89.

[92] *Id.* at 291-92.

[93] *Id.* at 292.

[94] *Id.* at 300.

> plumbing and -- to strip it and to re-habit and then determine whether or not if the building was going to be usable or to go ahead and destroy it, knock it down.[95]

Although Kent intended the offer as "a starting point for any kind of negotiation," Lloyd did not respond to it.[96]

Kent testified that he currently operates "a moving business" out of the Gage Property.[97] He explained why he does not want Lloyd to sell the property to someone else:

> Well, first of all, that -- that's a property that is dearest to me. It was one of the first, second, third, whatever it was for purchases. And that property I have a -- a really good understanding of what the office use over there for -- for the property.
>
> . . .
>
> [And] I would have no place to hang my hat.[98]

Kent acknowledged ordering Banker off the property:

> [B]ecause I was protecting my property, my assets, my business. Everything there that I make living off of is -- is the -- the only thing there that I can provide for myself at the time.
>
> . . .
>
> To me it's -- it's like somebody breaking in my house and trying to take my TV as an example. I'm -- I'm going to protect my assets, my trucks, my business.[99]

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[95] *Id.* at 297.

[96] *Id.* at 299-300.

[97] *Id.* at 299.

[98] *Id.* at 302-03.

[99] *Id.* at 305.

However, on cross-examination, Kent denied "harass[ing]" or "threatening" anyone:

> [I]f communication or talking to people is considered harassed, then I -- I disagree.
>
> . . .
>
> [N]obody threatened anybody. Talking and communicating with people and -- and basically just saying, look, I'm here to protect my property and my business. I don't think it's fair to say there -- to assume there that was harassing.[100]

On cross, Kent acknowledged that he owns a 50% interest in Lindemuth, Inc., with the other 50% held by Vikki's trust, and that the expenses of Lindemuth, Inc., are shared equally between him and the trust.[101] Kent identified Three Men and Two Trucks, Inc., and Allied Bailey Moving & Storage as the businesses he currently operates out of the Gage Property.[102] He did not know their annual gross sales.[103] The two businesses pay no rent to Lindemuth, Inc., for their use of the property and have no employees besides Kent himself.[104]

Kent also acknowledged on cross that he had received letters from Lloyd instructing him to remove his vehicles and other personal property from the Gage Property, and that he had not complied with those instructions or otherwise

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[100] *Id.* at 313-14. The Court does not find this testimony credible to the extent it conflicts with Banker's.

[101] *Id.* at 306.

[102] *Id.* at 307.

[103] *Id.*

[104] *Id.*

responded to them.[105] He explained that the Gage Property is "a place of business" and "a source of income," and that he "had no substitution to house the moving equipment and trucks."[106]

After the parties' closing arguments, the Court took the matter under advisement.

IV. Analysis

The material facts of this matter are unambiguous. The Agreement, which was incorporated into the Confirmation Order, directs Lloyd to implement the Joint Plans (which are to be funded by the sale of Debtors' real property) and to maximize the value of Debtors' bankruptcy estates. The Agreement also (1) gives Lloyd the *exclusive* authority to control and to sell Debtors' real property; (2) *specifically divests* Kent of such authority; and (3) provides that Lloyd's authority can *only* be terminated by order of the bankruptcy court.

This Court has never ordered that the Agreement be terminated. It did, however, specifically order in 2020 that the Agreement remained in effect.

The Gage Property, which belongs to debtor Lindemuth, Inc., generates thousands of dollars in annual carrying costs but no income. Its physical condition, which includes mold, trash, pests, and feces, both human and animal, is appalling. Lloyd's decision to sell the property is entirely consistent with, if not mandated by,

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[105] *Id.* at 308-10.

[106] *Id.* at 310.

his obligations under the Agreement. However, Kent has prevented Lloyd—verbally, physically, and via invocation of the Topeka police—from cleaning, repairing, and/or selling the Gage Property.

In response to these facts, Kent offers a variety of arguments. However, none of those arguments is persuasive.

A. Lloyd need not demonstrate "necessity" to sell a property.

First, Kent argues that Lloyd's decision to sell the Gage Property "is not based on economic necessity or on ensuring the successful completion of the confirmed plan."[107] However, the Agreement does not limit Lloyd's authority to that which is "necessary." Rather, the Agreement authorizes Lloyd to sell property "as [he] considers correct at reasonable prices," and it does not require him to justify his decisions to Kent beforehand. Because sale of the Gage Property falls squarely within Lloyd's exclusive authority to sell Debtors' real estate, Kent's first argument fails.

B. Lloyd was not required to bring this motion as a counterclaim.

Next, Kent argues that under Fed. R. Civ. P. 13, Lloyd should have brought the Motion to Enforce as a compulsory counterclaim in the adversary proceeding Kent filed against Lloyd on February 8, 2021.[108] Rule 13 applies to a "claim" that,

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[107] ECF 454 at 3.

[108] *Id.* at 13 (citing *Lindemuth v. Lloyd & MacLaughlin*, Adv. No. 21-6001). Kent's seven-count complaint in that proceeding seeks (1) a declaration that the Agreement is "void, terminated, and of no effect"; (2) an accounting by Lloyd and his company, Lloyd & MacLaughlin; (3) damages for breach of fiduciary duty; (4) damages for constructive fraud; (5) damages for civil conspiracy; (6) a declaration that a quitclaim deed executed by Vikki is "null and void"; and (7) quiet title as to

among other things, "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." However, Kent provides the Court with no reason to hold that enforcement of an already-existing injunction via contested matter constitutes a "claim" for purposes of Rule 13.[109] Nor does Kent adequately specify the common "transaction or occurrence" out of which the Motion to Enforce and the adversary proceeding allegedly arise.[110] Nor does he cite any authority, from the Tenth Circuit or any other court, to support his position. For these reasons, Kent's second argument fails.

C. Kent's recalcitrance does not "waive" Lloyd's ability to sell the Gage Property.

Next, Kent argues that Lloyd "[has] been aware of Debtor's alleged misconduct but sat on [his] rights for more than a year and therefore appear[s] to have waived [his] right to assert same."[111] Because Kent does not cite any authority to support that statement, or explain how his own persistent interference with Lloyd's efforts to clean up the Gage Property constitutes waiver on Lloyd's part, his third argument fails as well.

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the properties identified in Vikki's quitclaim deed. This Court dismissed counts (3) and (4) of the complaint on December 13, 2021. *See* Adv. No. 21-6001, ECF 82, 83.

[109] Kent's brief inaccurately characterizes Lloyd's motion as a "request for injunctive relief." *See* ECF 454 at 12-13. However, the injunction already exists as a component of the Confirmation Order; Lloyd seeks only to enforce it.

[110] Kent's brief cites "Movants' status as Debtors' Power of Attorney and the parties alleged failure to abide by existing agreements and Orders concerning Movants' power of attorney status." ECF 454 at 13. These vague references do not identify a "transaction or occurrence."

[111] ECF 454 at 14.

D. Sale of the Gage Property is not "retaliation" against Kent.

Next, during opening statements, Kent claimed that Lloyd's proposed sale of the Gage Property is "retaliation" against Kent for his (Kent's) attempts to terminate the Agreement. The cost of carrying the Gage Property belies that argument, as does the property's appalling physical condition. And Lloyd's refusal to engage with Kent's $65,000 offer does not support Kent's argument, either; Lloyd cannot determine whether the offer is reasonable without access to the property, and all of the evidence available to him (such as the appraised value of the Gage Property, the 2015 sale price of the 230 Southwest Gage property, and Lensing's testimony) suggests that $65,000 is too low.[112] Moreover, the concept of "absorption" described by Lensing explains why Lloyd did not attempt to sell the Gage Property in the earlier years of these bankruptcy cases. For these reasons, Kent's fourth argument fails.

E. The Agreement grants Lloyd exclusive authority to sell the Gage Property; Kent is bound by the Agreement.

Finally, during closing arguments, Kent asserted that Lloyd is not a "trustee," but rather an attorney-in-fact, and that as such, under Kansas law, Lloyd cannot supersede Kent's "business judgment" or sell the Gage Property against Kent's wishes. However, while styled as a "power of attorney," the Agreement is

[112] At the hearing, Kent asked Lensing whether he had considered litigation costs in determining the value of the Gage Property. *See* Hearing Tr. 259-61, Sept. 28, 2021, ECF 488. Lensing replied that litigation costs would not affect his determination of value. *Id.* at 261. The Court agrees; Kent may not impose litigation costs as a "heckler's veto" to Lloyd's business judgment.

broader than that. Regardless of its title, the Agreement unambiguously grants Lloyd the *exclusive* authority to sell Debtors' real property and *specifically divests* Kent of such authority. This complete substitution of Lloyd's business judgment for Kent's regarding the management and disposition of Debtors' real property is the *raison d'être* of the Agreement. While such substitution might extend beyond what Kansas law would otherwise permit under a power-of-attorney arrangement, the Agreement was not executed in a vacuum. Rather, it was executed by Kent and Vikki as a component of Debtors' bankruptcy proceedings, which submitted Debtors' real property to the exclusive jurisdiction of this Court. *Cf. Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004) ("Bankruptcy courts have exclusive jurisdiction over a debtor's property, wherever located, and over the estate.") (citing 28 U.S.C. § 1334(e)). Whether Kansas law would permit the Agreement outside of bankruptcy is beside the point, because bankruptcy law permits (and sometimes even requires) third-party administration of estate property. *See, e.g.*, 11 U.S.C. §§ 1104 (appointment of trustee), 1112 (conversion to Chapter 7 for cause); *cf. Arizona v. United States*, 567 U.S. 387, 399-400 (2012) (doctrine of preemption). Because the Bankruptcy Code unquestionably permits third-party administration of estate property, Kent's final argument fails.

The Court rejects Kent's final argument for two additional reasons. First, both the Confirmation Order (of which Lloyd's authority under the Agreement is a material component) and the Court's prior order approving the Agreement are final judgments—and final judgments may not be attacked other than with a timely

appeal. *See, e.g.*, *J.D. Behles & Assocs. v. Raft (In re K.D. Co.)*, 254 B.R. 480, 490 (B.A.P. 10th Cir. 2000); *cf. United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). Thus, even if there were any merit to Kent's limits-of-Kansas-power-of-attorney argument (which there is not), the Court's prior orders are *res judicata*,[113] and Kent is bound by them.

Second, Kent is judicially estopped from arguing that the Agreement is contrary to Kansas law. Kent induced his creditors to accept the Joint Plans by granting Lloyd exclusive authority over Debtors' real property. Now he claims that such authority was never (despite the plain language of the Agreement) *really* exclusive, and that if any party-in-interest wanted Lloyd's authority over Debtors' real property to *actually* be exclusive, then that party should have moved to appoint Lloyd as a trustee under § 1104. But what reason would any party have had, given the existence of the Agreement, to move for the appointment of a trustee? What could § 1104 have accomplished, vis-à-vis Lloyd's control over Debtors' real property, that the plain language of the Agreement had not already done? Given Kent's voluntary execution of the Agreement, and his prior representations to parties-in-interest and this Court as to the viability of the Agreement, he is judicially estopped from arguing—at this late date—that the Agreement does not

[113] The doctrine of res judicata, or claim preclusion, "is not concerned with whether a prior judgment was right or wrong . . . [i]t is concerned only with bringing an end to litigation after the parties have had a fair opportunity to litigate their claims." 18 MOORE'S FED. PRACTICE § 131.12[3] (3d ed. 2022).

actually mean what it says. *See, e.g.*, *Johnson v. Lindon City Corp.*, 405 F.3d 1065, 1068-69 (10th Cir. 2005) (citing *New Hampshire v. Maine*, 532 U.S. 742 (2001)).

For these reasons, the Court holds that (1) the Kent's actions vis-à-vis the Gage Property constitute interference with Lloyd's implementation of the Joint Plans and that (2) the Confirmation Order enjoins such interference.

III. CONCLUSION

The Motion to Enforce is hereby granted. Any further actions by Kent to block or otherwise interfere with Lloyd's efforts to clean, repair, market, and sell the Gage Property, Southwest Emland Drive, or any of Debtors' real property while the Agreement remains in effect will constitute civil contempt and cause for sanctions pursuant to § 105(a) of the Bankruptcy Code. *Cf. Mountain Am. Credit Union v. Skinner (In re Skinner)*, 817 F.2d 444 (10th Cir. 1990) (holding that § 105 authorizes bankruptcy court to impose civil contempt sanctions).

IT IS SO ORDERED.

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