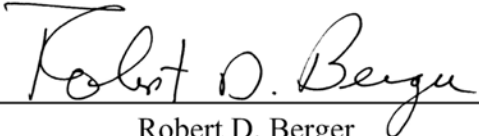


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 13th day of December, 2021.




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

KENT LINDEMUTH,

Plaintiff,

Adv. No. 21-6001

v.

LLOYD & MacLAUGHLIN LLC, et al.,

Defendants.

**ORDER GRANTING MOTION TO DISMISS
COUNT V OF THE COMPLAINT**

In Count V of the complaint in this adversary proceeding, plaintiff Kent Lindemuth alleges a civil conspiracy among the defendants to eliminate Kent's rights of survivorship in property he co-owned with his late wife Vikki prior to her death in 2019. Defendant Shannon Mesker, as successor trustee of the Vikki Lindemuth Revocable Trust dated November 9, 2018 (the "**Trust**"), now moves to dismiss Count V under Fed. R. Civ. P. 12(b)(6).¹ For the reasons set forth below, the Trust's motion to dismiss Count V will be granted.²

I. Background

Kent, Vikki, and five of their companies³ (together with Kent and Vikki, "**Debtors**") filed Chapter 11 bankruptcy petitions in 2012. The five debtor companies owned a number of commercial real estate properties, mostly in Topeka; the properties served as collateral for tens of millions of dollars in loans.

Soon after the petitions were filed, Debtors' secured lenders began to complain that Kent was mismanaging the mortgaged properties and not

¹ ECF 49. Rule 12(b)(6) applies to this adversary proceeding through Fed. R. Bankr. P. 7012(b). Defendants Jim Lloyd and Lloyd & MacLaughlin LLC have filed a motion to dismiss Counts I through V, *see* ECF 53; the Court will address that motion in a separate order.

² Although Kent has filed a motion to withdraw the reference of this proceeding, *see* ECF 11, Fed. R. Bankr. P. 5011(c) provides that "[t]he filing of a motion for withdrawal of a case or proceeding . . . shall not stay the administration of the case or any proceeding therein before the bankruptcy judge" unless the bankruptcy judge orders otherwise. Because the motion to withdraw the reference has not stayed the administration of this proceeding, this Court will proceed to rule on the defendants' motions to dismiss.

³ The "**Debtor Companies**" are Lindemuth, Inc.; Lindy's, Inc.; KDL, Inc.; Bellairre Shopping Center, Inc.; and K. Douglas, Inc.; Debtors' bankruptcy cases are jointly administered under case number 12-23055 (Lindemuth, Inc.).

cooperating with the lenders in bankruptcy-related matters. According to Debtors' current attorney-in-fact, defendant Jim Lloyd:

In or around early 2013, several of the lenders to the Debtor Companies 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 Debtors' assets. He was constantly attempting to block the Chapter 11 Debtors' efforts to develop and implement a plan of reorganization.⁴

Debtors filed proposed Chapter 11 plans (the "**Joint Plans**") in 2014.⁵ To obtain their secured lenders' acceptance of the Joint Plans, and as a precondition to confirmation of the Joint Plans,⁶ Kent and Vikki entered into an agreement appointing Lloyd as Debtors' attorney-in-fact (the "**Power of Attorney**"). The Power of Attorney 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

⁴ ECF 55 at 2-3.

⁵ 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.

⁶ See *infra* p. 8 (describing agreement with secured lenders); cf. [11 U.S.C. § 1124](#) ("Impairment of claims or interests"); [11 U.S.C. § 1126](#) ("Acceptance of plan"); [11 U.S.C. § 1129](#) ("Confirmation of plan").

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]
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.⁷

The Power of Attorney also provides:

[Kent and Vikki] hereby give 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

This Court entered an order confirming Lloyd's authority under the Power of Attorney on May 6, 2014 (the "**Bankruptcy Court Order**").⁹

The Joint Plans were confirmed early in 2015.¹⁰ Lloyd reports:

Pursuant to Mr. Lloyd's authority and in implementation of the confirmed Chapter 11 Plan, Mr. Lloyd has sold a total of approximately \$40 million in real property out of an initial portfolio valued by the applicable County authorities at approximately \$61 million. Throughout

⁷ Pre and Post Confirmation Bankr. Power of Attorney, ECF 1-1.

⁸ *Id.* (emphases added).

⁹ See Order Approving Mot. to Confirm Jim Lloyd's Binding Authority, Case No. 12-23055, ECF 502.

¹⁰ See Order Confirming Plan of Reorganization ("**Confirmation Order**"), Case No. 12-23055, ECF 652.

Mr. Lloyd's appointment as attorney-in-fact and as agent of the Debtors, he has had the full support of the secured lenders holding mortgages on the Debtors' assets securing their loans.¹¹

Upon confirmation of the Joint Plans, the Debtor Companies received a discharge, but Kent and Vikki individually did not.¹² Debtors' bankruptcy cases were administratively closed at the end of 2015.¹³

On June 1, 2016, Kent was indicted on 103 counts of bankruptcy fraud arising out of his omission of 103 firearms from his Chapter 11 bankruptcy schedules and monthly operating reports.¹⁴ 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.¹⁵

Vikki filed for divorce from Kent in Shawnee County, Kansas, on September 7, 2016. The Shawnee County court entered an order at the outset of the case

¹¹ ECF 54 at 8.

¹² 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\(d\)\(1\)\(A\)](#).

¹³ See Final Decree, Case No. 12-23055, ECF 690.

¹⁴ See Indictment, *United States v. Lindemuth*, No. 16-cr-40047-DDC (D. Kan. June 1, 2016), ECF 1.

¹⁵ See First Superseding Indictment, *United States v. Lindemuth*, No. 16-cr-40047-DDC (D. Kan. Dec. 14, 2016), ECF 32; Second Superseding Indictment, *United States v. Lindemuth*, No. 16-cr-40047-DDC (D. Kan. Apr. 5, 2017), ECF 56; Third Superseding Indictment, *United States v. Lindemuth*, No. 16-cr-40047-DDC (D. Kan. May 3, 2017), ECF 71.

providing, among other things, that (1) “neither party shall change the beneficiary of any benefits or assets during the pendency of this action except as authorized by the [Joint Plans]” and that (2) Lloyd continued to have the powers granted to him under the Power of Attorney (the “**Divorce Court Order**”).¹⁶

On March 10, 2017, the United States Trustee moved to reopen Kent and Vikki’s individual bankruptcy case under [11 U.S.C. § 350\(b\)](#),¹⁷ alleging that Kent owned 2,166 undisclosed firearms (including the 103 for which he was originally indicted). This Court reopened the case that same day.¹⁸

On April 24, 2017, in connection with their divorce, Kent and Vikki entered into an agreement that appointed Lloyd’s firm, defendant Lloyd & MacLaughlin LLC (“**L&M**”), as agent for themselves and three of the five Debtor Companies (the “**Agent Agreement**”).¹⁹ The Agent Agreement provides that “the Services to be performed by [L&M] pursuant to this Agreement include but are not limited to duties and functions to be performed by Lloyd pursuant to the [Power of Attorney]”; it further authorizes L&M:

[i]n general to administer, protect and preserve all marital or other joint assets of the Lindemuths or their marital estate that are directly or indirectly owned or

¹⁶ See Temp. Order for Appt. of Bus. Manager for the Parties’ Bus. Interests ¶¶ 6, 8, ECF 1-4.

¹⁷ See U.S. Trustee’s Mot. to Reopen, Case No. 12-23060, 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.”

¹⁸ See Order Granting U.S. Trustee’s Mot. to Reopen, Case No. 12-23060, ECF 48.

¹⁹ See Agent Agreement, ECF 1-5.

controlled by any of the Lindemuth Entities,²⁰ including but not limited to real and personal property assets of the Lindemuth Entities, and to exercise authority and control of the related financial affairs of the Lindemuth Entities, with the express goal and direction of maximizing value of these assets.²¹

As to termination, the Agent Agreement provides that Kent and Vikki’s “authority to terminate this Agreement . . . shall be subject to obtaining any approvals of the Court as may be required.”²²

Vikki’s individual bankruptcy case was deconsolidated from Kent’s on May 1, 2017.²³

On December 8, 2017, a jury acquitted Kent of all bankruptcy-related charges.²⁴ He was acquitted on the remaining charge—willful receipt of firearms while under indictment—following a bench trial in 2018.²⁵

²⁰ The Agent Agreement defines “Lindemuth Entities” as KDL, Inc.; Lindemuth, Inc.; Lindy’s, Inc.; and “[a]ny other additional legal entities as may be mutually agreed in writing from time to time by the Lindemuths and the Agent.” *See* Agent Agreement at 14 (Schedule 1).

²¹ *Id.* at 16 (Schedule 2).

²² *Id.* § 8.4.

²³ *See* Order Granting Mot. to Sever Joint Case, Case No. 12-23060, ECF 66.

²⁴ *See* Verdict, *United States v. Lindemuth*, No. 16-40047-01-DDC (D. Kan. Dec. 2, 2017), ECF 139.

²⁵ *See* Special Verdict, *United States v. Lindemuth*, No. 16-40047-01-DDC (D. Kan. Aug. 2, 2018), ECF 187. Kent was 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. *See 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. *See 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

At a hearing before this Court on February 15, 2018, Kent’s counsel acknowledged Kent’s agreement with the secured lenders regarding Lloyd’s authority over the Debtor Companies:

[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 [criminal] case failed at trial.²⁶

The “Deines affidavit” cited by Kent’s counsel—from Jeffrey Deines, Kent’s former bankruptcy counsel—explains that Kent executed the Power of Attorney in exchange for the secured lenders’ consent to confirmation of 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.²⁷

In the fall of 2018, after receiving a terminal cancer diagnosis, Vikki created the Vikki Lindemuth Revocable Trust dated November 9, 2018 (the “**Trust**”). The following year, she filed a “Quit-Claim Deed to Sever Joint Tenancy” (the

“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”).

²⁶ Hearing Tr. 52:14-23, Feb. 15, 2018, Case No. 12-23060, ECF 201.

²⁷ Deines Aff. ¶¶ 8-9, Case No. 12-23060, ECF 162-4.

“Quitclaim Deed”) in Shawnee County as to a number of properties that she and Kent owned as joint tenants. The Quitclaim Deed transferred Vikki’s rights in the properties to herself as a tenant-in-common; its purpose and effect was to sever the joint tenancies and eliminate Kent’s rights of survivorship. Vikki then placed her tenant-in-common interests into the Trust. Some of the properties have since been sold to third parties, but the rest remain under Lloyd’s management.

Vikki died on November 11, 2019, while the divorce was still pending, and the Lindemuths’ individual bankruptcy cases were still open. The Shawnee County court dismissed the Lindemuths’ divorce action the next day without entering a final decree.

On November 13, 2019, Kent’s counsel sent Lloyd a letter purporting to terminate the Agent Agreement.²⁸

This Court ordered Vikki’s bankruptcy case closed without discharge on June 16, 2020.²⁹

In an order dated July 1, 2020, this Court held that “although one of the signors of the Power of Attorney has now died, the Power of Attorney remains in effect and confers to Mr. Lloyd the authority to proceed with transactions as specified therein.”³⁰ Six months later, Kent’s counsel sent Lloyd a letter purporting

²⁸ See Letter from Neil Sader to Philip N. Krause & Jim Lloyd (Nov. 13, 2019), ECF 1-11 at 12-13.

²⁹ See Order Closing Case, Case No. 17-20763, ECF 99.

³⁰ Order Denying Debtor’s Mots. ¶ 3, Case No. 12-23060, ECF 407.

to terminate the Power of Attorney and “reiterat[ing] his prior termination of the Agent Agreement.”³¹

II. Motion to Dismiss

On February 18, 2021, Kent filed the seven-count complaint at issue here against Lloyd, L&M, and Shannon Mesker as successor trustee of the Trust. (Mesker is one of Kent and Vikki’s two daughters.) The complaint alleges that Vikki and/or the Trust³² “conspired” with Lloyd and L&M to deprive Kent of his rights of survivorship in the properties affected by the Quitclaim Deed (Compl. ¶¶ 184, 186, 196, 198) and that the Quitclaim Deed was executed and recorded in contempt of the Divorce Court Order (*id.* ¶ 207). Count V, “Civil Conspiracy,” seeks damages from all three defendants. Mesker now moves to dismiss Count V, arguing that (1) this Court lacks jurisdiction to address Kent’s contempt allegations and (2) even if this Court had jurisdiction, Kent’s complaint fails to state a claim for civil conspiracy under Kansas law.

A. Jurisdiction

Under [Kan. Stat. Ann. § 20-1204a\(a\)](#), “the court that rendered” an order may address contempt allegations regarding that order. *Alpha Med. Clinic v. Anderson*, [128 P.3d 364, 380](#) (Kan. 2006). This requirement is jurisdictional. *Id.* (citing *Bond v. Albin*, [28 P.3d 394](#) (Kan. Ct. App. 2000), *rev. denied*, [16 P.3d 341](#) (Kan. 2001),

³¹ Letter from Neil Sader to James B. Lloyd & Philip Krause, (Dec. 7, 2020), ECF 1-11 at 2-5.

³² Paragraph 184 of Kent’s complaint names the Trust as the third co-conspirator, but paragraphs 186 and 198 name Vikki instead, and paragraph 196 names “Vikki Lindemuth and the Trust.”

overruled on other grounds by *S.M.J. ex rel. Jacobs v. Ogle*, [449 P.3d 997](#) (Kan. 2019)). Therefore, the only court with jurisdiction to address Kent’s contempt allegations is the Shawnee County court that issued the Divorce Court Order. *See id.* Because this Court lacks jurisdiction to address those allegations, Kent’s claim for civil conspiracy must fail to the extent it arises out of the alleged contempt. *Cf. Meyer Land & Cattle Co. v. Lincoln Cty. Conservation Dist.*, [31 P.3d 970, 976-77](#) (Kan. Ct. App. 2001) (affirming dismissal of civil conspiracy claim where underlying defamation claim was time-barred).

B. Failure to State a Claim

Kent responds that his claim for civil conspiracy arises not out of his contempt allegations against Vikki, but rather his breach-of-fiduciary-duty and constructive-fraud allegations against Lloyd and L&M.³³ However, his complaint still fails—in several ways—to state a claim for civil conspiracy under Kansas law.

To survive a motion to dismiss, a complaint “must contain enough allegations of fact, taken as true, ‘to state a claim to relief that is plausible on its face.’” *Khalik v. United Air Lines*, [671 F.3d 1188, 1190](#) (10th Cir. 2012) (quoting *Bell Atl. Corp. v. Twombly*, [550 U.S. 544, 570](#) (2007)). Legal conclusions, unlike factual allegations, are not entitled to the assumption of truth in this analysis. *See Ashcroft v. Iqbal*, [556 U.S. 662, 678](#) (2009). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, [550 U.S. at](#)

³³ *See* ECF 63 at 5.

556). However, factual allegations made “on information and belief,” without supporting factual assertions, are insufficient to plausibly state a valid claim. *See Walker v. Hickenlooper*, 627 F. App’x 710, 715 (10th Cir. 2015) (unpublished) (citing *Blantz v. Cal. Dep’t of Corr. & Rehab.*, 727 F.3d 917, 926-27 (9th Cir. 2013)); *cf. Al-Owhali v. Holder*, 687 F.3d 1236, 1243 (10th Cir. 2012).

Here, Count V alleges:

184. Lloyd and L&M conspired with The Trust to deprive Plaintiff of his Joint Tenancy interest with a right of survivorship in real property co-owned with Vikki Lindemuth.

185. Upon learning of her terminal cancer diagnosis, Vikki Lindemuth established The Trust to hold certain of her assets for the benefit of her heirs which includes Shannon Mesker who is Plaintiff’s daughter, is employed by the Lindemuth Entities, and is a beneficiary under The Trust.

186. Upon information and belief, Lloyd and L&M, in conjunction with Vikki Lindemuth, determined that a Quit Claim Deed to Sever Joint Tenancy would achieve Defendants’ goal of depriving Plaintiff of his joint tenancy with right of survivorship interest in real property he co-owned with Vikki Lindemuth.

187. On March 21, 2019, Vikki Lindemuth executed and recorded a “Quit Claim Deed to Sever Joint Tenancy” (the “QCD”) as Instrument No. 2019R03627 with the Shawnee County Register of Deeds. . . .

188. The QCD identifies Vikki Lindemuth as both “Grantor” and “Grantee” and further identifies thirteen tracts of real property jointly owned by Plaintiff and Vikki Lindemuth.

189. The QCD further states, in relevant part, “the express desire and intention of Grantor [Vikki Lindemuth] is to sever such joint tenancy and to eliminate any rights of survivorship held by either joint

tenant upon the death of either joint tenant, and to convert Grantor's [Vikki Lindemuth's] ownership of the Property to that of a tenant in common."

190. When the QCD was executed and recorded, Lloyd and L&M, along with Vikki Lindemuth, were aware of the Divorce Court's September 19, 2016 Order that appointed Lloyd as Plaintiff's Power of Attorney.

191. Lloyd and L&M, along with Vikki Lindemuth were also aware that Paragraph 6 of the Divorce Court Order states, in relevant part: "Neither party shall change the beneficiary of any benefits or assets during the pendency of this action except as authorized by the [Chapter 11 Plans]."

192. Lloyd and L&M transferred or sold at least four of the properties identified in the QCD after its recording, Tracts 1, 6, 7, and 13.

193. A title search for Tracts 1, 6, 7, and 13 would have revealed the existence of the recorded QCD.

194. At all times relevant, Lloyd and L&M were Plaintiff's fiduciaries and were bound to exercise fair dealing and impartiality, to avoid conflicts of interest, and to communicate with Plaintiff regarding the administration of his assets under the terms of the Agent Agreement and the KPPA.

195. Lloyd and L&M breached their fiduciary duties to Plaintiff when they failed to communicate with Plaintiff regarding the QCD's existence or its effect on Plaintiff's ownership interest in the real property identified in said QCD in violation of their duties under the Agent Agreement and KPPA.³⁴

196. Lloyd and L&M further breached their fiduciary duties of impartiality to Plaintiff, their duties to avoid conflicts of interest, and their duty to act in Plaintiff's best interests when they conspired with Vikki

³⁴ The complaint defines "KPPA" to mean the Kansas Power of Attorney Act. *See* Compl. ¶ 120.

Lindemuth and The Trust to sever Plaintiff's Joint Tenancy interests via the QCD in violation of the Agent Agreement and KPPA.

197. Lloyd and L&M further breached their fiduciary duties to act with reasonable care and prudence and to act in Plaintiff's best interests when they failed to take action to have the QCD declared void and of no legal effect for violating the Divorce Order in violation of the Agent Agreement and KPPA.

198. As a proximate result of Lloyd, L&M and Vikki Lindemuth's conspiracy to sever Plaintiff's Joint Tenancy interests via the QCD, Plaintiff has suffered damages including but not limited to the fair market value of Plaintiff's estate property and lost profits together with interest at the legal rate, plus attorney's fees and costs.³⁵

Civil conspiracy is “a means of establishing vicarious liability for [an] underlying tort.” *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983) (quoted in *State ex rel. Mays v. Ridenhour*, 811 P.2d 1220, 1228 (Kan. 1991)).³⁶ “Elements of a civil conspiracy are: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds in the object or course of action; (4) one or more unlawful overt acts; and (5) damages as the proximate result thereof.” *Meyer Land & Cattle Co. v. Lincoln Cty. Conservation Dist.*, 31 P.3d 970, 976 (Kan. Ct. App. 2001) (citing *Stoldt v. City of Toronto*, 678 P.2d 153, 161 (Kan. 1984)). Under Kansas law, a plaintiff does not state a claim for civil conspiracy by alleging that the defendants achieved a lawful result through unlawful means. *See Stoldt*, 678 P.2d at 161-62 (holding that

³⁵ Compl. ¶¶ 184-98 (alterations in ¶ 189 in original) (citations omitted).

³⁶ *See also* Restatement (Third) of Torts § 27 (Am. Law Inst. 2020) (“Civil conspiracy is a basis of secondary liability. It allows a defendant to be held responsible for a tort committed by another.”).

plaintiff did not state claim for civil conspiracy where he alleged that defendants' KOMA violation resulted in the lawful termination of his employment). Nor can a defendant can be liable for civil conspiracy where that defendant did not commit an independent actionable tort, regardless of whether tort claims have been alleged against other defendants. *See Meyer v. Christie*, [634 F.3d 1152, 1157](#) (10th Cir. 2011); *Pepsi-Cola Bottling Co. of Pittsburg, Inc. v. PepsiCo, Inc.*, [431 F.3d 1241, 1268](#) (10th Cir. 2005).

Here, the Trust argues that Count V fails to state a claim for civil conspiracy because it does not allege a "meeting of the minds" among the defendants. Kent responds that a meeting of the minds can be found in paragraph 186 of his complaint. That paragraph alleges:

Upon information and belief, Lloyd and L&M, in conjunction with Vikki Lindemuth, determined that a Quit Claim Deed to Sever Joint Tenancy would achieve Defendants' goal of depriving Plaintiff of his joint tenancy with right of survivorship interest in real property he co-owned with Vikki Lindemuth.

This allegation is insufficient to plead a meeting of the minds because it is made "upon information and belief" without any supporting factual assertions that would make an agreement among the defendants plausible. *Cf. Twombly*, [550 U.S. at 551](#); *Walker*, [627 F. App'x at 715](#).³⁷ Count V therefore fails to state a claim for civil

³⁷ At most, the complaint alleges that Lloyd and L&M found out about the Quitclaim Deed after it was executed and recorded. However, a defendant's after-the-fact knowledge is insufficient to allege a before-the-fact conspiracy. *See Chisler v. Randall*, 259 P. 687, 690 (Kan. 1927) (directing lower court to enter judgment for defendant on libel-conspiracy claim where defendant "knew nothing about any publication concerning the matter until after it was made"); *see also* 16 Am. Jur. 2d

conspiracy because it does not adequately allege a meeting of the minds. Moreover, the result of this inadequately-alleged agreement—the termination of Kent’s joint tenancy in property—was lawful. *See Reicherter v. McCauley*, [283 P.3d 219, 222-23](#) (Kan. Ct. App. 2012) (holding that a joint tenant may unilaterally sever a joint tenancy with a quitclaim deed to himself as a tenant in common). Count V fails to state a claim for civil conspiracy on that basis as well. *Cf. Stoldt*, [678 P.2d at 161-62](#). And as the Trust points out, “[n]othing in the statute [[Kan. Stat. Ann. § 20-1204a](#), which governs civil contempt] or in Kansas case law suggests that civil contempt is a tort.”³⁸ Thus, even if Vikki’s execution of the Quitclaim Deed amounted to civil contempt, and even assuming that such contempt can be imputed to the Trust, the complaint does not allege that the Trust committed an actionable tort. Count V thus fails to state a claim for civil conspiracy on that basis as well. *Cf. Pepsi-Cola*, [431 F.3d at 1268](#). For these reasons, Count V will be dismissed as against the Trust under [Fed. R. Civ. P. 12\(b\)\(6\)](#).³⁹

Conspiracy § 53 (2020) (“The sine qua non of a conspiratorial agreement is the knowledge on the part of the alleged conspirators of its unlawful objective and their intent to aid in achieving that objective.”).

³⁸ ECF 50 at 8.

³⁹ The Court notes that the complaint does not allege any fiduciary or confidential relationship between Kent and the Trust. In the absence of such a relationship, Count V (the “underlying tort” of which, Kent argues, is his breach-of-fiduciary-duty and/or constructive-fraud claims against Lloyd and L&M) may be an improper attempt to hold the Trust liable for torts it was legally incapable of committing. *See* Restatement (Third) of Torts § 27 (Am. Law Inst. 2020) (“[E]ach party who conspires to commit a tort must be legally capable of committing it. . . . [A] conspiracy [to commit a breach of fiduciary duty] can be joined only by a defendant who had a fiduciary duty to the plaintiff in the first place.”).

III. Conclusion

The Trust's motion to dismiss Count V is hereby granted under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

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