United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Sara O. Douglas

Bankruptcy No.: 18 B 20650

Adversary Caption: Freda Nolan and Chicago Title Land Trust Co. as trustee u/t/n 8002376145 v. Sara O. Douglas

Adversary No.: 22 A 54

Date of Issuance: September 14, 2022

Judge: A. Benjamin Goldgar

Appearances of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 7
	)	
SARA O. DOUGLAS,	)	No. 18 B 20650
	)	
Debtor.	)	
	)	
	)	
FREDA NOLAN and CHICAGO TITLE TRUST CO., solely as trustee u/t/n 8002376145	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 22 A 54
	)	
SARA O. DOUGLAS,	)	
	)	
Defendant.	)	Judge Goldgar

MEMORANDUM OPINION

Before the court for ruling is the motion of defendant Sara O. Douglas under Rule 12(b)(6), Fed. R. Civ. P. 12(b)(6) (made applicable by Fed. R. Bankr. P. 7012(b)), to dismiss the complaint of plaintiffs Freda Nolan and Chicago Title Land Trust Company for failure to state a claim. For the reasons below, the motion will be granted. Nolan and Chicago Title will be given leave to amend.

1. Jurisdiction

The court has subject matter jurisdiction under 28 U.S.C. § 1334(b) and the district court's Internal Operating Procedure 15(a). This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

2. Facts

On a Rule 12(b)(6) motion to dismiss, all well-pleaded factual allegations in the complaint are taken as true, and all reasonable inferences are drawn in the plaintiff's favor. *Jauquet v. Green Bay Area Catholic Educ., Inc.*, 996 F.3d 802, 807 (7th Cir. 2021). Also considered are exhibits to the complaint and facts that can be judicially noticed. *Kuebler v. Vectren Corp.*, 13 F.4th 631, 636 (7th Cir. 2021).

These sources reveal the following facts. In August 2010, Freda Nolan and Roger Lee Fletcher bought property in Fox Lake, Illinois. They took title as joint tenants. Roger died on October 16, 2017, and as his joint tenant Nolan succeeded to his interest in the property. Two days after Roger died, Nolan conveyed the property to a land trust with Chicago Title Land Trust Company as trustee. Nolan is the beneficiary of the trust.

On October 13, 2017, three days before Roger died, he and his son Tom supposedly created "The Roger Lee Fletcher and Tom Lee Fletcher Living Trust." The trust declaration made Roger and Tom initial trustees. Roger and Tom were also initial beneficiaries: on the death of either one, the deceased's trust property became the survivor's trust property. Listed as Roger's property transferred to the trust was his interest in the Fox Lake property.

The trust declaration bore what purported to be Roger's signature dated October 13, 2017. The declaration also bore Tom's signature with the same date. Below the signature lines was an acknowledgment that Sara Douglas signed as notary public. It said that on October 13,

> before me, the undersigned Notary Public, personally appeared Roger Lee Fletcher and Tom Lee Fletcher, personally known to me (or proved to me on the basis of satisfactory evidence) to be the individuals who signed the foregoing instrument and acknowledged to me that they executed the same in their authorized capacities, and that by such signatures the persons executed the instrument.

Roger did not appear before Sara Douglas on October 13 and did not sign the trust declaration. He could not have done so. Roger was in a hospice facility where he had been since at least October 11 and according to his medical records was "unresponsive." The handwriting on the trust declaration's two signature lines was nearly identical; the same person, Tom, appears to have signed twice.

That same day, Roger also supposedly quitclaimed to himself and Tom as trustees Roger's 50% interest in the Fox Lake property. The deed's signature line bore this signature: "Roger Fletcher Tom Lee Fletcher POA." POA stands for "power of attorney." Below the signature line was an acknowledgment that Sara Douglas signed as notary public. The acknowledgment was dated October 13 and certified that Roger Fletcher

> is personally known to me to be the same person whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she/they signed, sealed and delivered said instrument as his/her/their free and voluntary act, for the purposes therein set forth, including the release and waiver of the right of homestead.

Roger did not appear before Sara Douglas on October 13 to sign the deed for the same reason he did not appear before her to sign the trust declaration. He was "unresponsive" in hospice and would die three days later. Because Tom purported to sign the deed for Roger under a power of attorney, Douglas's acknowledgment that Roger "appeared before [her] in person" was inconsistent with the signatures. And no power of attorney has ever been produced.

Douglas delivered the signed trust declaration and quitclaim deed to Tom, and in November he had the quitclaim deed recorded with the Lake County Recorder of Deeds.

Apparently unaware of the trust declaration and deed, and hoping to escape the cost of maintaining the Fox Lake property, in 2018 Nolan and Chicago Title sought to sell it. They received an offer, but the trust's interest of record in the property had muddied the title and

prevented the sale. Nolan and Chicago Title then brought a quiet title action against Fletcher, Douglas, and others in Illinois state court. The action is set for trial in January 2023.

The quiet title action evidently prompted Douglas to seek bankruptcy protection, and in July 2018 she filed a chapter 7 petition. Because Douglas failed to schedule Nolan as a creditor, Nolan had no notice of the bankruptcy case. Douglas received her discharge in November 2018.

Three years later, Nolan and Chicago Title had the bankruptcy case reopened and filed this adversary proceeding. The complaint alleges that because Nolan had no notice of the bankruptcy in time to contest dischargeability under sections 523(a)(2), (4), or (6) of the Code, she and Chicago Title can bring the proceeding under section 523(a)(3)(B). The complaint then asserts two counts. Count I is a claim that Douglas owes Nolan and Chicago Title a debt for money or property obtained by fraud, a debt nondischargeable under section 523(a)(2)(A). Count II is a claim that the debt is one for willful and malicious injury to property, a debt nondischargeable under section 523(a)(6). Both claims assert that Douglas fraudulently notarized the trust declaration and deed and conspired with Tom Fletcher to slander the title to the Fox Lake property.

Douglas now moves to dismiss both counts for failure to state a claim. Nolan and Chicago Title oppose the motion.

3. Discussion

The motion will be granted. The complaint alleges no facts to support its conclusions that Douglas conspired with Tom or acted with the requisite mental state. Because it does not, the complaint fails to state a nondischargeability claim.

a. Rule 12(b)(6) Standard

To survive a motion to dismiss, a complaint must clear two hurdles. *E.E.O.C. v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007). First, the complaint must describe the claim in enough detail to give the defendant notice of the allegations. *Id.*; *see* Fed. R. Civ. P. 8(a) (made applicable by Fed. R. Bankr. P. 7008). "[A] formulaic recitation of the elements of a cause of action will not do," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), nor will "naked assertions devoid of further factual enhancement," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). Some facts, in other words, must support each element of the claim. *Id.* at 678-79. Legal conclusions are disregarded. *McCauley v. City of Chicago*, 671 F.3d 611, 617 (7th Cir. 2011).

Second, the complaint "must plead facts sufficient to show that [the] claim has substantive plausibility." *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014). That means the allegations must raise the plaintiff's right to relief above the "speculative level." *Twombly*, 550 U.S. at 555. The plausibility standard "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. "[T]he plausibility determination is a context-specific task that requires the . . . court to draw on its judicial experience and common sense." *Bilek v. Federal Ins. Co.*, 8 F.4th 581, 586-87 (7th Cir. 2021) (internal quotation omitted).

b. Count I

Count I fails to meet either part of the test. It relies on conclusions rather than facts and so fails to give adequate notice or allege a plausible claim.

Count I attempts to allege a claim under section 523(a)(2)(A), which excepts from discharge any debt "for money, property, services, or an extension, renewal, or refinancing of

credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.C. § 523(a)(2)(A). The section describes three separate grounds for nondischargeability: false pretenses, false representation, and actual fraud. *Groom v. Krook (In re Krook)*, 615 B.R. 479, 484 (Bankr. N.D. Ill. 2020).

The claim in Count I is one for actual fraud.[1/] To allege an actual fraud claim, the objecting creditor must allege that (1) actual fraud occurred; (2) the debtor intended to defraud the creditor; and (3) the debtor's actual fraud created the debt. *Thazhathuputhenpurac v. Abraham (In re Abraham)*, 582 B.R. 202, 214 (Bankr. N.D. Ill. 2018); *Gasunas v. Yotis (In re Yotis)*, 548 B.R. 485, 495 (Bankr. N.D. Ill. 2016); *Muhammad v. Sneed (In re Sneed)*, 543 B.R. 848, 861 (Bankr. N.D. Ill. 2015).

An "actual" fraud means one involving "moral turpitude or intentional wrong" rather than a constructive fraud. *Husky Int'l Elecs., Inc. v. Ritz*, 578 U.S. 356, 360 (2016) (internal quotation omitted). A fraud "connotes deception or trickery generally." *Id.* "[A]ny deceit, artifice, trick, or design involving direct and active operation of the mind, used to circumvent and cheat another" will do. *McClellan v. Cantrell*, 217 F.3d 890, 893 (7th Cir. 2000) (internal quotation omitted). No misrepresentation is required. *Husky*, 578 U.S. at 361; *see also In re Caesars Entm't Operating Co., Inc.*, No. 15 B 1145, 2016 WL 7477566, at *3 (Bankr. N.D. Ill. Sept. 21, 2016) (noting that actual fraud involves "deception and trickery" and "need not involve a misrepresentation").

[1/] Nolan and Chicago Title suggest that Count I is also a claim for false representations. (Resp. at 3). But they fail to explain why that is so, and they are mistaken. The complaint alleges no false factual statement on which anyone relied. *See In re Davis*, 638 F.3d 549, 553 (7th Cir. 2011) (describing what must be alleged to state a false representation claim under section 523(a)(2)(A)).

Not only must the debtor have committed an act that qualifies as fraudulent, he must also have done so with a "wrongful intent." *Husky*, 578 U.S. at 360; *Allen v. Freund (In re Freund)*, 714 F. App'x 595, 597 (7th Cir. 2018) ("Scienter, or intent to deceive, is a required element under § 523(a)(2)(A) whether the claim is for a false representation, false pretenses, or actual fraud." (internal quotation omitted)); *see also Dare v. Jenkins (In re Jenkins)*, 607 B.R. 270, 283 n.38 (Bankr. N.D. Tex. 2019) (rejecting the argument that *Husky* dispensed with intent as an element). Wrongful intent means actual intent and depends on the debtor's subjective mental state at the time of the fraud. *Parkway Bank & Trust v. Casali (In re Casali)*, 526 B.R. 271, 274 (Bankr. N.D. Ill. 2013).

The complaint here states a plausible claim for actual fraud on Tom's part. The complaint alleges in detail that he engaged in a scheme to deprive Nolan and Chicago Title of half of their interest in the Fox Lake property by creating a bogus trust and quitclaim deed, forging Roger's signature on one and signing for him through a non-existent power of attorney on the other. But the defendant is not Tom, the scheme's architect and beneficiary. The defendant is Douglas, the notary. And so the challenge for Nolan and Chicago Title was to allege facts suggesting that Douglas conspired with Tom to implement the scheme and acted with wrongful intent. *See Guaranteed Rate, Inc. v. Conn*, 264 F. Supp. 3d 909, 931 (N.D. Ill. 2017) (noting that "the function of a conspiracy claim is to extend liability in tort beyond the active wrongdoer" (internal quotation omitted)).

Count I of the complaint alleges neither. A civil conspiracy is "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means." *Beaman v. Freesmeyer*, 776 F.3d 500, 510 (7th Cir. 2015) (quoting *Scherer v. Balkema*, 840 F.2d 437, 441 (7th Cir. 1988)). To plead a conspiracy, a plaintiff must allege facts showing

"both (1) an agreement to accomplish such a goal and (2) a tortious act committed in furtherance of that agreement." *Independent Trust Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 939 (7th Cir. 2012); *see, e.g., Guaranteed Rate*, 264 F. Supp. 3d at 931.

The complaint here repeatedly asserts there was a "conspiracy" to defraud Nolan and Chicago Title (Comp. ¶¶ 38, 42), that Douglas "conspired" with Tom to defraud them (Comp. ¶¶ 16(c)), that she committed fraud by "conspiring" or "conspiring or colluding" with him (*id.* ¶ 36), and that she took actions "in furtherance of the conspiracy" (*id.* ¶ 23). But these are just conclusions. Nowhere does the complaint allege facts suggesting an agreement between Tom and Douglas to commit fraud, let alone when that agreement was reached or who the parties to it were. And facts are necessary. A "bare allegation of conspiracy" is not enough to survive a motion to dismiss. *Cooney v. Rossiter*, 583 F.3d 967, 970-71 (7th Cir. 2009); *see also Wakley v. City of Indianapolis*, 776 F. App'x 376, 378 (7th Cir. 2019); *Maldonado v. County of Cook*, No. 20 C 213, 2020 WL 4365645, at *4 (N.D. Ill. July 30, 2020); *Ennenga v. Starns*, No. 10 C 5016, 2012 WL 1899331, at *3 (N.D. Ill. May 23, 2012).

The complaint's allegations of intent fare no better. The notice and plausibility requirements applicable to other allegations also apply to allegations of intent. *Iqbal*, 556 U.S. at 686-87. So a complaint must allege enough facts to give notice and support a plausible inference of intent. A plaintiff cannot plead intent as a mere conclusion. *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1327 (Fed. Cir. 2009); *Simonian v. Maybelline LLC*, 10 C 1615, 2011 WL 814988, at *4 (N.D. Ill. Mar. 1, 2011); *EMD Crop Bioscience Inc. v. Becker Underwood, Inc.*, 750 F. Supp. 2d 1004, 1019-20 (W.D. Wis. 2010); *see, e.g., McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 886 (7th Cir. 2012) (finding "conclusory allegations" of intent "insufficient under *Iqbal*").

But conclusions of fraudulent intent are all Nolan and Chicago Title offer. Continually they describe Douglas's actions as "fraudulent" or done "fraudulently." (Compl. ¶¶ 16-16(a), 19, 24, 28-29, 36, 38, 42). They allege that she "intended" to notarize "fraudulent" documents (*id.* ¶ 31), "intended" to injure Nolan and Chicago Title (*id.* ¶¶ 37, 44), and perpetrated a fraud "with the intent" of depriving them of their property (*id.* ¶ 24). At no point, though, do they supply facts from which an inference of Douglas's intent might be drawn. Allegations like these are too "threadbare" to avoid dismissal. *Iqbal*, 556 U.S. at 678; *see, e.g., Kinman v. Kroger Co.*, ___ F. Supp. 3d ___, ___, 2022 WL 1720589, at *7 (N.D. Ill. 2022) (dismissing fraud claim because "allegations of intent" were "conclusory"); *Von Behren v. Plainfield Cmty. Consol. Sch. Dist. 202*, No. 14 C 4618, 2014 WL 6819538, at *3 (N.D. Ill. Dec. 2, 2014) (same).

Nolan and Chicago Title disagree. On the question of intent, they argue that in notarizing Roger Fletcher's signatures on the trust declaration and quitclaim deed when he did not appear personally before her, Douglas violated section 6-102 of the Illinois Notary Public Act, 5 ILCS 312/6-102 (2016). Because he did not appear, and because the signatures were "blatantly false" (Resp. at 5), Douglas must have acted with fraudulent intent.

Not necessarily. True, the complaint alleges violations of the Act.[2/] *See May v. Rich*, 375

[2/] Douglas concedes the complaint alleges one violation: notarizing the trust declaration. But she argues that notarizing the deed did not violate the Act because Tom purported to sign the deed under a power of attorney. (Mot. at 4, 7). She is mistaken. The deed's acknowledgment said that Roger was "personally known" to Douglas to be the person who had signed his name, that Roger had "appeared before me . . . in person," and that he had acknowledged signing the deed as his "free and voluntary act." Because Tom signed for Roger supposedly under a power of attorney, the discrepancy between the acknowledgment's wording and Tom's signature on Roger's behalf arguably makes the acknowledgment defective. *See Crim v. EMC Mortg. Corp.*, 81 S.W.3d 764, 768 (Tenn. 2002). To show he could sign for his father, Tom would have had to present Douglas with the power of attorney for her consideration. *Penney v. Deutsche Bank Nat'l Trust Co.*, No. 16-cv-10482-ADB, 2018 WL 3651349, at *4 (D. Mass. Aug. 1, 2018). But the complaint alleges no power of attorney has ever been produced, raising the possibility there never was one.

F. App'x 592, 594 (7th Cir. 2010) ("The notary's work is not complete unless the signer appears before the notary."). But a notary can violate the Act negligently. *Shelter Mgmt. XIX v. Much Shelist Freed Denenberg & Ament P.C.*, 303 Ill. App. 3d 1067, 1073, 709 N.E.2d 592, 596 (1st Dist. 1999); *see also Vancura v. Katris*, 238 Ill. 2d 352, 380, 939 N.E.2d 328, 346 (2010) (observing that a notary can "negligently exercise[ ] the powers of the office"). And without more, a notary's false certification that a person has personally appeared, or has appeared and is personally known to the notary, is considered negligence. *Hatchett v. W2X, Inc.*, 993 N.E.2d 944, 964 (Ill. App. Ct. 1st Dist. 2013); *Bussman v. Krizoe*, 166 Ill. App. 3d 770, 771-72, 520 N.E.2d 971, 973 (5th Dist. 1988); *Hoffman v. Schroeder*, 38 Ill. App. 2d 20, 32, 186 N.E.2d 381, 387 (1st Dist. 1962).

Although the complaint's allegations are consistent with fraud, they are just as consistent with negligence. In signing the acknowledgments, Douglas might have been acting with Tom to defraud Nolan and Chicago Title – or she might simply have been careless. To withstand a motion to dismiss, though, a complaint must have allegations "plausibly suggest[ing]" the defendant's liability, *Iqbal*, 556 U.S. at 680, not "'merely consistent with'" it, *id.* at 678 (quoting *Twombly*, 550 U.S. at 557). A complaint raising the possibility that the defendant acted with wrongful intent – but also the possibility that he acted without it – "'stops short of the line between possibility and plausibility,'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557), and fails to state a claim, *see, e.g., Cohen v. American Sec. Ins. Co.*, 735 F.3d 601, 612 (7th Cir. 2013); *Angell v. Allergan Sales, LLC*, Nos. 3:18-cv-282-J-34JBT, 3:18-cv-2832-J-34JBT, 2019 WL 3958262, at *16 (M.D. Fla. Aug. 22, 2019); *Fullwood v. Wolfgang's Steakhouse, Inc.*, No. 13 Civ. 7174(KPF), 2014 WL 6076733, at *7 (S.D.N.Y. Nov. 14, 2014).

On the conspiracy question, Nolan and Chicago Title say they have "pled specific acts"

in furtherance of a conspiracy (Resp. at 8), and they have. The problem lies, not with their allegations of acts in furtherance of an agreement, but in the dearth of facts supporting an agreement in the first place. Nolan and Chicago Title do not deny this deficiency but insist they need not plead supporting facts when those facts "are exclusively in the possession of a defendant and can only be learned through discovery." (*Id.*).

Not so. The argument reverses the premise underlying *Twombly* and *Iqbal*'s pleading regime: that before subjecting a defendant to discovery, a plaintiff must *first* allege facts making out a plausible claim. *Iqbal*, 556 U.S. at 678-79 (noting that Rule 8 "does not unlock the doors of discovery for a plaintiff armed only with conclusions"); *Twombly*, 550 U.S. at 545-46, 558-59; *see Cooney*, 583 F.3d at 971 (noting that *Twombly*'s specific concern was "the burden of discovery imposed on a defendant by implausible allegations").[3/] That regime – a plausible claim first, then discovery – applies equally to conspiracy allegations. *Cooney*, 583 F.3d at 970-71. (Even before *Twombly* and *Iqbal*, in fact, conspiracy allegations "were often held to a higher standard than other allegations," *id.* 972, so that bald conclusions of conspiracy were not enough to escape dismissal, *id.* at 970.) Nolan and Chicago Title cannot prevent dismissal by saying they need discovery before they can plausibly allege a conspiracy.[4/]

Because Count I alleges only unsupported conclusions of conspiracy and intent, it fails to

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[3/] The decision that Nolan and Chicago Title cite, *Rezin v. Barr (In re Barr)*, 207 B.R. 168 (Bankr. N.D. Ill. 1997), did not concern conspiracy allegations. *Id.* at 172-73. It also predated *Twombly* by a decade.

[4/] Even if Nolan and Chicago Title were right on the law, their plea for discovery would be less than persuasive. They have been embroiled in litigation in the state court since 2018, litigation they themselves describe as "lengthy and expensive." They have already had four years of discovery in the state court.

state a claim against Douglas under section 523(a)(2)(A). Count I will be dismissed.[5]

c. Count II

Count II, the section 523(a)(6) claim, suffers from the same deficiencies. It, too, pleads conspiracy and intent only as conclusions and so fails to state a claim.

Section 523(a)(6) excepts from discharge a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). To plead a section 523(a)(6) claim, the objecting creditor must allege that (1) the debtor owes a debt resulting from an injury he caused to another entity, and (2) in causing the injury the debtor acted willfully and maliciously. *In re Calvert*, 913 F.3d 697, 700 (7th Cir. 2019). An act is "malicious" if the debtor acted "'in conscious disregard of [his] duties or without just cause or

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[5] To forestall later briefing, it may help to dispense with two unsuccessful arguments Douglas makes. First, Douglas argues that both a trust declaration and a deed can be valid even without notarized signatures. (Mot. at 2). True. The version of the Illinois Trusts and Trustees Act in effect in 2017 did not require signatures on a trust to be acknowledged or even witnessed. *See* 760 ILCS 5/2(1) (2016). Signatures on a deed also did not have to be acknowledged to convey title, *City of Virginia v. Mitchell*, 991 N.E.2d 936, 941, 941 (Ill. App. Ct. 4th Dist. 2013), although the deed could be recorded only if they were, 765 ILCS 5/35c (2016). But the implication of Douglas's argument – that Tom could have accomplished the fraud without Douglas – overlooks the fact that in acknowledging Roger's signature Douglas aided his fraud. Her acknowledgment tends to bolster the contention that Roger in fact appeared personally to sign the trust declaration and deed, and his signature is genuine.

Second, Douglas argues that the complaint fails to allege any benefit to Douglas from the fraud. Again, Douglas is half right. The complaint alleges no benefit to her, and section 523(a)(2)(A) makes nondischargeable debts for money, property, and so on only "to the extent obtained by" fraud, 11 U.S.C. § 523(a)(A); *see, e.g., BCL-Home Rehab LLC v. Fixler (In re Fixler)*, Nos. 19 B 36659, 21 A 215, 2022 WL 2903356, at *5 (Bankr. N.D. Ill. July 22, 2022). But the complaint alleges that *Tom* obtained property through the fraud. Douglas's participation in Tom's fraud would be enough to make her responsible for the resulting debt even if she herself did not benefit from it. *See First Am. Title Ins. Co. v. Speisman (In re Speisman)*, 495 B.R. 398, 403 (Bankr. N.D. Ill. 2013) (noting that "courts have not required the debtor to have received any benefit, direct or indirect, for there to be a violation of section 523(a)(2)(A)"). The complaint's deficiency lies in its failure to allege that Douglas agreed to participate in a fraud and knew she was participating, not that she gained nothing from her participation.

excuse.'" *First Weber Grp., Inc. v. Horsfall*, 738 F.3d 767, 775 (7th Cir. 2013) (quoting *In re Thirtyacre*, 36 F.3d 697, 700 (7th Cir. 1994). An act is "willful" if the debtor intended both the act itself and the resulting injury – "the consequences of [the] act." *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62 (1998); *see also Jendusa-Nicolai v. Larsen*, 677 F.3d 320, 323-24 (7th Cir. 2012).

As its language suggests, section 523(a)(6) excepts from discharge debts resulting from intentional torts. *Kawauuhau*, 523 U.S. at 61. Fraud is an intentional tort and can support a section 523(a)(6) claim. *Weltman v. Hakalir (In re Hakalir)*, Nos. 19 B 5093, 19 A 817, 2021 WL 3164786, at *7 (Bankr. N.D. Ill. July 26, 2021); *Groom*, 615 B.R. at 487. Slander of title is also an intentional tort and so can also support a section 523(a)(6) claim. *Taylor v. Snyder (In re Snyder)*, 542 B.R. 429, 435 (Bankr. N.D. Ill. 2015).

But Count II suffers from the same defects as Count I. Nolan and Chicago Title have alleged a plausible section 523(a)(6) claim against Tom. Tom, though, is not the defendant here. Douglas is the defendant. To rope in Douglas, Nolan and Chicago try to allege a conspiracy of which Douglas was supposedly a part. But the same conspiracy allegations underlying Count I are incorporated into Count II (Compl. ¶ 40), and because they consist of conclusions, not facts, they fail to allege a conspiracy. The same intent allegations are also incorporated into Count II, and because they consist of conclusions, they fail to allege that Douglas acted willfully or maliciously. Just as Count I fails to state a section 523(a)(2)(A) claim against Douglas, then, Count II fails to state a section 523(a)(6) claim. Count II will also be dismissed.

d. Leave to Amend

Nolan and Chicago Title will have leave to amend. A plaintiff whose complaint has been dismissed should receive "at least one opportunity to amend," *O'Brien v. Village of Lincolnshire*, 955 F.3d 616, 628 (7th Cir. 2020), unless amending would clearly be futile, *Bogie v. Rosenberg*,

705 F.3d 603, 608 (7th Cir. 2013). "That kind of clarity is rare," *Goldstein v. Haas (In re VitaHeat Med., LLC)*, 629 B.R. 250, 261 (Bankr. N.D. Ill. 2021), and is absent here. But since Nolan and Chicago Title have already had the chance to take discovery in the state court, they should have at their disposal the facts missing from their current complaint and should be able to allege them. If those facts are missing from the next complaint, the dismissal will be with prejudice.

4. Conclusion

The motion of defendant Sara O. Douglas to dismiss the complaint of plaintiffs Freda Nolan and Chicago Title Land Trust Company is granted. Nolan and Chicago Title have leave to amend. A separate scheduling order will be entered.

Dated: September 14, 2022

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A. Benjamin Goldgar
United States Bankruptcy Judge