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Kent LOGAN and Lance Logan, co-personal representatives of the Estate of A. Scott Logan, Appellants,
v.
MORGAN, LEWIS & BOCKIUS LLP, a Pennsylvania limited liability partnership; BDO Seidman, LLP (n/k/a BDO USA LLP), a New York limited liability partnership; and AIG International Inc., a Delaware corporation, Appellees.

No. 2D21-337

District Court of Appeal of Florida, Second District.

October 21, 2022

Scott F. Hessell of Sperling & Slater, P.C., Chicago, Illinois; Adam P. Merrill of Watershed Law LLC, Chicago, Illinois; and Scott C. Ilgenfritz of Johnson, Pope, Bokor, Ruppel & Burns, LLP, Tampa, for Appellants.

Ceci C. Berman of Brannock Humphries & Berman, Tampa; James P. Fogelman and Shannon Mader of Gibson, Dunn & Crutcher LLP, Los Angeles, California; and Jennifer K. Bracht, Denver, Colorado, for Appellee Morgan, Lewis & Bockius LLP.

No appearance for remaining Appellees.

ROTHSTEIN-YOUAKIM, Judge.

Kent and Lance Logan, co-personal representatives of the Estate of A. Scott Logan (Logan), appeal the trial court's dismissal with prejudice of Logan's claims against law firm Morgan, Lewis & Bockius LLP (Morgan Lewis). Because Logan stated causes of action against Morgan Lewis for aiding and abetting both fraud and breach of fiduciary duty and for civil conspiracy, we reverse.

I. Factual Background[1]

In 1999, Logan sold his business for $27.5 million and sought to minimize the tax liability on his capital gains. BDO Seidman, LLP (n/k/a BDO USA, LLP), an accounting firm with a dedicated tax advisory group—along with codefendant AIG International, Inc. (AIGI), and others—was then marketing an "investment strategy" directed toward high-income individuals like Logan. That strategy involved offsetting long and short options in the foreign currency markets.

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The only problem was that the executives in charge of BDO's "Tax Solutions" group (the tax executives) knew that their strategy was likely illegal. But they believed that if they could obtain an opinion from a major law firm giving BDO a "clean bill of health" and downplaying the risk of illegality, they could quash the growing concern among others within BDO about potential criminal exposure. BDO could then also continue to market the strategy to new clients and encourage existing clients to claim the strategy's purported tax benefits. The tax executives had considerable incentive to keep the scheme going for as long as possible because they each received ten percent (collectively thirty percent) of the Tax Solutions group's significant profits.

To obtain that legal cover, the tax executives turned in part to Morgan Lewis. From the outset, the attorneys that they consulted at that firm recognized that the strategy was an illegal tax shelter. Morgan Lewis noted that the "tax solutions" were "too good to be true," "dubious," and did not pass the " 'smell' test of experts." One Morgan Lewis attorney promptly recognized several "uglies," including "enormous losses and no apparent profit motive." Morgan Lewis commented in an early meeting with the tax executives that "someone wanting to make a [criminal] case could."

As if to remove all doubt, the IRS, in August 2000, issued a warning that tax shelters involving "transactions calling for the simultaneous purchase and sale of offsetting options which were then transferred to a partnership" could give

rise to criminal liability. Confirming its awareness of the illegality of BDO's tax shelter, Morgan Lewis internally concluded that the shelter was identical or substantially identical to the type identified in the IRS notice. A senior Morgan Lewis criminal tax expert presciently commented that "BDO's conduct reminds me of an old fashion[ed] *Klein* conspiracy"—a criminal tax conspiracy designed to obstruct the IRS's auditing of tax returns and collection of taxes.

But as notes of a conference between the tax executives and a principal Morgan Lewis tax attorney demonstrate, the tax executives wanted a whitewashed opinion with a preordained conclusion that was dismissive of any illegality or potential criminal liability: "List of all cr. statutes possible to apply + indication of no guilt." And according to Logan's complaint, Morgan Lewis, despite its knowledge to the contrary, gave the tax executives exactly what they wanted.

Now able to tell their other BDO partners and BDO's board that a major law firm had concluded that BDO had nothing to worry about, the tax executives not only successfully encouraged BDO to continue marketing and implementing the investment strategy, but they also had the cover they needed to continue to assure clients such as Logan that that strategy was perfectly legal and that they would ultimately be successful in any litigation with the IRS.

In late 1999, Logan, through a pass-through entity, engaged in a series of these "investments." When filing his tax return relating to the sale of his business in or about October 2000, Logan, relying on BDO's assurances, filed his return claiming the supposed benefits of those investments, offsetting the purported losses against the substantial taxable gains from the sale of his business.

The IRS, however, eventually figured out what BDO was doing and commenced litigation against BDO in federal court to enforce various civil summonses. BDO asked Morgan Lewis to represent it. While the IRS sought documents about BDO's

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tax strategies, Morgan Lewis was doing its best to keep its true views about the tax shelter concealed. For example, when BDO was sua sponte court-ordered to brief the applicability of the crime-fraud exception to the attorney-client privilege, Morgan Lewis revised BDO's draft letter to its clients (including Logan) about the court proceedings to remove any reference to that exception. Morgan Lewis also failed to include its written opinion concerning the legality of the tax scheme on any privilege log in the summons enforcement litigation, even though Logan alleges that it was responsive to the IRS's document requests. The tax executives were thus able to tell others at BDO that BDO was "appropriately resisting the summonses."

Ultimately, though, in 2009, several of the tax executives (including those who allegedly orchestrated the false opinion from Morgan Lewis) pled guilty to criminal tax fraud in connection with the scheme. In 2012, BDO entered into a deferred prosecution agreement with the United States Department of Justice. At least one of the Morgan Lewis attorneys was identified by the United States as an unindicted coconspirator.

The IRS also audited Logan. Relying on BDO's assurances that its investment strategy and his resulting tax benefits had been perfectly legitimate, Logan fought the IRS for several years. In 2016, however, the IRS obtained a tax judgment against Logan's partnership disallowing the use of any purported losses from the "investments" against Logan's capital gains. Logan has incurred approximately $11 million in penalties and interest, which he is still litigating with the IRS.

In 2017, Logan brought suit against BDO, Morgan Lewis, and AIGI. In the complaint, Logan alleged, in addition to the facts set forth above and among other things, that BDO's tax executives and Morgan Lewis had cooperated to prevent the illegality of the tax shelter from becoming known to clients such as Logan. Officially, BDO had been

telling clients that its "investment strategy" was legal and that BDO would stand behind clients in any disputes with the IRS; in private, BDO and Morgan Lewis had known that BDO's strategy was an illegal tax shelter. Logan alleged that this conduct by Morgan Lewis actively assisted BDO in defrauding and breaching its fiduciary duty to Logan.

Morgan Lewis moved to dismiss the complaint for failure to state a cause of action, arguing that it could not be liable to Logan because it had had no duty to him whatsoever; that it could not conspire as a matter of law with BDO, its own client, simply by providing legal services; that "aiding and abetting" is not a recognized cause of action under Florida law; and that the applicable statutes of limitations and repose barred Logan's claims.

After a hearing, the trial court granted Morgan Lewis's motion to dismiss all of the claims against it for failure to state a cause of action, referring to Morgan Lewis as "counsel for another party retained after the relevant transaction."

II. Analysis

We review de novo the trial court's dismissal of the claims against Morgan Lewis. *See Jensen v. Pinellas County* , 293 So. 3d 1076, 1079 (Fla. 2d DCA 2020). "[O]n a motion to dismiss for failure to state a cause of action, the circuit court may look only within the four corners of the complaint, must accept the plaintiff's allegations as true, and must resolve all inferences in the plaintiff's favor." *Wilson v. News-Press Publ'g Co.* , 738 So. 2d 1000, 1001 (Fla. 2d DCA 1999).

As an initial matter, we note that the trial court's stated grounds for dismissing Logan's claims do not survive

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scrutiny. The court apparently dismissed Logan's claims because Logan had stopped investing *before* the tax executives had approached Morgan Lewis for the allegedly fraudulent opinion regarding BDO's tax strategy. But Logan's claims are not premised on any reliance on Morgan Lewis's opinion in deciding to participate in BDO's investment scheme. Indeed, *none* of his claims stem from the investments *per se* . Rather, they are based on his subsequent filing, in late 2000, of his 1999 tax return—in which, relying on BDO's continued assurances, he claimed the supposed losses from the investments as an offset against his capital gains—and on his ensuing multi-year dispute with the IRS—which BDO continued to cheer on. To that end, Logan alleges that if Morgan Lewis had not provided the tax executives with a false, whitewashed assessment of its scheme, "BDO's board would have shut down BDO's tax solutions practice, including transactions, like Logan's, that were still in process."

Accordingly, the dismissal of Logan's claims against Morgan Lewis appears to have been premised on a misunderstanding of Logan's core allegations. With this correction and based on our further independent review of the complaint, we conclude that Logan stated causes of action against Morgan Lewis both for aiding and abetting fraud and breach of fiduciary duty and for civil conspiracy. We explain below.

A. Aiding and abetting

"A cause of action for aiding and abetting the breach of a fiduciary duty requires a plaintiff to establish: 1) a fiduciary duty on the part of a primary wrongdoer; 2) a breach of that fiduciary duty; 3) knowledge of the breach by the alleged aider and abettor; and 4) the aider and abettor's substantial assistance or encouragement of the wrongdoing." *Fonseca v. Taverna Imps., Inc.* , 212 So. 3d 431, 442 (Fla. 3d DCA 2017) (citing *Arbitrajes Financieros, S.A. v. Bank of Am., N.A.* , 605 F. App'x. 820, 824 (11th Cir. 2015)).[2] Similarly, a cause of action for aiding and abetting fraud requires a plaintiff to establish "(1) existence of the underlying fraud; (2) knowledge of the fraud; and (3) the defendant provided substantial assistance to the commission of the fraud." *Gilison v. Flagler Bank* , 303 So. 3d 999, 1002 (Fla. 4th DCA 2020) (citing *ZP No. 54 Ltd.*

P'ship v. Fid. & Deposit Co. of Md. , 917 So. 2d 368, 372 (Fla. 5th DCA 2005)).[3]

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Morgan Lewis does not dispute that Logan has adequately alleged both the underlying breach of fiduciary duty and the fraud by BDO. In short, Logan alleges that BDO breached its fiduciary duty to Logan by falsely advising and continuing to assure Logan that "claiming capital and ordinary losses" from the subject investments "was an appropriate tax treatment" despite knowing that its "investment strategy" was actually an illegal tax shelter. Logan makes similar allegations in his fraud count against BDO. Morgan Lewis also does not dispute that Logan has adequately alleged that Morgan Lewis knew that it was being brought in to give an opinion on the legality of the investment scheme because the tax executives were marketing the scheme to BDO's clients and wanted to continue to do so.

Morgan Lewis does dispute that it did anything other than provide legal advice to its client in the normal scope of its representation. Logan alleged, however, that Morgan Lewis, like the tax executives, knew that the investment scheme was actually an illegal tax shelter but nonetheless agreed to provide a false opinion downplaying the risk of criminal liability so that the scheme could continue.

Logan further alleged that by providing the opinion, Morgan Lewis did not simply enable the underlying torts to occur but was instrumental to their success and directly contributed to Logan's ultimate damages. Without Morgan Lewis's "blessing," the concerns of other BDO executives and BDO's board would have killed the tax executives' program, and BDO never would have been able to continue to falsely assure Logan of the program's legitimacy and encourage Logan in his ongoing dispute with the IRS.[4]

Thus, Logan has sufficiently alleged that Morgan Lewis substantially assisted BDO in its breach of fiduciary duty and fraud.[5] "Substantial assistance occurs when a defendant affirmatively assists, helps conceal[,] or fails to act when required to do so, thereby enabling the breach to occur." *Chang v. JPMorgan Chase Bank, N.A.* , 845 F.3d 1087, 1098 (11th Cir. 2017) (quoting *Lerner v. Fleet Bank, N.A.* , 459 F.3d 273, 295 (2d Cir. 2006)). Although Morgan Lewis contends that it was not required to act and had no duty to make any disclosures to Logan, this contention misses the mark: Morgan Lewis did not merely remain silent or fail to act; instead, as alleged by Logan, Morgan Lewis provided the tax executives with affirmative assistance in the form of a knowingly false and misleading opinion.

And contrary to Morgan Lewis's suggestion, no blanket rule insulates attorneys from liability for aiding and abetting a tort that harms a third party. Rather,

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courts have recognized that attorneys and law firms can be liable under Florida law for aiding and abetting when they knowingly help their clients breach a fiduciary duty to or defraud another. *See, e.g., Grape Leaf Cap., Inc. v. Lafontant* , 316 So. 3d 760, 761 (Fla. 3d DCA 2021) (reversing grant of motion to dismiss and permitting aiding and abetting claim against attorney and law firm to proceed); *Cordell Consultant, Inc. Money Purchase Plan & Tr. v. Abbott* , 561 F. App'x 882, 884–86 (11th Cir. 2014) (applying Florida law and reversing grant of motion to dismiss to allow aiding and abetting claim against attorneys to proceed); *Int'l Cmty. Corp. v. Young* , 486 So. 2d 629, 630 (Fla. 5th DCA 1986) (reversing summary judgment in favor of corporate attorney and concluding that whether attorney knowingly assisted officer's breach of trust was a fact issue to be decided by a jury).

We therefore conclude that the complaint more than adequately states a cause of action against Morgan Lewis for aiding and abetting fraud and a breach of fiduciary duty by BDO.

B. Civil conspiracy

The complaint also states a cause of action against Morgan Lewis for civil conspiracy. To state a cause of action for civil conspiracy, a plaintiff must plead "(1) an agreement between two or more parties; (2) to do an unlawful act or a lawful act by unlawful means; (3) the execution of some overt act in pursuance of the conspiracy; and (4) damage to the plaintiff as a result of said acts." *Plastiquim S.A. v. Odebrecht Constr., Inc.* , 337 So. 3d 1270, 1273 (Fla. 3d DCA 2022) (citing *Raimi v. Furlong* , 702 So. 2d 1273, 1284 (Fla. 3d DCA 1997)).

Moreover, "[i]n pleading conspiracy, the plaintiff must further identify an actionable underlying tort or wrong." *Id* . This is because "[t]here is no freestanding cause of action in Florida for 'civil conspiracy.' " *Tejera v. Lincoln Lending Servs., LLC* , 271 So. 3d 97, 103 (Fla. 3d DCA 2019). Rather, "[t]he conspiracy is merely the vehicle by which the underlying tort was committed, and the allegations of conspiracy permit the plaintiff to hold each conspirator jointly liable for the actions of the coconspirators." *Id.* Significantly, "[a] conspirator need not take part in the planning, inception, or successful conclusion of a conspiracy. The conspirator need only know of the scheme and assist in it in some way to be held responsible for all of the acts of his coconspirators." *Donofrio v. Matassini* , 503 So. 2d 1278, 1281 (Fla. 2d DCA 1987) (citing *Karnegis v. Oakes* , 296 So. 2d 657 (Fla. 3d DCA 1974)).

Logan alleges each element of a civil conspiracy claim against Morgan Lewis. He alleges an agreement among BDO and others to develop, implement, and market an illegal tax shelter. Although Morgan Lewis may not have been in on the earliest stages, Logan alleged that Morgan Lewis, knowing of the illegal scheme, joined it by agreeing to take action that would ensure its continuation, further its goals, and conceal its existence. He alleges further that in continuing to advise him that the scheme was legal and encouraging his fight with the IRS, BDO defrauded and breached its fiduciary duty to him. Finally, he alleges that as a direct and proximate result of their actions, he was damaged.

Morgan Lewis contends that attorneys and law firms are merely extensions of their clients and therefore cannot conspire with their clients to tortiously harm third parties. This contention misapprehends Florida law. Although recognizing that attorneys should be given wide berth to *lawfully* serve the interests of their clients, Florida law provides no per

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se bar to civil conspiracy claims against attorneys who help their clients breach a fiduciary duty to or defraud another. *See, e.g.* , *Blatt v. Green, Rose, Kahn & Piotrkowski* , 456 So. 2d 949, 951 (Fla. 3d DCA 1984) (reversing dismissal of civil conspiracy claim against law firm and attorney for participating with client in conspiracy to breach a fiduciary duty to a third party); *Cordell* , 561 F. App'x at 886 (reversing grant of motion to dismiss to allow civil conspiracy claim against law firm and certain of its attorneys under Florida law to proceed for conspiring with client to defraud a third party).

To be sure, courts in some circumstances have refused to extend civil conspiracy liability to attorneys, relying on the "intracorporate conspiracy" doctrine and the premise that the attorney was merely acting as an agent of his or her client within the scope of legal representation. *See, e.g., Farese v. Scherer* , 342 F.3d 1223, 1230–32 (11th Cir. 2003) ; *Heffernan v. Hunter* , 189 F.3d 405, 413 (3d Cir. 1999) ; *Doherty v. Am. Motors Corp.* , 728 F.2d 334, 340 (6th Cir. 1984). Those cases, however, typically involve situations in which a party's attorney employs lawsuits and other "sharp litigation practices" to gain tactical advantages for clients and are based on the premise that our legal system values zealous advocacy. In those situations, court-ordered sanctions and potential bar grievance procedures address what at most amounts to attorney misconduct. *See, e.g., Farese* , 342 F.3d at 1231–32 (holding that litigation tactics within scope of attorney's employment does not subject attorney to liability for civil conspiracy); *Heffernan* , 189 F.3d at 413 (" '[S]imply because a lawyer's conduct may violate the rules of ethics does not

mean that the conduct is actionable, in damages or for injunctive relief.' The offended third party has a remedy under state law through court imposed sanctions or reference to state disciplinary bodies." (quoting *Maritrans GP, Inc. v. Pepper, Hamilton & Scheetz* , 529 Pa. 241, 602 A.2d 1277, 1284 (1992))).

Even those cases, however, recognize that an attorney acting *outside* the scope of representation can conspire with his or her client. *See Heffernan* , 189 F.3d at 413 ("It is, of course, axiomatic that if the challenged conduct occurs outside the scope of representation, no reason for immunity exists and the attorney and the client, as individuals, could form a conspiracy."); *Johnson v. Hills & Dales Gen. Hosp.* , 40 F.3d 837, 840 (6th Cir. 1994) ("[C]orporate actors might be beyond the scope of their employment where the aim of the conspiracy exceeds the reach of legitimate corporate activity.").

Logan alleges that Morgan Lewis agreed to assist BDO in committing criminal tax fraud and defrauding others—conduct that plainly falls outside the scope of legitimate legal representation. Providing advice for the purposes of aiding a client's criminal or fraudulent scheme is by definition "*not ... a professional service but participation in a conspiracy* ." 1 *McCormick on Evid.* § 95 (8th ed. 2020) (emphasis added); *see also Kneale v. Williams* , 158 Fla. 811, 30 So. 2d 284, 287 (1947) ("[F]raud is outside the scope of the professional duty of an attorney ...."); *State v. Phelps* , 24 Or.App. 329, 545 P.2d 901, 904 (1976) (explaining that if a client has a criminal object in view and indicates as much to his attorney, "the client does not consult his [attorney] professionally, because it cannot be the [attorney's] business to further any criminal object").[6] Indeed,

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that such conduct falls outside the scope of lawful legal representation is underscored by the ethical rules themselves, which plainly state that "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent," including a "transaction to effectuate criminal or fraudulent avoidance of tax liability." R. Regulating Fla. Bar 4-1.2(d) (including Comments re: "Criminal, fraudulent, and prohibited transactions").

Logan does not merely speculate that BDO and the tax executives engaged in criminal conduct. To the contrary, as alleged, BDO entered into a detailed deferred prosecution agreement in 2012 with the United States Department of Justice. Several of the tax executives pled guilty to criminal tax charges. The complaint even quotes from multiple documents that Morgan Lewis allegedly concealed initially from Logan, the IRS, and upper BDO management—communications that appear to fall within the crime-fraud exception to the attorney-client privilege. Thus, Logan's allegations plainly establish (and later events undeniably confirmed) that Morgan Lewis was *not* acting within the scope of legitimate legal representation of either the tax executives or BDO. If it had been, it would have advised the tax executives to discontinue their so-called "investment strategy" immediately, knowing that it exposed them and BDO not merely to civil but criminal liability. Instead, it knowingly assisted them in perpetuating it.

Accepting the allegations of the complaint as true, Morgan Lewis cannot maintain that it was acting in the lawful interests of either the tax executives or BDO. Instead, Morgan Lewis was knowingly helping to further the unlawful acts of the tax executives. Moreover, as time went on, Morgan Lewis had a powerful independent incentive for its actions: if the tax executives went down with their scheme, Morgan Lewis's conduct and false opinion would likely be exposed, and it could go down, too.[7] Viewed through this lens, Morgan Lewis's refusal to disclose the tax executive's wrongdoing and its zealous representation of BDO in its litigation with the IRS were not merely the acts of counsel diligently acting in the best interests of its corporate clients, subject only to the rules of professional ethics. Rather, they were the acts of a coconspirator personally and highly

motivated to keep its own role in the conspiracy from coming to light.

We therefore conclude that the trial court should have permitted Logan's civil conspiracy claim against Morgan Lewis to proceed past the motion-to-dismiss stage. We reiterate, however, that "[e]xtreme caution should be exercised when an attempt is made to hold an attorney liable for a wrong committed by his client by way of a civil conspiracy cause of action." *See Blatt* , 456 So. 2d at 951. Our holding in this case is limited to concluding that "under Florida's broad and liberal pleading concepts, [Logan] has stated a cause of action. [Logan's] ability to prove

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his allegations ... is another matter." *See id* .

C. Statutes of limitation and repose

In a "tipsy coachman" argument, Morgan Lewis invites this court to affirm the dismissal on the ground that Logan's claims against it are barred by statutes of limitations and repose. We decline this invitation because these statutes are affirmative defenses, and whether they bar Logan's claims cannot be resolved conclusively in Morgan Lewis's favor on the basis of Logan's complaint. *See Hurley v. Lifsey* , 310 So. 3d 1030, 1032 (Fla. 2d DCA 2020) ("A motion to dismiss a complaint based on the expiration of the statute of limitations should be granted only in extraordinary circumstances in which the facts pleaded in the complaint conclusively establish that the statute of limitations bars the action as a matter of law." (quoting *Ervans v. City of Venice* , 169 So. 3d 267, 268 (Fla. 2d DCA 2015))); *Santiago v. Rodriguez* , 281 So. 3d 603, 605 (Fla. 2d DCA 2019) (applying same principle in context of statutes of repose).

III. Conclusion

Logan alleged sufficient facts to state a cause of action against Morgan Lewis both for aiding and abetting fraud and breach of fiduciary duty and for civil conspiracy, and Morgan Lewis failed to establish, based on the complaint, that the applicable statutes of limitations or repose bar those actions. We therefore reverse the dismissal of those claims and remand for further proceedings consistent with this opinion.

Reversed and remanded for further proceedings.

NORTHCUTT and CASANUEVA, JJ., Concur.

Notes:

[1] In reviewing the dismissal, we accept as true the detailed factual allegations in Logan's operative third amended complaint (the complaint). *GVK Int'l Bus. Grp., Inc. v. Levkovitz* , 307 So. 3d 144, 146 (Fla. 3d DCA 2020) ("When reviewing a final order dismissing a complaint, we, like the lower court, are required to accept as true all well pled factual allegations contained in the complaint; and thus, our determination of whether the complaint states a cause of action is based on a pure question of law." (quoting *Tabraue v. Doctors Hosp., Inc.* , 272 So. 3d 468, 471 n.6 (Fla. 3d DCA 2019))).

[2] Florida aiding and abetting cases generally paraphrase the Restatement (Second) of Torts § 876 (Am. L. Inst. 1979), which provides as follows:

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he:

> (a) does a tortious act in concert with the other or pursuant to a common design with him, or
>
> (b) *knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself* , or
>
> (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct,

> separately considered, constitutes a breach of duty to the third person.

(Emphasis added.) Thus stated, liability under section 876(b) does not require that the aider and abettor owe a direct duty to the third person.

[3] Florida expressly recognizes a cause of action for aiding and abetting a breach of fiduciary duty. *See Taubenfeld v. Lasko* , 324 So. 3d 529, 543–44 (Fla. 4th DCA 2021) (noting that Florida recognizes a cause of action for aiding and abetting a breach of fiduciary duty and holding that liability on an aiding and abetting theory also attaches to the common law tort of conversion); *see also Fonseca* , 212 So. 3d at 442 (upholding a jury verdict in favor of a plaintiff on a claim for aiding and abetting a breach of fiduciary duty). We see no reason why liability on an aiding and abetting theory would not also attach to the common law tort of fraud; indeed, Florida courts for some time have assumed that such a cause of action exists. *See, e.g.* , *ZP No. 54 Ltd. P'ship,* 917 So. 2d at 372.

[4] Indeed, Logan alleges that BDO would have pulled the plug on the tax executives' scheme. One long-time BDO director allegedly testified that if BDO's board of directors had known of the tax executives' "*concerns* about the criminal and civil liability ... I believe that the ... board would have fired them."

[5] The cases on which Morgan Lewis relies do not support dismissal here because they do not involve allegations of "actual knowledge" or "substantial assistance." *See ZP No. 54 Ltd. P'ship* , 917 So. 2d at 374 (holding that surety's mere provision of a performance bond did not constitute substantial assistance in a contractor's bid rigging efforts); *BCJJ, LLC v. LeFevre* , No. 8:09-CV-551-T-17EAJ, 2012 WL 3071404, at *35 (M.D. Fla. July 27, 2012) (concluding that a law firm was entitled to summary judgment on a claim for aiding and abetting fraud where defendant was merely the scrivener of transactional documents and did not know about the fraud).

[6] The concept that a lawyer cannot lawfully assist a client to defraud others is recognized in other areas of the law, including in limitations on the attorney-client privilege. "There is no lawyer-client privilege ... when ... [t]he services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud." Fla. Stat. § 90.502(4)(a).

[7] Accordingly, in the parlance of the intracorporate conspiracy doctrine, Logan plainly alleged that Morgan Lewis had a "personal stake in the activities" separate from BDO's. *See Mancinelli v. Davis* , 217 So. 3d 1034, 1037 (Fla. 4th DCA 2017) ("Florida courts recognize the 'personal stake' exception to the intra-corporate conspiracy doctrine," which provides that "where an agent has a 'personal stake in the activities separate from the principal's interest,' the agent can be liable for civil conspiracy." (quoting *Richard Bertram, Inc. v. Sterling Bank & Tr.* , 820 So. 2d 963, 966 (Fla. 4th DCA 2002))).
