UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JAMES R. THOMAS; GEORGE WYATT THOMAS and CAROLINE LACE GABBARD, his wife; CLIFTON WOODROW GREENE, JR.; AND MICHELLE RICHARDS; AND ON BEHALF OF A CLASS OF ALL OTHER PERSONS SIMILARLY SITUATED,

Plaintiffs,

v. Case No. 3:24-cv-1213-HES-MCR

SUWANNEE VALLEY ELECTRIC, COOPERATIVE, INC., a Florida Not for Profit Corporation; and RAPID FIBER INTERNET, LLC, a Florida Limited Liability Company

Defendants.
_____/

ORDER

This matter is before this Court on "Defendants' Motion to Dismiss" (Dkt. 28) and "Plaintiffs' Response in Opposition." (Dkt. 31.)

I.

Defendant Suwannee Valley Electrical Cooperative, Inc. ("SVEC") is a member-owned electric cooperative serving Suwannee, Lafayette, Hamilton, and northern Columbia counties in Northeastern Florida. Defendant Rapid Fiber Internet, LLC ("RFI") is a Florida limited liability company and a wholly owned subsidiary of SVEC. Plaintiffs are property owners in Suwannee,

Lafayette, Hamilton, and northern Columbia counties. SVEC maintains an electrical and fiber-optic network over Plaintiffs' properties.

SVEC was formed in 1937 to provide electricity to customers in rural Northeastern Florida counties. SVEC operates 4,100 miles of electric transmission and distribution lines and serves over 28,000 customers within a 2,100 square mile service area. (Dkt. 19 ¶ 14.) To create this network, SVEC acquired many easements, likely with slightly different language, allowing it to run electric wires and fiber optic lines across private properties. (*Id.* ¶ 10–13.) SVEC also runs electric wires and communications lines across private properties without easements. (*Id.* ¶ 10.)

In July 2022, SVEC planned to create an extensive telecommunications network. (*Id.* ¶ 17.) To achieve this, SVEC founded RFI to build a general telecommunications network and sell telecommunications services. (*Id.*) SVEC and RFI began to make the network on SVEC's electrical easements, which granted SVEC:

> [T]he right, privilege, and easement to reconstruct, operate and maintain for such period of time as it may use the same or until the use thereof is abandoned, and electric line or lines for the transmission and distribution of electricity, including necessary communication and other wires, poles, guys, anchors, ground connections, attachments, surface testing terminals, fixtures, equipment, and accessories (hereinafter collectively referred to as "facilities") desirable in connection therewith over, upon, across and under the following described lands in: _____ County Florida.

(*Id.* ¶ 18.) Later, SVEC added the following provision, titled "Access to Customer Premises," to its service agreement:

> Access to Customer Premises
>
> As a condition of receiving the Services, and without compensation, the Customer grants a perpetual easement on and through the service location to provide data and, if applicable, voice services on transport fiber, distribution fiber, and service extension fiber, if applicable, for Service to both the Customer and to other customers, and to perform necessary maintenance, service upgrades, and periodic right-of-way maintenance by or for Rapid Fiber; its parent company Suwannee Valley Electric Cooperative; and at Rapid Fiber's direction, a third party. This easement, in addition to all other rights and privileges afforded by Florida law, explicitly allows Rapid Fiber and its agents the right to enter Customer's property at which the Services and/or Rapid Fiber Equipment will be provided for the purposes of installing, configuring, maintaining, inspecting, upgrading, replacing, and removing the Services and/or Rapid Fiber Equipment used to receive any Services.

(*Id.* ¶ 25.) Relying on prior easements and the service agreement, Defendants began constructing and operating a general telecommunications network, the subject of this dispute. (*Id.* ¶ 25.)

Plaintiffs filed suit against Defendants in the Suwannee County Circuit Court. In November 2024, Defendants removed to this Court. In January, Plaintiffs filed an Amended Complaint. (Dkt. 19.) Plaintiffs alleged five counts against Defendants: Count 1, taking private property without compensation under color of state law in violation of the Fifth Amendment of the United States Constitution, 42 U.S.C. § 1983, and Article X, Section 6(a) of the Florida Constitution; Count 2, trespass; Count 3, unlawful detainer in violation of

Section 82.02 Florida Statutes; Count 4, inverse condemnation; and Count 5, unjust enrichment. (*Id.*) Additionally, Plaintiffs' Amended Complaint included unnumbered sections titled ambiguity, estoppel, and declaratory judgment. (*Id.*)

Now, Defendants move to dismiss this entire action under Fed. R. Civ. P. 12(b)(6). Defendants argue: (1) the right of way ("ROW") agreements expressly grant Defendants the right to use the easement property to provide general telecommunications services; (2) Plaintiffs fail to state an inverse condemnation claim; (3) the unjust enrichment claim fails because express contracts govern the claim; (4) the trespass claim fails because Plaintiffs do not allege a cognizable injury and gave consent; (5) the unlawful detainer claim fails because Plaintiffs were not ousted from their property or had their property withheld; (6) the declaratory judgment claim is superfluous and fails to state a claim; (7) ambiguity and estoppel are not causes of action; (8) this Court should dismiss Plaintiffs' request for equitable relief because Plaintiffs failed to allege a remedy at law; (9) the constructive trust request fails because Plaintiffs fail to allege a confidential relationship or specific, identifiable property; and (10) Plaintiffs cannot claim punitive damages.

Plaintiffs oppose the motion. First, Plaintiffs assert Defendants have no right to transmit general telecommunications over Plaintiffs' properties

without ROW agreements. Second, the ROW agreements do not authorize Defendants to transmit general telecommunications over Plaintiffs' properties. Plaintiffs also state that they sufficiently allege: (1) a per se and as-applied takings claim, (2) an inverse condemnation claim, (3) a trespass claim, (4) an unlawful detainer claim, and (5) an unjust enrichment claim. Lastly, Plaintiffs contend that a declaratory judgment, constructive trust, disgorgement, an accounting, and punitive damages are warranted here.[1]

II.

In deciding a Rule 12(b)(6) motion, a court must construe the complaint broadly and must view the allegations in the complaint in the light most favorable to the plaintiff. *Levine v. World Fin. Network Nat'l Bank*, 437 F.3d 1118, 1120 (11th Cir. 2006); *Hawthorne v. MacAdjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998). Mere recitals of a cause of action's elements, supported by only conclusory statements, do not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662,

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[1] Defendants attach several exhibits to their motion to dismiss, which contain agreements between SVEC and various individual plaintiffs. Defendants suggest these exhibits are incorporated by reference. In ruling on a motion to dismiss, a court may consider a document not attached or referred to in the complaint when the document is central to the plaintiff's claims and is undisputed or its authenticity is not challenged. *Johnson v. City of Atlanta*, 107 F.4th 1292, 1300 (11th Cir. 2024). Here, this Court notes the exhibits are agreements for the purchase of electrical power, not general telecommunications, and are not central to Plaintiffs' claims. Second, Plaintiffs object to Exhibit E, but Exhibit E is not one of the numbered exhibits attached to Defendant's motion. (Dkt. 31 at 24.) Because this Court cannot identify which exhibit Plaintiffs object to, it finds the exhibits are disputed. Therefore, this Court will not rely on Defendants' exhibits when ruling on the motion.

678 (2009). Although Rule 12(b)(6) allows "a well-pleaded complaint [to] proceed even if it strikes a savvy judge that actual proof of those facts is improbable," the alleged facts must be sufficient to raise the right to relief above mere speculation. *Id; Watts v. Fla. Int'l Univ.*, 495 F.3d 1289 (11th Cir. 2007).

The Supreme Court instructs a complaint must contain enough factual matter, assumed true, to suggest a right to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). The rule does not impose a probability requirement during the pleading stage, but it calls for sufficient facts to raise a reasonable expectation that discovery will reveal evidence of the element. *Id.* A complaint will survive a motion to dismiss if it alleges facts that render the element plausible. *Id.*

III.

A. Easements

Defendants' network spans two types of property: those with ROW agreements and those without. Although the analysis of Defendants' rights on both property types differs slightly, this Court arrives at the same conclusion: Defendants' actions go beyond the various easements.

1. Properties with an ROW Agreement

Defendants contend that the ROW agreement allows them to operate the general telecommunications network, but courts construe an unambiguous easement by its plain meaning. *City of Orlando v. MSD-Mattie, L.L.C.*, 895 So. 2d 1127, 1130 (Fla. 5th DCA 2005). The ROW Agreement's plain meaning does not grant Defendants the right to operate a general telecommunications network on Plaintiffs' properties.

The easement in *City of Orlando* is similar to the ROW agreements here, and this Court finds its conclusion persuasive. In *City of Orlando*, landowners granted the City an easement for the "construction, establishment, use, operation and maintenance of one or more overhead electric transmission lines . . . including, but not limited to necessary communication fixtures." *Id.* at 1128. The parties agreed that the fiber optic cables were not electric transmission lines. *Id.* at 1129. Noting that the phrase "necessary communication" suggested that the City may use telecommunications lines across the easements necessary for power delivery, the Court held that the plain language did not allow the City to lease excess fiber optic capacity to telecommunications companies. *Id.* at 1130.

Defendants argue the *City of Orlando* is outdated and distinguishable, instead urging this Court to adopt a Texas approach outlined in *CenterPoint*

Energy Houston Electric LLC v. Bluebonnet Drive, Ltd., 264 S.W. 3d 381 (Tex. App. 2008). Yet the easement in *CenterPoint* is distinguishable from the ROW agreement. In *CenterPoint*, the easement stated, "a rightofway [sic] or easement for electric transmission and distributing lines consisting of variable numbers of wires and all necessary and desirable appurtenances (including towers or poles made of wood, metal or other materials, telephone and telegraph wires, props and guys)." 264 S.W. 3d at 385. Considering whether this easement encompassed wireless communications, the *CenterPoint* Court held that the language "telephone and telegraph wires" specified the easement permitted general telecommunications. *Id.*

But the ROW agreement contains no language that grants the right to sell general telecommunications transmitted across Plaintiffs' land. A similar case is *Samaratunga Family Trust v. American Tower*, where a landowner granted a utility company an easement to operate "a microwave station" and "electrical and communication lines." *Samaratunga Fam. Tr. v. Am. Tower, Inc.*, No. A-17-CV-097 LY, 2017 WL 2274491, at *3 (W.D. Tex. May 24, 2017) (R&R adopted *Samaratunga Fam. Tr. v. Am. Texas Towers, Inc.*, No. A-17-CV-097-LY, 2017 WL 10841490, at *1 (W.D. Tex. July 25, 2017)). Unlike *CenterPoint*, the *Samaratunga* Court noted that the utility company's

easement included language giving the right to transmit microwave communications but not cellular telecommunications. *Id.*

City of Orlando remains good law, and Florida courts often follow it. *See Capallo v. Rivera*, 366 So. 3d 1192, 1198 (Fla. 2d DCA 2023); *Seven Kings Holdings, Inc. v. Marina Grande Riviera Beach Condo. Ass'n, Inc.*, 364 So. 3d 1108, 1114 (Fla. 4th DCA 2023).

The ROW agreement does not grant Defendants the right to sell general telecommunications transmitted across Plaintiffs' property. First, as in *City of Orlando*, the ROW agreement states, "electric line or lines for the transmission and distribution of electricity, including necessary communication and other wires," granting SVEC the right to transmit electricity and necessary communications across Plaintiffs' land, not general telecommunications. Second, as distinguished from *CenterPoint*, where the easement contained the language "telephone and telegraph wires," the ROW agreement contains no such language granting Defendants a right to operate a general telecommunications network. Third, like in *Samaratunga*, the ROW agreement grants the right to transmit electricity and necessary communications, but not general telecommunications. Thus, Plaintiffs have shown that Defendants' general telecommunications business exceeded the scope of the ROW Agreement.

2. Prescriptive Easements

Defendants also operate electrical and general telecommunications networks on properties with prescriptive easements. To establish a prescriptive easement in Florida, a claimant must prove actual, continuous, uninterrupted use for twenty years and "must be adverse under claim of right and must either be with the knowledge of the owner or by a use so open, notorious, visible, and uninterrupted that knowledge of the use by an adverse claimant is imputed to the owner." *Hunt Land Holding Co. v. Schramm*, 121 So. 2d 697, 700 (Fla. 2d DCA 1960).

Defendants' use of Plaintiffs' land without ROW agreements may constitute a prescriptive easement if the use lasted over twenty years, under claim of right, open, notorious, visible, and uninterrupted. Founded in 1937, SVEC likely established valid prescriptive easements for electrical power transmission. These prescriptive easements are limited to the transmission of electrical power. Defendants began planning and constructing the general telecommunications network in 2022, well outside the 20-year required period. No prescriptive easements grant Defendants the right to operate a general telecommunications network on Plaintiffs' lands.

B. Takings Claims

Plaintiffs contend Defendants' actions constitute an actionable taking. The United States Constitution mandates that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V. The Florida Constitution has a similar provision, but it states, "[n]o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner." Fla. Const. art. 10, § 6. A takings claim may exist where a government entity gives a third party "a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed." *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 832 (1987).

Generally, courts apply the same analysis to review takings claims under both the United States and the Florida Constitutions. *Chmielewski v. City of St. Pete Beach*, 890 F.3d 942, 949 (11th Cir. 2018). First, a court determines whether the claimant has asserted a property interest that is subject to a taking. *Givens v. Ala. Dep't of Corrs.*, 381 F.3d 1064, 1066 (11th Cir. 2004). Second, if the court finds such an interest exists, it must then decide whether the deprivation or reduction of that interest amounts to a taking.

First, Plaintiffs have identified a property interest subject to taking: the right to operate a general telecommunications network on Plaintiffs' lands. Second, to determine whether the deprivation or reduction of this interest

constitutes a taking, this Court must analyze both "per se" and "as-applied" takings.

1. Per Se Takings Claim

A per se, or total, taking occurs when the government or a government agent requires a property owner to suffer "a permanent physical invasion of her property—however minor—it must provide just compensation." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005). *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 421 (1982) (teaching a minor but permanent physical occupation of property authorized by the government constitutes a taking).

The alleged facts establish that the easement does not give Defendants the right to operate a general telecommunications network across Plaintiffs' property. Therefore, Defendants' alleged actions amount to a minor but permanent per se taking.

Defendants appear to recognize such a conclusion, so they suggest this Court should instead follow *Tuthill Ranch, Inc. v. United States*, 381 F.3d 1132 (Fed. Cir. 2004). In *Tuthill*, a government utility agency had the right to lay signal lines, and a ranch sued, claiming that the agency's laying of fiber optic cables exceeded the scope of the agency's easement. *Id.* at 1134–35. The *Tuthill* Court affirmed the grant of summary judgment on the takings claim for the

agency, noting that the agency already fully compensated the ranch for the right to lay fiber optic cables. *Id.* at 1139.

Here, as in *Tuthill*, Defendants have the right to lay "necessary communication and other wires," not a general telecommunications network. Unlike *Tuthill*, where the agency compensated the ranch, Defendants' Access to Customer Premises provision claims to grant Defendants the right to lay and maintain a general telecommunications network on Plaintiffs' land "without compensation." (Dkt. 19 ¶ 25.) Thus, Plaintiffs have stated a per se takings claim.

2. As-Applied Takings Claim

An as-applied taking occurs when a government entity substantially devalues the property in question without taking it. *Lingle*, 544 U.S. at 538–539. To determine whether an as-applied taking occurred, courts look to the *Penn Central* factors, which include: (1) the regulation's economic impact on the claimant, or more specifically, the extent to which the regulation has interfered with distinct investment-backed expectations, and (2) the character of the government action, such as a physical invasion. *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

Plaintiffs allege facts that meet both *Penn Central* factors. First, Plaintiffs' pleadings show harm to their distinct investment-backed

expectations, as the intensity and frequency of inspections, servicing, and repairs plausibly reduced the value of their properties. Second, Plaintiffs allege a physical invasion by a public utility company because Defendants' actions likely exceeded the scope of the ROW agreement. Thus, Plaintiffs have alleged facts sufficient to state an as-applied takings claim.

But Defendants suggest that this Court should follow *Support Working Animals*, a case where dog racing operators sued Florida, arguing that a state constitutional amendment banning dog racing constituted a taking. *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1203–04 (N.D. Fla. 2020). This Court declines the invitation. Unlike *Support Working Animals*, where Florida properly exercised its police power by regulating an industry, here, Defendants, as public utility companies, have no right to exercise state police powers. *Support Working Animals* offers Defendants no reprieve, and Plaintiffs have properly pleaded an as-applied takings claim.

C. Inverse Condemnation Claim

Defendants argue that Plaintiffs' inverse condemnation claim fails because their takings claim fails. But a claim for inverse condemnation exists "where a government agency, by its conduct or activities, has effectively taken private property without a formal exercise of eminent domain power." *Rubano*

v. Dep't of Transp., 656 So. 2d 1264, 1266 (Fla. 1995). Proof of a government taking is a crucial element of inverse condemnation. *Id.*

As explained above, Plaintiffs have plausibly alleged both per se and as-applied takings claims, and Defendants have not compensated Plaintiffs for these takings. Thus, Plaintiffs plausibly alleged inverse condemnation.

D. Unjust Enrichment Claim

Similarly, Defendants argue Plaintiffs' unjust enrichment claim has no merit, but Plaintiffs contend they satisfied the elements of unjust enrichment. These elements are: "(1) a benefit conferred upon a defendant by the plaintiff, (2) the defendant's appreciation of the benefit, and (3) the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof." *Rollins, Inc. v. Butland*, 951 So. 2d 860, 876 (Fla. 2d DCA 2006). Courts must examine each particular case to determine whether, without remedy, inequity would persist. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1274 (11th Cir. 2009).

First, Plaintiffs allege they involuntarily conferred the right to maintain a general telecommunications network to Defendants. Second, Defendants have accepted and continue to use this benefit to build and operate their general telecommunications business. Third, Plaintiffs adequately allege that inequity will persist because Defendants will accumulate benefits as they

derive income from the general telecommunication network. Plaintiffs have sufficiently alleged unjust enrichment.

But Defendants suggest Plaintiffs cannot pursue unjust enrichment because the parties have an express agreement for electrical power. Defendants cite *Doral Collision*, a case where a Florida court disallowed an unjust enrichment claim when a repair shop and a lienholder litigated an express contract for vehicle repairs. *Doral Collision Ctr., Inc. v. Daimler Tr.*, 341 So. 3d 424, 430 (Fla. 3d DCA 2022). Yet unlike *Doral Collision*, the ROW Agreement governs only the transmission of electrical power, not general telecommunications, and so, *Doral Collision* does not bar Plaintiffs' unjust enrichment claim.

E. Trespass Claim

Defendants argue Plaintiffs fail to adequately allege trespass, but in Florida, trespass refers to the injury to or use of another's property by someone without the authority or right to do so. *Halifax Drainage Dist. of Volusia Cnty. v. Gleaton*, 188 So. 374, 379 (1939). Consent may defeat a trespass claim. *Harris v. Baden*, 17 So. 2d 608, 612 (Fla. 1944). In some cases, a court may dismiss a complaint if an affirmative defense appears on the face of the complaint. *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011).

Defendants' constructing, maintaining, and repairing the general telecommunications network on Plaintiffs' land constitutes trespass because these actions exceeded the scope of the ROW agreement.

Still, Defendants assert that (1) a "mere intangible invasion of the plaintiff's property" is not trespass and (2) Plaintiffs' consent bars a trespass claim. But, first, Plaintiffs allege that Defendants' intrusions to construct, service, and maintain the general telecommunications network, not mere light signals, are a cognizable trespass. Second, as stated above, the ROW agreement does not grant Defendants the right to construct and operate a general telecommunications network on Plaintiffs' land. Plaintiffs likely consented to Defendants' intrusions to maintain and operate the electrical power network. Still, any entrance for general telecommunications plausibly exceeded the scope of that consent, a cognizable trespass. Thus, Plaintiffs have plausibly alleged facts sufficient to state a trespass claim.

F. Unlawful Detainer

Defendants attack the unlawful detainer claim because Plaintiffs still physically possess their property. A property owner may file suit against a wrongful possessor who has obtained property by unlawful detention. Fla. Stat. § 82.03(1). To state a claim for unlawful detainer, a property owner must show that: (1) the property owner was in peaceful possession of the property;

(2) the wrongful possessor ousted the property owner of actual possession; and (3) the wrongful possessor withheld possession from the property owner without consent or legal process. *Floro v. Parker*, 205 So. 2d 363, 367 (Fla. 2d DCA 1967).

Plaintiffs allege that they had a right to operate a general telecommunications network across their property. Defendants wrongfully took this right and continue to use it without consent or legal process. Defendants counter that Plaintiffs have not lost access to or use of their properties. But the right to operate a general telecommunications network is a "stick in the bundle of property rights," and allegedly, Defendants have assumed this right without consent or legal process. This sufficiently states a claim for unlawful detainer.

G. Declaratory Judgment

Plaintiffs seek a declaration of the rights and duties of the parties under the ROW agreement. Any United States Court may declare the rights and legal relations of any party seeking such a declaration in a case of actual controversy. 28 U.S.C. § 2201. This act confers discretion on the courts rather than granting litigants an absolute right. *Pub. Serv. Comm'n of Utah v. Wycoff Co.*, 344 U.S. 237, 241 (1952). Yet the existence of an alternative remedy does

not prevent a party from seeking an otherwise appropriate declaratory judgment claim. Fed. R. Civ. P. 57.

Plaintiffs ask this Court to determine whether the ROW agreement or the Access to Customer Premises provision grants Defendants the right to operate a general telecommunications network across Plaintiffs' lands. Defendants contend that the declaratory judgment claim is superfluous and fails to state a claim. But, despite alternative remedies, Plaintiffs' declaratory judgment claim would resolve this controversy, and Plaintiffs properly request a declaratory judgment to determine the rights and legal relations of the parties on Plaintiffs' lands. This Court agrees with Plaintiffs that dismissing the declaratory judgment claim would be premature.

H. Ambiguity and Estoppel

Defendants correctly state that ambiguity and estoppel are not causes of action, and this Court will not consider either as an independent cause of action. *See S.-Owners Ins. v. Mac Contractors of Fla., LLC*, No. 2:18-CV-21-FTM-99MRM, 2019 WL 6696393, at *2 (M.D. Fla. Dec. 9, 2019) ("whether the insurance policy is ambiguous is an issue of contract interpretation"); *Agency for Health Care Admin. v. MIED, Inc.*, 869 So. 2d 13, 20 (Fla. 1st DCA 2004) ("equitable estoppel is a defensive doctrine rather than a cause of action").

I. Equitable Remedies

Defendants claim Plaintiffs may not plead equitable remedies because adequate remedies at law exist, but a plaintiff may plead alternative relief or different types of relief. Fed. R. Civ. P. 8(a)(3). A plaintiff may alternatively plead equitable relief even though a court may not award such relief where an adequate remedy at law exists. *Brown v. Toscano*, 254 F.R.D. 690, 698 (S.D. Fla. 2008). Plaintiffs may have adequate relief at law, but this does not bar Plaintiffs' equitable relief claims at the motion to dismiss stage.

1. Constructive Trust

Defendants claim that Plaintiffs may not seek a constructive trust because no confidential relationship exists here. Generally, courts should impose a constructive trust where one wrongfully acquires a property interest by fraud, abuse of confidence, or other means. *Quinn v. Phipps*, 113 So. 419, 422 (Fla. 1927). "To impose a constructive trust, there must be (1) a promise, express or implied, (2) transfer of the property and reliance thereon, (3) a confidential relationship and (4) unjust enrichment." *Provence v. Palm Beach Taverns, Inc.*, 676 So. 2d 1022, 1025 (Fla. 4th DCA 1996) (internal citation omitted).

Plaintiffs properly allege a promise, a transfer of property, reliance thereon, and unjust enrichment. Yet Defendants correctly note that Plaintiffs

have failed to allege a confidential relationship. But the Florida Supreme Court has held that a confidential relationship is not necessary to establish a constructive trust. *See In re Estate of Tolin,* 622 So. 2d 988, 990 (Fla. 1993) (holding that Florida courts may impose a constructive trust when fraud occurs, one breaches a confidential relationship, or one benefits from the mistake of another at the expense of a third party). The lack of a confidential relationship cannot alone dismiss the constructive trust claim.

But Defendants also claim that Plaintiffs' request for a constructive trust fails because Plaintiffs neglected to allege "specific, identifiable property." Defendants correctly state that a constructive trust cannot be imposed on general assets. *Bender v. CenTrust Mortg. Corp.*, 51 F.3d 1027, 1030 (11th Cir. 1995). But *Bender* explains, "[I]t is well settled that Florida courts will impress property with a constructive trust only if the trust res is specific, identifiable property or if it can be clearly traced in assets of the defendant which are claimed by the party seeking such relief." *Id.* (quoting *Finkelstein v. Se. Bank, N.A.*, 490 So. 2d 976, 983 (Fla. 4th DCA 1986)).

Plaintiffs claim damages specifically relating to Defendants' general telecommunications business, not their assets generally, and the discovery process can specifically identify these assets. Therefore, at this stage, Plaintiffs allege facts sufficient to state a claim for a constructive trust.

2. Disgorgement

Plaintiffs also seek disgorgement. Disgorgement is an equitable remedy intended to prevent unjust enrichment. *S.E.C. v. Monterosso*, 756 F.3d 1326, 1337 (11th Cir. 2014). To claim disgorgement, an injured party need only produce a reasonable approximation of the unlawfully acquired assets, but "exactitude" is not necessary. *S.E.C. v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005). Once the injured party produces a reasonable approximation of the unlawfully acquired assets, the burden shifts to the defendant to show the injured party's estimate is unreasonable. *Monterosso*, 756 F.3d at 1337.

Plaintiffs request the disgorgement of Defendants' general telecommunications-related revenues from the first date the general telecommunications network began operation. At the motion to dismiss stage, this satisfies Plaintiffs' reasonable approximation burden. Defendants have made no demonstration of unreasonableness, and so this Court finds that Plaintiffs have alleged facts sufficient to show entitlement to disgorgement.

3. Accounting

Plaintiffs similarly claim entitlement to an accounting. Generally, Florida courts grant an accounting where a fiduciary relationship exists between parties or in cases of "complicated or mutual accounts." *Zaki Kulaibee Establishment v. McFliker*, 771 F.3d 1301, 1311 (11th Cir. 2014). When a

fiduciary relationship exists, such as that of a trustee, agent, or executor, Florida law grants the right to an accounting. *Armour & Co. v. Lambdin*, 16 So. 2d 805, 810 (Fla. 1944). In a complexity case, Florida law provides an accounting when the parties' accounts are sufficiently complicated and an adequate remedy at law is lacking. *Dahlawi v. Ramlawi*, 644 So. 2d 523, 524 (Fla. 3d DCA 1994).

Plaintiffs have alleged facts sufficient to show the complexity of the many easement transactions and the general telecommunications sales. Additionally, Defendants correctly state that Plaintiffs have not shown that an adequate remedy at law is lacking, but Plaintiffs may plead alternatively. Thus, Plaintiffs show plausible entitlement to an accounting.

J. Punitive Damages

Defendants claim Plaintiffs fail to allege a sufficient basis for punitive damages. A defendant may be liable for punitive damages if the trier of fact finds the defendant personally guilty of intentional misconduct or gross negligence. § 768.72 Fla. Stat. (2025). Intentional misconduct requires actual knowledge of the wrongfulness of the conduct and of a high probability of injury or damage. *Id.*

Plaintiffs plead that Defendants "intentionally, willfully, and knowingly" installed the general telecommunications network without authorization,

acting outside the scope of the ROW agreement. These alleged facts plausibly suggest that Defendants had actual knowledge of their wrongful conduct. This plausibly states a claim for punitive damages.

IV.

For the reasons stated above, this Court concludes that the motion to dismiss should primarily be denied.

Accordingly, it is **ORDERED**:

"Defendants' Motion to Dismiss" (Dkt. 28) is **DENIED** in part and **GRANTED** in part;

a. The motion is **DENIED** as to Count I, Count II, Count III, Count IV, Count V, the declaratory judgment unnumbered count, and Plaintiffs' request for equitable relief; and

b. The motion is **GRANTED** as to Plaintiffs' ambiguity and estoppel unnumbered counts.

DONE AND ENTERED at Jacksonville, Florida, this 13th day of August 2025.

HARVEY E. SCHLESINGER
UNITED STATES DISTRICT JUDGE

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