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No. SC2024-0547

IN THE SUPREME COURT OF FLORIDA

RJ'S INTERNATIONAL TRADING, LLC,

Appellant,

v.

CROWN CASTLE SOUTH LLC,

Appellee.

On Certification from the
United States Court of Appeals for the Eleventh Circuit,
Case No. 22-11977

SUPPLEMENTAL APPENDIX TO APPELLEE'S ANSWER BRIEF

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September 30, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on September 30, 2024, via electronic mail using the Court's ePortal system upon all counsel of record in this action.

/s/ Eve A. Cann
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

RJ'S INTERNATIONAL TRADING, LLC, Plaintiff, v. CROWN CASTLE SOUTH, LLC, and AT&T CORP., Defendants.	))))))))))	Case No. 20-cv-25162-CMA

DEFENDANTS' MOTION TO DISMISS COMPLAINT AND
INCORPORATED MEMORANDUM OF LAW

Defendants Crown Castle South, LLC ("Crown Castle") and AT&T Corp. (collectively, "“Defendants”), pursuant to Fed. R. Civ. P. 12(b)(6), file this joint Motion to Dismiss the Complaint of Plaintiff, RJ's International Trading, LLC, for failure to plausibly state any claim for relief.[1] Defendants submit the incorporated memorandum in support of their request to dismiss Plaintiff's Complaint with prejudice.

I. INTRODUCTION

Seizing on an opportunity to demand undue compensation for utilities installation on a disputed public right of way adjoining its property, Plaintiff engaged in lengthy negotiations with Crown Castle to resolve a tenuous controversy over a tortured and untenable interpretation of an easement agreement. As alleged, when the negotiations over the "fair market value" for the installation of limited underground cables and a handhole fell through, Plaintiff decided to file this lawsuit based on a claim that the installed utilities deprived it of the ability to pursue a speculative,

[1] Crown Castle South, LLC appears to be a typographical error of the entity Crown Castle South LLC.

future multi-million-dollar commercial development. Interestingly, Plaintiff was in no rush to seek the asserted injunctive and declaratory relief back in February 2020, when it first became aware of the installation, to protect this allegedly intended commercial development. Instead, after many months, Plaintiff opted to lump together suspect and implausible claims not only against Crown Castle, but surprisingly against AT&T as well, all of which require dismissal with prejudice.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed its Complaint on December 18, 2020, alleging claims for declaratory judgment, breach of easement agreement, quantum meruit, trespass, and injunctive relief against both Crown Castle and AT&T. (Compl., Dkt. No. 1.)[2] Plaintiff filed a Supplemental Complaint on December 22, 2020 to clarify the citizenship of its members and those of Crown Castle to establish diversity subject matter jurisdiction. (Dkt. No. 6.) Defendants were ordered on December 23, 2020 and January 8, 2021 to file a single combined response to Plaintiff's Complaint by January 22, 2021. (Dkt. Nos. 9, 12).

The Complaint pleads and cites to, but does not attach, key supporting documents.[3] (Dkt. No. 1.) Plaintiff pleads a Memorandum of Option and Lease Agreement dated October 21, 1993 (the "Lease")[4] between Hidden Valley Corp. (Plaintiff's predecessor-in-interest) as Lessor and Bellsouth Mobility Inc. (AT&T's predecessor-in-interest) as Tenant. (*Id*. at ¶¶ 9, 13, 15-16). Pursuant to the Lease, AT&T is the current tenant of a parcel of land (the "Leased Property")

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[2] Plaintiff has not filed a motion for injunctive relief.

[3] Pursuant to Rule 201 of the Federal Rules of Evidence, Defendants request that the Court take judicial notice of the adjudicative facts and/or public records: Lease, Easement Agreement and Sublease as identified in the Complaint and defined herein. Attached to this motion as Exhibits A, B and C, respectively, are true copies of the Lease, the Easement Agreement and the Sublease. *See also Pucci v. Carnival Corp*., 146 F.Supp.3d 1281, 1292 (S.D. Fla. 2015) (citing *Fin. Sec. Assurance, Inc. v. Stephens, Inc.*, 500 F.3d 1276, 1284 (11th Cir.2007) (holding that a motion to dismiss may attach a document referred to in a complaint)).

[4] The correct date on the face of the Lease is October 21, 1992, not October 21, 1993.

owned by Plaintiff. (*Id.* at ¶¶ 8-9). The Leased Property adjoins Plaintiff's main property located at 17000 South Dixie Highway, Miami, Florida, 33157 (the "Property"). (*Id.* at ¶ 8.) The Lease allowed the Tenant/AT&T to use the Leased Property for the purpose of constructing, maintaining, and operating a communication facility with a cellular tower currently maintained on the Leased Property. (*Id.* at ¶ 10.) The Lease also granted a "nonexclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes *over, under or along* a twenty foot […] wide right of way extending from the nearest public right of way, namely S.W. 96 Court or S.W. 170 Street, to the leased parcel." (Ex. A, p. 4032.) (*emphasis added*.) This was the contemplated "20-foot access utility easement to the Leased Property." (Dkt. No. 1, ¶ 11.)

Plaintiff further pleads the Grant of Non-Exclusive Easement Agreement dated June 26, 1993 (the "Easement Agreement") between Grantor (Plaintiff's predecessor-in-interest) and Grantee/lessee (AT&Ts predecessor-in-interest) in favor of Grantee (AT&T presently). (*Id.* at ¶ 11; Ex. B., p. 5030).[5] The Easement Agreement granted and conveyed a "non-exclusive easement over, across and upon the Easement Property for the purpose of: 1.1 Constructing, maintaining, repairing and replacing paved areas for vehicular and pedestrian ingress to and egress from the Benefited Property; and 1.2 Constructing, maintaining, repairing and replacing utility facilities." (*Id.* at p. 5030-31 (1. Grant of Easement.); Dkt. No. 1, ¶ 12.) The Easement Agreement further granted the Grantee/AT&T "the right to do all things necessary, useful or convenient for the full enjoyment of this Easement." (Ex. B; p. 5031 (3. Grant of Easement.))

Plaintiff also pleads a Site Designation Supplement and Memorandum of Sublease dated June 2, 1999 (the "Sublease) between AT&T's predecessor-in-interest and Crown Castle's

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[5] AT&T is a party to the Easement Agreement, but Crown Castle is not.

predecessor-in-interest. (Ex. C; Dkt. No. 1, ¶ 14.) In addition to subleasing the Leased Property, the Sublease granted Crown Castle nonexclusive rights of ingress and egress, including any and all easements. (*Id.* at ¶ 14; Ex. C, p. 1875 (3. Reserved Space.))

According to the Complaint, in or around February 2020, Crown Castle installed fiber optic cables and a handhole without Plaintiff's consent and notice. (Dkt. No. 1, ¶ 14.) Plaintiff contends that Crown Castle installed the cables "underground and outside of the 20-foot easement" allegedly "in contravention of the Easement Agreement." (*Id.* at ¶¶ 17-18.) Plaintiff also contends that Crown Castle installed the handhole on Plaintiff's property and not in a location which Crown Castle thought might be a public right of way. (*Id.* at ¶ 19.)

As Plaintiff disputed that the Easement Agreement allowed for underground rights and that there was no public right of way, Plaintiff demanded payment for the alleged unauthorized use of the Property, but Crown Castle allegedly refused to pay what Plaintiff sought as the fair market value for the use of the Property. (*Id.* at ¶ 20.) Plaintiff alleges damage from Crown Castle's tortious conduct on the sole basis that Plaintiff is allegedly "prohibited" from developing the Property (speculated to be worth approximately $700,000) into a multi-million-dollar commercial property. (*Id.* at ¶ 21.)

In support of the Complaint, Plaintiff attaches a single exhibit. This exhibit contains a color diagram which outlines the boundaries of the Property, the Leased Property, the easement and the location of the installed fiber optic cables and handhole. (*Id.*; Ex. A).

Notably, Plaintiff directs the preceding factual allegations solely toward Crown Castle. (*Id.* at ¶¶ 17-21.) The only distinct allegation against AT&T is that Crown Castle was AT&T's agent and that Crown Castle was performing the above acts within the scope of the agency. (*Id.* at ¶ 4.) But Plaintiff twists the allegations against Crown Castle in an attempt to assert four legal claims

against both Crown Castle and AT&T to seek numerous remedies, including, a mandatory injunction requiring the removal of the underground cables and handhole, specific performance, and damages in multiple categories (expectation, consequential, nominal, and punitive). However, Plaintiff's claims for relief are untenable as they are legally invalid and conceptually deficient as pled, such that dismissal with prejudice is warranted.

III. LEGAL STANDARD FOR MOTION TO DISMISS

Generally, a pleading stating a claim for relief need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. Fed. R. Civ. P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (factual allegations "must be enough to raise a right to relief above the speculative level"). The factual allegations must demonstrate that the plaintiff is entitled to relief, not just show a "mere possibility of misconduct." *Iqbal*, 556 U.S. at 679. Plaintiff's obligation to provide the grounds for his entitlement to relief requires more than "labels and conclusions," and a "formulaic recitation of the elements of a cause of action will not do." *Id*.

"The Court may favor plaintiff with all reasonable inferences from the allegations. *Stephens v. Dep't of Health & Human Servs.*, 901 F.2d 1571, 1573 (11th Cir. 1990). However, "[t]here are a few exceptions to this rule, such as when the facts alleged are internally inconsistent." *Gersten v. Rundle*, 833 F. Supp. 906, 910 (S.D. Fla. 1993). Also, "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc*., 326 F.3d 1183, 1185 (11th Cir. 2003). Unlike factual allegations, conclusions in a pleading "are not entitled to the assumption of truth." *Iqbal*, 556

U.S. at 679 (citing *Twombly*, 550 U.S. at 555). Legal conclusions may "provide the framework of a complaint", but "they must be supported by factual allegations." *Id.*

The Court may consider "well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed." *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004). "Where a pleading's exhibits contradict its allegations, the exhibits control." *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1206 (11th Cir. 2007). A "district court can generally consider exhibits attached to a complaint in ruling on a motion to dismiss, and if the allegations of the complaint about a particular exhibit conflict with the contents of the exhibit itself, the exhibit controls." *Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016).

IV. PLAINTIFF FAILS TO STATE CLAIMS UPON WHICH RELIEF CAN BE GRANTED

A. PLAINTIFF FAILS TO STATE A CLAIM FOR DECLARATORY JUDGMENT AGAINST CROWN CASTLE

A declaratory judgment claim is generally subject to dismissal when asserted concurrently with a breach of contract claim over the same legal issue since a request for a declaration to determine rights under a contract is deemed duplicative of a breach of contract claim. *Perez v. Scottsdale Ins. Co*., No. 19-cv-22346-GAYLES, 2020 WL 607145, at *2 (S.D. Fla. Feb. 7, 2020).

Even though this is a diversity action, the Federal Declaratory Judgment Act is applied. *See Agostinachhio v. Heidelberg Engineering, Inc*., No. 18-cv-60935-UU, 2018 WL 4925691, at *6 (S.D. Fla. Aug. 22, 2018). The Declaratory Judgment Act provides that "[i]n a case of actual controversy within its jurisdiction ... any court of the United States ... may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201. "The Declaratory Judgment Act is designed to settle actual controversies before they ripen into violations of law or a breach of some contractual duty." *Mt. Hawley Insurance Co. v. Navarre*

United Methodist Church, Inc., No. 16-cv-720-MCR-CJK, 2017 WL 5899724, at *2 (N.D. Fla. Aug. 14, 2017) (internal quotations omitted). The Act is the "means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy and in cases in which a party who could sue for coercive relief has not yet done so." *Id.*

Here, Plaintiff's declaratory judgment claim against Crown Castle is inappropriate as duplicative of the breach of easement agreement claim because both require an interpretation and determination of the scope of the Easement Agreement - namely, whether it grants underground rights to Grantee. (Dkt. No. 1, ¶¶ 23-29.) This duplication is confirmed by Plaintiff's own allegation that the installation of fiber optic cables and a handhole under and outside the 20-foot easement was a material breach of the Easement Agreement. (*Id.* at ¶ 33.) Further, Plaintiff's request for declaration that the handhole was installed on the Property, and not on a public right of way, is similarly duplicative of Plaintiff's trespass claim. (*Id.* at ¶ 42.) As Plaintiff's declaratory judgment claim is duplicative of other asserted claims and is brought concurrently to address alleged controversies which, as pled, have seemingly "ripen into violations" of trespass law and contractual rights, the declaratory judgment claim should not be allowed to stand on its own.

Plaintiff asserts a declaratory judgment claim against Crown Castle while also seeking coercive and injunctive relief through other legal claims. Given this impermissible duplication, Plaintiff has failed to state a claim for relief or declaratory judgment that is plausible on its face. Accordingly, dismissal with prejudice is justified.

B. PLAINTIFF FAILS TO STATE A CLAIM FOR BREACH OF EASEMENT AGREEMENT AGAINST CROWN CASTLE

In Florida, the elements of a claim for breach of contract are: "(1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach." *See*

Vega v. T-Mobile USA, Inc., 564 F.3d 1256, 1272 (11th Cir. 2009); *Molina v. Aurora Loan Services, LLC*, 710 Fed. App'x. 837, 839 (11th Cir. 2017). A breach of easement agreement claim is the same as a breach of contract claim.

The general rule is that damages for breach of contract can be recovered if they "arise naturally and according to the usual course of things from such breach [i.e., general damages] and such as the parties contemplated, when the contract was made, as the probable result of its breach [i.e., consequential damages]." *Silverpop Systems, Inc. v. Leading Market Technologies, Inc*., 641 Fed. App'x. 849, 855 (11th Cir. 2016).

Here, Plaintiff's claim for breach of easement agreement against Crown Castle is fatally misconceived for the simple reason that Crown Castle is not a party to the Easement Agreement, only AT&T is. Therefore, this claim is not properly asserted against Crown Castle, and it fails because no easement agreement exists between Plaintiff and Crown Castle. Additionally, Plaintiff's allegations do not satisfy the damages element for breach of contract. Plaintiff does not plead any actual damages arising naturally from the alleged breach of the Easement Agreement. Plaintiff complains that it suffered damages as it was not paid for the use of the Property, but this is a claim more akin to damages for trespass than any direct damage from violating any provision in the Easement Agreement. Additionally, Plaintiff appears to assert unspecified damages for its alleged inability to proceed with a multi-million-dollar development. Not only is Plaintiff's latter claim speculative, but it is also utterly improper because it seeks non-recoverable consequential damages which were not contemplated by the parties at the time the Easement Agreement was executed.

Plaintiff asserts a breach of easement claim against Crown Castle which is legally defective as pled. As Plaintiff has failed to state a claim for relief that is plausible on its face, dismissal with prejudice is justified.

C. PLAINTIFF FAILS TO STATE A QUANTUM MERUIT CLAIM AGAINST CROWN CASTLE

Quantum meruit is a legal doctrine which "imposes legal liability on a contract that the law implies from facts where one receives goods or services from another ... [and] where ... a reasonable person receiving such benefit would ordinarily expect to pay for it." *Safeguard Support Servs., LLC v. Nationwide Referral Servs., LLC*, No. 11- CIV-61977, 2011 WL 12317971, at *12 (S.D. Fla. Dec. 15, 2011) (quoting *Osteen v. Morris*, 481 So. 2d 1287, (Fla. 5th DCA 1986)). The doctrine of quantum meruit derives from contracts "implied in fact" where "the parties have in fact entered into an agreement but without sufficient clarity, so a fact finder must examine and interpret the parties' conduct to give definition to their unspoken agreement .... [in order to give] the effect which the parties ... presumably would have agreed upon if, having in mind the possibility of the situation which has arisen, they had contracted expressly thereto.'" *Tooltrend, Inc. v. CMT Utensili, SRL*, 198 F.3d 802, 806 (11th Cir. 1999). A claim for quantum meruit "requires that plaintiffs demonstrate an expectation of compensation before they seek compensation …[and] that expectation might very well be relevant to the question of whether it would be unjust to retain a benefit without having to pay for it." *Id.* Further, it is uncontroverted that the existence of a valid, written contract precludes a quantum meruit claim. *Capital Sales & Marketing, Inc. v. NCL (Bahamas) Ltd.*, No. 1:19-cv-20736-GAYLES/OTAZO-REYES, 2020 WL 6263012, at *3 (S.D. Fla. Oct. 23, 2020).

Here, Plaintiff does not allege any arrangement wherein it agreed to provide goods or services to Crown Castle, much less with an actual expectation of compensation – *this alone*

defeats Plaintiff's quantum meruit claim. Quite the opposite, Plaintiff objected to the alleged "unauthorized use of the Property" as it contends that it did not consent to and was not given notice about Crown Castle's installation of the fiber optic cables and the handhole. (Dkt. No. 1, ¶¶ 17, 38-39). While Plaintiff asserts that it would be inequitable for Crown Castle to retain the alleged benefit of "maintaining the cables and handhole outside of the scope of the easement," Plaintiff does not plead that it had any expectation of compensation, or even intention to confer a benefit and provide anything of value to Crown Castle, when the installation occurred. (*Id*. at ¶ 39.) Additionally, as Plaintiff relates the alleged conferred benefit to the Easement Agreement, as a matter of law, the very existence of this written agreement separately precludes the quantum meruit claim.

Plaintiff asserts a quantum meruit claim against Crown Castle which is legally invalid and defective as pled. As Plaintiff has failed to state a claim for relief that is plausible on its face, dismissal with prejudice is justified.

D. PLAINTIFF FAILS TO STATE A CLAIM FOR TRESPASS AGAINST CROWN CASTLE

"Trespass to real property is an injury to or use of the land of another by one having no right or authority." *Rebalko v. City of Coral Springs*, No. 5:14-cv-469-Oc-32PRL, 2020 WL 6446042, at *28 (S.D. Fla. Nov. 3, 2020) (citing *Glen v. Club Mediterranee, S.*A., 450 F.3d 1251, 1254 n.1 (11th Cir. 2006) quoting (*Guin v. City of Riviera Beach*, 388 So. 2d 604, 606 (Fla. 4th DCA 1980)). "The injury caused by trespass to real property is the loss of the use and enjoyment of the land, or injury to the land." *Daniel v. Morris*, 181 So. 3d 1195, 1199 (Fla. 5th DCA 2015) (citing *Coddington v. Staab*, 716 So.2d 850, 851 (Fla. 4th DCA 1998; *State v. Sarantopoulos*, 604 So.2d 551, 555 n. 7 (Fla. 2d DCA 1992)). The measure of damages for trespass to real property is the difference in the property value before and after the trespass. *Parker v. Town of Palm Beach*,

No.: 9:17-CV-80176-RLR, 2017 WL 2629490, at *3 (S.D. Fla. June 19, 2017) (dismissing plaintiff's trespass count for failure to state a claim under Florida law due to failure to properly allege "the manner how and the manner in which his property was damaged and that his property value diminished"). Nominal damages can be awarded for trespass when a plaintiff fails to prove actual damages. *Daniel*, 181 So. 3d 1195 at 1199.

Here, Plaintiff does not assert any specific injury to the Property as there are no factual allegations of physical injury to the land.[6] (Dkt. No. 1, ¶ 46.) Instead, Plaintiff contends that the installation of the underground fiber optic cables and the handhole constitutes use of the Property allegedly interfering with Plaintiff's own use and enjoyment of the Property. (*Id.* at ¶¶ 44-45.) Plaintiff offers no factual allegations demonstrating how and why Plaintiff's use and enjoyment of the Property have been violated. Plaintiff's only express complaint is that the installation "has diminished the value of the Property and deprived [Plaintiff of] the ability to commercially develop the Property." (*Id.* at ¶ 46.) Thus, Plaintiff's injury is *future deprived use* based on the completely speculative and factually unsupported assertion that, as a result of the cable and handhole installation, Plaintiff is unable to develop the Property into a multi-million-dollar commercial property. (*Id.* at ¶ 21.) Similarly lacking any factual support is Plaintiff's other speculative allegation that the Property has diminished in value – a plainly conclusory allegation made with no attempt to show any difference in the Property's value before and after the alleged trespass. (*Id.* at ¶ 46.) Ultimately, Plaintiff does not plead any factual allegations of any injury to the Property, any true and cognizable inability to use and enjoy the Property, and any difference in the Property's value before and after the alleged trespass. Plaintiff's multiple pleading failures to

[6] Under available case law, typical trespass scenarios entail physical damage to or removal of structures, trees, or vegetation.

include sufficient factual allegations require that the trespass claim be dismissed. *See Parker*, 2017 WL 2629490, at *3.

Additionally, Plaintiff's single exhibit to the Complaint appears to contradict Plaintiff's claim that the underground cables and the handhole were installed on the Property. (Dkt. No. 1, Ex. A.) The attached diagram shows, with a blue dotted line, that the location of the installed cables and handhole is on a public right of way as it is beyond the depicted sidewalk and in the direction of the side street. On its face, the diagram appears to contradict Plaintiff's trespass allegation that Crown Castle is using land that it has no right or authority to as it appears to show that the disputed installation location is a public right of way.

Plaintiff asserts a trespass claim against Crown Castle which is flawed, misconceived and defective as pled. As Plaintiff has failed to state a claim for relief that is plausible on its face, dismissal with prejudice is justified.

E. PLAINTIFF FAILS TO STATE ANY CLAIM AGAINST AT&T

As already noted, Plaintiff pleads no separate factual allegations against AT&T. Plaintiff incorporates and relies on the factual allegations describing Crown Castle's conduct and acts to improperly assert claims for declaratory judgment, breach of easement agreement, quantum meruit and trespass against AT&T. Plaintiff's only separate allegation toward AT&T is a conclusory assertion of unspecified "agency" deliberately masqueraded as a fact, but which is completely devoid of factual support. (Dkt. No. 1, ¶ 21.) In fact, Plaintiff does not plead what type of agency relationship is being alleged, let alone anything detailing the required legal elements of agency.

Plaintiff's claims against AT&T fail not only due to the lack of factual allegations toward AT&T, but also for all the reasons that warrant dismissal of the claims against Crown Castle. The sound bases for dismissing Plaintiff's claims against AT&T are reiterated as follows: (i) the declaratory judgment claim is duplicative of the breach of easement agreement and quantum

meruit claims; (ii) the breach of easement agreement claim does not plead any separate conduct by AT&T which constitutes a material breach of the Easement Agreement and does not plead any resulting damages; (iii) the quantum meruit claim is precluded by the existence of the express Easement Agreement and the lack of any benefit whatsoever conferred upon AT&T with any expectation of compensation to Plaintiff; and (iv) the trespass claim does not plead any separate conduct by AT&T and does not show any injury to the Property, any cognizable inability by Plaintiff to use and enjoy the Property or any difference if the value of the Property before and after the alleged trespass.

Plaintiff's claims against AT&T are completely unsupported by factual allegations, as well as legally invalid and flawed as pled. As Plaintiff has failed to state any claim for relief that is plausible on its face, dismissal with prejudice is justified.

V. CONCLUSION

As outlined at length herein, Plaintiff's claims against Crown Castle and AT&T are legally and conceptually deficient. There are no conceivable amendments that may overcome these defects, as these pleading deficiencies are fundamental flaws as a matter of law, not just pleading mistakes. Plaintiff has stated no plausible claims for relief. As such, Plaintiff's claims against Crown Castle South, LLC and AT&T Corp. should be dismissed with prejudice.

Wherefore, Defendants, Crown Castle South, LLC and AT&T Corp., respectfully request that this Honorable Court enter an order granting this Motion and dismissing Plaintiff's Complaint in its entirety, along with granting any and all additional relief that this Court deems just and proper.

Local Rule 7.1(3)

As Defendants move to dismiss Plaintiff's claims under Federal Rule 12(b)(6) for failure to state a claim upon which relief can be granted, counsel for Plaintiff and Defendants have agreed that they are not required to meet-and-confer pursuant to Local Rule 7.1(3) in advance of filing the within motion to dismiss.

Respectfully submitted January 22, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2021, I served a copy of the foregoing electronically via CM/ECF to all parties/attorneys on the list to receive notice in this case, including but not limited to the following:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-25162-CIV-ALTONAGA/Torres

RJ'S INTERNATIONAL TRADING, LLC,

Plaintiff,

v.

CROWN CASTLE SOUTH, LLC; *et al.*,

Defendants.
_________________________________/

ORDER

THIS CAUSE is before the Court on Defendants, Crown Castle South, LLC ("Crown Castle") and AT&T Corp.'s ("AT&T['s]") Motion to Dismiss Complaint [ECF No. 14], filed on January 22, 2021. Plaintiff, RJ's International Trading, LLC, filed a Response in Opposition [ECF No. 21]; to which Defendants filed a Reply [ECF No. 29]. The Court has carefully considered the Complaint [ECF No. 1], the parties' written submissions, the record, and applicable law. For the following reasons, the Motion is granted in part and denied in part.

I. BACKGROUND

This case involves a property and contract dispute between Plaintiff and Defendants. (*See generally* Compl.). Plaintiff is a Florida limited liability company with its principal place of business in Florida. (*See id.* ¶ 1; Suppl. Compl. [ECF No. 6] ¶¶ 1, 6). Crown Castle is a Delaware limited liability company with its principal place of business in Houston, Texas. (*See* Suppl. Compl. ¶¶ 2, 7). Crown Castle is AT&T's agent and acts within the scope of the agency relationship. (*See* Compl. ¶ 4). AT&T is a New York corporation with its principal place of business in New Jersey. (*See id.* ¶ 3).

In 1993, AT&T's predecessor in interest, BellSouth Mobility, Inc. ("BellSouth"), entered into a leasing agreement with Hidden Valley Corporation ("Hidden Valley") for property located at 9690 S.W. 170th Street, in Miami, Florida (the "Property"). (*See id.* ¶¶ 8–9, 15). Under the terms of the leasing agreement, BellSouth "agreed to use the [] Property for the purpose of constructing, maintaining, and operating a communication facility." (*Id.* ¶ 10 (alteration added)). A cellular tower is currently maintained on the Property. (*See id.*).

In 1993, BellSouth was also granted an easement under a Grant of Non-Exclusive Easement Agreement (the "Easement Agreement") over the Property. (*See id.* ¶ 11). The Easement Agreement granted BellSouth (and its successors) an easement (1) "for utilities and vehicular and pedestrian ingress and egress over, across, and upon the Property[;]" and (2) "over, across, and upon the Property for the purpose of constructing, maintaining, repairing and replacing paved areas for vehicular and pedestrian ingress to and egress and constructing, maintaining, repairing and replacing utility facilities." (*Id.* ¶ 12 (alteration added; other alteration adopted; quotation marks and emphasis omitted)). That same year, R.J. International Trading, Inc. purchased the Property subject to the Easement Agreement. (*See id.* ¶ 13).

In 1999, Crown Castle's predecessor in interest, Crown Castle South, Inc., entered a Site Designation Supplement and Memorandum of Sublease (the "Sublease Agreement") with BellSouth. (*See id.* ¶ 14). Crown Castle "is a telecommunications services provider that installs and operates telecommunications facilities throughout the United States." (*Id.*). The Sublease Agreement granted:

> Crown Castle the nonexclusive rights of ingress to and egress from the entire Adjoining Site, and access to the entire Tower and all Improvements (including any and all easements), at such times (on a 24-hour, seven (7) day per week basis), to such extent, and in such means and manner (on foot or by motor vehicle) as the Transferring Entity deems necessary or desirable for its full use and enjoyment of the Reserved Space.

(*Id.*).

R.J. International Trading, Inc. conveyed the Property to Plaintiff in 2005. (*See id.* ¶ 16). In February 2020, Crown Castle, without notice or consent from Plaintiff, (1) excavated the Property; (2) installed fiber-optic cables beneath the Property; and (3) installed a handhole on the Property. (*See id.* ¶ 17). Crown Castle installed the cables "underground and outside of the 20-foot easement . . . in contravention of the Easement Agreement." (*Id.* ¶¶ 18–19 (alteration added)). Crown Castle installed the handhole on Plaintiff's Property and not on a public right of way. (*See id.* ¶ 19).

Plaintiff contacted Crown Castle to advise that the Easement Agreement "did not give [it] underground rights and there was no public right of way." (*Id.* ¶ 20 (alteration added)). After several communications, Plaintiff demanded payment from Crown Castle for the unauthorized use of the Property, but Crown Castle has neither paid the fair market value for the use of the Property nor removed the cables. (*See id.* ¶¶ 18–20). Plaintiff has been damaged by Defendants' conduct, in that Plaintiff has "expended funds for surveyors" and, with the installation of fiber optic cables and a handhole, is unable "to develop the [] Property into a multi-million-dollar commercial property." (*Id.* ¶ 21 (alteration added)).

In December 2020, Plaintiff filed this action against Defendants, asserting five claims for relief: declaratory judgment (Count I); breach of easement agreement (Count II); "quantum meruit" (Count III); trespass (Count IV); and injunctive relief (Count V). (*See generally id.*). Defendants move to dismiss the Complaint for failure to state claims for relief under Federal Rule of Civil Procedure 12(b)(6). (*See generally* Mot.).

II. STANDARD

"To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient

factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (alteration added; quoting *Twombly*, 550 U.S. at 570). Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (alteration added; quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]" *Twombly*, 550 U.S. at 555 (alteration added; citation omitted). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (alteration added; citing *Twombly*, 550 U.S. at 556).

To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (alteration added; citing *Twombly*, 550 U.S. at 556). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citation omitted), *abrogated on other grounds by Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012).

When considering a motion to dismiss, a court construes the complaint in the light most favorable to the plaintiff and takes the factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

III. DISCUSSION

A. Count I: Declaratory Relief

In Count I, Plaintiff asserts a claim for declaratory relief. (*See* Compl. ¶¶ 22–29). It is wholly within the Court's discretion whether to entertain a case under the Declaratory Judgment Act, 28 U.S.C. section 2201, even if the action properly falls within the Court's jurisdiction. *See*

Otwell v. Ala. Power Co., 747 F.3d 1275, 1280 (11th Cir. 2014) (noting "[i]t is well established that district courts have exceptionally broad discretion in deciding whether to issue a declaratory judgment, and the remedy is not obligatory." (alteration added; citation omitted)). "By the Declaratory Judgment Act, Congress sought to place a remedial arrow in the district court's quiver; it created an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 (1995). The Court "should not entertain an action for declaratory judgment on issues which are properly raised in other counts of the pleadings and already before the court, through which the plaintiff will be able to secure full, adequate and complete relief." *AquaDry Plus Corp. v. Rockhill Ins. Co.*, No. 19-62331-Civ, 2020 WL 927440, at *1 (S.D. Fla. Feb. 26, 2020) (quotation marks and citations omitted).

Defendants contend Plaintiff's declaratory-relief claim should be dismissed as duplicative of the breach-of-easement-agreement and trespass claims. (*See* Mot. 6–7; Reply 2–3). The Court agrees.

Quite simply, Plaintiff's breach-of-easement-agreement and trespass claims will resolve the same dispute at issue in the declaratory-relief claim. Plaintiff seeks a declaration regarding the interpretation and scope of the Easement Agreement and that it is entitled to recover damages for Defendants' unauthorized use of the Property. (*See* Compl. ¶¶ 23–24). "A petition for a declaration that one party's reading of a contract establishes breach is nothing more than a petition claiming breach of contract." *AquaDry Plus Corp.*, 2020 WL 927440, at *2 (quotation marks and citation omitted). Because the determination of Plaintiff's breach-of-easement-agreement and trespass claims involves the same factual dispute as the declaratory-judgment claim, Plaintiff will "will be able to secure full, adequate and complete relief through [those] claim[s] and consequently the declaratory action must be dismissed." *Bleau Fontaine Condo. Ass'n No. Three, Inc. v. Indian*

Harbor Ins. Co., No. 18-22995-Civ, 2019 WL 1932785, at *3 (S.D. Fla. Jan. 10, 2019) (alterations added; quotation marks and citations omitted).

In short, Count I is dismissed.

B. Count II: Breach of Easement Agreement

Count II states a breach-of-easement-agreement claim. (*See* Compl. ¶¶ 30–34). A claim for breach of contract under Florida law[1] requires that a plaintiff allege: "(1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009) (citing *Friedman v. N.Y. Life Ins. Co.*, 985 So. 2d 56, 58 (Fla. 4th DCA 2008)).

Defendants insist Plaintiff fails to state sufficient facts to establish the damage element of its breach-of-easement-agreement claim. (*See* Mot. 7–9; Reply 3–7). The Court disagrees.[2]

Plaintiff sets out a plausible breach-of-easement-agreement claim. The Complaint (1) alleges the existence of a binding Easement Agreement between Plaintiff and Defendants; (2) identifies the specific provision of the Easement Agreement breached by Defendants; (3) describes that Defendants breached the Easement Agreement by installing fiber-optic cables and a handhole on the Property; (4) states Plaintiff suffered damages in having to hire property surveyors

[1] The parties do not raise a conflict-of-laws issue and do not dispute Florida law applies. (*See generally* Mot.; Resp.).

[2] Defendants also contend Plaintiff's claim must be dismissed against Crown Castle because "no easement agreement exists between Plaintiff and Crown Castle." (Mot. 8). Defendants maintain that although "Crown Castle is a third party against which Plaintiff can enforce a covenant running with land []or an easement," Plaintiff cannot "assert a direct breach of easement agreement claim against Crown Castle." (Reply 7 (alteration added)). Defendants cite no authority for this proposition and simply rely on attorney argument. (*See* Mot. 8; Reply 7). The Court is unpersuaded and declines to dismiss on this basis. *See Winn-Dixie Stores, Inc. v. Dolgencorp, Inc.*, 964 So. 2d 261, 262 (Fla. 4th DCA 2007) (holding "the covenant in its [(Winn-Dixie's)] lease was one running with the land that was enforceable against Dolgencorp[,]" which was not a party to the lease agreement containing the covenant (alteration added)); *id.* at 263 (stating Winn-Dixie asserted claims against Dolgencorp for "injunctive relief, specific performance, damages for breach of contract, and unjust enrichment." (footnote call number omitted)).

following Defendants' breach; (5) explains Plaintiff is prohibited from increasing the value of the Property by development due to the alleged breach; and (6) claims Defendants did not pay for the use of the Property. (*See* Compl. ¶¶ 11–12, 15, 17, 20–21, 31–34). These allegations state a valid cause of action for breach of the Easement Agreement against Defendants, and Defendants have received fair notice of what Plaintiff's claim is.

Plaintiff's breach-of-easement-agreement claim against Defendants may proceed.[3]

C. Count III: "Quantum Meruit"

In Count III, Plaintiff includes the term "quantum meruit" in the title of the claim. (*See* Compl. ¶¶ 35–39). Crown Castle contends Plaintiff's "quantum meruit claim . . . is legally invalid and defective as pled." (Mot. 10 (alteration added)). To this, Plaintiff clarifies it "did not bring a quantum meruit claim" but rather "an unjust enrichment claim (i.e., contract implied in law)."

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[3] As to AT&T, Defendants argue:

> Plaintiff pleads no separate factual allegations against AT&T. Plaintiff incorporates and relies on the factual allegations describing Crown Castle's conduct and acts to improperly assert claims for declaratory judgment, breach of easement agreement, quantum meruit and trespass against AT&T. Plaintiff's only separate allegation toward AT&T is a conclusory assertion of unspecified "agency" deliberately masqueraded as a fact, but which is completely devoid of factual support. In fact, Plaintiff does not plead what type of agency relationship is being alleged, let alone anything detailing the required legal elements of agency.

(Mot. 12 (citation omitted)). The Court agrees in large part with Defendants' synopsis, save for the contention regarding Plaintiff's breach-of-easement-agreement claim. While Count II is not a model of specificity, Plaintiff alleges enough facts to state a claim for breach of the Easement Agreement against AT&T. (*See* Compl. ¶¶ 11–12, 15, 21, 31).

Regarding Counts III and IV, Plaintiff's rebuttal is unhelpful. (*See* Resp. 14–15). Plaintiff first recites the elements of actual and apparent agency and then concludes by stating the general, conclusory allegation in paragraph 4 is enough. (*See id.*; Compl. ¶ 4). Plaintiff then cites the "whole world['s]" knowledge of Defendants' relationship and refers to an attachment to Defendants' Motion. (Resp. 15 (alteration added)). Plaintiff's vague allegation in paragraph 4 is not enough to hold AT&T liable for Crown Castle's acts alleged in Counts III and IV. Research has not uncovered any authority supporting Plaintiff's theory that worldwide knowledge alleviates its pleading burden; nor does Plaintiff's reference to an attachment to Defendants' Motion dictate a different result. Counts III and IV against AT&T are thus dismissed, but Count II survives.

(Resp. 10). Crown Castle insists Plaintiff "cannot change the claim it has pled from 'Quantum Meruit' to 'Unjust Enrichment' in an attempt to avoid dismissal of the claim[,]" emphasizing the title of Plaintiff's claim in Count III. (Reply 7 (alteration added)).

The Court is unpersuaded by Crown Castle's reliance on the title of Count III. Indeed, "the substance of the claim is more important than its title[.]" *Conden v. Royal Caribbean Cruises, Ltd.*, No. 20-cv-22956, Order on Mot. to Dismiss [ECF No. 69], at *16 (S.D. Fla. Feb. 22, 2021) (alteration added); *see also, e.g.*, *Edwards v. Bank of N.Y. Mellon*, No. 2:14-cv-304, 2014 WL 5594876, at *8 (E.D. Va. Oct. 31, 2014) ("A complaint must be judged by its substance rather than according to its form or label." (alteration adopted; quotation marks omitted; collecting cases)).

While Count III is labeled as a quantum meruit claim, its allegations seek to recover on a theory of unjust enrichment. (*See* Compl. ¶¶ 36–39). Plaintiff alleges (1) it conferred a benefit on Crown Castle; (2) Crown Castle had knowledge of the benefit; (3) Crown Castle retained the benefit by continuing its use of the Property; and (4) allowing Crown Castle to retain the benefit without paying fair value for its use would be inequitable. (*See id.*). These allegations directly track the elements of an unjust enrichment claim. *See, e.g.*, *Virgilio v. Ryland Grp., Inc.*, 680 F.3d 1329, 1337 (11th Cir. 2012) (unjust enrichment claim under Florida law requires that a plaintiff allege: "(1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof." (citations omitted)).[4]

[4] *See also, e.g.*, *Bule v. Garda CL Se., Inc.*, No. 14-21898-Civ, 2014 WL 3501546, at *3 (S.D. Fla. July 14, 2014) ("Claims for breach of implied agreement, *quantum meruit*, and unjust enrichment are all synonymous: they are all claims in equity designed to provide a remedy where one party was unjustly enriched." (citation omitted)); *Atlantis Marine Towing Salvage & Servs., Inc. v. Sim*, No. 13-21005-Civ, 2014 WL 1379044, at *5 (S.D. Fla. Apr. 8, 2014) (analyzing quantum meruit and unjust enrichment claims together (citations omitted)); *Com. P'ship 8098 Ltd. P'ship v. Equity Contracting Co.*, 695 So. 2d 383, 386 (Fla. 4th DCA 1997) ("Florida courts have synonymously used . . . [the] terms — . . . 'unjust enrichment[]'. . . and 'quantum meruit.'" (alterations added; footnote call number omitted)).

Crown Castle does not challenge the substance of Plaintiff's factual allegations concerning its unjust enrichment claim, despite being offered an opportunity to do so in its Reply.[5] (*See* Reply 7). Plaintiff's unjust enrichment claim against Crown Castle may proceed.

D. Count IV: Trespass

In Count IV, Plaintiff brings a trespass claim under Florida law. (*See* Compl. ¶¶ 40–46). "Civil trespass to real property occurs when there is an injury to or use of the land of another by one having no right or authority." *Gunning v. Equestleader.com, Inc.*, 253 So. 3d 646, 648 (Fla. 2d DCA 2017) (citation omitted). "To sue and recover for a trespass, the plaintiff must have been the owner or rightfully in possession of the land at the time of the trespass." *Id.* (citation omitted). "The injury caused by trespass to real property is the loss of the use and enjoyment of the land or injury to the land." *Daniel v. Morris*, 181 So. 3d 1195, 1199 (Fla. 5th DCA 2015) (citations omitted); *see also Parker v. Town of Palm Beach*, No. 9:17-cv-80176, 2017 WL 2629490, at *3 (S.D. Fla. June 19, 2017) (injury caused by trespass can also be shown by alleging "the manner how and the manner in which [the] property was damaged and that [the] property value diminished." (alterations added)).

According to Crown Castle, "Plaintiff does not plead any factual allegations of any injury to the Property, any true and cognizable inability to use and enjoy the Property, and any difference in the Property's value before and after the alleged trespass." (Mot. 11). Crown Castle insists the trespass claim must be dismissed. (*See id.* 10–12; Reply 7–10). The Court disagrees.

[5] In its Motion, Crown Castle argues "the very existence of th[e] written [Easement] [A]greement separately precludes" Plaintiff's claim. (Mot. 10 (alterations added)). This argument lacks merit at the motion-to-dismiss stage. *See Shetty v. Sharma*, No. 20-cv-23070, Order on Mot. to Dismiss [ECF No. 89], at *9–10 (S.D. Fla. Feb. 4, 2021) (rejecting this precise argument at the motion-to-dismiss phase); *Frayman v. Douglas Elliman Realty, LLC*, No. 20-23393-Civ, 2021 WL 299951, at *16 (S.D. Fla. Jan. 25, 2021) (same; collecting cases).

The Complaint states (1) Crown Castle encroached on the Property by intentionally installing cables and a handhole; (2) Plaintiff owns the Property; (3) Plaintiff did not consent to Crown Castle's use of the Property; (4) Crown Castle wrongfully interfered with and disturbed Plaintiff's rightful possession, use, and enjoyment of the Property; (5) the value of the Property diminished in value as a result of Crown Castle's installment of a fiber-optic cable network; and (6) the value of the Property diminished due to delays in developing the Property. (*See* Compl. ¶¶ 17–18, 19–20, 41–46). With these allegations, the Complaint provides enough facts to set out a plausible trespass claim against Crown Castle.[6] Count IV may proceed.

E. Count V: Injunctive Relief

In Count V, Plaintiff asserts a claim for injunctive relief against Defendants. (*See* Compl. ¶¶ 48–52). "The Eleventh Circuit has made clear that any motion or suit for either a preliminary or permanent injunction must be based upon a cause of action. There is no such thing as a suit for a traditional injunction in the abstract. For a traditional injunction to be even theoretically available, a plaintiff must be able to articulate a basis for relief that would withstand scrutiny under Fed. R. Civ. P. 12(b)(6) (failure to state a claim)." *Organo Gold Int'l, Inc. v. Aussie Rules Marine Servs., Ltd.*, 416 F. Supp. 3d 1369, 1379 (S.D. Fla. 2019) (alteration adopted; quotation marks omitted; quoting *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1127 (11th Cir. 2005)). "An injunction is a remedy potentially available only after a plaintiff can make a showing that some independent legal right is being infringed — if the plaintiff's rights have not been violated,

[6] Crown Castle insists "Plaintiff's [] speculative allegation that the Property has diminished in value . . . [is] a plainly conclusory allegation made with no attempt to show any difference in the Property's value before and after the alleged trespass." (Mot. 11 (alterations added)). The Court is unconvinced Plaintiff must allege an exact monetary figure in order to sufficiently plead the Property's value diminished. Crown Castle further contends the "attached diagram" "*appears* to contradict Plaintiff's claim that the underground cables and the handhole were installed on the Property." (*Id.* 12 (emphasis added)). The Court declines to analyze a diagram to determine if Plaintiff's allegations state a trespass claim, especially considering Crown Castle's position the diagram only "appears" to contradict the claim.

he is not entitled to any relief, injunctive or otherwise." *Alabama*, 424 F.3d at 1127 (quotation marks and citation omitted).

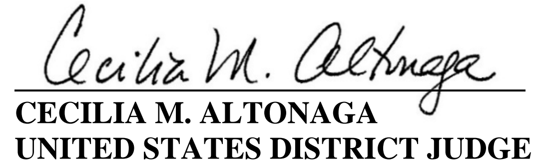
Defendants contend "the claim for injunctive relief should also be dismissed as there [are] [] no legal claims for which an injunction might be pursued." (Reply 2 (alteration added); *see also* Mot. 2 n.2, 5, 7). The Court agrees in part. "[A]n injunction is not a cause of action but a remedy." *Pierson v. Orlando Reg'l Healthcare Sys., Inc.*, 619 F. Supp. 2d 1260, 1288 (M.D. Fla. 2009) (alteration added; collecting cases). "To the extent that [Plaintiff] seeks injunctive relief in connection with the alleged breach[] of the [Easement Agreement], that request for relief is already set forth in the [C]omplaint's prayer for relief." *Genterra Grp., LLC v. Sanitas USA, Inc.*, No. 20-22402-Civ, 2021 WL 148887, at *7 (S.D. Fla. Jan. 15, 2021) (alterations added); (*see also* Compl. 12). Count V is dismissed.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendants, Crown Castle South, LLC and AT&T Corp's Motion to Dismiss Complaint **[ECF No. 14]** is **GRANTED in part** and **DENIED in part** as follows:

1. The Motion is **GRANTED** as to Counts I and V in their entirety, as to both Defendants; and **GRANTED** as to Counts III and IV in part, as to Defendant, AT&T Corp.
2. The Motion is **DENIED** as to Count II, as to both Defendants; and **DENIED** as to Counts III and IV, as to Defendant, Crown Castle South, LLC.
3. Defendants have until and including **March 31, 2021** to file separate answers to Plaintiff's Complaint [ECF No. 1].

DONE AND ORDERED in Miami, Florida, this 19th day of March, 2021.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

RJ'S INTERNATIONAL TRADING, LLC, Plaintiff, v. CROWN CASTLE SOUTH LLC, Defendant.	))))))))))	Case No. 20-cv-25162-ALTONAGA/Torres

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant, Crown Castle South LLC ("Crown Castle South"), by and through its undersigned counsel, and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, moves for summary judgment against Plaintiff, RJ's International Trading, LLC ("Plaintiff"), on its remaining claims for breach of Easement Agreement, Unjust Enrichment, and Trespass, and on its claim for punitive damages, and in support thereof states:

I. INTRODUCTION

Plaintiff seeks undue compensation from Crown Castle South for installation of underground utilities on Plaintiff's property by a third party. Speculatively and opportunistically, Plaintiff brings meritless claims alleging that the installation prevents the construction of a not-yet-even-conceived building. As a basis for this contrived complaint, Plaintiff is attempting to sue under an easement agreement that neither it nor Crown Castle South are parties to and for actions that Plaintiff knows full well were taken by a third party. As Plaintiff has been unable to produce any evidence of Crown Castle South's involvement in the underlying facts of its claims (outside

of subleasing an adjoining property to Plaintiff's own property), summary judgment should be entered for Crown Castle South for all remaining claims.

II. STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 56.1, Crown Castle submits the following Statement of Material Facts, which has also been submitted as a separate document:

1. On October 21, 1992, Hidden Valley Corp. ("Hidden Valley") entered into an Option and Lease Agreement (the "Lease") with Bellsouth Mobility, Inc. ("Bellsouth") for certain real property labeled the "storage lot in the rear of 17000 South Dixie Hwy, Miami, Dade County, State of Florida" (the "Leased Property"). Ex. "1," Stoner Aff., ¶ 10; Ex. "1-1," Lease.[1]

2. The Lease granted a "nonexclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits, and pipes *over, under or along* a twenty foot […] wide right of way extending from the nearest public right of way, namely S.W. 96 Court or S.W. 170 Street, to the leased parcel." Ex. "1-1," Lease, p. 4032 (emphasis added).

3. On January 26, 1993, Hidden Valley entered into a Grant of Non-Exclusive Easement (the "Easement Agreement") with Bellsouth, its successors and assigns. Ex. "1," Stoner Aff, ¶ 11; Ex. "1-2," Easement Agreement.

4. The Easement Agreement granted and conveyed a "non-exclusive easement over, across and upon the Easement Property for the purpose of: 1.1 Constructing, maintaining, repairing and replacing paved areas for vehicular and pedestrian ingress to and egress from the Benefitted

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[1] Pursuant to Rule 201 of the Federal Rules of Evidence, Crown Castle South requests that the Court take judicial notice of the adjudicative facts and/or public records: Lease, Easement Agreement, Sublease and Warranty Deed as identified in the Complaint and defined herein.

Property; and 1.2 Constructing, maintaining, repairing and replacing utility facilities." Ex. "1-2," Easement Agreement, pp. 5030-31.

5. The Easement Agreement, in contemplating remedies for breach of the agreement, states that "[t]he *parties* hereto shall each have the right to enforce the terms of this Easement and the rights and obligations created herein by all remedies provided under the laws of the State of Florida, including, without limitation, the right to sue for damages for breach or for injunction or specific performance." *Id*. at p. 5032 (emphasis added).

6. On October 29, 1993, Hidden Valley sold the property with the current address of 17000 South Dixie Highway, Miami, Florida 33157 (the "Property") to R.J. International Trading, Inc. Ex. "2," Bachan Dep., 29:24-30:22; Ex. "3," Warranty Deed.

7. The Property contains the land tract that is subject to the Easement Agreement. Ex. "2," Bachan Dep., 39:18-40:8.

8. The Warranty Deed executed between Hidden Valley and R.J. International Trading, Inc. conveyed the Property "[subject to] [c]onditions, covenants, restrictions, limitations, and easements which appear of record." Ex. "3," Warranty Deed.

9. Hidden Valley, however, did not execute a separate agreement or document transferring its rights under the Easement Agreement to R.J. International Trading, Inc. Ex. "2," Bachan Dep., 40:15-44:25.[2]

10. R.J. International Trading, Inc. later conveyed the Property to Plaintiff. *Id*., Bachan Dep., 28:3-20.

[2] In its Complaint, Plaintiff acknowledges that the two parties to the Easement Agreement are Hidden Valley and Bellsouth Mobility, Inc. (ECF No. 1, ¶ 11).

11. On June 2, 1999, Bellsouth entered into a Site Designation Supplement and Memorandum of Sublease (the "Sublease") with Crown Castle South which granted Crown Castle South nonexclusive rights of ingress and egress, including access to and use of any and all easements. Ex. "1," Stoner Aff., ¶ 16, Ex. "1-3," Sublease.

12. The Sublease allows Crown Castle South to use a portion of the Leased Property to install and maintain a cell tower. *Id.*

13. On July 22, 2019, Crown Castle South entered into a license agreement (the "License Agreement") with Crown Castle Fiber LLC ("CC Fiber") that permitted CC Fiber "to install, operate and maintain the Equipment at the Site within the Licensed Space." Ex. "1," Stoner Aff., ¶ 17, Ex. "1-4," License Agreement.

14. Crown Castle South and CC Fiber are separate entities conducting different business and acting independently of each other, and neither one is affiliated with Bellsouth. Ex. "1," Stoner Aff., ¶¶ 13-15.

15. CC Fiber installed the utilities (fiber optic cables and handhole) that are the subject matter of this lawsuit. *Id.* at ¶ 18; Ex. "2," Bachan Dep., 23:3-8.

16. The utilities installed by CC Fiber are not connected to the cell tower on the Leased Property, and they are not used in any manner in the operation of the cell tower. Ex. "1," Stoner Aff., ¶ 21.

17. On March 5, 2021—three and a half months after this case was filed—CC Fiber attempted to remove a portion of the fiber optic cables that were allegedly installed on the Property.[3] Plaintiff did not allow CC Fiber to proceed with the removal, stating through counsel

[3] Although immaterial to summary judgment, it is worth noting that Plaintiff's expert surveyor has recently confirmed that another portion of the fiber optic cables and the handhole were installed in a public right-of-way. (ECF No. 57.)

that Plaintiff would not allow removal "without clear direction from the Court or a legally binding and enforceable settlement delineating the rights of the parties." *Id*. at ¶¶ 22-23; Ex. "1-5," March 2021 Correspondence.

III. LEGAL STANDARD OF REVIEW

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial burden of stating the basis for its motion and identifying those portions of the record demonstrating the absence of genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). That burden shifts if the moving party shows the court that there is "an absence of evidence to support the nonmoving party's case." *Id.* at 325. Once the burden has shifted, the non-moving party must designate specific facts showing that there is a genuine issue of material fact. *Id.* at 324. Genuine issues of material fact only exist if a reasonable jury considering the evidence presented could find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Material facts are those that will affect the outcome of the trial under governing law. *Id.* at 248. A party opposing a properly supported motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but ... must set forth specific facts showing that there is a genuine issue for trial." *Id.* at 248 (quoting *First Nat'l Bank of AZ v. Cities Serv. Co.*, 391 U.S. 253 (1968)). To be genuine, there must be more than a "metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Courts must consider all the evidence in the light most favorable to the non-moving party in determining whether a material fact exists. *Anderson*, 477 U.S. at 261 n.2. All doubt as to the

existence of a genuine issue of material fact must be resolved against the moving party. *Hayden v. First Natl. Bank of Mt. Pleasant*, 595 F.2d 994, 996-97 (5th Cir. 1979). If the determination of the case rests on which competing version of the facts or events is true, the case should be submitted to the trier of fact. *Id.* However, the facts must only be viewed in a light most favorable to the non-moving party if there is a genuine dispute as to those facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007). "When the opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Id.*

IV. MEMORANDUM OF LAW

A. Plaintiff's Breach of Easement Agreement Claim Fails Because Neither Plaintiff Nor Crown Castle South Are Parties to the Easement Agreement.

Contrary to basic legal principles, Plaintiff asserts a breach of contract claim and seeks contractual damages under the Easement Agreement even though neither Plaintiff nor Crown Castle South are parties to this agreement. As Plaintiff knows well, nothing in the record contradicts that Hidden Valley and Bellsouth—the original grantor and grantee—are still the current parties to the Easement Agreement. Nothing in the record suggests that Hidden Valley relinquished or transferred its rights under the Easement Agreement when it sold the Property to Plaintiff in October 1993. And nothing in the record suggests that Bellsouth relinquished or transferred its rights under the Easement Agreement to Crown Castle South. Thus, the record is utterly devoid of any evidence establishing a contractual relationship and privity of contract between Plaintiff and Crown Castle South with regard to the Easement Agreement.

A breach of easement agreement claim is the same as a breach of contract claim. In Florida, the elements of such claim are: (1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach. *Vega v. T-Mobile, USA, Inc.*, 564 F.3d 1256, 1272

(11th Cir. 2009). A non-party to a contract may not invoke the contract. *Galstadi v. Sunvest Communities USA, LLC*, 637 F. Supp. 2d 1045, 1055 (S.D. Fla. 2009). Similarly, a contract does not bind one who is not a party to the contract, or who has not in some manner agreed to accept its terms. *Whetstone Candy Co., Inc. v. Kraft Foods, Inc.* 351 F.3d 1067, 1073 (11th Cir. 2003).

Here, the express language of the Easement Agreement leaves no doubt that the contracting parties are Hidden Valley as grantor and Bellsouth as grantee—these two parties executed the Easement Agreement. The Easement Agreement is not between Plaintiff and Crown Castle South, and Crown Castle South is not affiliated with Bellsouth. As there is no evidence in the record of Plaintiff and Crown Castle South subsequently becoming parties to the Easement Agreement, no easement agreement exists between them. Logically, absent an existing contract, Plaintiff's breach of easement agreement claim against Crown Castle South fails. This Court should therefore grant summary judgment for Crown Castle South as a matter of law.

B. Plaintiff's Unjust Enrichment and Trespass Claims Fail Because Crown Castle South Did Not Install the Subject Fiber Cables or Handhole.

As Plaintiff knew back in February 2020 (long before this lawsuit was filed), Crown Castle South did not install the fiber optic cables and handhole implicated in this case—even Plaintiff's corporate representative admitted that the installation was performed by or on behalf of CC Fiber. Yet, Plaintiff—in what can only be described as an opportunistic move—decided to sue Crown Castle South and AT&T Corp. (whom Plaintiff originally alleged was Bellsouth's successor), based solely on the parties' Sublease which allows Crown Castle South to use the easement tract.[4]

[4] Plaintiff apparently perceives the Sublease as a convenient platform to sue two "huge corporations" and claim punitive damages against them without any evidence whatsoever that either one was involved in or was benefiting from the installation. Ex. "2," Bachan Dep., 220:4-7.

But the evidence in the record establishes that Crown Castle South was not responsible for the installation and does not control the installed utilities.

A claim for unjust enrichment has three elements: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendant to retain it without paying the value thereof. *Virgilio v. Ryland Group, Inc*., 680 F.3d 1329, 1337 (11th Cir. 2012). Under Florida law, civil trespass to real property occurs when there is an injury to or use of the land of another by one having no right or authority. *Gunning v. Equestleader.com, Inc.*, 253 So. 3d 646, 648 (Fla. 2d DCA 2017).

Here, Plaintiff's unjust enrichment and trespass claims both stem from allegations that Crown Castle South improperly installed fiber optic cables and a handhole on the Property. (ECF No. 21, pp. 10, 12). As Plaintiff knew from the beginning, and was further repeatedly advised during discovery, Crown Castle South did not install the fiber optic cables and the handhole and has no ownership or control over those utilities. The installation was completed on behalf of CC Fiber, a wholly separate entity. Additionally, discovery further revealed that the installed utilities were not (and are not) connected to or used to operate the cell tower on the Leased Property.

Plainly, the evidence in the record establishes that Crown Castle South did not install the utilities, did not receive any benefit from the installation, and did not use or harm the Property in any way. On these facts, Plaintiff's unjust enrichment and trespass claims fail. This Court should therefore grant summary judgment for Crown Castle South as a matter of law.

C. Plaintiff Has Produced No Evidence to Suggest that Punitive Damages are Appropriate.

Plaintiff pleads punitive damages in the Complaint, but it has produced no evidence to support such a plea. In fact, the evidence in the record demonstrates that Plaintiff's claim for

punitive damages—originally asserted against "two huge corporations" with no involvement in the alleged installation of utilities—is brought in bad faith, seemingly as leverage to improperly attempt to extract an undeserved settlement.

> Punitive or exemplary damages are allowable, however, solely as punishment or 'smart money' to be inflicted for the malicious or wanton state of mind with which the defendant violated plaintiff's legal right, and can only be imposed in cases where either by direct or circumstantial evidence some reasonable basis for an inference of wantonness, actual malice, deliberation, gross negligence, or utter disregard of law on defendant's part may be legitimately drawn by the jury trying the case.
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> *Winn & Lovett Grocery, Co. v. Archer*, 171 So. 214, 222-23 (Fla. 1936).

Under Florida law, a mistake or even gross negligence alone does not meet the high threshold necessary for punitive damages to be awarded. *See Horn v. Corkland Corp.*, 518 So. 2d 418, 420 (Fla. 2d DCA 1988) ("Upon review of the facts in this case, we find that evidence clearly supports the trial judge's finding that the trespass was committed by mistake and not by willful and wanton misconduct on the part of the Corkland or Scarborough. Under such circumstances, this court has held that punitive damages are not appropriate"); *see also U.S. Concrete Pipe Co. v. Bould*, 437 So. 2d 1061, 1064 (Fla. 1983) ("Gross negligence is not enough to give rise to punitive damages – there must be a willful and wanton disregard for the rights of others"); *Fla. Power Corp. v. Scudder*, 350 So. 2d 106, 110 (Fla. 2d DCA 1977).

Even if Plaintiff's claims withstand summary judgment, nothing in the record demonstrates that Crown Castle South's conduct meets the high standard of willful and wanton disregard to warrant punitive damages. In fact, the record evidence demonstrates the contrary—Crown Castle South's efforts to resolve the issues outside of litigation, efforts to ensure Plaintiff was aware that it was CC Fiber who took the actions complained of (something Plaintiff admitted it knew), and CC Fiber attempting to take action to remove and relocate the fiber optic cables that allegedly caused the trespass.

Additionally, when the present dispute arose, despite the parties' differing positions, CC Fiber made legitimate attempts to remove the fiber cables allegedly installed on Plaintiff's Property. At that point, Plaintiff obstructed CC Fiber's attempt to remove the cables and communicated through counsel that it would continue to do so "without clear direction from the Court or a legally binding and enforceable settlement delineating the rights of the parties."

V. CONCLUSION

As outlined herein, it is undisputed that Crown Castle South stands in no contractual relationship with Plaintiff with regard to the Easement and, more importantly, that Crown Castle South has not installed the fiber optic cables and handhole alleged as the factual bases for Plaintiff's claims. As Plaintiff has known from the time of the alleged installation, it was CC Fiber that is responsible for the installed utilities. But Plaintiff has relentlessly pursued Crown Castle South, apparently hoping for a "legally binding and enforceable settlement" with a "huge" corporation. Regardless of Plaintiff's ill-conceived and improper motives, its legal claims are invalid as a matter of law. This Court is justified in granting summary judgment in favor of Crown Castle South on all claims, and such a ruling is warranted.

REQUEST FOR HEARING

Pursuant to Local Rule 7.1(b)(2), Crown Castle South requests a hearing on its Motion for Summary Judgment. Crown Castle South suggests that oral argument would assist the Court to fully address the significance of the evidentiary record to gauge whether there could be any credible argument of disputed material facts based on the pleaded claims and defenses in this case. The Court would also benefit from detailed argument of any cited case law and its application in this case. Crown Castle South estimates that the time required for such hearing shall be no more

than one (1) hour, taking into consideration time for arguments to be presented by both sides, and for the questions and inquiry by the Court on the issues presented.

WHEREFORE, Defendant Crown Castle South LLC, respectfully requests that the Court enter an Order granting Crown Castle South's Motion for Summary Judgment and award any and all other relief this Court deems just and proper.

Respectfully submitted on September 24, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2021, I served a copy of the foregoing via email to all parties/attorneys on the list to receive notice in this case and the affected non-party, including but not limited to the following:

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