

FILED

3-16-2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

Clerk, U.S. District Court  
District of Montana  
Helena Division

MICHAEL F. SHORT, as TRUSTEE  
of the MICHAEL F. SHORT LIVING  
TRUST, and SHORT FR, LTD., a  
Texas limited partnership,

CV 19-31-BLG-TJC

**ORDER**

Plaintiffs,

vs.

PARK ELECTRIC COOPERATIVE  
INC., and ARTHUN RANCH INC.,

Defendants.

Plaintiffs Michael F. Short, as Trustee of the Michael F. Short Living Trust, and Short FR, LTD., a Texas limited partnership, (collectively, “Short”), filed this action against Defendants Park Electric Cooperative, Inc. (“PEC”), and Arthun Ranch, Inc. (“Arthun”), alleging various causes of action related to the provision of electrical service on Short’s property and easements for electrical distribution lines. (*See generally* Doc. 1.)

Short’s Complaint asserts claims for declaratory judgment on easement rights (Counts 1 and 2); obstruction of, interference with, and breach of easement (Count 3); injunctive relief (Count 4); unjust enrichment as to PEC (Count 5); unjust enrichment as to Arthun Ranch (Count 6); and violation of the Montana Consumer Protection Act as to PEC (Count 7). (*Id.* at 10-19.)

Pending before the Court are Arthun's Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) and (6) (Doc. 6), and PEC's Motion for Judgment on the Pleadings under Fed. R. Civ. P. 12(c) (Doc. 11). The motions are fully briefed and for the following reasons, the Court orders (1) that Arthun's motion is **GRANTED** in part and **DENIED** in part; and (2) PEC's motion is **GRANTED** in part and **DENIED** in part.

### **I. Factual Background**

The following pertinent facts are taken from Short's Complaint, which are accepted as true for purposes of Defendants' motions.<sup>1</sup>

Short owns two sections of real estate which are situated immediately north of a section of land owned by the State of Montana ("state section"). (Doc. 1 at ¶¶ 7-8.) Arthun Ranch owns two sections of real estate stacked due south of the state section. (*Id.* at ¶ 9.) Short is building a residence on their property and wish to establish electrical service. (*Id.* at ¶ 10.)

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<sup>1</sup> Like a motion under Fed. R. Civ. P. 12(b)(6), when considering a motion for judgment on the pleadings under Rule 12(c), the Court accepts all factual allegations in the complaint as true and construes them in the non-movants favor. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). The same standard is applied to a motion to dismiss for lack of standing. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1121 (9th Cir. 2010).

Short has an easement over the state section which allows for the placement of electrical distribution lines from the state section/Arthun border to Short's property. (*Id.* at ¶ 14.) The Arthun property is also encumbered by several easements in favor of Short's property and PEC, described below. (*Id.* at ¶15.)

In 1956, Arthun's predecessor in interest granted an easement across the Arthun property to PEC ("1956 Easement"). (*Id.* at ¶ 16.) The 1956 Easement gave PEC "the right to enter upon [lands including the Arthun Property] . . . and to place, construct, operate, repair, maintain, relocate and replace thereon and in or upon all streets, roads or highways abutting said lands an electric transmission or distribution line or system . . . ." (*Id.* at ¶ 18.)

In 1989, Arthun also granted an easement over the north end of the Arthun property to Short's predecessor "for purposes ordinarily and reasonably associated with the ownership and use of the servient lands including . . . the installation of utility lines and cables . . . ." (*Id.* at ¶¶ 20, 21.) The easement runs north from the termination of the "Anderson Road" for a distance of approximately 175 feet to connect with the Short's easement on the state section. (*Id.* at ¶ 23.)

Then, in 2008, Arthun granted an additional easement across the Arthun property to Short's predecessor. (*Id.* at ¶ 24.) The 2008 Easement was "granted for purposes ordinarily and reasonably associated with the ownership and use of the dominant lands including . . . the existence of a residence which may be built

upon the dominant lands . . . [and] the installation of utility lines and cables . . . .”

(*Id.* at ¶ 26.) The boundaries of the 2008 Easement are identical to the boundaries of the 1989 Easement. (*Id.* at ¶ 27.)

There is an existing electrical distribution line on Arthun’s property that runs north along PEC’s easement for approximately three miles, which provides electrical service to the Arthun Ranch. (*Id.* at ¶ 11.) The line terminates at the Arthun Ranch buildings, approximately 700 feet south of the state section. (*Id.* at ¶¶ 12.) The distance between the termination of the existing distribution line and Short’s easement at the end of Anderson Road is unquantified, but relatively close. (*See* Doc. 1-1.)

Seeking to establish electrical service to their property, Short informed Arthun of their intention to connect the existing distribution line to the state section easement. (*Id.* at ¶ 28.) Arthun declined access to the existing line. (*Id.* at ¶ 29.) Thereafter, Short submitted a written service request to PEC in December 2017 to establish electrical service from the existing distribution line. (*Id.* at ¶ 30.) But PEC represented to Short that PEC does not have an easement to cross Arthun’s property for that purpose, and advised Short that the only feasible option was to establish another underground line along the Anderson Road to connect with Short’s 1989 and 2008 easements. (*Id.* at ¶¶ 32, 78, 79.) The proposed line would roughly parallel the Arthun’s existing distribution line. (*Id.* at ¶ 33.)

PEC estimated the cost of the new distribution line would be \$83,000, while connecting from Arthun's existing line to the same end point would only cost \$3,750. (*Id.* at ¶ 38; *see* Doc. 1-1.) Short also alleges they have expended approximately \$100,000 to supply temporary power to their property for the past three years pending the resolution of its request. (*Id.* at ¶ 39.)

When electrical access via the existing distribution line was ultimately denied, this action ensued.

## II. Legal Standards

### A. Fed. R. Civ. P. 12(b)(6) and (c)

A Rule 12(c) motion for judgment on the pleadings is “functionally identical” to a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted. *Cafasso, United States ex rel. v. General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011). Thus, the same legal standard “applies to motions brought under either rule.” *Id.*

“Dismissal under Rule 12(b)(6) is proper only when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory.” *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)). The Court's standard of review under Rule 12(b)(6) is informed by Rule 8(a)(2), which requires that a pleading contain “a short and plain statement of the

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