

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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EVERETT E. CHAMBERS,  
JOANNE CHAMBERS,  
RAY VINNEY and all others  
similarly situated,

Plaintiffs,

v.

SPRINT CORPORATION and  
UNION PACIFIC RAILROAD COMPANY,

Defendants.

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OPINION AND  
ORDER

00-C-0349

This is a civil action for monetary relief in which plaintiffs Everett E. Chambers, Joanne Chambers, Ray Vinney and all others similarly situated, bring state law claims of trespass and unjust enrichment. Plaintiffs allege that without their knowledge or permission defendants Sprint Corporation and Union Pacific Railroad Company installed fiber optic cables beneath the railroad right-of-way running across plaintiffs' properties and that in doing so, defendants exceeded the scope of defendant Union Pacific's property rights in the right-of-way, which are limited to the sole purpose of operating a railroad.

After plaintiffs filed suit in the Circuit Court for Monroe County, Wisconsin, defendants removed this case to federal court pursuant to 28 U.S.C. § 1441. It is before the court now on plaintiffs' motion to remand. Plaintiffs contend that there is no substantial question of federal law because defendant Union Pacific's property rights are determined solely by state statute. Defendants contend that there is such a question, making removal proper under § 1441 and giving the court subject matter jurisdiction pursuant to 28 U.S.C. § 1331. I will deny plaintiffs' motion to remand because determining whether defendants violated plaintiffs' property rights will require an examination of the scope of the property rights granted by Congress, which is a substantial question of federal law sufficient to establish jurisdiction under § 1331.

From the exhibits and pleadings filed by the parties and for the purposes of this motion only, I find the following facts are undisputed.

## FACTS

Plaintiffs are land owners in Monroe County in the state of Wisconsin who own land adjacent to a portion of defendant Union Pacific's right-of-way. Defendant Union Pacific is a Utah corporation. Defendant Sprint is a Kansas corporation doing business in the state of Wisconsin through Sprint Communication Company Ltd. Partnership, a wholly-owned long distance fiber optic division. Defendant Sprint is in the business of installing and maintaining

fiber optic telecommunications systems throughout the United States.

In acts of Congress dated June 3, 1856, and May 5, 1864, the federal government conveyed certain lands to the state of Wisconsin “for the purpose of aiding in the construction of a railroad . . . .” Act of Congress June 3, 1856, Ch. 43, 11 Stat. 20 § 1; Act of Congress May 5, 1864, Ch. 80, 13 Stat. 66 § 2 and § 3. Pursuant to acts of the state legislature on April 1, 1863, and March 29, 1865, the state of Wisconsin granted the same lands to defendant Union Pacific's predecessor, Tomah & Lake St. Croix Railroad Company. In the land grant of 1863, the state legislature stated:

For the purpose of aiding in the construction of said railroad, there is hereby granted to the “Tomah and Lake St. Croix railroad company,” herein created, all the interest and estate, present and prospective, of this state in and to so much of the lands granted by the government of the United States to the State of Wisconsin . . . by virtue of an act of congress entitled “an act granting a portion of the public lands to the state of Wisconsin, to aid in the construction of railroads,” approved June 3d, 1856 . . . together with all and singular the rights, privileges and immunities conferred or intended to be conferred by said act of congress . . . .

Private and Local Laws of Wisconsin, April 1, 1863, Ch. 243. In the land grant of 1865, the state legislature affirmed the earlier grant and implemented the 1864 act of Congress:

That there be and is hereby granted to and upon the Tomah and Lake St. Croix railroad company, all and singular the rights, privileges and interest granted and conferred and bestowed to and upon the state of Wisconsin, by an act of congress approved May 5th, 1864, any and all the lands in said act of congress mentioned, granted and conferred to the state of Wisconsin, for the purpose of aiding in the construction of a railroad . . . .

General Laws of Wisconsin, March 29, 1865, Ch. 232.

Without notifying plaintiffs, defendant Union Pacific reached an agreement with defendant Sprint, allowing defendant Sprint to install a fiber optic cable beneath defendant Union Pacific's right-of-way.

### OPINION

Federal jurisdiction exists if plaintiffs' well-pleaded complaint raises a substantial federal issue. See Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). Federal question jurisdiction exists only if the “well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.” Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983). The federal question must be substantial: “[O]riginal federal jurisdiction is unavailable unless it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims, or that one of the other claims is 'really' one of the federal law.” Id. at 13.

Showing that a right arose originally by federal statute is not enough to support federal question jurisdiction by itself. See Shulthis v. McDougal, 225 U.S. 561, 569 (1912). A suit does not arise under federal law “unless it really and substantially involves a dispute or

controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends.” Id. In Shulthis, the Court held that a substantial dispute involving federal law is especially important in cases involving the rights to land acquired under federal law. “If it were not, every suit to establish title to land in the central and western States would so arise, as all titles in those States are traceable back to those laws.” Id. at 569-570 (citations omitted).

This court has subject matter jurisdiction if the right to relief under plaintiffs' state law claims of trespass and unjust enrichment depends on the construction of federal law. See Smith v. Kansas City Title & Trust Co., 255 U.S. 180 (1921); see also Franchise Tax Board, 463 U.S. at 9 (“We have often held that a case 'arose under' federal law where the vindication of a right under state law necessarily turned on some construction of federal law.”) In order to prevail on their state law claims, plaintiffs must demonstrate that defendants did not have the legal right to bury a fiber optic cable in the right-of-way on their property without their permission. Resolution of plaintiffs' claims will depend on the scope of defendant Union Pacific's property rights and more precisely, whether those property rights gave defendant Union Pacific the authority to allow defendant Sprint to bury a fiber optic cable in the right-of-way.

Plaintiffs contend that there is no substantial issue of federal law because defendant Union Pacific's predecessor received the land from the Wisconsin legislature rather than from

the acts of Congress. Plaintiffs are correct when they argue that the mere fact that defendant Union Pacific's property rights arose under the 1856 and 1864 acts of Congress is insufficient to establish subject matter jurisdiction. However, there is a substantial issue of federal law because determining whether defendants violated plaintiffs' rights by exceeding the scope of defendant Union Pacific's property rights requires an interpretation of the original land grants from Congress to the state of Wisconsin.

Although defendant Union Pacific's predecessor received the land grant pursuant to Wisconsin statutes in 1863 and 1865, those statutes were based on and included references to the 1856 and 1864 acts of Congress. In 1863, the Wisconsin legislature referred to the 1856 act of Congress when it granted to defendant Union Pacific's predecessor “all the interest and estate, present and prospective . . . granted by the government of the United States to the state of Wisconsin . . . by virtue of act of Congress . . . approved June 3d, 1856.” Private and Local Laws of Wisconsin, April 1, 1863, Ch. 243. In 1865, the Wisconsin legislature implemented the 1864 act of Congress by granting defendant Union Pacific's predecessor, “all and singular the rights, privileges and interest granted and conferred and bestowed to and upon the state of Wisconsin . . . any and all the lands in said act of congress mentioned, granted and conferred to the state of Wisconsin.” General Laws of Wisconsin, March 29, 1865, Ch. 232.

Because the Wisconsin statutes granted defendant Union Pacific's predecessor property

rights by specific reference to the property rights in the acts of Congress, the determination of defendant Union Pacific's property right involves “a dispute or controversy respecting the validity, construction or effect of [federal] law.” Shulthis, 225 U.S. at 569; See Kansas Pacific Railroad Co. v. Atchison, Topeka & Santa Fe Railroad Co., 112 U.S. 414, 416 (1884) (holding that case arises under federal law whenever correct decision depends on construction of Constitution or law of United States). In order to determine defendant Union Pacific's property rights, the court must first determine the property rights granted to the state of Wisconsin pursuant to the acts of Congress. See Northern Pacific Railway Co. v. Townsend, 190 U.S. 267, 270 (1903) (federal question exists when case depends upon nature and effect of act of Congress). Only after determining the scope of those property rights can the court determine the scope of the property rights granted to defendant Union Pacific's predecessor and, in turn, to defendant Union Pacific. Plaintiffs argue that the federal acts are of little significance to their claims and that the parties do not dispute the nature of the property interest that Congress gave the state. Plaintiffs' assertions do not obviate the need to interpret those statutes. I conclude, therefore, that this case presents a substantial federal question.

Defendants' request to file a sur-reply will be denied because it responds to issues not determinative of plaintiffs' motion. Furthermore, because defendants' motion to file a sur-reply is denied, plaintiffs' motion to file a sur-rebuttal is moot.

ORDER

IT IS ORDERED that plaintiffs' motion to remand this action to Wisconsin state court in Monroe County is DENIED. FURTHER, IT IS ORDERED that defendants' motion for leave of court to file a sur-reply in opposition to plaintiffs' motion to remand is DENIED and plaintiffs' request to file a sur-rebuttal is DENIED as moot.

Entered this 10th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB  
District Judge