

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

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

Plaintiffs,

v.

MCI WORLDCOM and
UNION PACIFIC RAILROAD COMPANY,

Defendants.

ORDER

00-C-0348

This is a civil action for monetary relief in which plaintiffs Everett E. Chambers, Joanne Chambers, Cornelius Schleicher, 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 MCI WorldCom 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 in 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 MCI is a Georgia corporation engaged in the installation and maintenance of fiber optic telecommunications systems in locations 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.

In 1866, the state of Wisconsin authorized the Tomah and Lake St. Croix Railroad Company to change its name to the West Wisconsin Railway Company and the renamed railroad received all the “grants, rights, and privileges of every name and nature” of its predecessors upon the change in name. Private and Local Laws of Wisconsin, April 5, 1866, Ch. 285. The Chicago, Saint Paul, Minneapolis and Omaha Railway Company was the successor to the West Wisconsin Railway Company and Union Pacific is the successor to the Chicago, Saint Paul, Minneapolis and Omaha Railway Company.

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

OPINION

For the reasons stated in Chambers v. Sprint, Case number 00-C-0349, a copy of which is attached, plaintiffs' motion to remand will be denied and defendant Union Pacific's motion to file a sur-reply will be denied.

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 defendant Union Pacific's 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