

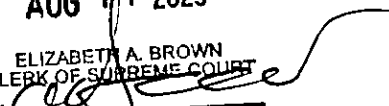
IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY O. GARMONG,  
Appellant,  
vs.  
SIERRA PACIFIC POWER COMPANY,  
INC., A NEVADA CORPORATION,  
Respondent.

No. 88865

FILED

AUG 14 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court final judgment in a civil action. Second Judicial District Court, Washoe County; Lynne K. Jones, Judge.

Respondent Sierra Pacific Power Company (SPPC) is a utility regulated by the Public Utilities Commission of Nevada (PUCN) that provides electric service in northern Nevada, including to four properties owned by appellant Gregory Garmong. Garmong sued SPPC after SPPC replaced analog meters with smart meters at Garmong's properties. Garmong alleged that although he objected to SPPC doing so, SPPC entered Garmong's properties and installed the smart meters when Garmong was not present.

In the operative complaint, Garmong asserted claims for: (1) breach of contract; (2) breach of implied warranty in contract; (3) breach of implied covenant of good faith and fair dealing; (4) breach of the Nevada deceptive trade practices act (NDTPA); (5) fraud; (6) statutory fraud under NRS 41.600; (7) intentional infliction of emotional distress; and (8) Nevada civil RICO. On motion by SPPC, the district court dismissed claims 2-3, 5,

and 7-8. The district court later granted summary judgment in SPPC's favor on Garmong's remaining claims. Garmong seeks reversal, arguing: (1) dismissal was erroneous because the complaint adequately pleaded facts to support the claims; and (2) summary judgment was erroneous because a valid unilateral contract was formed requiring SPPC to pay Garmong to leave the smart meters on Garmong's premises, and because SPPC is not immune from NDTA claims simply by being a regulated entity.

Presuming the complaint's factual allegations true and drawing all inferences in Garmong's favor, we perceive no error in the district court's decision dismissing Garmong's second, third, fifth, and eighth claims.<sup>1</sup> "An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo," and "is rigorously reviewed on appeal, with all factual allegations in the complaint presumed true and all inferences drawn in favor of the complainant." *Shea v. State*, 138 Nev. 346, 349, 510 P.3d 148, 151 (2022). Dismissal is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* (internal quotation marks omitted).

Garmong argues that the district court erred in dismissing the second claim because the complaint sufficiently alleged that SPPC breached the implied warranty to perform services in a workmanlike manner by entering one of Garmong's premises through a fence and padlocked gate to replace the meter. We disagree. SPPC owns the meters, and an electric tariff permits SPPC to replace its meters at any time and provides SPPC an irrevocable easement through the customer's premises to do so. Electric Tariff No. 1, Rule No. 16(B), (D). SPPC also has a "right of access to a

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<sup>1</sup>Garmong does not challenge the dismissal of the seventh claim.

Customer's premises for any purpose normally connected with the furnishing of electric energy and the exercise of the rights secured to it by law or these rules." *Id.* at 16(D). When read in conjunction with the PUCN orders authorizing the installation of smart meters, SPPC had the right to enter Garmong's premises to replace the existing meters with smart meters, and Garmong's obstruction of SPPC's access to one of its meters does not supply a basis for a claim against SPPC. The district court did not err in dismissing Garmong's second claim.

Nor did the district court err in dismissing Garmong's third claim. While all contracts impose an implied covenant of good faith and fair dealing, Garmong fails to credibly assert any justified expectations under the contracts, the purpose of which is to supply electric service in exchange for payment, or how such expectations were denied. *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991) (stating that damages may be awarded when a "party performs a contract in a manner that is unfaithful to the purpose of the contract and [the other party's] justified expectations are thus denied"). And we are unpersuaded by Garmong's assertion that SPPC breached the covenant by "forcing Garmong to accept a meter with unknown capabilities and dangers," when PUCN expressly authorized SPPC to replace its existing meters with smart meters. *Cf.* NRS 704.130(2) ("All regulations, practices and service prescribed by the Commission must be enforced and are prima facie reasonable . . . ."); *Virgin Valley Water Dist. v. Paradise Canyon, LLC*, 141 Nev., Adv. Op. 19, 567 P.3d 962, 970 (2025) ("As a general principle, there can be no breach of the implied promise or covenant of good faith and fair dealing where the contract expressly permits the actions being challenged,

and the defendant acts in accordance with the express terms of the contract.” (internal quotation marks omitted)).

The district court also did not err in dismissing Garmong’s fifth claim. A fraud claim must “satisfy the heightened pleading requirement of NRCP 9(b).” *In re Amerco Derivative Litig.*, 127 Nev. 196, 223, 252 P.3d 681, 700 (2011); NRCP 9(b) (allegations of fraud must be pleaded with particularity). Garmong’s operative complaint fails to satisfy this pleading requirement. Among other deficiencies, Garmong failed to adequately allege reliance on any alleged misrepresentation or concealment. *Nev. Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1417 (D. Nev. 1995) (“Actual reliance on an alleged misrepresentation, or a sufficient showing that the fraud victim would have acted differently if there had not been fraudulent concealment, is . . . a required element.”). And Garmong’s cursory, single-paragraph argument on appeal regarding the fraud claim, which still fails to allege reliance or reference any allegations in the operative complaint, does not persuade us that the district court erred in dismissing the claim.<sup>2</sup> *Cf. Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) (“We will not supply an argument on a party’s behalf but review only the issues the parties present.”).

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<sup>2</sup>We need not consider Garmong’s argument, first made on appeal, that the alleged fraud was that SPPC did not inform Garmong that he could enter an opt-out program. *Dermody v. City of Reno*, 113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997) (“Parties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below,” and “[a]rguments raised for the first time on appeal need not be considered by this court.” (internal quotation marks omitted)). Regardless, Garmong again fails to allege the requisite intent, reliance, or damages for this argument.

Finally, Garmong argues that the district court erred in rejecting the allegations in support of the RICO claim—that SPPC engaged in extortion by threatening to terminate service unless Garmong accepted a smart meter. But Garmong fails to meaningfully argue how this constitutes extortion, particularly since the tariffs authorize SPPC to terminate electric service for several reasons, including “[v]iolation of any other rules of the Utility on file with and approved by the Commission.” Electric Tariff No. 1, Rule 6(B)(2)(c). The district court did not err in dismissing this claim. *See Allum v. Valley Bank of Nev.*, 109 Nev. 280, 283, 849 P.2d 297, 299 (1993) (“It is well-settled that to have standing as a RICO plaintiff, one’s injury must flow from the violation of a predicate RICO act.”).

We also affirm the district court’s grant of summary judgment to SPPC on Garmong’s remaining claims. “We review a district court’s decision to grant summary judgment *de novo*.” *Golden Gate/S.E.T. Retail of Nev., LLC v. Modern Welding Co. of Cal., Inc.*, 141 Nev., Adv. Op. 12, 565 P.3d 1, 4 (2025). “All evidence must be viewed in a light most favorable to the nonmoving party,” but the “nonmoving party must present specific facts demonstrating a genuine factual issue” to survive a motion for summary judgment. *Id.* (internal quotation marks omitted).

The breach-of-contract claim is based on letters Garmong sent to SPPC stating that SPPC “agrees to be liable for a fee of \$500.00 per day” for each smart meter remaining on Garmong’s premises. Garmong contends SPPC accepted these terms because it did not remove the smart meters or otherwise respond to the letters, thereby forming a unilateral contract which SPPC breached by failing to pay the daily fees. We disagree. As discussed above, SPPC was already permitted to install and maintain smart meters on Garmong’s premises. *Cf. generally Cnty. of Clark v.*


*Bonanza No. 1*, 96 Nev. 643, 650, 615 P.2d 939, 943 (1980) (“A benefit conferred or detriment incurred in the past is not adequate consideration for a present bargain.”). Nor did SPPC’s silence in these circumstances constitute acceptance of Garmong’s alleged offer. *See generally, e.g.*, Restatement (Second) of Contracts § 69 cmt. a (1981) (“Ordinarily an offeror does not have power to cause the silence of the offeree to operate as acceptance.”). Garmong also points to no authority which would permit him to contravene the terms of the tariffs, which provide that “[n]o rent or other charge whatsoever shall be made by the Customer against the Utility for placing or maintaining . . . [the] meters . . . upon the Customer’s premises.” Electric Tariff No. 1, Rule 16(B). The district court did not err in granting SPPC summary judgment on this claim.

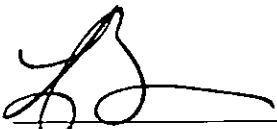
We similarly discern no error in the district court’s grant of summary judgment to SPPC on Garmong’s fourth claim, for breach of the NDTPA, and sixth claim, for statutory fraud under NRS 41.600. The NDTPA does not apply to “[c]onduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local government agency,” NRS 598.0955(1)(a), and the PUCN authorized SPPC to replace the existing meters with smart meters. Because SPPC’s conduct complied with an order from a state governmental agency, the NDTPA does not apply, and Garmong’s claim fails as a matter of law. Garmong’s claim for statutory fraud under NRS 41.600 is a derivative of the NDTPA claim. *See* NRS 41.600(2)(e) (defining “consumer fraud,” as pertinent here, as a violation of


"[a] deceptive trade practice defined in NRS 598.0915 to 598.025, inclusive"). Because the NDTPA claim fails, so too does the statutory fraud claim.

We therefore

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Herndon

  
\_\_\_\_\_, J.  
Bell

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. Lynne K. Jones, Chief Judge  
Carl M. Hebert  
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC/Las Vegas  
Washoe District Court Clerk