

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

MILDRED HARRINGTON and RIJEH GARNETT,)	CASE NO. _____
)	
Plaintiffs,)	PETITION AND REQUEST FOR
)	DAMAGES AND EQUITABLE
vs.)	RELIEF
)	
DAVENPORT HOTEL, L.L.C.,)	
)	
Defendant.)	

Plaintiffs Mildred Harrington and Rijeh Garnett (collectively “Plaintiffs”), by and through their attorneys Milberg Coleman Bryson Phillips Grossman, PLLC, for their Petition and Request for Damages and Equitable Relief against Defendant Davenport Hotel, L.L.C. (“Davenport Hotel” or “Defendant”), state as follows:

NATURE OF THE CASE

1. This is an action against Defendant Davenport Hotel for the senseless, tragic, and entirely preventable collapse (the “Collapse”) of a six-story apartment building in Davenport (the “Building”). Defendant owns, operates, and manages the Building. Defendant is also responsible for maintaining the Building. Defendant’s total and sustained abrogation of this duty directly and proximately caused the Collapse.

2. The Building Collapsed at approximately 5 p.m. Sunday, May 28, 2023.

According to AP News, the Collapse “left a gaping hole in the center of what was once the Davenport Hotel.”¹

3. The total loss from the Collapse is still unknown. Dozens of individuals were evacuated from the Collapsed Building, but multiple residents are still unaccounted for as of the filing of this Petition.

4. The Building is over a century old but had not been properly maintained in a manner commensurate with its age. At the time of the Collapse, bricks had been reported as freely falling from the Building and other signs of severe structural issues with the Building were observed.

5. After the Collapse, the City of Davenport issued a civil infraction citation to Davenport Hotel for its violation of a section of the Davenport Municipal Code that requires owners maintain buildings and structures in a safe and sanitary condition and in a sound structural position.

6. Defendant’s negligence of the century-old property caused the Collapse. Because Defendant did not properly maintain or ensure the safety and structural integrity of the Building, more than 100 people are out of a home and lost much of their personal property. Dozens were caught in the Collapse. Both groups suffered personal injury including mental anguish. Some residents were stuck in the Building for as long as two days before being rescued and suffered physical injury including dehydration.

¹ Associated Press, Iowa Apartment Collapse Leaves Residents Missing, Rubble Too Dangerous to Search, <https://apnews.com/article/building-collapse-davenport-iowa-a80c3f7531eaf22dea943f5ec5f5ef0e> (last accessed June 1, 2023).

7. Plaintiffs bring this lawsuit on behalf of themselves and the Classes defined herein to address Defendant's egregious negligence and the untold suffering and damage it has caused.

PARTIES

8. Plaintiff Mildred Harrington is a resident of Davenport, Iowa and resided at the Building in an apartment unit with her family at the time of the Collapse.

9. Plaintiff Rijeh Garnett is a resident of Davenport, Iowa and resided at another apartment building on the same block as the Building at the time of the Collapse.

10. Defendant Davenport Hotel, L.L.C. is an Iowa Limited Liability Company owned and operated by Bettendorf, Iowa resident Andrew Wold.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over Defendant because it is an Iowa Limited Liability Company incorporated in and registered with the State of Iowa, with its headquarters in Bettendorf, Scott County Iowa.

12. This Court also has personal jurisdiction over Defendant because the company owns, operates, and is responsible for maintaining the Building located in Davenport, Scott County Iowa that collapsed and thereby injured Plaintiffs and untold other Iowans.

13. This Court has subject matter jurisdiction because Plaintiffs bring their claims under Iowa tort law.

14. Venue is proper because Defendant is headquartered in this County and because the Building whose collapse is at issue in this Petition is located in this County.

STATEMENT OF FACTS

The Building's History and Negligent Upkeep

15. The Building is a six-story, 116-year-old historic brick building in Davenport, Iowa. Built in 1907, it was listed in the National Register of Historic Places in 1983. Previously operated as the Davenport Hotel, the structure was renovated into a mixed-use residential and commercial building. Before the Collapse, the Building had 79 apartment units.²

16. According to the Associated Press, the Building “was designed so the exterior brick and steel frame support each other, so the loss of exterior brick can threaten the building’s integrity.”³ Relatedly, reporting from the Associated Press found that “Building workers had been completing interior and exterior repairs in recent months,” and “[r]eports of falling bricks were part of that work.”⁴

17. Defendant purchased the Building in 2021, and the negligent renovations leading up to the Collapse were unfortunately just one of many instances of Defendant’s negligence in caring for the property. In fact, the Associated Press reported that “local court records show the city declared the building a nuisance in May 2022 ‘due to numerous solid waste violations’ involving its overflowing dumpster.”⁵ Between May 2022 and March 2023, city inspectors noted similar nuisance problems with the Building *nineteen times*.

² *Supra*, available at <https://apnews.com/article/building-collapse-davenport-iowa-a80c3f7531eaf22dea943f5ec5f5ef0e> (last accessed June 1, 2023).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

18. One business owner leasing space on the first floor of the Building had been calling the city to complain about conditions in the Building since December when the bathroom in their retail space collapsed.⁶

19. A previous resident of the Building also expressed concern to the media over the Building's safety. Former resident Schlaan Murray told the Associated Press that he moved into an apartment unit in the Building in February 2022 and had numerous issues from the beginning, including heat, air conditioning, and plumbing. According to the Associated Press, “[c]alls to the management company rarely got a response, and even if workers did stop by, ‘they didn’t fix stuff, they just patched it up.’”⁷

20. After the Collapse, the city filed a new enforcement action against Defendant for failing to maintain the property “in a safe, sanitary, and structurally sound condition” leading up to the Collapse in violation of Davenport Municipal Code §8.15.130(B) and (C).⁸

21. Davenport Hotel owner Andrew Wold failed to appear in court for the numerous previous municipal violations described herein, and the court therefore imposed a default judgment for those violations. A court date is set for June 9 for Defendant's current violation.

⁶ Des Moines Register, “Building Collapses in Downtown Davenport; Search for Missing Underway”, <https://www.desmoinesregister.com/story/news/2023/05/28/authorities-investigate-downtown-davenport-building-collapse/70266171007/> (last accessed June 1, 2023).

⁷ *Supra*, available at <https://apnews.com/article/building-collapse-davenport-iowa-a80c3f7531eaf22dea943f5ec5f5ef0e> (last accessed June 1, 2023) (quoting former resident Schlaan Murray).

⁸ The City of Davenport seeks to impose a \$300 in the action with Case ID 07821DACICI005337.

The Building's Collapse

22. The Building Collapsed at approximately 5:00 p.m. on Sunday, May 28, 2023.

Reporting from the Des Moines Register included a picture of Building after the Collapse:



23. In the immediate aftermath of the Collapse, Davenport Fire Chief Michael Carlsten told the Des Moines Register that seven people were rescued and a dozen others escorted out of Building. While other Building residents remained missing, a search had to be delayed until gas and water utilities could be shut off, prolonging the suffering of victims caught in the Collapse.¹⁰

⁹ Nikos Frazier/Quad City Times Via AP, available at <https://www.desmoinesregister.com/story/news/2023/05/28/authorities-investigate-downtown-davenport-building-collapse/70266171007/> (last accessed June 1, 2023).

¹⁰ *Supra*, available at <https://www.desmoinesregister.com/story/news/2023/05/28/authorities-investigate-downtown-davenport-building-collapse/70266171007/> (last accessed June 1, 2023).

24. The Davenport Fire Chief was also reported as expressing concern that “I think our big thing is the stability of the building. We’re not sure how stable the building is.”¹¹

25. Medics set up a patient care area near the site of the Collapse, and a nearby church was designated as a “reunification” site to account for residents and victims of the Collapse.¹²

26. Gov. Kim Reynolds issued a disaster proclamation activating assistance programs for the residents left without their homes. The demolition of the Building was ultimately ordered, although at the time of filing the Building has not yet been demolished, and residents were prevented from going back inside for belongings due to the instability.¹³

27. At the time of filing, there were still residents unaccounted for, and the ultimate toll of this catastrophe is still unknown.

PLAINTIFFS’ FACTUAL ALLEGATIONS

PLAINTIFF HARRINGTON

28. Plaintiff Mildred Harrington lived with her boyfriend Phillip Brooks and Phillip’s mother Lisa Brooks in an apartment unit in the Building until the Collapse.

29. At the time of the Collapse, Mildred and Phillip were in the Building hallway and were unable to get to their apartment unit where Phillip’s mother Lisa was.

30. Lisa, 59 years old, was trapped in the family’s apartment unit until she was finally rescued the next day on May 29. After being pulled through a window in her apartment unit,

¹¹ *Id.*

¹² *Id.*

¹³ *Supra*, available at <https://apnews.com/article/building-collapse-davenport-iowa-a80c3f7531eaf22dea943f5ec5f5ef0e> (last accessed June 1, 2023).

Lisa was admitted to a local hospital, Genesis East, for *inter alia* dehydration as a result of being trapped in the building.

31. Due to the collapse, Plaintiff Harrington has had to miss work, and Plaintiff Harrington is worried that she may lose her employment as a result of the Collapse.

32. Virtually all of Plaintiff Harrington's belongings, her boyfriend's belongings, and her boyfriend's mother's belongings, including clothing and ID, are in the Collapsed Building and likely lost forever.

33. Plaintiff Harrington and her family have suffered emotionally from the Collapse and have lost their home.

PLAINTIFF GARNETT

34. Plaintiff Rijeh Garnett lived in an apartment building on the same block as the Building. At the time of the Collapse, she was out of town.

35. Upon learning of the Collapse, Plaintiff Garnett returned to Davenport to the scene of the Collapse and was told by a police officer that, due to the Collapse, she was not allowed to access her apartment building.

36. In addition to her personal property and other belongings, Plaintiff Garnett kept two pet dogs in her apartment, and both pets were in the building at the time of the Collapse. After being insistent and speaking with another police officer, Plaintiff was escorted to her apartment unit where she was able to retrieve her two dogs.

37. In addition to the emotional distress she experienced the day of the Collapse and in recovering her pets, Plaintiff Garnett has been homeless since the Collapse. She stayed two nights in shelter provided by Red Cross. She is currently staying at a local hotel.

CLASS ALLEGATIONS

38. Plaintiff Harrington brings this action individually and as the representative of all those similarly situated pursuant to Iowa R. Civ. P. 1.261, on behalf of the below-defined Class:

The Resident Class

All persons who resided at, kept personal property at, or were at, in, or near the Building at the time of the Collapse.

39. Plaintiff Garnett brings this action individually and as the representative of all those similarly situated pursuant to Iowa R. Civ. P. 1.261, on behalf of the below-defined Class:

The Collateral Class

All persons who resided near to the Building and whose residence was collaterally damaged as a result of the Building's Collapse.

40. Members of the Classes described are collectively referred to herein as "Class Members" or members of the "Class."

41. The following are excluded from the Class: (1) any Judge presiding over this action and members of his or her family; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parent has a controlling interest (as well as current or former employees, officers, and directors); (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

42. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

43. Plaintiffs reserve the right to amend the definitions of the Classes if discovery or further investigation reveals that the Classes should be expanded or otherwise modified.

44. **Numerosity.** Upon information and belief, the Class consists of more than one hundred Class Members, residing in the Building's 79 units as well as nearby buildings, and is thus so numerous that joinder of all members is impracticable.

45. **Commonality.** There are questions of fact or law common to the Class, which common questions predominate over any questions affecting only individual members. These common questions include:

- (a) Whether Defendant Davenport Hotel owed Plaintiffs and proposed Class Members a duty of care in maintaining the Building;
- (b) Whether Defendant Davenport Hotel was negligent in its duty to maintain the Building; and
- (c) Whether Defendant Davenport Hotel's negligence in maintaining the Building caused the Collapse that injured Plaintiffs and proposed Class Members.

46. **Adequacy.** Plaintiffs will fairly and adequately protect the interest of the Class because they are members of the Classes and their interests do not conflict with the interests of the Class Members they seek to represent. Plaintiffs have also retained counsel competent and experienced in complex commercial and class action litigation. Plaintiffs and their counsel intend to prosecute this action vigorously for the benefit of all Class Members. Accordingly, the interests of the Class Members will be fairly and adequately protected by Plaintiffs and their counsel.

47. **Efficiency.** The class action is an appropriate method for the fair and efficient adjudication of the controversy because:

- The damages suffered by each individual proposed Class Member do not justify the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct;
- Even if individual Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;
- The claims presented in this case predominate over any questions of law or fact affecting individual Class Members;
- Individual joinder of all proposed Class Members is impracticable;
- Absent a class action, Plaintiffs and Class Members will continue to suffer harm as a result of Defendant's unlawful conduct; and
- This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiffs and proposed Class Members can seek redress for the harm caused by Defendant.

COUNT I

Negligence

(On Behalf of Plaintiffs and the Classes)

48. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

49. At all times relevant to this lawsuit, Defendant owed a duty to Plaintiffs and Class Members to maintain the Building in a reasonably safe condition and to act reasonably in correcting structural issues within the building of which Defendant knew or should have known.

50. At all times relevant to this lawsuit, Defendant owed a duty to Plaintiffs and Class Members to warn them of dangers in the Building of which Defendant knew or should have known.

51. Defendant breached its duty to Plaintiffs and Class Members by, among other things:

- a. Failing to maintain the Building in a reasonably safe condition per Davenport Municipal Code §8.15.130(B) and (C);
- b. Failing to remediate the improperly performed repair work that resulted in observed “falling bricks” and a weakening of the Building’s structure;
- c. Failing to hire competent contractors, inspectors, engineers, and appropriate entities to perform the required maintenance;
- d. Failing to warn residents of structural concerns associated with the Building;
- e. Failing to warn residents of the dangers in the Building of which Defendant knew or should have known;
- f. Failing to address warnings and complaints from residents of structural concerns associated with the Building;
- g. Falsely representing to the residents of the Building that the Building was safe for residential and commercial tenants.

52. As a direct and proximate result of Defendant’s negligent acts and omissions, Plaintiffs and Class Members were trapped in the Building as it Collapsed, suffered physical and mental injury, lost personal property, and/or were displaced from their residences due to the Collapse caused by Defendant.

53. As a result of the Collapse caused by Defendant, Plaintiffs and Class Members are entitled to money damages for personal physical injury, mental pain and suffering, loss of earnings, loss of property, and all other damages to which they may be entitled under applicable law.

54. Plaintiffs and Class Members are also entitled to injunctive relief as a result of the Collapse caused by Defendant. Without a Court order ensuring Defendant takes the necessary steps to fulfill its duty to maintain the structure in a safe and structurally sound condition, Plaintiffs and Class Members are at undue risk of future harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in favor of Plaintiffs and the Classes against Defendant, award Plaintiffs and the Classes damages in an amount to be determined at trial, award Plaintiffs and the Classes their costs and reasonable attorneys' fees, and grant such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: June 1, 2023

Respectfully submitted,

By: /s/J. Bart Goplerud
J. Barton Goplerud
Shindler, Anderson, Goplerud & Weese
P.C
5015 Grand Ridge Dr STE 100
West Des Moines, IA 50265
Telephone: 515-223-4567
Fax: 515-223-8887
Email: goplerud@sagwlaw.com

Gary Klinger*
MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC
227 W. Monroe Street, Suite 2100
Chicago, Illinois 60606
Telephone: 866.252.0878
gklinger@milberg.com

Attorneys for Plaintiff
**pro hac vice forthcoming*