IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

JONATHAN UHL in his individual capacity, JUSTINE UHL in her individual capacity, D.U., a minor, by and through JONATHAN and JUSTINE UHL as next friends and guardians, and C.U., a minor, by and through JONATHAN and JUSTINE UHL as next friends and guardians, Plaintiff, Vs. CITY OF DAVENPORT, Defendant.	CASE NO. CVCV303523 DENYING THE DEFENDANT'S PRE-ANSWER MOTION TO DISMISS

INTRODUCTION

On May 22, 2025, this case came before the Court on the Defendant's pre-answer Motion to Dismiss. For the following reasons, the Court DENIES the Defendant's Motion to Dismiss.

FACTUAL BACKGROUND

Assuming the truth of all of the allegations in the Plaintiff's Amended Petition, Jonathan Uhl ("Jonathan") is a real estate appraiser in the City of Davenport ("the City"), Iowa. In 2017, Jonathan and his wife, Justine Uhl ("Justine"), hired contractors to build them a new home. Attached to their build was an "accessory dwelling unit" ("ADU"), which the Uhls intended to rent out as a source of additional income.

After construction was completed, the City issued a "Certificate of Occupancy" for the home. A "Certificate of Occupancy" is document attesting that the building meets the requirements of the building code and, therefore, is safe for human occupancy.[1]

[1] Davenport Municipal Code § 15.08.335.

Once City inspector Max Adams ("Adams") approved the home, the Uhls moved in. But they soon experienced problems with their new house, including: two electrical shorts leading to two house fires, sewer gas leakage, and high radon levels.

The severity and sudden onset of the problems with the home prompted Jonathan to investigate Adams' qualifications. Jonathan made public records requests. From these requests, he gathered a dossier of information about Adams, which, in Jonathan's view, demonstrated the inspector's incompetence and corruption.

Aside from the difficulties with their home, the Uhls also had problems with their ADU. Jonathan asked the City to inspect the ADU so that he could acquire a rental license, but the City denied his request. Therefore, Jonathan could not rent it out. At that point, and onward until March of 2023, Jonathan believed that no rental license had been issued. But, in March, he received a "Rental License Renewal Notice" ("the Renewal Notice")—a document from the City that charged him $30 to renew his rental license.

When Jonathan asked the City about the Renewal Notice, the city attorney stated that Jonathan had wrongfully claimed two "homestead exemptions," one on the new home and one on a property Jonathan owns in Bettendorf, Iowa. But Jonathan did not rent out the ADU because, to his knowledge, no rental permit had actually been issued and no inspection of his property had been performed, meaning that to rent out the ADU would violate the municipal code.

Throughout the entirety of the above-described experiences, Jonathan and his attorneys communicated their concerns to the City and its attorneys. However, the parties were unable to reach an out-of-Court resolution. After their clashes reached critical mass, Jonathan sued on January 13, 2025, seeking: (1) a Writ of Mandamus ordering the City to inspect the ADU and to

issue a valid rental permit, (2) a Declaratory Judgment clarifying the parties' duties and stating that the City violated the Municipal Code when it failed to inspect the ADU, (3) Damages for injuries caused by the City's alleged negligence in turning over public documentation, (4) Damages for injuries caused by the City's alleged reckless disregard for the Uhls' safety, (5) Damages for the injuries caused by the City's negligent hiring and supervision of various city personnel, and (6) Damages for injuries caused by the City's fraudulent concealment of certain documents that Uhl requested.

The City filed a pre-answer Motion to Dismiss Jonathan's Petition, arguing that his claims are outside of the limitations' period and, therefore, are time barred, or, in the alternative, that Jonathan failed to exhaust his administrative remedies and, therefore, this Court does not have jurisdiction to hear the claim. The Court DENIES the City's Motion to Dismiss.

DISCUSSION

A Motion to Dismiss, "is properly sustained only when there exists no conceivable set of facts entitling the non-moving party to relief."[2] As the Iowa Supreme Court has directed:

> A court should grant a motion to dismiss if the petition fails to state a claim upon which any relief may be granted. In considering a motion to dismiss, the court considers all well-pleaded facts to be true. A court should grant a motion to dismiss only if the petition on its face shows no right of recovery under any state of facts. Nearly every case will survive a motion to dismiss under notice pleading. Our rules of civil procedure do not require technical forms of pleadings....
> A petition need not allege ultimate facts that support each element of the cause of action; however, a petition must contain factual allegations that give the defendant 'fair notice' of the claim asserted so the defendant can adequately respond to the petition." The "fair notice" requirement is met if a petition informs the defendant of the incident giving rise to the claim and of the claim's general nature.
> The only issue when considering a motion to dismiss is the "petitioner's right of access to the district court, not the merits of his allegations." The court cannot rely

[2] *Barkema v. Williams Pipeline Co.*, 666 N.W.2d 612, 614 (Iowa 2003).

> on evidence to support a motion to dismiss, nor can it rely on facts not alleged in the petition.[3]

Therefore, the Court, at this stage in the case can only review Jonathan's petition to determine whether he has pled facts that, if proven, would entitle him to relief.

Because this case involves claims against a municipal body, Jonathan must meet certain criteria before his case can proceed. States and their subdivisions enjoy sovereign immunity, which protects them from being sued without their consent.[4] So, if a Plaintiff is going to sue a municipal government, he must identify a law that permits the suit to proceed—a law that waives sovereign immunity. Without such a law, the suit dies at the threshold.

In this case, the Iowa Municipal Tort Claims Act ("IMTCA") waives municipal sovereign immunity for select claims.[5] Jonathan's suit, which alleges torts against municipal actors, is, therefore, comprehended within the scope of the IMTCA, and, if his lawsuit is to proceed, it must comply with the requirements of that statute.

At this point in the case, the main question is: did Jonathan file his claims within the period provided by the IMTCA? The relevant filing period is found in Iowa Code § 670.5:

> Except as provided in section 614.8, a person who claims damages from any municipality or any officer, employee or agent of a municipality for or on account of any wrongful death, loss, or injury within the scope of section 670.2 or section 670.8 or under common law shall commence an action therefor within two years after the alleged wrongful death, loss, or injury.

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[3] *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 609 (Iowa 2012) (cleaned up).

[4] IMMUNITY, Black's Law Dictionary (12th ed. 2024) ("A government's immunity from being sued in its own courts without its consent.")

[5] *See* Iowa Code § 670.2 ("1. Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function."); *see also* Iowa Code § 670.1(2)&(4) (defining "municipality" and "tort" and imposing liability on municipal agents for torts they commit.)

The operation of this section is different from other statutes of limitation. As the Iowa Supreme Court has noted:

> "Although frequently referred to as a statute of limitations, section 670.5 is a statute of creation." "Chapter [670] created a new right of action—one that was not available at common law nor available elsewhere by statutory authority, and therefore, while cases interpreting other limitation statutes are helpful, they do not control here." This statute "bars any claim not filed within the requisite time period as measured from the date of injury rather than date of accrual."[6]

So, in evaluating Jonathan's claims, the Court must ask whether injury occurred within the two years preceding January 13, 2025 (the date on which the Uhls filed their petition). If the claim falls within that period, then the suit is timely. If, contrariwise, the alleged injury occurred outside the two-year window and there is no question of fact as to the time of the injury's occurrence, then the Court may grant the City's Motion to Dismiss.[7] The Court will review Jonathan's claims in turn.

I. WRIT OF MANDAMUS

Jonathan's claim for a writ of mandamus hangs on the City's alleged refusal to perform the required inspections and issue the appropriate rental permits. According to the Uhls' Petition, Jonathan began requesting a permit in July of 2022. So, at first blush, it seems that the claim is outside the filing period. However, the Petition goes on to allege that on "March 23, 2023, Mr. Uhl suddenly received a "Rental License Renewal Notice" (the "Renewal Notice") in the mail from the City."[8] This renewal notice had an attendant fee of $30.00. The Court finds that the issuance of a renewal notice despite the fact the City never issued a rental permit may constitute

[6] *Stogdill v. City of Windsor Heights*, 991 N.W.2d 719, 730 (Iowa 2023).
[7] *Carlson v. Second Succession, LLC*, 971 N.W.2d 522, 528 (Iowa 2022) ("A defendant 'may raise the statute of limitations by a motion to dismiss if it is obvious from the uncontroverted facts contained in the petition that the applicable statute of limitations bars the plaintiff's claim for relief.'")
[8] Amended Petition at 10.

an injury for purposes of the IMTCA. Because that injury occurred within the two-year period, the Court finds that there may exist a set of facts under which Jonathan is able to recover.

Additionally, Jonathan alleges that the City has continued to deny him the benefit of a rental inspection so that he can procure a valid rental license. Taking as true the allegations in the petition, the City may be violating its own ordinances. If that is the case, then Jonathan may be entitled to relief.

The City argues that Jonathan did not exhaust his administrative remedies and, therefore, the Court should send his case back to the Neighborhood Services Department or the Board of Adjustment. The City's argument requires the Court to look beyond the facts in the Petition. Currently, the Court cannot tell what steps Jonathan took to exhaust his administrative remedies.[9] Because Jonathan has pled enough facts to make out a claim for relief, the Court DENIES the City's Motion to Dismiss with respect to Jonathan's Count I.

II. DECLARATORY JUDGMENT

Jonathan's Declaratory Judgment claim focuses on the City's failure to inspect the ADU and issue a rental permit for it. Davenport Municipal Code §8.15.145 (H) provides: "Issuance of

[9] It may be argued that this issue is not one of fact but of law. If it is a fact issue, then the Court cannot dispose of the matter at the Motion to Dismiss stage. If it is a matter of law, then the Court may be able to decide the issue at the Motion to Dismiss stage. The City argues that this case falls within the ambit of Davenport Municipal Code Title 8 and Iowa Code §414.15, which according to the City, contain implicit exhaustion requirements. There are at least two problems with this argument: the first is that the City equates the 'Board of Adjustment' mentioned in the Iowa Code with the 'Neighborhood Services Department' mentioned in the Davenport Municipal Code even though their respective duties differ (compare Iowa Code §414.12 with Davenport Municipal Code §2.18.020); the second is that the existence of the City's proposed exhaustion requirement is not obvious from the face of the statutory text. For these and the reasons listed above, the Court finds that the existence of an exhaustion requirement is not a purely legal question that the Court can decide at the Motion to Dismiss stage.

a Rental License. The City shall issue a rental license upon the applicants meeting of all standards and the payment of all fees and other debt owed to the City."

Here, the City failed to inspect the ADU and issue a rental permit as early as July of 2022. However, it is possible that the continued failure to inspect the ADU and issue a rental permit constitutes a continuing injury. If the City intractably refuses to issue a rental permit, despite the fact that the rental meets the code requirements, then that refusal is an ongoing violation of the Municipal Code.

Because there exists a set of facts under which Jonathan may recover, the Court DENIES the City's Motion to Dismiss with respect to Jonathan's Count II.

III. NEGLIGENCE

Jonathan's next claim is styled 'negligence,' though, it is pled more as an intentional tort. Jonathan argues that the City illegally destroyed documents, failed to provide relevant permits and inspections, and wrongfully threatened him with criminal charges. These actions, somehow, amounted to negligence, for which Jonathan seeks damages.

The Court's role at this stage is limited. It does not ask whether the pleadings make an ironclad case for negligence. It does not weigh the plausibility of the Plaintiff's claims. All it can do is ask whether the pleadings notify the Defendant of a cognizable claim. Here, the Court finds that these pleadings eke by.

Jonathan has stated the acts that he believes constitute negligence (allowing shoddy and incomplete inspections/denying rental unit inspections/destroying public documents). He has also argued that the 'discovery rule,' which tolls the statute of limitations while relevant facts are

concealed, applies to his case. And there is at least some authority supporting the application of the common law discovery rule to the IMTCA.[10]

It is important, at this point, to clarify what the Court *does not* hold. It does not hold that the discovery rule applies to this case. It does not hold that Jonathan's claim is meritorious. It does not hold that Jonathan's claim is timely. Its narrow holding is this: there is a conceivable set of facts (in which the discovery rule applies and saves the otherwise facially untimely claim) under which Jonathan's claim is viable. Accordingly, the Court DENIES the City's Motion to Dismiss with respect to Jonathan's Count III.

IV. RECKLESS DISREGARD FOR THE SAFETY OF ANOTHER

Jonathan's next claim relies mostly on the same allegations supporting his negligence claim. The primary difference being that his reckless disregard claim zeroes in on the City's failure to ensure that its inspectors were properly trained and licensed and that they were performing the appropriate inspections.

For the reasons stated above, the Court DENIES the City's Motion to Dismiss with respect to the Uhls' Count IV, with the understanding that this ruling does not foreclose the City from later arguing that Jonathan's Petition is time-barred.

V. NEGLIGENT HIRING AND SUPERVISION

Jonathan's fifth claim is for negligent hiring and supervision. Once again, the question, as the Court sees it, is whether the discovery rule applies, and, if it does, when Jonathan discovered the facts relevant to his injury. Because, at this point, there are facts at issue, the Court DENIES the City's Motion to Dismiss as it relates to Jonathan's Count V.

[10] *See generally Callahan v. State*, 464 N.W.2d 268 (Iowa 1990) (applying the common law discovery rule to a prior version of the IMTCA).

VI. FRAUDULENT CONCEALMENT

Finally, Jonathan argues that the City wrongfully refused to hand over relevant public documents and made false representations respecting those documents. Jonathan alleges that he relied on the City's misrepresentations and as a consequence suffered damage.

What Jonathan knew and when he knew it, what the City knew and whether it concealed it are all questions that may float or sink Jonathan's claims. At present, the Court must take as true the allegations of the Petition, which pass the easy test for a Motion to Dismiss. Therefore, the Court DENIES the City's Motion to Dismiss.

CONCLUSION

At this stage of litigation, the law circumscribes the Court's role to reviewing the allegations in the petition to determine whether they state a cognizable claim. So long as there exists some conceivable set of facts under which the Plaintiff can recover, then the Court must deny the Motion to Dismiss. Such a set of facts exists here; therefore the Court DENIES the City's Motion to Dismiss.

SO ORDERED

State of Iowa Courts

Case Number	**Case Title**
CVCV303523	JONATHAN UHL ET AL VS CITY OF DAVENPORT
Type:	OTHER ORDER

So Ordered

Henry W. Latham II, District Court Judge,
Seventh Judicial District of Iowa

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