

STATE OF SOUTH DAKOTA )  
 )  
 ) :SS  
COUNTY OF MINNEHAHA )

IN CIRCUIT COURT  
SECOND JUDICIAL CIRCUIT

<p>EMILY FODNESS, MICHAEL FODNESS, and CHRISTINE FODNESS,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CITY OF SIOUX FALLS,</p> <p style="text-align: center;">Defendant.</p>	<p>49CIV18-_____</p> <p style="text-align: center;"><b>COMPLAINT</b></p>
--	--

COMES NOW Plaintiffs, Emily Fodness, Michael Fodness, and Christine Fodness, and for their Complaint against Defendant, City of Sioux Falls, state and allege as follows:

**PARTIES**

1. Plaintiff Emily Fodness (“Emily”) is an adult residing in Tarrant County, Texas. Plaintiffs Michael Fodness (“Michael”) and Christine Fodness (“Christine”) are adults residing in Minnehaha County, South Dakota.

2. Defendant City of Sioux Falls is a first-class municipal corporation and a home-rule municipality in the State of South Dakota.

**JURISDICTION**

3. This Court has jurisdiction over this matter pursuant to SDCL 15-7-2.

4. Venue is proper in this Court pursuant to SDCL 15-5-6 and 15-5-8.

**FACTS**

5. Defendant approves, issues, and ensures compliance with building permits within the City of Sioux Falls.

**RECEIVED**

**SEP 21 2018**

CITY ATTORNEY'S OFFICE  
SIOUX FALLS, SD

6. From approximately February of 2013 to September of 2016, Defendant issued to Hultgren Construction LLC (“Hultgren”) approximately 33 building permits for the construction, repair, remodel, or demolition of certain properties.

7. Defendant was aware of repeated instances in which Hultgren failed to comply with and performed work beyond the scope of work allowed by permits issued by Defendant.

8. Defendant was aware of complaints from citizens and businesses about Hultgren’s work and permits. Such complaints included the belief that Defendant dispensed with the usual protocols for approving, issuing, or ensuring compliance with building permits issued to Hultgren.

9. Upon information and belief, Defendant failed to issue Hultgren citations, revoke its building permits, or take any other adverse action against Hultgren for its known and repeated violations and complaints.

10. In April of 2016, Defendant entered into discussions with Hultgren and its agents regarding the renovation of buildings located at and adjacent to 136 South Phillips Avenue within the City of Sioux Falls (the “Property”).

11. Defendant knew that Hultgren intended to combine parts of the buildings into a single, open space for commercial development by removing certain portions of a load bearing wall separating the interiors of the Property.

12. Defendant knew that the work that Hultgren intended to complete required the assistance and approval of certain qualified persons, including an architect and/or structural engineer, to mitigate inherent risks and dangers involved in the proposed work.

13. Upon information and belief, Defendant advised Hultgren that Defendant could not issue a building permit for the Property due to Hultgren's failure to submit adequate architectural or structural plans.

14. Upon information and belief, Defendant knew that the issuance of demolition permits for a structure in which Plaintiffs were known to reside, without adequate architectural or structural plans, and to a contractor who explicitly intended to remove portions of an interior load bearing wall and was known to be in violation of its past and current permits, would substantially increase the risk of injury or death to Plaintiffs.

15. Upon information and belief, Hultgren asked Defendant to issue a permit allowing Hultgren to proceed with the demolition of the interior of the Property.

16. Defendant agreed to issue to Hultgren permits for the interior demolition of the Property, notwithstanding Hultgren's failure to provide adequate architectural or structural plans for its proposed work.

17. Defendant failed to notify Plaintiffs of the work it authorized Hultgren to perform on the Property, which, without adequate plans and supervision, and given Hultgren's history of violating and exceeding the scope of its permits, substantially increased the risk of injury or death to Plaintiffs, including the risk of structural collapse and exposure to asbestos and other harmful substances.

18. If Defendant had notified Plaintiffs of the dangers it knew existed, Plaintiffs would not have continued to reside in the Property during Hultgren's work.

19. On the morning of December 2, 2016, the Property collapsed due to Hultgren's demolition of certain portions of the load bearing wall separating the interiors of the buildings.

20. On the morning of the collapse, Emily was asleep in her upper floor apartment when the floor beneath her disappeared, causing her to plummet to the story below. Simultaneously, the building above Emily collapsed and trapped her under the crushing weight of the building's rubble. Miraculously, Emily found her cellphone within the rubble, which allowed her to communicate her condition to family and first responders. Emily feared for her life as she faced the very real possibility that the debris above could shift, resulting in her being crushed or suffocated.

21. On the morning of the collapse, Michael Fodness was on the ground level of the Property when he heard a cracking sound and felt the building shift. Fearing for his safety, Michael ran from the building and, through a haze, saw that the building collapsed. At that time, Michael was unsure if Emily was in the building. Michael called Christine, and she informed him that Emily was asleep in her bedroom. Given the destruction he saw before him, Michael believed that his daughter had been killed in the collapse.

22. On the morning of the collapse, Christine was at work when she received a phone call from Michael that their building collapsed. Christine ran to her car and drove toward home, knowing that her daughter was in the building at the time of the collapse and facing the inescapable conclusion that her daughter had just been killed.

23. Emily sustained extensive injuries that she had to endure, unaided, for several hours while first responders attempted to extricate her from the building debris. Michael and Christine likewise spent those hours fearing that their daughter would be killed prior to her rescue. After nearly four hours, first responders extricated Emily from the debris and immediately rushed her to the emergency room at Avera McKennan Hospital, where she received urgent medical attention.

24. Emily sustained, and continues to suffer from, severe physical and psychological injuries that result in physical manifestations as the result of the building collapse. Such injuries are permanent and have caused, and will continue to cause, pain, suffering, loss of enjoyment of life, medical expense, wage loss, property loss, and other damage.

25. Michael and Christine sustained, and continue to suffer from, severe psychological injuries resulting in physical manifestations as a result of the building collapse. Such injuries are permanent and have caused, and will continue to cause, pain, suffering, loss of enjoyment of life, medical expense, wage loss, property loss, and other damage.

#### **COUNT ONE: NEGLIGENCE**

26. Plaintiffs reallege the above-stated paragraphs as if fully set forth herein.

27. Defendant was uniquely aware of the particular dangers and risks to which Plaintiffs would be exposed by allowing Hultgren, who was known to violate and work beyond the scope of permits issued by Defendant, to proceed with its intended plans to demolish an interior load bearing wall without plans, approvals, or supervision.

28. Defendant breached its special duties to Plaintiffs by exposing them to known, dangerous, and life-threatening conditions that would not have occurred except for Defendant's acts and omissions.

29. Plaintiffs relied on Defendant's acts and omissions, and such reliance substantially increased the risk of harm to Plaintiffs.

30. Plaintiffs suffered, and will continue to suffer, damages as a result of Defendant's breach of its special duties to Plaintiffs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. Judgment against Defendant on all Counts alleged herein in an amount of past and/or future damages to be proven during trial, plus interest, costs, and attorneys' fees; and
2. For such other and further relief, including equitable relief, as the Court deems just and equitable.

**PLAINTIFFS DEMAND A JURY TRIAL AS TO ALL CLAIMS ASSERTED HEREIN.**

Dated this \_\_\_\_ day of September, 2018.

BALLARD SPAHR LLP

By: 

\_\_\_\_\_  
Daniel R. Fritz  
Alexander C. Ellman  
101 South Reid Street, Suite 302  
Sioux Falls, SD 57103  
Telephone: (605) 978-5200  
Facsimile: (605) 978-5225  
Email: fritzd@ballardspahr.com  
ellmana@ballardspahr.com  
*Attorneys for Plaintiffs*