

IN THE IOWA DISTRICT COURT FOR HARDIN COUNTY

George M. Ioerger, George M. Ioerger as
Trustee of the Wilma Ioerger Trust &
Westhenry Ioerger,

Plaintiffs,

v.

City of Iowa Falls, Hansen Family Hospital,
J.E. Dunn Construction Company, Hoefer
Wysocki Architects, LLC, & George Butler
Associates, Inc. a/k/a GBA
Architects/Engineers.

Case No. _____

**PETITION
AT
LAW**

COME NOW Plaintiffs George M. Ioerger, George M. Ioerger as Trustee of the Wilma Ioerger Trust, and Westhenry Ioerger and for their causes of action against the Defendants, respectfully state the following:

I. FACTUAL BACKGROUND

1. Plaintiff George M. Ioerger is an individual who owns a life estate in the real estate identified as Parcels 1 and 3 on the document attached hereto as Exhibit A.
2. Plaintiff George M. Ioerger as Trustee of the Wilma Ioerger Trust (“Wilma Ioerger Trust”) owns a remainder interest in the real estate identified as Parcels 1 and 3 on Exhibit A.
3. Plaintiff Westhenry Ioerger is an individual who owns an undivided one-half interest in the real estate identified as Parcel 2 on Exhibit A.
4. Plaintiff George M. Ioerger owns a life estate in an undivided one-half interest in the real estate identified as Parcel 2 on Exhibit A.
5. Plaintiff Wilma Ioerger Trust owns a remainder interest in an undivided one-half interest in the real estate identified as Parcel 2 on Exhibit A.

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6. Defendant City of Iowa Falls is an Iowa municipal corporation that owns the real estate identified as Parcel 4 on Exhibit A.

7. For purposes of clarity, all future descriptions of real estate herein which reference a numbered "Parcel" shall be references to those numbered parcels of real estate identified on Exhibit A. In addition, unless a specific reference to an individual Defendant is made in a particular averment, the use of the term "Defendants" includes all Defendants named herein.

8. Defendant Hansen Family Hospital ("Hospital") is a subsidiary city organization of Defendant City of Iowa Falls that is managed by a board of hospital trustees under Chapter 26 of the Iowa Falls Municipal Code.

9. Defendant J.E. Dunn Construction Company ("J.E. Dunn") is a corporation authorized to do business in Iowa. J.E. Dunn acted as the general contractor and/or construction manager for the construction described herein.

10. Defendant Hoefer Wysocki Architects, LLC ("Hoefer Wysocki") is a foreign limited liability company organized under the laws of Missouri and authorized to do business in Iowa. Hoefer Wysocki acted as architects and participated in the design of the construction described herein.

11. Defendant George Butler Associates, Inc. a/k/a GBA Architects/Engineers ("GBA") is a foreign corporation organized under the laws of Kansas and authorized to do business in Iowa. GBA acted as architects and engineers in the design of the construction described herein.

12. At all material times hereto, Defendants Hospital, J.E. Dunn, Hoefer Wysocki and GBA were acting with the full authority and approval of Defendant City of Iowa Falls in matters related to the construction of the hospital building and surrounding area.

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13. On or about August 3, 2012, Defendants began construction of a new hospital building located on Parcel 4. Prior to the construction of the hospital building, Parcel 4 consisted of bare ground. During the course of building, Defendants constructed a hospital building and pavement which covered the majority of Parcel 4. In addition, the land was graded, with roads and detention ponds also constructed by Defendants on Parcel 4.

14. During the course of construction, Defendants cut a 12" tile that had been providing drainage for Parcel 3 by allowing drainage from the west in an easterly direction through Parcel 4 onto Parcel 2 and Parcel 1. After the tile was cut, Defendants re-routed the 12" tile into a detention pond on the southeast corner of Parcel 4. The downstream end of the 12" tile was located by Defendants and connected to said detention pond to act as an outlet.

15. The detention ponds constructed by Defendants on Parcel 4 are insufficient to adequately collect the amount of water normally occurring on the subject properties.

16. Because of the grading, paving, and construction of the large hospital building, large quantities of surface water from rain and melted snow which previously laid upon the property until they evaporated or percolated into the soil are now collected in said detention ponds. Surface waters overflow from the detention ponds onto Parcels 1 and 2.

17. The channeling of surface water onto Parcels 1 and 2 created by the changes made by Defendants to Parcel 4 causes flooding and damage to crops grown on those Parcels, as well as damage to the real estate itself, including erosion and deposit of silt.

18. The insufficient drainage through Parcel 4 created by the rerouting of the 12" tile has significantly reduced drainage formerly available to Parcel 3. The reduced drainage causes flooding and damage to crops grown on Parcel 3, as well as damage to the real estate itself.

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19. The conditions described in paragraphs 13 through 18 and the injuries to the Plaintiffs' real estate resulting from said conditions will continue to exist, grow worse, and cause Plaintiffs to suffer increasing injuries so long as the present drainage patterns for the applicable parcels of real estate remain unaltered.

II. FIRST CAUSE OF ACTION-TRESPASS

20. Plaintiffs re-allege and incorporate by reference herein the averments made in paragraphs 1 through 19.

21. Defendants intended, knew, or had substantial reason to know that the aforementioned actions would cause surface water to physically intrude upon Plaintiffs' property in a manner it would not have naturally done before said actions.

22. The aforementioned actions on the part of Defendants amount to a deliberate physical invasion of Plaintiffs' property and property rights through continuous physical intrusion upon said property by improperly using it as a drainage area for Parcel 4 and by improperly preventing natural drainage onto and across Parcel 4.

III. SECOND CAUSE OF ACTION-NUISANCE

23. Plaintiffs re-allege and incorporate by reference the averments made in paragraphs 1 through 19.

24. By their aforementioned actions, Defendants created a nuisance tending to cause damage to Plaintiffs' property and create an unreasonable risk of future damage.

25. In light of the conditions created by the present use and maintenance of Parcel 4 by Defendant City of Iowa Falls and Defendant Hospital, such present use and maintenance cannot be considered lawful or reasonable, but rather constitutes a prior and ongoing nuisance.

IV. THIRD CAUSE OF ACTION-NEGLIGENCE

26. Plaintiffs re-allege and incorporate by reference the averments made in paragraphs 1 through 19.

27. It was reasonably foreseeable to the Defendants that the construction of the aforementioned structures and alterations to Parcel 4 would result in both diversion and retention of water onto Plaintiffs' property and to the property of others and that if such structures and alterations were carelessly designed or built they would cause injury to Plaintiffs' property. Defendants therefore owed a duty to Plaintiffs to design and construct these structures and alterations in a manner that would not cause injury to Plaintiffs.

28. The Defendants failed to use due care in designing and constructing these structures and alterations.

29. As a result of the Defendants' failure to use due care, excessive and unnecessary quantities of water were both diverted directly to, and improperly retained on, Plaintiffs' property.

30. This diversion and retention of water caused injury to Plaintiffs by damaging Plaintiffs' crops and real estate.

31. Without corrective action by the Defendants, these excessive quantities of water will continue to be diverted to and retained on Plaintiffs' property, and cause future harm to Plaintiffs' crops and real estate.

32. As a proximate result of Defendants' actions described above, Plaintiffs have suffered damages to date in amounts exceeding the jurisdictional amount. As long as these conditions persist, Plaintiffs will continue to suffer similar damages in amounts that can not presently be ascertained and for which an award of monetary damages would be inadequate.

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WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages for past, present and future injuries suffered by the Plaintiffs;
2. For punitive damages in an amount deemed sufficient to punish the Defendants for their reckless and malicious conduct and to deter others from engaging in similar conduct;
3. For an injunction, together with other appropriate equitable relief, requiring Defendants to cease discharging surface waters onto Parcels 1 and 2 and to cease restricting drainage naturally flowing from Parcel 3;
4. For costs of prosecuting this action, including attorney fees and court costs; and
5. For such other relief as the court may deem proper.

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