IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

AMANDA L. WINK, AN INDIVIDUAL, BRYAN C. SINGER, AN INDIVIDUAL, ERIKA L. NORDYKE, AN INDIVIDUAL, BEVERLY A. VAN DAM, AN INDIVIDUAL, 3D RENTALS, LLC, DP HOMES LLC,, Plaintiffs, vs. CITY OF ORANGE CITY, AND KURT FREDERES, IN HIS OFFICIAL CAPACITY AS ORANGE CITY CODE ENFORCEMENT OFFICER AND BUILDING INSPECTOR, Defendants.	NO. EQCV029175 RULING RE: DEFENDANTS' PRE-ANSWER MOTION TO DISMISS

On June 28, 2021, the Defendants in this action filed a Pre-Answer Motion to Dismiss the Plaintiffs' Petition. Plaintiffs resisted Defendants' Motion on July 8, 2021 to which the Defendants' filed a Reply on July 15, 2021. The Court held a telephonic hearing on Defendants' Motion on July 26, 2021. After having considered the parties' arguments and the applicable law, the Court now enters the following Ruling on Defendants' Pre-Answer Motion to Dismiss.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

When "construed in the light most favorable to the plaintiff," *Haupt v. Miller*, 514 N.W.2d 905, 911 (Iowa 1994), Plaintiffs' Petition discloses the following facts.

Plaintiffs are five individuals and two Limited Liability Companies all of whom either own rental residential real estate or who occupy rented residential real estate in Orange City, Iowa. Orange City is a municipality duly organized and existing under the laws of the State of Iowa. Kurt Frederes is the City Code Enforcement Officer and Building Inspector for the City of Orange City.

On or about February 15, 2021, Orange City enacted Ordinance No. 825 which requires landlords and tenants to submit to mandatory inspections of rental properties located within Orange City at least every five years or sooner if allegations of violations of applicable housing codes have been received by the City. The Ordinance provides that the Defendants may seek an administrative search warrant to enter the rental property to conduct the inspection if access is refused by the owner or tenant.

The Defendants have sent letters to Joshua Dykstra and Bev Van Dam to register their rental properties. In response, on April 26, 2021, both sent a letter to the City of Orange City expressing their support of their tenants to refuse inspections under Ordinance No. 825. Bryan Singer, Erika Nordyke and Amanda Wink also sent a letter to the City of Orange City on April 26, 2021 asserting their rights under Article I, Section 8 of the Iowa Constitution to refuse an inspection of their residence in the absence of a warrant supported by individual probable cause. On May 13, 2021, Kurt Frederes sent a letter to each of the Plaintiffs indicating that the City of Orange City intended to “continue to follow the process of the Rental Ordinance including inspection of your property.” The letter continued by stating that the City of Orange City would take the necessary steps to complete the inspection process pursuant to the terms of the ordinance in the even inspections were refused.

Under the terms of the Ordinance, landlords must keep and maintain rental permit to rent dwelling units. In addition, the City will not issue or renew a permit until the units involved are inspected pursuant to the Ordinance. Under the Ordinance, landlords are required to allow inspectors to enter a rental unit "at reasonable times" and shall have recourse to the remedies provided at law to secure entry if denied, including, but not limited to, obtaining an administrative search warrant to search the rental unit.

The Plaintiffs are requesting a declaratory judgment and injunctive relief to prevent the Defendants from enforcement of the Ordinance. The Defendants have filed a Pre-Answer Motion to Dismiss seeking to have the Plaintiffs' Petition dismissed based on the following issues: 1) the Issue presented in the Plaintiff's Petition is not ripe for review; 2) The Plaintiffs do not have standing to invoke the Court's jurisdiction regarding the enforcement of the Ordinance; and 3) The Ordinance is constitutional on its face.[1]

II. STANDARD OF REVIEW

Iowa Rule of Civil Procedure 1.421(1)(a) provides that parties can raise the defenses of lack of jurisdiction of the subject matter in a pre-answer motion. Iowa R. Civ. P. 1.421(1)(a). "While lack of ripeness or standing are technically not matters of subject matter jurisdiction, they are closely related doctrines" that can be raised in a pre-answer motion to dismiss. *Citizens for Responsible Choices v. City of Shenandoah,* 686 N.W.2d 470, 472 (Iowa 2004).

In considering a motion to dismiss, the court analyzes the petition for legal sufficiency. *Schaffer v. Frank Moyer Constr., Inc.,* 563 N.W.2d 605, 607 (Iowa 1997). A motion to dismiss admits well-pleaded facts and waives uncertainty or ambiguity in the

[1] The Court does not address the issue of whether the Ordinance is Constitutional on its face as this question goes to the merits of the Plaintiff's claims and is not a basis for a pre-answer motion to dismiss under Rule 1.421(1).

petition. *Id.* (citing *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994)). The motion is properly granted only when the petition "'on its face shows no right of recovery under any state of facts.'" *Id.* (quoting *Tate,* 510 N.W.2d at 887). In making this determination, the court accepts all allegations in the petition as true and construes them in a light most favorable to the nonmoving party. *D.M.H. ex rel. Hefel v. Thompson,* 577 N.W.2d 643, 644 (Iowa 1998) (citing *Brumage v. Woodsmall*, 444 N.W.2d 68, 68–69 (Iowa 1989)). "However, 'facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it.'" *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001) (citing *Ritz v. Wapello Cnty. Bd. of Supervisors,* 595 N.W.2d 786, 789 (Iowa 1999); *Tate,* 510 N.W.2d at 887). Consequently, motions to dismiss are not to be freely granted. *Id*.

As Iowa is a notice pleading state, Iowa R. Civ. P. 1.402(2)(a), little must be included in the petition for it to survive a motion to dismiss. *Rieff*, 630 N.W.2d at 292 (citing *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994)). The petition is not required to identify a specific legal theory; a petition suffices if the plaintiff states the prima facie elements of the particular claim and this statement provides the defendant with "fair notice." *Soike v. Evan Matthews & Co.*, 302 N.W.2d 841, 842 (Iowa 1981) (citing *Lamantia v. Sojka*, 298 N.W.2d 245, 247 (Iowa 1980)); *see also Woodsmall v. Kan. City Barbeque Soc'y, Inc.*, No. 01-1691, 2002 WL 31423199, at *1 (Iowa Ct. App. Oct. 30, 2002) ("We look to the pleadings to determine if they were so deficient that the opposing party was deprived of notice of the claims made." (citing *Haupt v. Miller*, 514 N.W.2d 905, 909 (Iowa 1994))). Defendants receive "fair notice" of a claim as long as the petition informs them of the incident giving rise to the claim and the general nature of the action. *Smith*, 513 N.W.2d

at 730; *see also Cemen Tech, Inc. v. Three D Indus., L.L.C.*, 753 N.W.2d 1, 12 (Iowa 2008) (citing *Roush v. Mahaska State Bank*, 605 N.W.2d 6, 10 (Iowa 2000)).

III. CONCLUSIONS OF LAW

A. Ripeness

"A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative." *Greenbiar Group, LLC v. Haines,* 854 N.W.2d 46, 50 (Iowa App. 2014). "If a claim is not ripe for adjudication, a court is without jurisdiction to hear the claim and must dismiss it." *Iowa Coal Mining Co. v. Monroe County,* 555 N.W.2d 418, 432 (Iowa 1996).

B. Standing

A plaintiff must have standing to invoke a court's jurisdiction. *Pillsbury Co. v. Wells Dairy, Inc.,* 752 NW2d 430, 432 (Iowa 2008). In order to establish standing, the complaining party must both have a specific personal or legal interest in the litigation and be injuriously affected. *Horsfield Materials Inc. v. City of Dyersville,* 834 NW2d 444, 452 (Iowa 2013). "The injury cannot be 'conjectural' or 'hypothetical' but must be 'concrete' and 'actual or imminent'". *Godfrey v. State,* 752 NW2d 413, 423 (Iowa 2008).

IV. ANALYSIS

In their Petition, the Plaintiffs contend that Ordinance No. 825 is unconstitutional in violation of Article I, Section 8 of the Iowa Constitution.[2] Initially, the Defendants assert that Ordinance No. 825 is constitutional on its face. This, however, while perhaps a basis for dismissal on summary judgment grounds, tis not a proper basis for dismissal on a pre-answer motion pursuant to Rule 1.421(1). Accordingly, the Court does not consider that

[2] Article 1, Section 8 prohibits unreasonable searches and seizures of persons, houses, papers and effects and that no warrant shall issue but on probable cause.

issue at this time other than the fact that the Plaintiffs have alleged a violation of Article I, Section 8 as a basis for their suit herein.

The real issues involved at this stage of the proceeding are those of ripeness and standing. As stated above, for a case to be ripe there must exist an actual, present controversy involved not just a hypothetical or speculative dispute. Likewise, for a party to have standing to bring a cause of action, that party must have a personal or legal interest in the litigation and be injuriously affected. The Defendant asserts that these conditions are not satisfied, at least at this time, as the Defendants have not yet attempted to enforce Ordinance No. 825 and as a result the controversy involved herein is only speculative and the Plaintiffs have not suffered any injuries as the Defendants may never seek to inspect the Plaintiffs properties under this ordinance.

The Defendants argument herein fails in light of the language contained in the ordinance. Ordinance No. 825 does not state that the City “may” inspect all rental units under Section 4.08 of the Ordinance. On the contrary, Section 4.08 states that the City “shall” inspect all rental units every five years or sooner. As such the Plaintiffs contentions herein are not speculative, the statutory requires the City to perform the action(s) that the Plaintiff complains of. Likewise this is clearly a present controversy as the Plaintiffs have all expressed their intentions to the City to refuse access to their properties for any inspections under Ordinance No. 825 and the City has expressed that they intend to proceed in accordance with the terms of the Ordinance (which again requires said inspections to take place, not that the City has discretion to conduct such inspections). Accordingly, the Court finds that this dispute is “ripe” for purposes of conferring jurisdiction upon the Court to consider the merits of the Plaintiffs Petition at this time.

For similar reasons, the Court also finds that the Plaintiffs have standing to bring this action at this time. It is clear that each of the Plaintiffs have a personal and legal interest in the litigation. Each are seeking to protect what they perceive to be their Article I, Section 8 rights in their residences or real estate that they own. In light of the language of the Ordinance it is equally clear that the Plaintiffs have been injuriously affected in a concrete and imminent manner. Again had the language of the Ordinance been discretionary instead of mandatory, this might not be the case. However, as stated above, the Ordinance requires and places a duty upon the City to conduct the inspections at least once every five years. While five years may not sound imminent, the facts of this case are such that if the Plaintiffs are required to wait until the inspection is in process, they will have little, or likely no, recourse to the Courts to prevent the injury(ies) they assert they will suffer to their privacy rights. Accordingly, the Court finds that the Plaintiffs have standing to bring this action at this time.

Based on the foregoing, the Court finds that the Defendants' Pre-Answer Motion to Dismiss should be denied at this time. The Court would consider the Defendants contention that the Ordinance is constitutionally valid on its face at a latter proceeding and makes no indication as to the merits of the Defendants contention in this regard at this time.

IT IS THEREFORE ORDERED that the Defendants Pre-Answer Motion to Dismiss is denied.

State of Iowa Courts

Case Number	**Case Title**
EQCV029175	VAN DAM, ET AL V. CITY OF ORANGE CITY, ET AL.
Type:	OTHER ORDER

So Ordered

Patrick H. Tott, Chief Judge
Third Judicial District of Iowa

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