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## Nebraska Judicial Branch

## Case Summary

In the District Court of Hall County  
 The Case ID is CI 19 000825  
 Gustave A Larson Co v. Cherry Park East  
 The Honorable Ryan C Carson, presiding.  
 Classification: Foreclosure-Other  
 Filed on 10/01/2019  
 This case is Open as of 10/01/2019

## Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Gustave A Larson Company	Aaron F Smeall 8712 W. Dodge Road, Suite 400 Omaha NE 68114 402-392-0101
Defendant ACTIVE Cherry Park East, LLC c/o Ward F Hoppe, Reg. Agent 5631 S 48th Street Suite 220 Lincoln NE 68516	
Defendant ACTIVE RCC Enterprises, L.L.C. c/o Russell Supencheck, Reg. Agent 1118 E Capital PO Box 1112 Grand Island NE 68801	
Alias is Burtle's Heating & A/C Defendant ACTIVE Russell A Supencheck 1107 S Pine Street Grand Island NE 68801	
Defendant ACTIVE Hoppe Homes, L.P. c/o Ward F Hoppe, Reg. Agent 5631 S 48th Street Suite 220 Lincoln NE 68516	
Defendant ACTIVE Equitable Bank c/o Thomas E Gdowski, Reg. Agent	

113 North Locust Street  
Grand Island NE 68801

### Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	10/01/2019	\$35.00
Plaintiff	Filing Fee - State	10/01/2019	\$1.00
Plaintiff	Automation Fee	10/01/2019	\$8.00
Plaintiff	NSC Education Fee	10/01/2019	\$1.00
Plaintiff	Dispute Resolution Fee	10/01/2019	\$0.75
Plaintiff	Indigent Defense Fee	10/01/2019	\$3.00
Plaintiff	Uniform Data Analysis Fee	10/01/2019	\$1.00
Plaintiff	J.R.F.	10/01/2019	\$6.00
Plaintiff	Filing Fee-JRF	10/01/2019	\$6.00
Plaintiff	Legal Aid/Services Fund	10/01/2019	\$6.25
Plaintiff	Complete Record	10/01/2019	\$15.00
Plaintiff	Service Fees	10/08/2019	\$6.95
Plaintiff	Service Fees	10/08/2019	\$6.95
Plaintiff	Service Fees	10/08/2019	\$6.95

### Financial Activity

No trust money is held by the court  
Fee/Fine held by the court is \$83.00

### Payments Made to the Court

Receipt	Type	Date	For	Amount
9078433	Non-Monetary Rec	10/08/2019	Gustave A Larson Compa	\$6.95
			Service Fees	\$6.95
9078434	Non-Monetary Rec	10/08/2019	Gustave A Larson Compa	\$6.95
			Service Fees	\$6.95
9078435	Non-Monetary Rec	10/08/2019	Gustave A Larson Compa	\$6.95
			Service Fees	\$6.95
269542	Electronic Trans	10/01/2019	Gustave A Larson Compa	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

## Register of Actions

10/08/2019 Return Summons/Alias Summons  
 The document number is 00120152  
 Served 10/04/2019, Certified Mail  
 Image ID N19281R3WD08

10/08/2019 Return Summons/Alias Summons

The document number is 00120151  
Served 10/04/2019, Certified Mail  
Image ID N19281R34D08

10/08/2019 Return Summons/Alias Summons  
The document number is 00120148  
Served 10/04/2019, Certified Mail

Image ID N19281R3ID08

10/01/2019 Summons Issued on Equitable Bank  
The document number is 00120152  
Summons e-mailed  
Image ID D00120152D08

10/01/2019 Summons Issued on Hoppe Homes, L.P.  
The document number is 00120151  
Summons e-mailed  
Image ID D00120151D08

10/01/2019 Summons Issued on Russell A Supencheck  
The document number is 00120150  
Summons e-mailed  
Image ID D00120150D08

10/01/2019 Summons Issued on RCC Enterprises, L.L.C.  
The document number is 00120149  
Summons e-mailed  
Image ID D00120149D08

10/01/2019 Summons Issued on Cherry Park East, LLC  
The document number is 00120148  
Summons e-mailed  
Image ID D00120148D08

10/01/2019 Complaint-Praecipe  
This action initiated by party Gustave A Larson Company  
Image ID N19274VAQD08



IN THE DISTRICT COURT OF HALL COUNTY, NEBRASKA

GUSTAVE A. LARSON COMPANY, )  
 a Wisconsin corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CHERRY PARK EAST, LLC, a )  
 Nebraska limited liability )  
 Company; RCC ENTERPRISES, )  
 L.L.C., a Nebraska limited )  
 Liability company, d/b/a )  
 Burtle's Heating & A/C; )  
 RUSSELL A. SUPENCHECK; )  
 HOPPE HOMES L.P., a Nebraska )  
 limited partnership; and )  
 EQUITABLE BANK, a Nebraska )  
 banking corporation, )  
 )  
 Defendants. )

CASE NO: CI19-\_\_\_\_\_

**COMPLAINT FOR FORECLOSURE  
 OF CONSTRUCTION LIEN  
 AND  
 VIOLATION OF  
 NEBRASKA PROMPT PAY ACT  
 Neb. Rev. Stat.  
 §45-1201 to 45-1211**

COMES NOW the Plaintiff, Gustave A. Larson Company, and for its Complaint against the Defendants, and each of them, alleges and states as follows:

JURISDICTION AND VENUE

1. That Plaintiff Gustave A. Larson Company ("Plaintiff") is a Wisconsin corporation with its principal office in Pewaukee, Wisconsin.
2. The Defendant Cherry Park East, LLC ("Defendant Cherry Park") is a Nebraska limited liability company with its principal place of business in Lincoln, Lancaster County, Nebraska.
3. The Defendant Hoppe Homes, L.P. ("Defendant Hoppe") is a Nebraska limited partnership with its principal place of business in Lincoln, Lancaster County, Nebraska.

4. The Defendant RCC Enterprises, L.L.C., ("Defendant RCC") is a Nebraska limited liability company with its principal place of business in Grand Island, Hall County, Nebraska, and is doing business as Burtle's Heating & A/C. Defendant RCC is the subcontractor of Defendant Hoppe.

5. The Defendant Russell A. Supencheck is a resident of Grand Island, Hall County, Nebraska, and guaranteed the Agreement entered into by Defendant RCC with Plaintiff. A true and correct copy of said Guaranty is attached hereto as Exhibit "A" and incorporated herein by this reference.

6. The Defendant Equitable Bank is a Nebraska banking corporation doing business in Grand Island, Hall County, Nebraska.

7. The events complained of herein took place in Grand Island, Hall, Nebraska.

#### GENERAL ALLEGATIONS

8. Plaintiff and Defendant RCC entered into an agreement (the "Agreement") to provide materials for the improvement of certain real property owned by Defendant Cherry Park and located at 588 Stuhr Road, Grand Island, Hall County, Nebraska (the "Real Property").

9. At all times relevant hereto, Plaintiff remained in compliance with the terms and conditions of said Agreement.

10. Plaintiff, at the special request of Defendant RCC furnished materials to the Real Property for the benefit of Defendant Cherry Park.

11. Pursuant to the Agreement, Plaintiff submitted to Defendant RCC documentation of materials provided as

specified in the Agreement and requested payment for the materials.

12. Defendant RCC accepted the materials provided by Plaintiff.

13. More than ninety (90) days has passed and Defendant RCC has failed to pay the Plaintiff.

14. After all credits there is presently due the Plaintiff from Defendant RCC the sum of Forty-seven Thousand Eight Hundred Fifty-six and 63/100 Dollars (\$47,856.63) plus interest accruing from and after April 13, 2018.

FIRST CLAIM FOR RELIEF  
FORECLOSURE OF CONSRUCUTION LIEN

15. Plaintiff restates those allegations contained in Paragraphs 1 through 14, inclusive, as if set forth separately herein.

16. Defendant Cherry Park at all times hereto, owned real estate and improvements thereon legally described as:

LOT ONE (1), EAST PARK ON STUHR SUBDIVISION,  
CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA  
(the "Real Property")

and commonly referred to as 588 Stuhr Road, Grand Island, Hall County, Nebraska.

16. That Plaintiff, at the special request of Defendant RCC, furnished materials to the Real Property referred to in paragraph 15 of Plaintiff's Complaint.

17. That said materials and services were furnished upon the request of Defendant RCC for HVAC equipment to be installed on the Real Property, and that there is presently due the Plaintiff, after all credits, the sum of Forty-seven Thousand Eight Hundred Fifty-six and 63/100 Dollars

(\$47,856.63) plus interest accruing from and after April 13, 2018.

18. That on March 22, 2018, Plaintiff filed a Construction Lien against the Real Property in the office of the Register of Deeds of Hall County, Nebraska, said Lien being recorded as Instrument Number 201801755 in the Construction Lien Records. A true and correct copy of said Construction Lien is attached hereto and marked Exhibit "B" and by this reference incorporated herein; that Plaintiff paid the sum of Sixteen and no/100 Dollars (\$16.00) for its filing fee for the filing of the Construction Lien; that in addition, Plaintiff has incurred costs for a lien search, which cost was required for the protection and enforcement of Plaintiff for its Construction Lien.

19. That no proceeding at law has been instituted to recover any part of the amount due for said Construction Lien.

20. That the Defendant Cherry Park claims to have some interest in, right or title to the Real Property by reason of a Deed recorded in the office of the Register of Deeds of Hall County, Nebraska, in which said Defendant Cherry Park is named as grantee of the subject premises, and is now the present titleholder of record, but whatever interest in said Real Property said Defendant Cherry Park may have is subject to, junior, inferior and subsequent to the Construction Lien of Plaintiff herein.

21. Defendant Equitable Bank may claim some right, title, lien or interest in said real property as Trustee and Beneficiary pursuant to a Construction Deed of Trust recorded January 5, 2017 in the Hall County Register of Deeds' Office identified as Instrument Number 201700098 and a Construction Deed of Trust recorded January 6, 2017 in

the Hall County Register of Deeds' Office identified as Instrument Number 201700116, but whatever right, title, lien or interest Defendant Equitable Bank may claim in said Real Property is junior and inferior, subject and subsequent to the interest of Plaintiff.

WHEREFORE, Plaintiff prays as follows:

(a) That its Construction Lien set forth herein be adjudged and decreed to be a valid first lien upon the Real Property in the amount of Forty-seven Thousand Eight Hundred Fifty-six and 63/100 Dollars (\$47,856.63) plus interest accruing from and after April 13, 2018, together with all costs expended by Plaintiff for filing and protection of the Construction Lien;

(b) Plaintiff further prays that said Defendant Cherry Park be directed to pay all sums found due to Plaintiff and, in default of payment, that such Construction Lien on the above-described Real Property and improvements thereon be foreclosed and that the above-described Real Property and improvements thereon be sold upon execution to pay the sums so found to be due;

(c) That the interests of the Defendants Equitable Bank and the Defendant Cherry Park be found to junior and inferior, subject and subsequent to the interest of Plaintiff;

(d) That in the event of such sale, the purchaser be put in possession and that Defendants, and each of them, be foreclosed of all right, title, interest and equity of redemption in the Real Property;

(e) Plaintiff recovers its costs, together with such further relief as this Court may deem just and equitable.

SECOND CLAIM FOR RELIEF  
VIOLATION OF THE NEBRASKA CONSTRUCTION PROMPT PAY ACT  
AGAINST DEFENDANT HOPPE HOMES, L.P.

22. Plaintiff restates those allegations contained in Paragraphs 1 through 21, inclusive, as if set forth separately herein.

23. Nebraska statutes include the Nebraska Construction Prompt Pay Act cited as Neb. Rev. Stat. §45-1201 to 45-1211.

24. At all times material the Defendant Hoppe Homes, L.P. was in charge of the project where the improvements were made and was acting as a representative of the owner of the Real Property.

25. Neb. Rev. Stat. §45-1203, provides (1) "When a contractor has performed work in accordance with the provisions of a contract with an owner, the owner shall pay the contractor within thirty days after receipt by the owner or the owner's representative of a payment request made pursuant to the contract." More than 30 days have passed since Plaintiff provided its request for payment.

26. Pursuant to Neb. Rev. Stat. §45-1205, Plaintiff is entitled to interest at a rate of 1% per month on the unpaid sum.

27. Pursuant to Neb. Rev. Stat. §45-1211, Plaintiff is entitled to an award of attorney fees.

WHEREFORE Plaintiff respectfully requests that this Court enter judgment against the Defendant Hoppe Homes, L.P. on Plaintiff's Second Claim for Relief in the amount of Forty-seven Thousand Eight Hundred Fifty-six and 63/100 Dollars (\$47,856.63) plus interest accruing from and after April 13, 2018; Plaintiff further requests that this Court award Plaintiff interest in the amounts proscribed

by Neb. Rev. Stat. §45-1205 at a rate of 1% per month on the unpaid amounts; Plaintiff further requests that this Court award Plaintiff attorney fees as prescribed by Neb. Rev. Stat. §45-1211; for costs as allowed by law; and for such other and further relief as this court deems just and equitable.

GUSTAVE A. LARSON COMPANY,  
Plaintiff

By         /s/ Aaron F. Smeall          
Aaron F. Smeall, #22756  
Smith Slusky Pohren & Rogers, LLP  
8712 West Dodge Rd., Suite 400  
Omaha, NE 68114  
402.392.0101  
Attorneys for Plaintiff

**This is an attempt to collect a debt and any information obtained will be used for that purpose. This firm and the lawyer signing this document may be considered debt collectors under the Fair Debt Collection Practices Act.**



# Gustave A. Larson Company

WHOLESALE HVAC AND REFRIGERATION

## INDIVIDUAL PERSONAL GUARANTY

I, Russell A. Supencheck residing at 1415 Windsor Rd Grand Island NE 68801  
 for and in consideration of Gustave A. Larson Company (hereafter "Larson") extending  
 credit at my request to RAS Enterprises Inc. <sup>OBA</sup> Burtles (hereafter  
(Name of Company)  
 referred to as the "Company"), of which I am owner/proprietor  
(Title)

hereby personally guarantee to Larson the payment at W233 N2869 Roundy Circle West, Pewaukee, Wisconsin 53072 of any obligation of the Company, and I hereby agree to pay Larson on demand any sum which may become due to Larson by the Company whenever the Company shall fail to pay the same, together with any reasonable attorney fees incurred by Larson in enforcing this Guaranty. It is understood that this Guaranty shall be a continuing and irrevocable guaranty and indemnity for such indebtedness of the Company.

I do hereby waive notice of default, non-payment and notice thereof and consent to any modification or renewal of the credit hereby guaranteed. I consent to the jurisdiction of the Circuit Court of Waukesha County, Wisconsin for any legal action arising out of this Guaranty.

Signature \_\_\_\_\_

Print Name Russell A. Supencheck

Social Security # 530842050

Date 5-21- 2013

Witness: \_\_\_\_\_

Address: 1415 Windsor Rd  
Grand Island NE 68801

W233 N2869 Roundy Circle West • P.O. Box 810 • Pewaukee, WI 53072-0910  
 Phone: 262-542-0200 • Fax: 262-542-2405 • www.galarson.com



ENTERED AS INSTRUMENT NO  
201801755  
STATE OF NEBRASKA )  
COUNTY OF HALL ) SS

2018 MAR 22 PM 01:33

*WGB WMB*  
REG OF DEEDS  
ELECTRONICALLY RECORDED  
RECORDING FEE \$16.00

201801755

CONSTRUCTION LIEN

DRAFTED BY AND RETURN TO:  
Advantage Lien Protection, LLC  
12065 W. Janesville Rd.  
Hales Corners, Wisconsin 53130  
414-529-5878

STATE OF NEBRASKA )  
HALL COUNTY )

CLAIMANT: **Gustave A. Larson Company**, pursuant to the provisions of the Nebraska Construction Lien Act, R.R.S. §52-125 et. seq., as amended, respectfully claims a Construction Lien upon the interest in the real estate of **Cherry Park East, LLC** as hereinafter described.

1. THE CLAIMANT is a Wisconsin Corporation, under the name of Gustave A. Larson Company, whose principal address is: W233 N2869 Roundy Circle West, Pewaukee, Wisconsin, 53072.
2. THE PROPERTY subject to this lien is: 588 Stuhr Road, Grand Island, Hall County, Nebraska, 68841, commonly known as *East Park Apartments*. **The Property legal description is: LOT ONE (1), EAST PARK ON STUHR SUBDIVISION, CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA. PARCEL ID: 400146215**
3. THE PROPERTY OWNER(S) name and mailing address against whose interest in the aforesaid real estate this lien is claimed is: Cherry Park East, LLC of 5631 South 48th Street, Ste. 220, Lincoln, Nebraska, 68516.
4. The Claimant states that on or about March 15, 2017, under a contract with Burtle's Heating & A/C, PO Box 1112, Grand Island, Nebraska 68802, under a sub-contract to Hoppe Homes LP, the undersigned Claimant agreed to furnish certain materials and/or labor to wit: HVAC equipment.
5. Further, that such labor and/or materials were furnished on and between March 15, 2017, and February 15, 2018, both days inclusive and were furnished to be used and were actually used for the improvement of said real estate.
6. That the total amount of Claimant's demand for such labor and/or materials so furnished was \$30,000.00 and that no part thereof has been paid; and that there is now due and owing to Claimant the sum of \$30,000.00, (*Thirty Thousand Dollars*), together with accruing interest due.

CLAIMANT: **GUSTAVE A. LARSON COMPANY**  
P.O. Box 3239,  
Milwaukee, Wisconsin 53201-3239

*Sarah Differt*, 3/15/18  
Ms. Sarah Differt Dated  
Claimant's authorized agent

25545-1

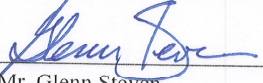
EXHIBIT "B"

page 2 of 2

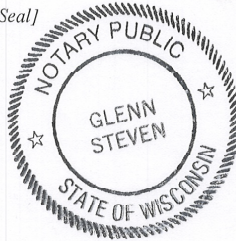
STATE OF Wisconsin        )  
  ) ss.  
MILWAUKEE COUNTY        )

The affiant, Ms. Sarah Differt, deposes that s/he is a duly authorized agent of Advantage Lien Protection, LLC, and that the foregoing Construction Lien is made at the instance of the Claimant, who have authorized Advantage Lien Protection, LLC, to act as their agent in this matter; that s/he has read the foregoing document and knows the contents thereof; and that all statements therein contained are true to the best of his, or her knowledge.

Subscribed and sworn to before me

  
\_\_\_\_\_, 3/15/2017  
Mr. Glenn Steven,  
Notary Public, State of Wisconsin  
My commission expires: 4/20/2021

[Seal]



25545-1 / 519217 East Park Apts East Park

IN THE DISTRICT COURT OF HALL COUNTY, NEBRASKA

GUSTAVE A. LARSON COMPANY, )  
a Wisconsin corporation, )  
 )  
Plaintiff, )

CASE NO: CI19-\_\_\_\_\_

vs. )

**PRAECIPE FOR SERVICE**

)  
CHERRY PARK EAST, LLC, a )  
Nebraska limited liability )  
Company; RCC ENTERPRISES, )  
L.L.C., a Nebraska limited )  
Liability company d/b/a )  
Burtle's Heating & A/C; )  
RUSSELL A. SUPENCHECK; )  
HOPPE HOMES L.P., a Nebraska )  
limited partnership; and )  
EQUITABLE BANK, a Nebraska )  
Banking corporation, )  
 )  
Defendants. )

TO THE CLERK OF SAID COURT:

Please issue summons for service upon the Defendants, together with a copy of the Complaint, by Certified U.S. Mail, Return Receipt Requested, at the following addresses:

Cherry Park East, LLC  
c/o Ward F. Hoppe, Reg. Agent  
5631 S 48<sup>th</sup> Street, Ste 220  
Lincoln NE 68516

RCC Enterprises, L.L.C.  
c/o Russell Supencheck, Reg. Agent  
PO Box 1112  
Grand Island NE 68801

Russell A. Supencheck  
1107 S Pine Street  
Grand Island NE 68801-7948

Hoppe Homes L.P.  
c/o Ward F. Hoppe, Reg. Agent  
5631 S 48<sup>th</sup> Street, Ste 220  
Lincoln NE 68516

Equitable Bank  
c/o Thomas E. Gdowski, Reg. Agent  
113 North Locust Street  
Grand Island NE 68801

GUSTAVE A. LARSON COMPANY,  
Plaintiff

By           /s/ Aaron F. Smeall            
Aaron F. Smeall, #22756  
Smith Slusky Pohren & Rogers, LLP  
8712 West Dodge Rd., Suite 400  
Omaha, NE 68114  
402.392.0101  
Attorneys for Plaintiff