

Select Language▼

All State Agencies | All State Services |

Nebraska Judicial Branch

Case Summary

In the District Court of Cass County
 The Case ID is CI 19 0000253
 E Poutre; et al v. M. Tincher; et al
 The Honorable Michael A Smith, presiding.
 Classification: Contract Disputes
 Filed on 09/30/2019
 This case is Open as of 09/30/2019

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Eric Poutre 201 Sunburst Circle Plattsmouth NE 68048	Thomas D Prickett 545 Main Street PO Box 489 Plattsmouth NE 68048 402-296-6996
Plaintiff ACTIVE Silvia Poutre 201 Sunburst Circle Plattsmouth NE 68048	Thomas D Prickett 545 Main Street PO Box 489 Plattsmouth NE 68048 402-296-6996
Plaintiff ACTIVE Steven Benner 207 Sunburst Circle Plattsmouth NE 68048	Thomas D Prickett 545 Main Street PO Box 489 Plattsmouth NE 68048 402-296-6996
Plaintiff ACTIVE Marilyn Benner 207 Sunburst Circle Plattsmouth NE 68048	Thomas D Prickett 545 Main Street PO Box 489 Plattsmouth NE 68048 402-296-6996
Defendant ACTIVE Mark A Tincher 1906 Young Road Plattsmouth NE 68048	Lauren R Goodman First National Tower, Suite 3 1601 Dodge Street Omaha NE 68102 402-341-3070
Defendant ACTIVE Tincher Investments, Co. 1906 Young Road Plattsmouth NE 68048	Lauren R Goodman First National Tower, Suite 3 1601 Dodge Street Omaha NE 68102 402-341-3070

Court Costs Information

Incurring By	Account	Date	Amount
Plaintiff	Petition	09/30/2019	\$35.00
Plaintiff	Filing Fee - State	09/30/2019	\$1.00

Incurring By	Account	Date	Amount
Plaintiff	Automation Fee	09/30/2019	\$8.00
Plaintiff	NSC Education Fee	09/30/2019	\$1.00
Plaintiff	Dispute Resolution Fee	09/30/2019	\$0.75
Plaintiff	Indigent Defense Fee	09/30/2019	\$3.00
Plaintiff	Uniform Data Analysis Fee	09/30/2019	\$1.00
Plaintiff	J.R.F.	09/30/2019	\$6.00
Plaintiff	Filing Fee-JRF	09/30/2019	\$6.00
Plaintiff	Legal Aid/Services Fund	09/30/2019	\$6.25
Plaintiff	Complete Record	09/30/2019	\$15.00
Plaintiff	Service Fees	10/04/2019	\$46.06

Financial Activity

No trust money is held by the court
No fee money is held by the court

Payments Made to the Court

Receipt	Type	Date	For	Amount
9064054	Non-Monetary Rec	10/07/2019	Poutre, Eric,	\$46.06
			Service Fees	\$46.06
102098	Electronic Trans	09/30/2019	Poutre, Eric,	\$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

12/03/2019 Answer

This action initiated by party Mark A Tincher
Answer filed by Lauren R Goodman of McGrath North Mullin & Kratz PC LLO,
obo Mark A Tincher and Tincher Investments Co, Inc.
Image ID N19337780D20

10/04/2019 Return Summons/Alias Summons

The document number is 00032841
Served 10/02/2019, Cass County Sheriff
Personal Service

Served Summons and Complaint @ Def's Home 1906 Young Rd, Plattsmouth,
NE. 68048

Image ID 000100787D20

09/30/2019 Summons Issued on Mark A Tincher

The document number is 00032841
Image ID D00032841D20

09/30/2019 Demand for Jury Trial
For Progression Purposes Only

09/30/2019 Praecipe-Summons/Alias

This action initiated by party Eric Poutre
Cass Co Shf serve Mark A. Tincher by Pers Svc.
Image ID N19273HLWD20

09/30/2019 Complaint-Praecipe

This action initiated by party Eric Poutre
C/A #1--Breach of Contract Express or Implied; C/A #2--Promissory Estoppe

1

Image ID N19273HLQD20

IN THE DISTRICT COURT OF CASS COUNTY NEBRASKA

ERIC POUTRE and SILVIA)	Case No. CI 19-
POUTRE, husband and wife, and)	
STEVEN BENNER and)	
MARILYN BENNER, husband)	
and wife,)	
)	
Plaintiffs,)	
)	
vs.)	COMPLAINT
)	
MARK A. TINCHER, and)	
TINCHER INVESTMENTS CO.,)	
INC.,)	
)	
Defendants.)	

COMES NOW, Plaintiffs and for their Complaint against the Defendants, state and allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs are residents of Cass County, Nebraska an own property within Lakeview Estates II Subdivision.
2. Defendant Tinch Investments Co., Inc., (hereinafter "Tinch Investments") is domestic corporation with its principal place of business in Cass County, Nebraska, and doing business in Cass County, Nebraska and elsewhere.
3. Defendant Mark A. Tinch is an individual residing in Cass County, Nebraska.
4. Defendant Mark A. Tinch is the principal of and exercises dominion and control over Tinch Investments.
5. Jurisdiction for this lawsuit is proper in this Court pursuant to Neb. Rev. Stat. § 24-302.
6. Venue is proper in this Court pursuant to Neb. Rev. Stat. § 403.1 because the occurrences at issue in this action occurred in Cass County, Nebraska.

7. Plaintiff hereby demands a jury trial on issues triable to a jury.

FACTS AND BACKGROUND

8. Defendant Tincher Investments was the developer of the Lakeview Estates II subdivision.

9. Defendant Tincher Investments developed the Lakeview Estates II Subdivision, marketed, and sold lots within the subdivision.

10. All of the streets and thoroughfares in the Lakeview Estates II Subdivision are paved except for Sunburst Circle.

11. Plaintiffs in this action reside on Sunburst Circle within the Lakeview Estates II Subdivision.

12. On or about April 16, 2013, Plaintiffs Eric and Silvia Poutre as buyer and Tincher Investments and Mark A. Tincher as seller entered into an agreement for the purchase of Lots 11 and 12 in the Lakeview Estates II Subdivision. As part of the agreement seller agreed to “[H]ave the cul-de-sac roadway built prior to October 1, 2015, to include grading, paving, and blacktopped.”

13. Plaintiffs Steven and Marilyn Benner purchased lot 6 of the Lakeview Estates II Subdivision from Tincher Investments in October of 2015.

14. Defendant Mark A. Tincher promised Steven and Marilyn Benner that Mark A. Tincher would pave Sunburst Circle on multiple occasions.

15. Steven and Marilyn started construction of their residence on Lot 6 in the Lakeview Estates II Subdivision in January of 2016 and completed construction in October of 2016.

16. Mark A. Tincher promised Steven and Marilyn Benner that he would pave Sunburst Circle once construction of the Brenner residence was complete.

17. Plaintiffs herein have made repeated demands on the Defendants to pave Sunburst Circle but Defendants have failed to do so.

**FIRST THEORY OF RECOVERY: BREACH OF CONTRACT EXPRESS OR
IMPLIED**

18. The foregoing paragraphs are incorporated by reference herein as if fully set forth.

19. The parties entered into binding and enforceable agreements wherein the Defendants were obligated to pave Sunburst Circle.

20. The Plaintiffs have fully performed all obligations incumbent upon them pursuant to the agreements.

21. The Defendants have materially breached the express or implied agreements with the Plaintiffs by failing to pave the Sunburst Circle.

22. As a direct and proximate result of Defendants' breach, the Plaintiffs have been damaged in an amount to be proven at trial.

SECOND THEORY OF RECOVERY: PROMISSORY ESTOPPEL

23. The foregoing paragraphs are incorporated by reference as if fully set forth herein.

24. The Defendants made promises to pave Sunburst Circle.

25. The Defendants should reasonably expect that their promises would induce action or forbearance by the Plaintiffs.

26. The Plaintiffs relied upon the Defendants' promise and acted in accordance therewith.

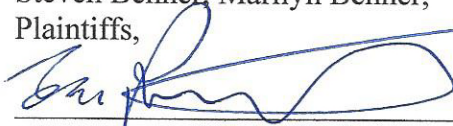
27. The Plaintiffs' reliance upon the Defendants' promises were reasonable and foreseeable.

28. The only way to avoid injustice is to enforce the promise made by the Defendants.

WHEREFORE, Plaintiffs prays for a judgment against the Defendants, jointly and severally, in an amount to be determined at trial, trial by jury, pre- and post-judgment interest to the extent permitted by law, costs and attorney's fees to the extent permitted by law, and for such other and further relief as the Court may deem fair and just under the circumstances.

Respectfully Submitted,
Eric Poutre, Silvia Poutre,
Steven Benner, Marilyn Benner,
Plaintiffs,

By:



Thomas D. Prickett, #24516
Reinsch, Slattery, Bear & Minahan, PC, LLO
545 Main Street / P.O. Box 489
Plattsmouth, NE 68048
Tel: 402-296-6996
Email: tdp@rsbmlaw.com

IN THE DISTRICT COURT FOR CASS COUNTY, NEBRASKA

ERIC POUTRE and SILVIA POUTRE,)
husband and wife, and STEVEN BENNER and)
MARILYN BENNER, husband and wife,)
)
Plaintiffs,) **ANSWER**
)
vs.)
)
MARK A. TINCHER, and TINCHER)
INVESTMENTS CO., INC.,)
)
Defendants.

Defendants, Mark A. Tincher and Tincher Investments Co., Inc. (“Defendants”) for its answer to Plaintiffs’ Complaint hereby answers, denies and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Defendants lack information sufficient to admit or deny the allegations in Paragraph 1 of Plaintiffs’ Complaint and therefore deny those allegations.
2. Defendants admit the allegations in Paragraph 2 of Plaintiffs’ Complaint.
3. Defendants admit the allegations in Paragraph 3 of Plaintiffs’ Complaint.
4. Defendants admit that Mark A. Tincher is a shareholder of Defendant, Tincher Investments Co., Inc. Defendants deny the remaining allegations in Paragraph 4 of Plaintiffs’ Complaint.
5. Defendants admit that this Court has jurisdiction for this lawsuit.
6. Defendants admit that venue is proper in Cass County.
7. Paragraph 7 of Plaintiffs’ Complaint contains no allegations, and therefore no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 7 of Plaintiffs’ Complaint.

FACTS AND BACKGROUND

8. Defendants admit the allegations in Paragraph 8 of Plaintiffs' Complaint.

9. Defendants admit the allegations in Paragraph 9 of Plaintiffs' Complaint.

10. Defendants admit the allegations in Paragraph 10 of Plaintiffs' Complaint.

11. Defendants admit the allegations in Paragraph 11 of Plaintiffs' Complaint.

12. Defendants admit that Tincher Investments Co., Inc. sold Lots 11 and 12 in the Lakeview Estates II Subdivision to Eric and Silvia Poutre. Defendants deny the remaining allegations in Paragraph 12 of Plaintiffs' Complaint.

13. Defendants admit the allegations in Paragraph 13 of Plaintiffs' Complaint.

14. Defendants deny the allegations in Paragraph 14 of Plaintiffs' Complaint.

15. Defendants lack information sufficient to admit or deny the allegations in Paragraph 15 of Plaintiffs' Complaint and therefore deny those allegations.

16. Defendants deny the allegations in Paragraph 16 of Plaintiffs' Complaint.

17. Defendants deny the allegations in Paragraph 17 of Plaintiffs' Complaint.

FIRST THEORY OF RECOVERY: BREACH OF CONTRACT EXPRESS OR IMPLIED

18. For its response to Paragraph 18 of Plaintiffs' Complaint, Defendants incorporate herein by this reference its responses to Paragraphs 1 through 17 of Plaintiffs' Complaint.

19. Defendants deny the allegations in Paragraph 19 of Plaintiffs' Complaint.

20. Defendants deny the allegations in Paragraph 20 of Plaintiffs' Complaint.

21. Defendants deny the allegations in Paragraph 21 of Plaintiffs' Complaint.

22. Defendants deny the allegations in Paragraph 22 of Plaintiffs' Complaint.

SECOND THEORY OF RECOVERY: PROMISSORY ESTOPPEL

23. For its response to Paragraph 23 of Plaintiffs' Complaint, Defendants incorporate herein by this reference its responses to Paragraphs 1 through 22 of Plaintiffs' Complaint.

24. Defendants deny the allegations in Paragraph 24 of Plaintiffs' Complaint.

25. Defendants deny the allegations in Paragraph 25 of Plaintiffs' Complaint.

26. Defendants deny the allegations in Paragraph 26 of Plaintiffs' Complaint.

27. Defendants deny the allegations in Paragraph 27 of Plaintiffs' Complaint.

28. Defendants deny the allegations in Paragraph 28 of Plaintiffs' Complaint.

29. Defendants deny each and every allegation of Plaintiffs' Complaint not specifically admitted in this Answer.

30. Defendants allege that Plaintiffs have failed to state or allege facts upon which relief can be granted against Defendants.

31. Defendants allege that Plaintiffs' claims for breach of contract are barred because any alleged contract for the pavement of concrete lacked consideration.

32. Defendants allege that Defendant, Mark A. Tincher, is not a proper party to this lawsuit.

WHEREFORE, Defendants, Mark A. Tincher and Tincher Investments Co., Inc. request that Plaintiffs' Complaint be dismissed with prejudice, with Plaintiffs to bear all costs, and for any further relief as the Court deems just and reasonable.

DATED this 3rd day of December, 2019.

DEFENDANTS, Mark A. Tincher and Tincher
Investments Co., Inc.,

By: /s/ Lauren R. Goodman

Lauren R. Goodman (No. 24645)
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, Nebraska 68102
(402) 341-3070
(402) 341-0216 fax
lgoodman@mcgrathnorth.com

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December 2019, a true and correct copy of the foregoing were sent via regular U.S. mail, postage prepaid, to the following:

Thomas Prickett
Attorney at Law
Reinsch, Slattery, Bear, Minahan and Prickett, P.C., L.L.O.
545 Main Street
P.O. Box 489
Plattsmouth, Nebraska 68048
402-296-6996

/s/ Lauren R. Goodman

Certificate of Service

I hereby certify that on Wednesday, December 04, 2019 I provided a true and correct copy of the Answer to the following:

Tincher,Mark,A service method: No Service

Benner,Marilyn, represented by Thomas D. Prickett (Bar Number: 24516) service method:
Electronic Service to tdp@rsbmlaw.com

Tincher Investments, Co. service method: No Service

Poutre,Eric, represented by Thomas D. Prickett (Bar Number: 24516) service method:
Electronic Service to tdp@rsbmlaw.com

Poutre,Silvia, represented by Thomas D. Prickett (Bar Number: 24516) service method:
Electronic Service to tdp@rsbmlaw.com

Benner,Steven, represented by Thomas D. Prickett (Bar Number: 24516) service method:
Electronic Service to tdp@rsbmlaw.com

Signature: /s/ Lauren Goodmman (Bar Number: 24645)