

NO. CV33796

CITY OF BRECKENRIDGE, TEXAS
Plaintiff,

VS.

AKERS INVESTMENTS LLC and
MICHAEL GREG AKERS
Defendants.

§
§
§
§
§
§
§

IN THE 90TH

JUDICIAL DISTRICT COURT

STEPHENS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE COURT:

The City of Breckenridge, Texas ("City" or "Plaintiff"), Plaintiff in the above styled and numbered cause, files this Original Petition complaining of and about Akers Investments LLC ("Akers Investments") and Michael Greg Akers ("Mr. Akers") (collectively "Defendants"), Defendants in the above styled and numbered cause, and for cause of action would show the Court as follows:

I.

Plaintiff intends to conduct discovery under Level 1 of Texas Rule of Civil Procedure 190.2 and affirmatively pleads that this suit is governed by the expedited actions process in Texas Rule of Civil Procedure 169.

II.

Plaintiff seeks only monetary relief of \$250,000 or less, including damages of any kind, penalties, court costs, expenses, prejudgment interest, and attorney's fees.

III.

Plaintiff is a home-rule municipal corporation organized under the laws of the State of

NO. CV33796

CITY OF BRECKENRIDGE, TEXAS
Plaintiff,

VS.

AKERS INVESTMENTS LLC and
MICHAEL GREG AKERS
Defendants.

§
§
§
§
§
§
§
§

IN THE 90TH

JUDICIAL DISTRICT COURT

STEPHENS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE COURT:

The City of Breckenridge, Texas ("City" or "Plaintiff"), Plaintiff in the above styled and numbered cause, files this Original Petition complaining of and about Akers Investments LLC ("Akers Investments") and Michael Greg Akers ("Mr. Akers") (collectively "Defendants"), Defendants in the above styled and numbered cause, and for cause of action would show the Court as follows:

I.

Plaintiff intends to conduct discovery under Level 1 of Texas Rule of Civil Procedure 190.2 and affirmatively pleads that this suit is governed by the expedited actions process in Texas Rule of Civil Procedure 169.

II.

Plaintiff seeks only monetary relief of \$250,000 or less, including damages of any kind, penalties, court costs, expenses, prejudgment interest, and attorney's fees.

III.

Plaintiff is a home-rule municipal corporation organized under the laws of the State of

Texas, and which is located in Stephens County, Texas.

IV.

Defendant, Akers Investments LLC was a Texas limited liability company which had done business in Stephens County, Texas. Akers Investments forfeited its right to do business in the State of Texas on February 23, 2024. Akers Investments may therefore be served with process by serving its Director Michael Akers at 122 Sunset Blvd., Breckenridge, TX 76424 pursuant to Rule 29 of the Texas Rules of Civil Procedure.

Defendant Michael Greg Akers is an individual residing in Stevens County, Texas. Michael Greg Akers may be served at 122 Sunset Blvd., Breckenridge, TX 76424 or wherever he may be found.

V.

Venue is appropriate in Stephens County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a).

FACTS

VI.

In early 2024, the City determined that it was in its best interest to establish a dog park for use by citizens of the City and the surrounding areas. The creation of a dog park requires the installation of fencing of sufficient quality to form a protective barrier around the park to both (1) prevent dogs from escaping and potentially injuring themselves or others and (2) ensure that the dogs participating in dog park activities are protected from outside threats such as, for example, aggressive dogs which may be strays not suited for dog park participation.

The total anticipated cost of installing the fencing for a dog park being determined to be under the \$50,000 threshold which would require public bidding pursuant to Chapter 252 of the

Texas Local Government Code, the City solicited informal submittals from those members of the community who were in the business of installing fencing in the community.

One of the individuals who sought to obtain the contract from the City to install the dog-park fencing was Mr. Akers. Mr. Akers resided in the City of Breckenridge and was at the time believed to operate a company known as Akers Investments LLC.¹ Ultimately, on April 1, 2024, Akers Investments LLC submitted a bid to the City quoting a price of \$24,304.94 to supply and install the required fencing. After some discussions with the City, Akers Investments LLC requested 25% of the quoted price up front. The City ultimately issued a purchase order to Akers Investments LLC and paid the requested 25%, which check was deposited. *See* Exhibit 1 (the quote, purchase order, and payment). While the City expected work to promptly begin on the dog park fencing, it did not. In fact, to this day no fencing has been installed and the City has not received a refund of its monies paid.

It subsequently became known to the City that two months prior to its receipt of Akers Investments LLC's quote and its payment thereto, Akers Investments LLC had forfeited its existence in the State of Texas pursuant to Texas Tax Code § 171.309. *See* Exhibit 2 (SOS tax forfeiture certificate). Mr. Akers was a director or officer of Akers Investments LLC. *See* Exhibit 3 (SOS information form).

Written demand for repayment was made on Akers Investments LLC on May 7, 2025. *See* Exhibit 4. Akers Investments LLC has not to date remitted the amount due as demanded therein. Written demand for repayment was made on Mr. Akers on July 11, 2025. Exhibit 5.

Texas Tax Code § 171.255 provides for liability when an entity which has forfeited its

¹ Since the events forming the basis of this Petition, Greg Akers has been elected as a member of the City of Breckenridge City Council. All of the facts which form the basis of this Petition occurred prior to his assuming that office.

existence incurs obligations after said forfeiture. Specifically, subpart a of that section provides that “each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived.” Tex. Tax. Code § 171.255(a). Moreover, that liability is in the same manner and to the same extent as if the director or officer were a partner in a partnership. *Id.* at § 171.255(b). As a result, the obligations incurred by Akers Investments LLC in April 2024, after its corporate status had been forfeited pursuant to § 171.309 of the Texas Tax Code are the liability of Mr. Akers pursuant to § 171.255.

VII.

CAUSES OF ACTION

A. Breach of Contract

The quote transmitted by Akers Investments LLC constituted an offer to provide the materials at the quoted price, the City responded with an acceptance subject to Akers Investments LLC accepting a 25% down payment, and Akers Investments LLC accepted this response by cashing the check. Despite the offer and acceptance of this contractual agreement, Akers Investments LLC and Mr. Akers failed to perform under the terms of the contract by supplying the agreed upon materials. Further, upon demand, they have refused to repay the monies paid by the City in anticipation of the materials being supplied. *See* Exhibits 3, 4. Defendants are in breach of the contractual agreement with the City and the City is entitled to recover its actual damages of \$6,076.24 for said breach and its compensatory damages stemming therefrom.

B. Conversion

To establish a claim for conversion of personal property, a plaintiff must prove that: (1) the plaintiff owned or had legal possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property. *Smith v. Maximum Racing, Inc.*, 136 S.W.3d 337, 341 (Tex. App.—Austin 2004, no pet.). Defendants took custody of the City's property (*i.e.*, its money) and refused to provide the goods that money was transferred for. The City has demanded the return of the money and Defendants have not returned same. Defendants have converted the Plaintiff's property, and the City is entitled to recover its actual damages of \$6,076.24 as well as compensatory damages stemming therefrom.

C. Unjust Enrichment

"Unjust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay." *Freeman v. Harleton Oil & Gas, Inc.*, 528 S.W.3d 708, 740 (Tex. App.—Texarkana 2017, pet. denied). In the event no enforceable contract is found by the Court, the City is entitled to recover its actual damages under the unjust enrichment theory, as Defendants have paid money to Defendants for materials Defendants have refused to provide and, further, Defendants have refused to refund the money. The City is therefore entitled to recover its actual damages of \$6,076.24 under this quasi-contract theory.

D. Attorneys' Fees

The City is entitled to recover reasonable and necessary attorney's fees under Texas Civil Practice and Remedies Code chapter 38 because this suit satisfies the requirements of § 38.001(b). The City has retained the undersigned counsel, who presented the City's claim to Akers Investments LLC and Mr. Akers. Neither Akers Investments LLC nor Mr. Akers tendered the amount owed within 30 days after the claim was presented.

CONDITIONS PRECEDENT

VIII.

All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

PRAYER

Therefore, the City of Breckenridge, Texas respectfully requests that the Defendants be cited to appear and answer herein, and that upon final hearing hereof, the City have judgment of and against the Defendants, jointly and severally, for:

- (1) Actual damages of \$6,076.24;
- (2) Compensatory damages as may be determined by the finder of fact;
- (3) Prejudgment and postjudgment interest at the maximum rate permitted by law;
- (4) Court costs;
- (5) Attorney fees; and
- (6) All other and further relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ Wm. Andrew Messer

WM. ANDREW MESSER

STATE BAR NO. 13472230

andy@txmunicipallaw.com

TIMOTHY A. DUNN

STATE BAR NO. 24050542

taddunn@txmunicipallaw.com

MESSER FORT, PLLC

6371 PRESTON ROAD, SUITE 200

FRISCO, TEXAS 75034

972.668.6400 - TELEPHONE

972.668.6414 - FACSIMILE

COUNSEL FOR PLAINTIFF

Invoice

Akers Investments LLC
 114 E. Elm St.
 Breckenridge, Tx., 76424
 (254) 212-9279
 Greg.AkersInvestmentsLLC@gmail.com

DATE	INVOICE #
4/1/2024	1059

BILL TO
City Of Breckenridge 105 North Rose Ave. Breckenridge, Tx. 76424

DUE DATE	JOB NAME
4/12/2024	

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Fencing	Materials for 900' of 6' Chain Link Fencing including but not limited to: 1. Terminal Posts 2. Line Posts 3. Top Rail 4. Tension wire 5. Two 7' Drive through Gate 6. Two 3.5' Walk through Gate 7. All miscellaneous Hardware, etc.	1	14,404.94	14,404.94
Fencing	Labor to install 900' of 6' Chain Link Fencing described above.	900	11.00	9,900.00
	To begin work we require 60% of the total bill equals \$14,582.97. Final payment will be due at completion \$9,721.97. The estimated time start to finish will be 2 weeks weather permitting.			0.00

Pd 25% of Invoice #6,076.24 CK#6446 4-30-24

We appreciate your prompt payment.

Total	24,304.94
Balance Due	24,304.94

105 NORTH ROSE - BRECKENRIDGE, TEXAS 76424

6. 10. 1941

To

Date _____

Confirming Order-

By

Ship To

SHOW THIS ORDER NUMBER ON INVOICE. RENDER INVOICE IN DUPLICATE AND MAIL TO BRECKENRIDGE, TEXAS.
RENDER SEPARATE INVOICE FOR EACH SHIPMENT. INDICATE ON ALL INVOICES DISCOUNT TERMS OF PAYMENT.

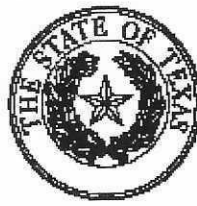
[illegible]

REQUESTED BY

ACCOUNT NO.

APPROVED BY

By



**Forfeiture pursuant to Section 171.309 of the Texas Tax Code
of
Akers Investments, LLC**

File Number : 804606378

Certificate / Charter forfeited : February 23, 2024

The Secretary of State finds that:

1. The Secretary has received certification from the Comptroller of Public Accounts under Section 171.302 of the Texas Tax Code indicating that there are grounds for the forfeiture of the taxable entity's charter, certificate or registration; and
2. The Comptroller of Public Accounts has determined that the taxable entity has not revived its forfeited privileges within 120 days after the date that the privileges were forfeited.

Therefore, pursuant to Section 171.309 of the Texas Tax Code, the Secretary of State hereby forfeits the charter, certificate or registration of the taxable entity as of the date noted above and records this notice of forfeiture in the permanent files and records of the entity.



A handwritten signature in cursive script that reads "Jane Nelson".

Jane Nelson
Secretary of State

Comptroller
of Public
Accounts
FORM

05-102

(Rev.9-11/30)

Texas Franchise Tax Public Information Report

To be filed by Corporations, Limited Liability Companies (LLC) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

Tcode 13196 Franchise

Taxpayer number

3 2 0 8 4 9 5 6 7 1 6

Report year

2 0 2 4

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at (800) 252-1381 or (512) 463-4600.

Taxpayer name

AKERS INVESTMENTS, LLC

Mailing address

122 SUNSET BLVD

City

BRECKENRIDGE

State

TX

ZIP Code

76424

Plus 4

Secretary of State (SOS) file number or
Comptroller file number

0804606378

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office

122 Sunset BLVD

Principal place of business

Please sign below!

Officer, director and manager information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or managers change throughout the year.



3208495671624

SECTION A Name, title and mailing address of each officer, director or manager.

Name	Title	Director	Term expiration	m	m	d	d	y	y
Michael Akers	Officer	<input checked="" type="radio"/> YES							
Mailing address	City	State	ZIP Code						
122 Sunset BLVD	Breckenridge	TX	76424						
Name	Title	Director	Term expiration	m	m	d	d	y	y
		<input type="radio"/> YES							
Mailing address	City	State	ZIP Code						
Name	Title	Director	Term expiration	m	m	d	d	y	y
		<input type="radio"/> YES							
Mailing address	City	State	ZIP Code						

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of 10 percent or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership

Registered agent and registered office currently on file. (see instructions if you need to make changes)

Agent: MICHEAL AKERS

☐ Blacken circle if you need forms to change the registered agent or registered office information.

Office: 122 SUNSET BLVD	City: BRECKENRIDGE	State: TX	ZIP Code: 76424
-------------------------	--------------------	-----------	-----------------

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or manager and who is not currently employed by this, or a related, corporation or limited liability company.

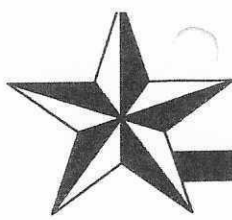
sign here Rhonda Crawford	Title: Electronic	Date: 04-09-2024	Area code and phone number: (254) 212-9353
---------------------------	-------------------	------------------	--

Texas Comptroller Official Use Only



VE/DE	<input type="radio"/>	PIR IND	<input type="radio"/>
-------	-----------------------	---------	-----------------------





MESSER ★ FORT

THE MUNICIPAL LAW FIRM

FRISCO | DALLAS | AUSTIN | ABILENE

EXHIBIT

4

exhibitmaker.com

May 7, 2025

Greg Akers
Akers Investments LLC
114 E. Elm St.
Breckenridge, TX 76424
Via email: Greg.AkersInvestmentsLLC@gmail.com
Via CM/RRR 7022 0410 0001 8982 1865
Via Regular Mail

RE: Demand for Payment

Mr. Akers:

This firm represents the City of Breckenridge (the "City"). In April of 2024, the City and Akers Investments LLC (the "Contractor") entered into a contract for the construction of a fence at the City's dog park (the "Contract"). The City agreed to pay Contractor 25%, or \$6,076.24, of the total Contract price, before the work was complete and such payment was made on April 30, 2024.

Although the Contract stated that the work would be complete within two (2) weeks, as of the date of this letter, the Contractor has yet to begin construction as agreed in the Contract. As such, Contractor is in breach of the Contract. Rather than enforce the Contractor's performance under the Contract, the City is electing to be reimbursed for its initial payment so the project may be rebid.

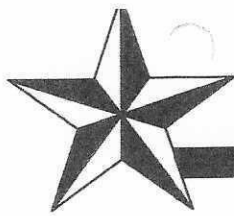
Demand is hereby made that Akers Investments LLC remit payment in the amount of \$6,076.24 to the City of Breckenridge at 105 N. Rose Ave., Breckenridge, Texas, 76424, Attention: Cynthia Northrop, City Manager, by May 21, 2025. Failure to do so may result in the City pursuing any and all claims against the Contractor that it has under the law.

We look forward to your prompt compliance.

Sincerely,

Eileen M. Hayman
City Attorney for the City of Breckenridge

Cc: Cynthia Northrop, City Manager (via email)



MESSER ★ FORT

THE MUNICIPAL LAW FIRM

FRISCO | DALLAS | AUSTIN | ABILENE

EXHIBIT

5

July 11, 2025

Michael Greg Akers
122 Sunset Blvd.
Breckenridge, TX 76424
Via email: mr.greg.akers@gmail.com
Via CM/RRR 9589 0710 5270 1780 9885 09
Via Regular Mail

RE: Demand for Payment

Mr. Akers:

This firm represents the City of Breckenridge (the "City"). In April of 2024, the City entered into a contract which was purportedly with Akers Investments LLC and was signed by yourself for the construction of a fence at the City's dog park (the "Contract"). The City agreed to pay 25%, or \$6,076.24, of the total Contract price, before the work was complete and such payment was made on April 30, 2024. A copy of the offer and responsive purchase order is attached as Exhibit A.

Akers Investments LLC was not a going concern in April 2024, having forfeited its corporate existence in February 2024. The contractual obligations undertaken by Akers Investments LLC after its corporate status was forfeited are the legal responsibility of its directors and officers pursuant to Tex. Tax Code § 171.255.

In any event, although the Contract stated that the work would be complete within two (2) weeks, as of the date of this letter, no construction pursuant to the Contract has taken place. As such, the entity or individual responsible under the Contract—yourself—is in breach of the Contract. Rather than enforce your performance under the Contract, the City is electing to be reimbursed for its initial payment so the project may be rebid.

Demand is hereby made that you, Michael Greg Akers, remit payment in the amount of \$6,076.24 to the City of Breckenridge at 105 N. Rose Ave., Breckenridge, Texas, 76424, Attention: Cynthia Northrop, City Manager, by May 21, 2025. Failure to do so may result in the City pursuing any and all claims against you that it has under the law, including seeking recovery of its attorneys fees pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code.

We look forward to your prompt compliance.

Sincerely,

/s/ Timothy A. Dunn

Timothy A. Dunn
Assistant City Attorney for the City of Breckenridge

Akers Investments LLC
 114 E. Elm St.
 Breckenridge, Tx., 76424
 (254) 212-9279
 Greg.AkersInvestmentsLLc@gmail.com

Invoice

DATE	INVOICE #
4/1/2024	1059

BILL TO
City Of Breckenridge 105 North Rose Ave. Breckenridge, Tx. 76424

DUE DATE	JOB NAME
4/12/2024	

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Fencing	Materials for 900' of 6' Chain Link Fencing including but not limited to: 1. Terminal Posts 2. Line Posts 3. Top Rail 4. Tension wire 5. Two 7' Drive through Gate 6. Two 3.5' Walk through Gate 7. All miscellaneous Hardware, etc.	1	14,404.94	14,404.94
Fencing	Labor to install 900' of 6' Chain Link Fencing described above.	900	11.00	9,900.00
	To begin work we require 60% of the total bill equals \$14,582.97. Final payment will be due at completion \$9,721.97. The estimated time start to finish will be 2 weeks weather permitting.			0.00
Pd 25% of Invoice #6,076.24 CK#6446 430.24				

We appreciate your prompt payment.

Total	24,304.94
Balance Due	24,304.94

105 NORTH ROSE - BRECKENRIDGE, TEXAS 76424

600

Date _____

Confirming Order _____

By _____

Ship To _____

SHOW THIS ORDER NUMBER ON INVOICE. RENDER INVOICE IN DUPLICATE AND MAIL TO BRECKENRIDGE, TEXAS.
RENDER SEPARATE INVOICE FOR EACH SHIPMENT. INDICATE ON ALL INVOICES DISCOUNT TERMS OF PAYMENT.

QUANTITY

DESCRIPTION OF MATERIAL

Blank Page

2014

REQUESTED BY

ACCOUNT NO.

APPROVED BY

By

Financial Board

IC Printing

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Sherry Brown on behalf of Wm. Andrew Messer
Bar No. 13472230
sherry@txmunicipallaw.com
Envelope ID: 103672768
Filing Code Description: Petition
Filing Description: Plaintiff's Original Petition
Status as of 7/29/2025 8:05 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Sherry Brown		sherry@txmunicipallaw.com	7/28/2025 3:53:06 PM	SENT
Andy Messer		andy@txmunicipallaw.com	7/28/2025 3:53:06 PM	SENT
Timothy A.Dunn		Taddunn@txmunicipallaw.com	7/28/2025 3:53:06 PM	SENT