

IN THE DISTRICT COURT OF THE CHEROKEE NATION

FILED

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THE CHEROKEE NATION,

Plaintiff,

v.

RED STONE CONSTRUCTION
SERVICES, LLC; STARR DESIGN GROUP,
INC.; CPR OF TULSA, LLC' and T & J
SPECIALTY CONTRACTORS, INC.,

Defendants.

Case No. CV-2017-375

THE CHEROKEE NATION
DISTRICT COURT
KRISTI MONCOOYEA
COURT CLERK

**DEFENDANT RED STONE CONSTRUCTION SERVICES, LLC'S
ANSWER TO PLAINTIFF'S PETITION**

Defendant Redstone Construction Services, LLC ("Red Stone"), for its Answer and Affirmative Defenses to the Petition of Plaintiff The Cherokee Nation ("Cherokee Nation"), alleges and states as follows:

PARTIES, VENUE, AND JURISDICTION

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Red Stone admits that the subject matter of the Petition concerns work performed during the construction of the Cherokee Nation Child Development Center located in Stillwell, Oklahoma ("CDC"). Red Stone has insufficient information to admit or deny whether jurisdiction and venue are proper in this Court and, therefore, denies same.

BACKGROUND FACTS

7. Red Stone realleges and incorporates by reference Paragraphs 1 through 6 of this Answer.

8. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 8 of the Petition.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 15 of the Petition and, therefore, denies same.

16. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 16 of the Petition and, therefore, denies same.

17. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 17 of the Petition and, therefore, denies same.

18. Red Stone admits that Chaves-Grievess Consulting Engineers, Inc. ("Chavez-Grievess") issued a report regarding the CDC (the "Report") which speaks for itself. Red Stone denies that the conclusions set forth in the Report are accurate or complete.

19. Red Stone admits that Chaves-Grievess issued a Report which speaks for itself. Red Stone denies that the conclusions set forth in the Report are accurate or complete.

20. Red Stone admits that on or about March 13, 2017, it sent a letter to CPR of Tulsa, LLC ("CPR") with a copy of the Report. Red Stone denies the remaining allegations set forth in Paragraph 20 of the Petition. The March 13, 2017 letter speaks for itself. Red Stone denies that the conclusions set forth in the Report are accurate or complete.

21. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 21 of the Petition and, therefore, denies same.

22. Red Stone denies any suggestion that it caused leaks in the roof and, thus, denies any suggestion that Red Stone has the obligation to correct the problems and issues caused by others. Nonetheless, in good faith, despite the problems caused by others, Red Stone has attempted to assist the Cherokee Nation in properly diagnosing the problems and issues so that proper repair could be made. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 22 of the Petition and, therefore, denies same.

Count I
Breach of Contract
(All Defendants)

23. Red Stone realleges and incorporates by reference Paragraphs 1 through 22 of this Answer.

24. Admitted.

25. Red Stone denies that Red Stone, T&J Specialty contractors, Inc. ("TJS"), and CPR breached the terms of the contract by failing to perform their scope of work in a competent, good and workmanlike manner. Red Stone admits the allegations of Paragraph 25 of the Petition relative to Starr Design Group, Inc. ("Starr Design").

26. Red Stone denies that Red Stone, TJS, and CPR breached the terms of the contract by failing to protect the roofing materials from the elements and by failing to adhere to and comply

with the project specifications in installation of the roof decking. Red Stone admits the allegations of Paragraph 26 of the Petition relative to Starr Design.

27. Red Stone denies the allegations contained in Paragraph 27 of the Petition.

28. Red Stone denies the allegations contained in Paragraph 28 of the Petition relative to Red Stone, TJS, and CPR. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 28 of the Petition relative to Starr Design, including the alleged damages.

Count II
Negligence
(All Defendants)

29. Red Stone realleges and incorporates by reference Paragraphs 1 through 28 of this Answer.

30. The allegations contained in Paragraph 30 of the Petition are conclusions of law which do not require a response. To the extent a response is required, Red Stone denies any suggestion that it, or its subcontractors, breached any duty owed to the Cherokee Nation.

31. The allegations contained in Paragraph 31 of the Petition are conclusions of law which do not require a response. To the extent a response is required, Red Stone denies any suggestion that it, or its subcontractors, breached any duty owed to the Cherokee Nation.

32. The allegations contained in Paragraph 32 of the Petition are conclusions of law which do not require a response. To the extent a response is required, Red Stone denies any suggestion that it, or its subcontractors, breached any duty owed to the Cherokee Nation.

33. Red Stone denies the allegations contained in Paragraph 33 of the Petition relative to Red Stone, TJS, and CPR. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 33 of the Petition relative to Starr Design, including the alleged damages.

Count III
Breach of Warranty
(Redstone, TJS, CPR)

34. Red Stone realleges and incorporates by reference Paragraphs 1 through 33 of this Answer.

35. Red Stone denies the allegations contained in Paragraph 35 of the Petition.

36. Red Stone denies the allegations contained in Paragraph 36 of the Petition.

37. Red Stone denies the allegations contained in Paragraph 37 of the Petition.

38. Red Stone denies the allegations contained in Paragraph 38 of the Petition.

39. Red Stone denies the allegations contained in Paragraph 39 of the Petition relative to Red Stone, TJS, and CPR. Red Stone has insufficient knowledge or information to admit or deny the allegations of Paragraph 39 of the Petition relative to Starr Design, including the alleged damages.

Regarding the unnumbered paragraph included in the Petition beginning with the word “WHEREFORE,” Red Stone denies that Plaintiff is entitled to any relief whatsoever from Red Stone. All allegations in the Petition not specifically admitted by Red Stone are denied.

AFFIRMATIVE DEFENSES

1. Plaintiff’s claims fail to state a claim upon which relief can be granted.

2. Contributory negligence.

3. Indemnification.

4. Statute of limitations.

5. The claims against Red Stone are barred because any damages suffered by the Cherokee Nation were not caused by Red Stone.

6. The claims against Red Stone are barred because any damages suffered by the Cherokee Nation were caused by the acts of others.

7. The claims against Red Stone are barred because Red Stone complied with the design supplied to it by the Cherokee Nation.

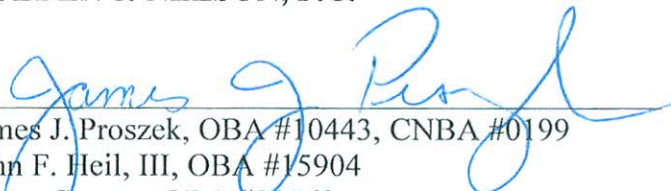
8. The claims against Red Stone are barred because any damages suffered by the Cherokee Nation were caused by a supervening cause.

9. Defendant reserves the right to assert additional affirmative defenses as may be identified through discovery.

WHEREFORE, Redstone requests that the Court deny all relief requested by Cherokee Nation and enter judgment in favor of Red Stone on all of Cherokee Nation's claims and that Red Stone be awarded its costs, including reasonable attorneys' fees incurred in this action as may be allowed by law, along with any other relief that the Court deems just and proper.

Respectfully submitted,

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

By: 

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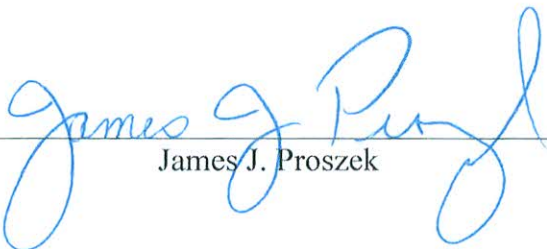
**ATTORNEYS FOR DEFENDANT RED STONE
CONSTRUCTION SERVICES, LLC**

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on August 25, 2017, a true and correct copy of the above and foregoing Answer and Affirmative Defenses to Plaintiff's Petition was delivered via first class mail to:

Wm. Gregory James, OBA #4620, CNBA #0497
Thomas A. Askew, OBA #13568, CNBA #0415
Sharon K. Weaver, OBA #19010, CNBA #0489
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**ATTORNEYS FOR PLAINTIFF
THE CHEROKEE NATION**



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