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CHEROKEE NATION  
DISTRICT COURT  
KEISTI MONCOOYEA  
COURT CLERK

Case No.

CV-17-375

## PETITION

Defendants states as follows:

## PARTIES, VENUE, AND JURISDICTION

1. The Cherokee Nation is a federally-recognized sovereign Indian nation. It is governed by the Cherokee Nation Constitution and the laws of the Cherokee Nation and exercises inherent governmental authority within the Cherokee Nation.

2. Defendant Red Stone Construction Services, LLC, (“Red Stone”) is an Oklahoma Limited Liability Company with its principal place of business in the City of Tulsa, Tulsa County, State of Oklahoma.

3. Defendant CPR of Tulsa, LLC, (“CPR”) is an Oklahoma Limited Liability Company with its principal place of business in the City of Tulsa, Tulsa County, State of Oklahoma.

4. Defendant Starr Design Group, Inc. (“Starr Design”) is an Oklahoma corporation with its principal place of business in the City of Tulsa, Tulsa County, State of Oklahoma.

5. Defendant T & J Specialty Contractors, Inc. (“TJS”) is an Arkansas corporation with its principal place of business in the City of Fort Smith, Sebastian County, State of Arkansas.

6. The subject matter of this Petition concerns acts, omissions, and work performed during the construction of the Cherokee Nation Child Development Center located in Stilwell, Oklahoma, (“CDC”) thus jurisdiction and venue in this Court are proper.

### **BACKGROUND FACTS**

7. Cherokee Nation incorporates herein all allegations set forth in paragraphs 1-6 above.

8. On or about March 22, 2010, Cherokee Nation contracted with Starr Design to perform and/or provide services in connection with the design, development, and construction of the CDC in Stilwell, Oklahoma, including project management, architectural design and engineering services.

9. On or about June 22, 2012, Cherokee Nation contracted with Red Stone as general contractor and construction manager for the CDC project.

10. On or about September 7, 2012, Red Stone awarded the subcontract for the roofing scope of the CDC project to CPR.

11. On or about September 7, 2012, Red Stone awarded the subcontract for the drywall scope of the CDC project, which included decking and sheathing of the roof, to TJS.

12. On or about January 10, 2013, by Subcontract Change Order No. 2, Red Stone transferred installation of the wood roof decking to CPR’s scope of work on the CDC project.

13. The CDC reached substantial completion and was approved for occupancy on June 14, 2013.

14. Subsequently, it was discovered that the roof was leaking in a number of places, allowing water to infiltrate into the building when it rains. Cherokee Nation notified Red Stone and CPR of the leaks and repair attempts were made, but additional leaks continued to appear and/or re-appear.

15. On or about July 23, 2015, representatives of CPR inspected the roof at the CDC and determined that fourteen of the fifteen then identified and existing leaks had to do with decking issues. CPR noted that the decking was curling up at the corners causing the staples used in the installation to pull out.

16. Following completion of the project, whenever leaks occurred at the CDC, the Cherokee Nation would contact CPR and/or Red Stone who would then inspect and make repairs. It was not until CPR's inspection and determination of July 23, 2015, that Cherokee Nation first discovered or had reason to know that the entire roof decking/roof substrate may have been improperly and negligently installed causing leaks to occur.

17. In the spring of 2016, Cherokee Nation retained Chavez-Grievess Consulting Engineers, Inc. ("Chavez-Grievess") to inspect, assess, and report on the roof and moisture in the building at the CDC.

18. In early 2017, Chavez-Grievess issued its report concluding that the source and cause of the roof leaks was substandard materials and improper installation of the roof sheathing.

19. It was concluded in the 2017 Chavez-Grievess report that the use of staples instead of screws in installation of the plywood decking and the improper spacing of the staples and panel clips, together with the excessive moisture of the decking material itself due to improper protection of the materials during installation have resulted in the curling and lifting of the decking to such a

degree that the roof felt has torn, the staples have pulled loose, all creating bulges in the roof and allowing water to infiltrate.

20. On or about March 13, 2017, Red Stone sent a letter to CPR with a copy of the 2017 Chavez-Grievances report. Red Stone did not contest the Chavez-Grievances findings.

21. Chavez-Grievances recommended that the shingles be removed, the roofing felt replaced, and the plywood deck replaced.

22. To date, none of the Defendants have corrected the ongoing leaks which continue today.

**COUNT I – BREACH OF CONTRACT**  
**(All Defendants)**

23. Cherokee Nation incorporates herein all allegations set forth in paragraphs 1-22 above.

24. Defendants, Starr Design (as Project Manager), Red Stone (as General Contractor), TJS, and CPR (as Subcontractors), each contracted to perform work on the CDC project.

25. Defendants, Starr Design, Red Stone, TJS, and CPR, breached the terms of the contract by failing to perform their contracted for scope of work in a competent, good and workmanlike manner.

26. Upon information and belief, Defendants, Starr Design, Red Stone, TJS, and/or CPR, breached 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.

27. TJS and CPR as the agents and subcontractors of Red Stone, together with Red Stone, breached the contract with the Cherokee Nation by providing faulty and substandard material and installation of the roof on the CDC by incorporating defective roofing materials and by failing to do the necessary inspections, testing and curative work required under the contract by

which the Cherokee Nation was a first party beneficiary with respect to Red Stone and an ostensible third party beneficiary with respect to TJS and CPR.

28. As the direct and proximate result of Starr Design's, Red Stone's, TJS's, and CPR's breach of contract, the Cherokee Nation has been damaged in an amount to be determined at trial, but which in any event exceeds \$75,000.

**COUNT II – NEGLIGENCE**  
**(All Defendants)**

29. Cherokee Nation incorporates herein all allegations set forth in paragraph 1-28 above.

30. Under the contract, Red Stone, and/or its subcontractors and/or its suppliers of materials, goods and equipment utilized in the work, and inspections of such work, owed the Cherokee Nation the duty to perform all such work in a good and workmanlike manner.

31. Under the contract, Starr Design, Red Stone, and/or its subcontractors and/or its suppliers of materials, goods and equipment utilized in the work owed the Cherokee Nation the duty to utilize a non-defective design for the CDC project, to utilize non-defective materials, goods and equipment and/or to perform inspections for the purpose of correcting any defects and/or deficiencies in the work, materials, and goods.

32. Red Stone, and/or its subcontractors and/or its suppliers for whom Red Stone was responsible, including TJS and CPR, breached their duty to the Cherokee Nation by performing negligent work and inspection services; and/or by incorporating into the design and/or construction of the roof defective roofing materials; and/or by negligently installing the defective roofing materials; and/or by failing to protect roofing materials from damage during installation; and/or by failing to inspect and correct defects and/or deficiencies in the work, materials, and goods.

33. As the direct and proximate result of the negligence of Defendants, and each of them, the Cherokee Nation has sustained damages in an amount to be proven at trial, but which in any event exceeds \$75,000.

**COUNT III – BREACH OF WARRANTY**  
**(Red Stone, TJS, and CPR)**

34. Cherokee Nation incorporates herein all allegations set forth in paragraph 1-33 above.

35. Red Stone, TJS, and CPR expressly and impliedly warranted and guaranteed that all materials furnished for the CDC project would be in accordance with the applicable building codes, plans, manufacturer's standards and recommendations as to quality, capacities, and workmanship.

36. Further Red Stone, TJS, and CPR expressly and impliedly warranted and guaranteed that all materials and installation would be free from defects for one year from the date of substantial completion and that each would be responsible to the Cherokee Nation for correction of any defects in its work.

37. Red Stone and CPR breached the warranty by failing to repair leaks in the CDC roof although demands have been made by Cherokee Nation that repairs be made and all attempts by Red Stone and/or CPR to make repairs have failed.

38. Under the circumstances that exist with the CDC's leaking roof and Defendants' inability to repair the conditions causing it to leak, any exclusive remedy to which Defendants may claim Cherokee Nation is limited to, fails of its essential purpose entitling Cherokee Nation to recover from Defendants all damages caused by Defendants' breach of warranty, including incidental and consequential damages.

39. As the direct and proximate result of the Defendants' breach of warranty, the Cherokee Nation has been damaged in an amount to be proven at trial, but which in any event exceeds \$75,000.

WHEREFORE, Plaintiff, the Cherokee Nation prays for all of the following:

- a) Judgment in its favor and against Defendants, and each of them, on Count I for breach of contract, together with costs, interest, and attorneys' fees; and,
- b) Judgment in its favor and against Defendants, and each of them, on Count II for negligence, together with costs, interest, and attorneys' fees; and,
- c) Judgment in its favor and against Defendants, and each of them, on Count III for breach of express and implied warranties, together with costs, interest, and attorneys' fees;

And, such other and further relief as the Court deems warranted under the circumstances.

Respectfully submitted,



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