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**ORDER DENYING PETITION FOR CERTIORARI,
SUPREME COURT OF OKLAHOMA
(SEPTEMBER 22, 2025)**

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

CHOCTAW NATION OF OKLAHOMA

v.

FLINTCO, LLC, and WORTH GROUP
ARCHITECTS, P.C., SPECIFIED TECHNOLOGIES,
INC., ABC ENTITIES I-X and JOHN DOES I-X,

No. 122,098 (comp w/122,281)

Before: ROWE, C.J., KUEHN, V.C.J.,
WINCHESTER, EDMONDSON, COMBS,
GURICH, DARBY, KANE, JETT, JJ.

Petition for certiorari is denied.

CONCUR: Rowe, C.J., Winchester,
Edmondson, Combs, Gurich and Darby, JJ.

DISSENT: Kuehn, V.C.J., Kane and Jett, JJ.

/s/ Dustin P. Rowe
Chief Justice

**OPINION, COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA, DIVISION III
(MARCH 26, 2025)**

NOT FOR OFFICIAL PUBLICATION
See Okla. Sup. Ct. R. 1.200 before citing

COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA
DIVISION III

CHOCTAW NATION OF OKLAHOMA,

Plaintiff/Appellee,

v.

FLINTCO, LLC,

Defendant/Appellant,

and

WORTH GROUP ARCHITECTS, P.C.,
SPECIFIED TECHNOLOGIES, INC.,
ABC ENTITIES I-X AND JOHN DOES I-X,

Defendants.

Case No.122,098 (comp w/122,281)

Appeal from the District Court of Bryan County,
Oklahoma Honorable Mark Campbell, Trial Judge

Before: Robert D. BELL, Chief Judge.
DOWNING, P.J., and MITCHELL, J.

AFFIRMED

OPINION BY ROBERT D. BELL, CHIEF JUDGE:

¶ 1 Defendant/Appellant, Flintco, LLC (Flintco), appeals from the district court's order denying Flintco's motion to compel arbitration in this fraud action brought by Plaintiff/Appellee, Choctaw Nation of Oklahoma (Nation), against Flintco and other defendants. In 2005, Flintco agreed to provide construction management services to Nation under a Construction Management Contract (Contract). The Contract includes a dispute resolution clause (Clause), which provides, in part, "Any Claim arising under this Agreement . . . shall be submitted to a dispute resolution conference, and if the dispute is not resolved in conference, then to Mediation. If the dispute is not resolved in Mediation it will be submitted to binding arbitration." On October 31, 2023, Nation sued Flintco alleging Flintco purposefully and intentionally failed to construct certain projects as required by applicable code requirements and the Contract, failed to disclose to and intentionally concealed the projects did not comply with the Contract, and made false representations that the completed projects met all Contract requirements. Flintco filed a motion to compel arbitration alleging the fraud claim related to and arose from Flintco's performance under the Contract and therefore Nation is obligated to arbitrate this claim under the Clause. The district court denied Flintco's motion to compel arbitration, finding Nation has alleged fraud, and an allegation of fraud was not contemplated by the Clause's language. On appeal, Flintco asserts the district court erred when it denied the motion to compel arbitration because the Clause is valid, enforceable, and irrevocable; Nation agreed to resolve any "claim" and/or "dispute" under the Clause; the frauds claim are encompassed within

the language of the Clause; and Nation did not allege it was “fraudulently induced” to enter the Clause. After *de novo* review of the record, we affirm the district court’s determination that Nation’s fraud claims are not within the scope of the Clause and affirm the court’s decision to deny the motion to compel.

¶ 2 In 2005, Flintco agreed to provide construction management services to Nation under the Contract for certain construction projects, including a multilevel hotel in Durant, Oklahoma. The Contract includes a dispute resolution clause which was amended to provide:

In order to compel arbitration or to allow for enforcement of any arbitrator’s award, the Owner agrees to a partial waiver of sovereign immunity for the sole purpose of submitting disputes arising under this Agreement to the jurisdiction of an arbitrator or arbitration panel, giving full legal effect to any order, judgment or award resulting from an arbitration proceeding, and allowing for the enforcement of an arbitration order, judgment or award.

Any Claim arising under this Agreement that cannot be resolved between the Project Officer and the Project Manager for Flintco shall be submitted to a dispute resolution conference, and if the dispute is not resolved in conference, then to mediation. If the dispute is not resolved in Mediation it will be submitted to binding arbitration. The dispute resolution conference shall consist of the submission of the dispute to the Contracting Official and the Chief Executive Officer of Flintco

who shall meet to attempt to resolve the dispute prior to Mediation. Mediation shall not be commenced by either party until the Contracting Official and Chief Executive Officer of Flintco have had twenty (20) days to attempt to resolve the claim. If the dispute cannot be settled within twenty days the parties shall submit to mediation with a mediator to be agreed upon by the parties. If the dispute is not resolved in mediation it will be submitted to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (the “AAA Rules”) within sixty (60) days of the unsuccessful mediation. Enforcement of an arbitration award shall be sought in either the Choctaw Tribal Court, or a Federal Court with jurisdiction. Should there be no Federal Court with jurisdiction; either party may seek enforcement of an arbitration award in a State Court of Oklahoma. Regardless of venue, enforcement of an arbitration award shall be consistent with the principles of the Federal Arbitration Act, 9 U.S.C. 1, et seq.

¶ 3 Nation alleged it discovered Flintco’s construction project (the multilevel hotel in Durant) had numerous deficient safety features, including but not limited to uninstalled fire stops, missing firewalls, missing fire caulking, undersized hot water pipes, and additional fireproofing/life safety issues.

¶ 4 Nation brought the instant action against Flintco alleging Flintco purposefully and intentionally failed to construct the projects as required by applicable

code requirements and the Contract, and intentionally concealed that the projects did not comply with the Contract. Nation also alleged Flintco falsely represented that the completed projects met all Contract requirements.

¶ 5 Flintco filed a motion to compel arbitration alleging Nation's fraud claims related to and arose from Flintco's performance under the Contract. The district court denied Flintco's motion to compel arbitration, finding Nation alleged fraud, and an allegation of fraud was not contemplated by the language of the Clause.

¶ 6 Flintco now appeals alleging the district court erred when it denied the motion to compel arbitration because the Clause is valid, enforceable, and irrevocable; the parties agreed under the Clause to resolve any unresolved claims and disputes arising under the contract, even tort claims. Flintco further contends the fraud claims are encompassed within the broad and plain language of the Clause because the factual underpinnings of the fraud claims are actually breach of contract claims labeled as a tort. Flintco insists that placing the "tort" label on the claims does not exclude such claims from the scope of the Clause.¹

¶ 7 Nation counters the district court properly denied the motion because Nation did not consent to arbitrate its fraud claims and the arbitration clause is too narrow in scope to compel arbitration of its fraud and deceit claims which are not detectable like other

¹ Flintco footnotes that Nation asserted "fraud" claims to evade the long-expired statute of limitations for breach of contract.

contractual occurrences.² Nation also contends the Clause did not specify that such actions are subject to arbitration because Clause did not reference extracontractual conduct, such as fraud and deceit. Because this language is missing from the Clause, Nation insists it did not agree to arbitrate such conduct.

¶ 8 The question as to the existence of a valid enforceable agreement to arbitrate Nation's fraud claims is a question of law to be reviewed on appeal by a *de novo* standard, without deference to the lower court. *Oklahoma Oncology & Hematology P.C. v. US Oncology, Inc.*, 2007 OK 12, ¶ 19, 160 P.3d 936.

¶ 9 The dispositive issue on appeal is whether Nation's claims against Flintco—for fraudulent concealment and misrepresentations-relating to Flintco's performance of its contractual obligations—are within the scope of the Clause under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* (FAA), and the Oklahoma Uniform Arbitration Act, 12 O.S. 2021 § 1851 *et seq.* (OUAA). “The FAA controls substantive rights, but the Oklahoma Uniform Arbitration Act (OUAA) controls the procedure for enforcing the FAA.” *Williams v. TAMKO Bldg. Products, Inc.*, 2019 OK 61, ¶ 5, 451 P.3d 146, *citing Rogers v. Dell Computer Corp.*, 2005 OK 51, ¶ 15, 138 P.3d 826. “The FAA embodies a liberal policy favoring enforcement of arbitration agreements.” *Oklahoma Oncology*, 2007 OK 12 at ¶ 21 (citation omitted).

² Flintco's co-defendant, Worth Group Architects, P.C. (Worth Group), a nonsignatory to the Contract, also filed a motion to compel Nation to arbitrate its fraud claims against Worth Group pursuant to the Clause. The district court denied the motion. Worth Group appealed in Oklahoma Supreme Court Case No. 122,281. That case is a companion case to the instant appeal.

¶ 10 To address this issue, this Court must determine whether there is a valid binding arbitration clause and, if so, whether “the arbitration clause is broad enough to include the alleged dispute.” *Voss v. City of Oklahoma City*, 1980 OK 148, ¶ 6, 618 P.2d 925. If this Court answers both these questions in the affirmative, “arbitration must be ordered.” *Id.*

When considering whether a claim is arbitrable, “[W]e evaluate the factual underpinnings of the complaint rather than merely considering the labels attached to each of the causes of action it contains.” * * * If the allegations underlying the claims touch matters covered by the parties’ [arbitration agreement], then those claims must be arbitrated, whatever the legal labels attached to them.” *** Oklahoma law mandates that ambiguities are to be resolved in favor of arbitration, unless the court can say with “positive assurance” that the matter is not subject to arbitration.

High Sierra Energy, L.P. v. Hull, 2011 OK CIV APP 77, ¶ 17, 259 P.3d 902 (citations omitted).

¶ 11 “An arbitration agreement’s existence is governed by state law principles.” *Williams v. TAMKO Bldg. Products, Inc.*, 2019 OK 61, ¶ 8, 451 P.3d 146. The Clause must be interpreted to give effect to the parties’ mutual intent, as such intent existed at the time of contracting. Title 15 O.S.2021 § 152. “The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.” Title 15 O.S. 2021 § 154. The words of the Clause “are to be understood in their ordinary and popular sense[.]” Title 15 O.S.2021 § 160.

¶ 12 After *de novo* review, we hold the Clause is valid, but the Clause does not “clearly and plainly” require the parties to arbitrate Nation’s fraud claims. The term “Claim” is not defined nor does the Clause have language to clearly include “any and all extracontractual disputes” and “any and all claims for fraud or misrepresentation.” Had the parties intended to arbitrate claims of fraud or other extracontractual conduct, the Clause could have plainly stated that such claims are included. However, this language was not contained in the Clause. “Courts cannot supply material stipulations or read into a contract words or terms it does not contain; the law will not make a better contract than the parties themselves have seen fit to enter into, or alter it for benefit of one party to detriment of another.” *Dismuke v. Cseh*, 1992 OK 50, ¶ 9, 830 P.2d 188 (citation omitted).

¶ 13 Even though both the FAA and OUAA favor arbitration when the parties contractually choose this remedial forum, “the courts will not impose arbitration upon parties where they have not agreed to do so.” *Oklahoma Oncology*, 2007 OK 12 at ¶ 22.

¶ 14 After *de novo* review, this Court concludes the district court correctly determined the Clause did not encompass Nation’s claims against Flintco for its alleged intentional misconduct and fraudulent actions. Accordingly, the district court’s order denying Flintco’s motion to compel arbitration is affirmed.

¶ 15 AFFIRMED.

DOWNING, P.J., and MITCHELL, J., concur.

**COURT'S ORDER REGARDING
DEFENDANT FLINTCO, LLC'S
MOTION TO COMPEL ARBITRATION,
DISTRICT COURT OF BRYAN COUNTY
STATE OF OKLAHOMA
(MARCH 15, 2024)**

IN THE DISTRICT COURT OF BRYAN COUNTY
STATE OF OKLAHOMA

CHOCTAW NATION OF OKLAHOMA,

Plaintiff,

v.

FLINTCO, LLC, ET AL.,

Defendants.

No. CJ-23-230

Before: Mark R. CAMPBELL, District Judge.

**COURT'S ORDER REGARDING
DEFENDANT FLINTCO, LLC'S MOTION
TO COMPEL ARBITRATION
(FILED ON JANUARY 5, 2024)**

This case came on for hearing on the motion referenced above on February 20, 2024. The parties were represented by counsel. The Court heard the argument of counsel, and then took the matter under advisement. Further, the Court has considered the

premises of the matter. Based on the law and the evidence, the Court finds and orders as follows:

Defendant Flintco, LLC's Motion to Compel Arbitration should be, and hereby is, DENIED. Mores [sic] specifically, the Court finds that the Plaintiff has alleged fraud, and the Court further finds that the issue of an allegation of fraud was not contemplated by the language of the Arbitration Clause.

Now, on this 15th day of March, 2024, IT IS SO ORDERED!

/s/ Mark R. Campbell
District Judge

cc: Attorneys

**CONSTRUCTION MANAGER CONSULTING
AGREEMENT, RELEVANT EXCERPTS
(JUNE 1, 2005)**

THE CHOCTAW NATION

**SOLICITATION AND CONTRACT
CONSTRUCTION MANAGEMENT SERVICES**

**TITLE: CONSTRUCTION OF
CHOCTAW NATION FACILITIES**

LOCATION: CHOCTAW NATION, OKLAHOMA

PROJECT NO: CHOCTAW-CM-RT

QUALIFICATION PROPOSALS DUE: JUNE 1, 2005

CHOCTAW NATION HEALTH AUTHORITY

16TH AND LOCUST STREET

P.O. DRAWER 1210

DURANT, OKLAHOMA 74701-1210

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SECTION A

CONSTRUCTION MANAGEMENT AGREEMENT **CONSTRUCTION MANAGEMENT SERVICES**

THIS AGREEMENT, entered into this 1st day of June, 2005 Is by and between THE CHOCTAW NATION OF OKLAHOMA, hereafter called the OWNER, and FLINTCO INC., hereafter called the CONSTRUCTION MANAGER;

WHEREAS THE Owner intends to construct, alter, renovate, and repair CHOCTAW NATION FACILITIES, hereafter called the PROJECT(s), according to construction Contract documents to be prepared by Architect/Engineer, hereafter Called the ARCHITECT;

THEREFORE, the Owner and the Construction Manager hereby enter into this Agreement as set forth in this Construction Management Services Document for Work as described in Task Orders which are requested by the Choctaw Nation.

OWNER

By: /s/ Gary Batton

CONSTRUCTION MANAGER

By: /s/ DeWayne Gifford

[. . .]

4. Disputes

Any Claim arising under this Agreement that cannot be resolved between the Project Officer and the Project Manager for Flintco shall be submitted to a dispute resolution conference, and if the dispute is not resolved in conference, then to Mediation. If the dispute is not resolved in Mediation it will be submitted to binding arbitration. The dispute resolution conference shall consist of the submission of the dispute to the Contracting Official and the Chief Executive Officer of Flintco who shall meet to attempt to resolve the dispute prior to mediation. Mediation shall not be commenced by either party until the Contracting Official and Chief Executive Officer of Flintco have had twenty (20) days to attempt to resolve the Claim. If the dispute cannot be settled within twenty (20) days the parties shall submit to mediation with a mediator to be agreed upon by the parties. If the dispute is not resolved in mediation it will be submitted to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (the “AAA Rules”) within sixty (60) days of the unsuccessful mediation. Enforcement of an arbitration award shall be sought in either the Choctaw

Tribal Court, or a Federal Court with jurisdiction. Should there *be* no Federal Court with jurisdiction; either party may seek enforcement of an arbitration award in the State Court in Tulsa County, Oklahoma. Regardless of venue, enforcement of an arbitration award shall be consistent with the principles of the Federal Arbitration Act, 9 U.S.C. 1, *et seq.*

**TRIBAL COUNCIL BILL
(JUNE 14, 2008)**

CB-78-2008

IN THE TRIBAL COUNCIL OF
THE CHOCTAW NATION

A COUNCIL BILL

A COUNCIL BILL TO AUTHORIZE A
MODIFICATION TO AGREEMENT WITH
FLINTCO COMPANY

Whereas, The Choctaw Nation has entered into an Agreement dated June 1, 2005 with Flintco Company for construction management, and

Whereas, the parties desire to modify the agreement to include the contractual language set forth in Exhibit "A" to this Council Bill.

Therefore, be it enacted that the Agreement between the Choctaw Nation and Flintco Company dated June, 1 2005 be modified to include the language set forth in Exhibit "A" hereto.

CERTIFICATION

I, the undersigned, as Speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma, on June 14, 2008. I further certify that the foregoing Council Bill. CB-78-2008, was

adopted at such meeting by an affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.

/s/ Delton Cox _____

Speaker

Choctaw Nation Tribal Council

/s/ Charlotte Jackson _____

Secretary

Choctaw Nation Tribal Council

/s/ Gregore E. Pyle _____

Chief of the Choctaw Nation of
Oklahoma

EXHIBIT “A”

In order to compel arbitration or to allow for enforcement of any arbitrator's award, the Owner agrees to a partial waiver of sovereign immunity for the sole purpose of submitting disputes arising under this Agreement to the jurisdiction of an arbitrator or arbitration panel, giving full legal effect to any order, judgment or award resulting from an arbitration proceeding, and allowing for the enforcement of an arbitration order, judgment or award.

Any Claim arising under this Agreement that cannot be resolved between the Project Officer and the Project Manager for Flintco shall be submitted to a dispute resolution conference, and if the dispute is not resolved in conference, then to mediation. If the dispute is not resolved in Mediation it will be submitted to binding arbitration. The dispute resolution conference shall consist of the submission of the dispute to the Contracting Official and the Chief Executive Officer of Flintco who shall meet to attempt to resolve the dispute prior to Mediation. Mediation shall not be commenced by either party until the Contracting Official and Chief Executive Officer of Flintco have had twenty (20) days to attempt to resolve the claim. If the dispute cannot be settled within twenty days the parties shall submit to mediation with a mediator to be agreed upon by the parties. If the dispute is not resolved in mediation it will be submitted to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (the “AAA Rules”) within sixty (60) days of the unsuccessful mediation. Enforcement of an arbitration award shall be sought in either the Choctaw Tribal Court, or a Federal Court with jurisdiction.

Should there be no Federal Court with jurisdiction; either party may seek enforcement of an arbitration award in a State Court of Oklahoma. Regardless of venue, enforcement of an arbitration award shall be consistent with the principles of the Federal Arbitration Act, 9 U.S.C. 1, *et seq.*

**CHOCTAW NATION PETITION FILED IN THE
DISTRICT COURT OF BRYAN COUNTY,
STATE OF OKLAHOMA
(OCTOBER 31, 2023)**

**IN THE DISTRICT COURT OF BRYAN COUNTY
STATE OF OKLAHOMA**

CHOCTAW NATION OF OKLAHOMA,

Plaintiff,

v.

FLINTCO, LLC; WORTH GROUP ARCHITECTS,
P.C.; SPECIFIED TECHNOLOGIES, INC.; ABC
ENTITIES I-X; and, JOHN DOES I-X,

Defendants,

Case No.:CJ-23-230

PETITION

COMES NOW the Plaintiff, Choctaw Nation of Oklahoma, by and through its undersigned counsel, and for its claims against Defendants Flintco, LLC, Worth Group Architects, RC., Specified Technologies, Inc., ABC Entities I-X and John Does I-X (collectively, “Defendants”), hereby alleges and states as follows:

Parties

1. Plaintiff Choctaw Nation of Oklahoma (“Plaintiff” or the “Nation”) is a federally recognized Indian tribe with its headquarters located in Durant, Oklahoma. As a federally recognized tribe, the Nation is not a citizen for diversity purposes.
2. Defendant Flintco, LLC (“Flintco”) is a domestic limited liability company formed under the laws of the State of Oklahoma and can be served via its registered agent CT Corporation System located at 1833 South Morgan Road, Oklahoma City, OK 73128. Upon information and belief, Flintco has its principal place of business in Tulsa County, Oklahoma.
3. Upon information and belief, Defendant Worth Group Architects, P.C. (“WGA”) is a foreign corporation formed under the laws of Colorado and has its principal place of business at 7535 E. Hampden Avenue, Suite 302, Denver, CO 80231.
4. Upon information and belief, Defendant Specified Technologies, Inc. (“Specified Technologies”) is a foreign corporation formed under the laws of New Jersey and has its corporate headquarters in Somerville, New Jersey.
5. Defendant ABC Entities are unknown or unidentified business entities that at all relevant times were engaged in business activities within the Reservation boundaries of the Choctaw Nation of Oklahoma and Bryan County, Oklahoma.
6. Defendant John Does are not yet known or identified individuals that at all relevant times were engaged in business activities within the Reservation

boundaries of the Choctaw Nation of Oklahoma. and Bryan County, Oklahoma.

7. Communications, contracts and agreements giving rise to the causes of action contained in this Petition were made and final approval given by the Nation within the Reservation boundaries of the Choctaw Nation of Oklahoma and Bryan County, Oklahoma. Further, the payment for the services was sent by the Nation from within the Reservation boundaries of the Choctaw Nation of Oklahoma and Bryan County, Oklahoma.

8. Defendants performed the services for several of the construction and/or renovation Projects, as defined herein, giving rise to the causes of action within the Reservation boundaries of the Choctaw Nation of Oklahoma and Bryan County, Oklahoma.

9. The substantial events that give rise to this lawsuit took place within the Reservation boundaries of the Choctaw Nation of Oklahoma, and Bryan County, Oklahoma.

10. Venue is proper pursuant to 12 O.S. §§ 134 and 137.

11. Under Oklahoma law, the Nation is a governmental entity seeking in its sovereign capacity to vindicate public rights. Therefore, any statute of limitations defense would not apply to the Nation acting in its sovereign capacity.

Factual Background

12. These causes of action arises from several construction and/or renovation projects in which Flintco was hired by the Nation as the Construction Manager,

including but not limited to the Broken Bow Health Center, Broken Softball Fields, Poteau Remodel, McAlester project, Durant Oasis Pool, Durant Event Center, Grant Casino Hotel, McAlester Casino, Stringtown Casino, Tribal Office Complex, Choctaw Casino and Hotel in Durant, Grant Casino Hotel, McAlester Casino, Parking Structure, Choctaw Casino in Idabel, Durant waste water treatment plant renovations, and Cultural Center in Tuska Homma (collectively, the “Projects”).

13. The original Construction Management Agreement between the Nation and Flintco for the Projects was entered into on or about May 5, 2005.

14. The Construction Management Agreement states that as the Construction Manager, Flintco was “responsible for cost estimates and recommendations on cost control, review of design during the process with a view towards value engineering, construction coordination and scheduling, and direction of all construction activities.”

15. According to the Construction Management Agreement, Flintco’s tasks as the Construction Manager also included but were not limited to reviewing all plans and specifications submittals and advising on site, foundations, systems and materials, construction feasibility, availability of labor and materials, time requirements for procurement, installation and construction, relative costs, and providing written recommendations for economies as appropriate.

16. Additionally, Flintco had the following responsibilities regarding a comprehensive safety program pursuant to the Construction Management Agreement:

The Construction Manager shall review the safety programs developed by each of the separate contractors and prepare and submit to the Contracting Official a recommended comprehensive safety program which complies with the requirements of the Occupational Safety and Health Act of 1970. (Performance of such services will not relieve the separate contractors of their respective responsibilities for safety of persons and property or from compliance with all applicable statutes, rules, regulations or orders.) During construction, the Construction Manager shall monitor compliance by the separate contractors with their contractual safety requirements and report deficiencies.

17. The Construction Management Agreement further provides that “[t]he contractor shall, without additional expense to the Owner, be responsible for obtaining any necessary license and permits, and for complying with any Federal, State and municipal laws, codes, and regulations applicable to the performance of the work.”

18. The Construction Management Agreement contained the following requirements for Flintco's supervision of separate contractors:

Maintain a competent full-time supervisory staff at the job site for the coordination and direction of the work of the separate contractors. Determine the adequacy of the separate contractor's personnel and equipment and the availability of the necessary materials and supplies; take the action necessary to

correct any defective work, and maintain the job schedule.

19. WGA was the Architect/Engineer for one or more of the Projects and was required to provide design services and prepare construction contract documents pursuant to the Construction Management Agreement.

20. By way of example, WGA's design for the Choctaw Casino and Hotel in Durant was based on the 2006 International Building Code and 2006 International Mechanical Code; however, many of the details and design/code requirements were not implemented during construction of the Choctaw Casino and Hotel in Durant.

21. WGA, as the Architect/Engineer, was required to consult with Choctaw Nation Staff and the Construction Manager for the preparation of a project schedule pursuant to the Construction Management Agreement:

The Construction Manager, in consultation with the Choctaw Nation Staff and Architect/Engineer shall prepare a project schedule for the design and construction phase of the project(s). The final draft of the schedule shall be signed by the Construction Manager, The Architect/Engineer and the Contracting Official and shall then become an attachment of this contract. The schedule will not be altered without the written consent of the Contracting Official.

22. As the Architect/Engineer, WGA also had certain obligations in assisting the Construction Man-

ager regarding bidding documents and advertisement for bids per the Construction Management Agreement:

Review the bidding documents with the Architect, assemble bid data including copies of drawings and specifications provided by the Architect, to obtain competitive bids on appropriate segments of construction, including procurement of equipment, materials and supplies purchased under separate requisition. The Architect shall provide reproducibles and specification masters of the agreed upon bid packages to the Construction Manager. Bid packages shall be identified by the Construction Manager and agreed upon by the A/E and approved by the Project Officer. The A/E shall provide the Construction Manager technical support during the advertising for bids of each bid package. The reproduction of the Bid Package Documents shall be paid for under the Construction Manager's Contract for Part B services as a general condition item.

See Article 4.1k of Part B. All other documents will be provided by the A/E.

23. Specified Technologies was the vendor of and was responsible for installing the fire stop for one or more of the Projects.

24. Specified Technologies emphasizes the importance of its fire stopping services on its own website, stating that "Specified Technologies Inc. is an industry leader in developing innovative fire protec-

tion systems that help stop the spread of fire, smoke, and hot gases.”¹

25. In November of 2021, the Nation discovered that the Projects have numerous deficient conditions that stem from the construction and/or renovation of the Projects by Flintco.

26. The building conditions and code compliance of the Projects were evaluated, and several deficient conditions were found that fell short of the Projects’ safety and design requirements, such as building and mechanical codes and minimum fire resistive requirements.

27. Some of the deficient conditions of the Projects discovered include but are not limited to the following: fire stops not installed, missing firewalls that were never constructed/installed, other walls not constructed/installed, missing fire safing, missing fire caulking, undersized hot water pipes, and other fireproofing and life safety related issues.

28. In short, certain firewalls and life safety related elements of the Projects were never installed.

29. Many of the deficient conditions discovered were required to be implemented pursuant to the design and code requirements of the Projects.

30. The Defendants purposefully failed to construct and/or renovate the Projects in a way that would comply with the Construction Management Agreement and all design and code requirements, and the Nation discovered in November 2021 that various shortcuts

¹ Specified Technologies Website, available at <https://www.stifirestop.com/> (last visited October 4, 2023).

were taken during construction and/or renovation of these Projects.

31. Due to numerous fire protection, plumbing and other defects, the Projects are not code compliant as required and contemplated by the Construction Management Agreement and are unsafe and hazardous.

32. Flintco's wrongful acts and/or omissions caused and/or contributed to the deficient conditions discovered long after construction/renovation of the Projects.

33. WGA's wrongful acts and/or omissions caused and/or contributed to the deficient conditions discovered long after construction/renovation of the Projects.

34. Specified Technologies' wrongful acts and/or omissions caused and/or contributed to the deficient conditions discovered long after construction/renovation of the Projects.

35. Defendants made representations to the Nation that the Projects were completed and met all requirements contained in the Construction Management Agreement, including that the Projects satisfied all design and safety requirements.

36. However, these representations turned out to be untrue.

37. The Nation relied upon these representations to its detriment.

38. In addition to the false representations made, Defendants actively and fraudulently concealed the deficient conditions of the Projects by purposefully

failing to report these conditions to the Nation despite having legal and contractual duties to do so.

39. The Nation has incurred and will continue to incur significant costs and expenses to cure the failures and deficiencies in the construction and/or renovation of the Projects that were caused and/or contributed to by Flintco, WGA and Specified Technologies' wrongful acts and/or omissions.

Count One: Fraud/Constructive Fraud

40. Plaintiff incorporates by reference the above and foregoing paragraphs as if set forth fully herein.

41. Defendants entered into agreements whereby they agreed to perform construction in accordance with the requirements of the Projects.

42. Defendants had no intention of performing up to the standards required by the Project.

43. Defendants committed fraud by purposefully and intentionally failing to construct and/or renovate the Projects in accordance with the design and code requirements, of the Projects, as well as the Construction Management Agreement.

44. Defendants took various shortcuts during the construction and/or renovation of the Projects.

45. Defendants failed to construct and install numerous items that were required by the design and code requirements of the Projects and caused other deficient conditions. For example, several of the Projects had missing fire walls, fire stops were not installed, there were undersized water pipes, and other fireproofing and life safety related issues were present.

46. Defendants had a duty to inspect the Projects and ensure that they complied with the Construction Management Agreement and all design and code/safety requirements for the Projects.

47. Defendants had a duty to report to the Nation any deficiencies and failures to comply with the Construction Management Agreement and all design and safety requirements for the Projects.

48. Defendants had a duty to speak and remained silent to the Nation's detriment.

49. Defendants made representations to the Nation that the Projects were completed and met all requirements contained in the Construction Management Agreement, including that the Projects satisfied all design and code/safety requirements.

50. Defendants knew their representations were untrue and Defendants purposefully failed to disclose the deficient conditions and failures to meet the Projects' design and code/safety requirements.

51. Defendants actively and fraudulently concealed the design and code/safety failures, as well as other deficient conditions of the Projects, by purposefully failing to report these failures and conditions to the Nation despite having legal and contractual duties to do so.

52. The Nation relied on the false material representations made by Defendants.

53. The Nation did not discover any of the Projects' failures and deficient conditions until November 2021 due to Defendants' false material representations and active fraudulent concealment.

54. As a result of Defendants' fraud and other wrongful conduct, the Nation has suffered damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of attorneys' fees, costs, and interests.

55. Defendants have been unjustly enriched as a result of their fraud and wrongful conduct.

56. The conduct of Defendants was intentional, willful, malicious and in reckless disregard of the rights of the Plaintiff, and/or was grossly negligent, and is sufficiently egregious in nature so as to warrant the imposition of punitive damages.

Prayer for Relief

WHEREFORE, premises considered, Plaintiff Choctaw Nation of Oklahoma prays for judgment in its favor and against Defendants Flintco, LLC, Worth Group Architects, P.C., Specified Technologies, Inc., ABC Entities I-X and John Does I-X for actual and punitive damages each in an amount exceeding Seventy-Five Thousand Dollars (\$75,000.00), and any other relief this Court deems just, equitable and proper.

Respectfully Submitted,

/s/ Michael Burrage

OBA #1350

J. Renley Dennis, OBA # 33160

John S. Sanders, OBA #34990

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ATTORNEYS' LIEN CLAIMED
JURY TRIAL DEMANDED