IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
(Asheville Division)

TRIBAL CASINO GAMING ENTERPRISE, *Plaintiff,* v. W.G. YATES & SONS CONSTRUCTION COMPANY, RENTENBACH CONSTRUCTORS INCORPORATED, METROMONT CORPORATION, CHOMARAT US, INC., and CHOMARAT NORTH AMERICA, LLC, *Defendants.*	Case No. 1:16-CV-30

AMENDED COMPLAINT

NOW COMES Plaintiff Tribal Casino Gaming Enterprise ("TCGE"), by and through its undersigned counsel of record, complaining of Defendants, and hereby alleges and says as follows:

PARTIES

1. TCGE is a Tribal Enterprise of the Eastern Band of the Cherokee Indians located in Cherokee, North Carolina. TCGE owns and operates the gaming and resort enterprise commonly known as Harrah's Cherokee Casino and Hotel.

2. Upon information and belief, W.G. Yates & Sons Construction Company ("WG Yates") is a Mississippi corporation authorized to and which does conduct business in the state of North Carolina.

3. Upon information and belief, Rentenbach Constructors Incorporated ("Rentenbach") is a Mississippi corporation authorized to and which does conduct business in the state of North Carolina.

4. Upon information and belief, Metromont Corporation ("Metromont") is a South Carolina corporation which is authorized to and which does conduct business in the state of North Carolina.

5. Upon information and belief, Chomarat US, Inc. is a Delaware corporation which does business in the state of North Carolina.

6. Upon information and belief, Chomarat North America, LLC is a South Carolina limited liability company with a principal place of business in Anderson, South Carolina which conducts business in the state of North Carolina.

7. Upon further information and belief, Chomarat North America, LLC is a wholly-owned subsidiary of Chomarat US, Inc.

8. Chomarat US, Inc. and Chomarat North America, LLC are hereinafter referred to collectively as "Chomarat."

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity of citizenship), as the parties are all domiciled and citizens in different states, and the amount in controversy is in excess of $75,000.

10. This Court has personal jurisdiction over the Defendants as the acts complained of all occurred within the State of North Carolina, Defendants conduct business in North Carolina and are registered with the North Carolina Secretary of State, and the contract between the

parties from which this suit arises contains a forum selection clause designating the Western District of North Carolina as the appropriate jurisdiction for this suit.

11. Venue is proper in the United States Court for the Western District of North Carolina pursuant to 28 U.S.C. § 1391(b) as the acts complained of all occurred within the Western District and the contract between the parties from which this suit arises contains a forum selection clause designating the Western District of North Carolina as the appropriate jurisdiction for this suit.

GENERAL ALLEGATIONS

12. On or about April 3, 2008, the TCGE entered into a contract (the "Contract") with WG Yates and Rentenbach pursuant to which WG Yates and Rentenbach would jointly act as the General Contractor for the construction of what was estimated to be a $97,357,600 expansion to the existing casino facility located at 777 Casino Drive, Cherokee, North Carolina, 28719 (the "Project").

13. One portion of the Project was a 6-level, 1,200 space parking deck (the "Parking Deck"). Upon information and belief, WG Yates and Rentenbach engaged Metromont in a design, manufacture, and build capacity to design, and build, the Parking Deck.

14. Metromont prepared all of the various structural calculations and designed the precast concrete products to be used in the construction of the Parking Deck.

15. Upon information and belief, the construction of the Parking Deck consists of Metromont manufactured precast factory-topped CarbonCast® double tees (the "DTs"). The DTs consist of precast concrete with carbon fiber C-GRID® in the flanges. Upon information and belief, the DTs were factory-topped by Metromont using a precast topping slab

manufactured by Metromont, which used carbon fiber C-GRID® (the "C-GRID") as an alternative to traditional steel mesh.

16. Upon information and belief, the C-GRID was designed and manufactured by Chomarat.

17. Once on site of the Project, the DTs were placed by a Metromont contracted erector and the individual DTs were connected at their flanges by a welded steel shear and alignment connector manufactured by JVI, Inc ("JVI"). Over 200 of the JVI connectors had failed by 2015.

18. On or about April 4, 2013, Reigstad & Associates, Inc. ("Reigstad") was retained by the TCGE to perform a site visit to review the conditions at the Parking Deck, and to give the TGCE a condition assessment report on how the Parking Deck was performing. Following its site visit, Reigstad noted numerous deficiencies, including:

a) "tee to tee" welds broken and failed,
b) widespread sealant failure "sealant had failed to set and solidify
c) elastomeric membrane failure at the roof,
d) full-depth cracking in tees throughout the garage, and
e) half the light fixtures had failed, likely from leaking water.

19. Plaintiff and its representatives contacted WG Yates, Rentenbach and Metromont regarding the noted deficiencies.

20. Metromont reassured Plaintiff and Reigstad that the full-depth cracking in the DTs was not an issue with the calculations for, design of, or manufacturing of the DTs and that certain modifications would provide the additional support necessary to secure the DTs and make them safe for the purpose for which they were intended.

21. As a result of the observed deficiencies, on or about December 9, 2013, an on-site meeting took place with Rentenbach and Metromont. As a result of that meeting, Metromont

agreed to modify the DTs to conform to the load and strength requirements in the original plans and specifications and, upon information and belief, to complete its performance and obligations, including repair obligations, under its contract with WG Yates and Rentenbach.

22. Metromont, in conjunction with Rentenbach, then modified certain of the DTs in early 2014 by attaching "steel channels" to the DTS.

23. Metromont, among other things, promised to review and address other issues at the Parking Deck, including the sealant failure.

24. Upon information and belief, these modifications did not effectively compensate for the defects in the DTs and C-GRID.

25. In or about March 2014, a certain number of the steel channels unfastened from the DTs and failed.

26. By the end of March 2014, Metromont refastened the steel channels that had failed by, upon information and belief, bolting them to the DTs with double nutting or burring the threads.

27. In the late spring/early summer of 2014, Metromont committed to a schedule to come back in July to look at sealant replacement. However, by August 29, 2014, Metromont indicated that they weren't taking responsibility for the entire sealant failure and refused to do any more repair work.

28. As a result of both the original construction defects, including failure of the C-Grid, and the failed remediation attempts in 2014, conditions at the Parking Deck continued to deteriorate, leading to a major collapse of a section of the Parking Deck on or about February 19, 2015 (the "Collapse").

29. As a result of the Collapse, TCGE engaged the services of Reigstad to study potential causes for the failure. Reigstad's study concluded that the American Concrete Institute's ("ACI") standard of care for design was not followed for the use of the C-GRID carbon material. The sealant used between the DTs never set and remains in semi-liquid condition. A previous examination revealed improper material was used at the DT to DT connections, all of which caused widespread cracking and failure of the Parking Deck. Because these components were largely internal to the DTs, they constitute latent defects that could not have been discovered through ordinary diligence by TCGE.

30. Plaintiff requested from Metromont, and was then provided by Metromont, with the calculations upon which Metromont designed the DTs to bear the loads that would be exerted on the same by vehicles in the Parking Deck.

31. Reigstad's opinion is that Metromont's calculations did not follow the standard of care required by the ACI and industry standard for use of carbon products in concrete. In its calculations, Metromont used mechanical properties, including tensile strength values, for the C-GRID that went above and beyond the publicly available recommendations of Chomarat and the technical data, including mechanical properties, which was published by Chomarat and available to Metromont at the time of manufacture of the DTs.

32. Specifically, the design strength number of 1200 lbs. used in Metromont's calculation for the DTs with C-GRID is far in excess of the design strength number published by Chomarat and supported by the ACI – 682.5 lbs.

33. Upon information and belief, Metromont willfully and wantonly ignored Chomarat's recommendations on the capacity of the C-GRID for precast concrete so as to decrease costs associated with the manufacture of the DTs.

34. Additionally, upon information and belief, Metromont knowingly underestimated the concentrate live load in its load calculations used to construct the Parking Deck in violation of accepted industry standards.

35. Upon further information and belief, Metromont has used similar defective calculations in the production of other CarbonCast® double tees using C-GRID that have been used in other public parking decks, thereby, further endangering the general public.

36. Further, Metromont actively concealed these deficient calculations (the likely source of the issues with the DTs) during much of the course of the investigation of the cracking and related issues that had arisen at the Parking Deck until the complete failure of several DTs.

37. Upon further information and belief, Chomarat expressly or impliedly approved the use of its C-GRID product in the DTs in a conscious disregard for injury to Plaintiff and for the safety of its invitees.

38. Upon information and belief, Metromont falsely represented to Plaintiff and Rentenbach that the DTs were suitable for this Parking Deck based on the specifications provided to Metromont and had actual knowledge that the same was false based on the mechanical properties of the C-GRID used in the DTs.

39. Moreover, during the repair of the Parking Deck undertaken by Plaintiff, Plaintiff discovered that the location of the depth of the C-GRID in the DTs was not in accordance with the design and shop drawings prepared by Metromont. Accordingly, this decreased the bearing capacity of the DTs. Upon information and belief, Metromont did not ensure that the C-GRID was properly located in the DTs during production of the same by Metromont.

40. Section 5.3 of the Contract requires that "[a]ny defective materials used by Contractor shall be replaced by Contractor at the sole cost and expense of Contractor." Section

18.4(b) requires that "[t]he Contractor shall promptly correct all defective work to the standards of this Agreement and the Contract Documents whether observed before or after the Substantial Completion Date and whether or not fabricated, installed or completed."

41. Section 18.4(e) states that "[i]f the Contractor fails, after written notice from Owner after Owner has actually discovered such defective Work, to correct defective Work in accordance with this Section and the Contract Documents, the Owner may correct it and hold the Contractor liable for all related costs, expenses and damages."

42. Finally, Section 18.4(f) states that "[i]n addition to the foregoing warranty, a warranty period of one (1) year shall apply to " to any work supplied in correction of the defective Work under warranty, or the property of the Owner pursuant to the provisions of 18.4. " *Such warranty period shall commence on the date the Owner accepts the corrective Work of the Contractor.*"[Emphasis added].

43. Upon information and belief, after initial construction of the Parking Deck, TCGE rejected the Parking Deck work as being incomplete and required Defendants to come back and perform corrective work. As noted above, additional corrective work was performed in March-August, 2014, at which point Defendants simply refused to return. As such, TCGE never "accepted" the repeated failed corrective work by Defendants which is therefore still under warranty.

FIRST CLAIM FOR RELIEF
(Breach of Contract against WG Yates and Rentenbach)

44. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

45. Pursuant to the facts set out above, WG Yates and Rentenbach jointly and severally owed a duty to TCGE to perform their work in a workmanlike manner and in accordance with the applicable standard of care and to construct the Parking Deck in conformance with the applicable contract documents, the applicable plans and specifications, industry standards, applicable buildings codes, good construction practices and in a sound, structurally sufficient manner.

46. It was reasonably foreseeable to WG Yates and Rentenbach at the time of contracting that a failure to perform their work in accordance with the Contract requirements, the applicable plans and specifications, industry standards, applicable buildings codes, and good construction practices would cause damage to the TCGE.

47. Upon information and belief, WG Yates and Rentenbach breached their duties to TCGE by, among other things, use of substandard or improper materials and failing to otherwise construct the Parking Deck in accordance with the Contract requirements, the applicable plans and specifications, industry standards, applicable buildings codes, and good construction practices and in a manner that would result in a sound, structurally sufficient final product.

48. As a result of WG Yates's and Rentenbach's breaches of the Contract, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

SECOND CLAIM FOR RELIEF
(Bad Faith Breach of Warranty against WG Yates and Rentenbach)

49. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

50. WG Yates and Rentenbach expressly warranted their workmanship from defects as is set forth above and set forth in more detail in the Contract.

51. Said warranties are valid and enforceable.

52. Plaintiff has relied upon the warranties to its detriment.

53. WG Yates and Rentenbach have breached the warranties by failing and refusing to repair their defective work on the Parking Deck as is set forth in more detail herein.

54. As a result of WG Yates's and Rentenbach's breaches of their express warranties to the TCGE, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

55. Additionally, WG Yates's and Rentenbach's denial of Plaintiff's claims against the warranties and failure to repair warranty work were willful, wanton, and in conscious disregard of its duty to remedy the claims and honor the warranties. Plaintiff is, therefore, entitled to damages, including punitive damages and its attorneys' fees, from WG Yates and Rentenbach for their bad faith in accordance with applicable law.

THIRD CLAIM FOR RELIEF
(Negligence against WG Yates and Rentenbach)

56. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

57. Pursuant to the facts set out above, WG Yates and Rentenbach jointly and severally owed a duty to TCGE to perform their work in a workmanlike manner and in accordance with the applicable standard of care and to construct the Parking Deck and perform related repairs and modifications in conformance with the applicable plans and specifications, industry standards, applicable buildings codes, good construction practices and in a sound, structurally sufficient manner.

58. WG Yates and Rentenbach know or reasonably should have known that a failure to perform their work in accordance with the applicable standard of care and to construct the Parking Deck and perform related repairs and modifications in conformance with the applicable plans and specifications, industry standards, applicable buildings codes, good construction practices would cause damage to the TCGE.

59. Upon information and belief, WG Yates and Rentenbach's work failed to comply with the applicable standard of care, failed to conform with the applicable plans and specifications, failed to meet industry standards, violated applicable buildings codes, and failed to comply with good construction practices.

60. As a result of WG Yates and Rentenbach's negligence, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

FOURTH CLAIM FOR RELIEF
(Negligence against Metromont)

61. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

62. Pursuant to the facts set out above, Metromont owed a duty to TCGE to design and manufacture the precast DTs and build the Parking Deck and perform related repairs and modifications in accordance with the applicable standard of care, to properly construct the Parking Deck, to install the Parking Deck in a workmanlike manner and fit for its intended use, to use construction materials fit for their intended purpose, and to ensure that any other elements of the Parking Deck which were integral to the proper function of the Parking Deck were properly constructed and integrated.

63. Metromont knew or should have known that a failure to perform its work and perform related repairs and modifications in accordance with the applicable contract documents, the applicable plans and specifications, industry standards, the applicable standard of care and good design and building practices would cause damage to the TCGE.

64. Upon information and belief, Metromont breached its duty of care by failing to, among other things, design and manufacture the DTs and construct a structurally sound structure, failing to construct the Parking Deck in accordance with the requirements of the applicable contract Documents, applicable plans and specifications, the applicable standard of care, industry standards, and good construction practices, and by using substandard or inappropriate materials, which resulted in the Parking Deck, including DTs, not being a structurally sound and fit for its intended use and purpose.

65. As a result of Metromont's negligence, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

FIFTH CLAIM FOR RELIEF
(Gross Negligence against Metromont)

66. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

67. Pursuant to the facts set out above, including, without limitation, that Metromont acted with gross negligence in its calculations for the strength of the DTs and actively concealed the same from Plaintiff until complete failure of certain DTs.

68. Upon information and belief, Metromont willfully and wantonly ignored Chomarat's recommendations on the capacity of the C-GRID for concrete structures so as to

decrease costs associated with the manufacture of the DTs and with a conscious disregard for injury to Plaintiff and the safety of its invitees.

69. As a result of Metromont's gross negligence, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

SIXTH CLAIM FOR RELIEF

(Breach of the Implied Warranty of Fitness for a Particular Purpose against Metromont)

70. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

71. Pursuant to the relationship between the Parties, there existed an implied warranty of fitness for a particular purpose wherein Metromont was obligated to provide factory-topped DTs fit for use in the Parking Deck.

72. Plaintiff was a foreseeable third-party beneficiary of any implied warranty.

73. Metromont had knowledge of the particular purpose for which Plaintiff intended to use the DTs, including the modified DTs.

74. Plaintiff relied on Metromont's skill and judgment to select a suitable product.

75. Metromont breached the implied warranty of fitness for a particular purpose by providing Plaintiff with defective DTs and defective modifications of the same.

76. As a result of Metromont's breach of the implied warranty of fitness for a particular purpose, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

77. The allegations of the preceding paragraphs are incorporated herein by reference.

SEVENTH CLAIM FOR RELIEF
(Negligence against Chomarat)

78. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

79. Pursuant to the facts set out above, Chomarat owed a duty to design and manufacture the C-GRID and market its appropriate use in accordance with the applicable standard of care, to properly advise Metromont on its use in the DTs, and to use carbon fiber materials fit for their intended purpose in the DTs, and to ensure that the elements it supplied for the DTs were properly integrated.

80. Chomarat knew or should have known that a failure to perform in a manner that meets industry standards and the applicable standard of care would cause damage to the TCGE.

81. Upon information and belief, Chomarat breached its duty of care by failing to, among other things, use appropriate calculations, design and manufacture the C-GRID and market its appropriate use in accordance with the applicable standard of care, and to properly advise Metromont on its use in the DTs, and to use carbon fiber materials fit for their intended purpose in the DTs, and to ensure that the elements it supplied for the DTs were properly integrated.

82. As a result of Chomarat□s negligence, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

EIGHTH CLAIM FOR RELIEF
(Gross Negligence against Chomarat)

83. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

84. Pursuant to the facts set out above, Chomarat, upon information and belief and without limitation: expressly or impliedly approved the use of its C-GRID product in the DTs in a conscious disregard for injury to Plaintiff and for the safety of its invitees; knowingly overestimated the tensile strength of its carbon fiber strand in the C-GRID and published the same to consumers and manufacturers; and knowingly failed to report a guaranteed rupture strain and provide the same to manufacturers and users of C-GRID, including for use in the DTs.

85. Upon information and belief, Chomarat's acts and omissions were done in conscious disregard of injury to Plaintiff and others and to the safety of users of the Parking Deck.

86. As a result of Chomarat's gross negligence, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

NINTH CLAIM FOR RELIEF

(Breach of the Implied Warranty of Fitness for a Particular Purpose against Chomarat)

87. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth herein.

88. Pursuant to the relationship between the Parties, there existed an implied warranty of fitness for a particular purpose wherein Chomarat was obligated to provide C-GRID fit for use in the DTs used in the construction of the Parking Deck.

89. Plaintiff was a foreseeable third-party beneficiary of any implied warranty.

90. Chomarat had knowledge of the particular purpose for which Metromont and Plaintiff intended to use the C-GRID.

91. Plaintiff and Metromont relied on Chomarat's skill and judgment to select a suitable product.

92. Chomarat breached the implied warranty of fitness for a particular purpose by providing Plaintiff and Metromont with C-GRID that was not appropriate for use in the DTs and Parking Deck.

93. As a result of Chomarat's breach of the implied warranty of fitness for a particular purpose, the TCGE has been damaged in an amount to be proven at trial but believed to be in excess of $4,000,000.

94. The allegations of the preceding paragraphs are incorporated herein by reference.

TENTH CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices against Defendants)

95. The acts of Defendants, as alleged above, constitute unfair and deceptive trade practices in violation of N.C. Gen. Stat. §75-1.

96. The acts of Defendants, as alleged above, were in or affecting commerce.

97. As a direct and proximate result of the acts of Defendants, as alleged above, Plaintiff has suffered damages in an amount in excess of $4,000,000.00 as may be proven at trial and to be trebled pursuant to N.C. Gen. Stat. § 75-16.

98. In addition, Plaintiffs are entitled to reasonable attorney fees pursuant to N.C. Gen. Stat. § 75-16.1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays the Court as follows:

1. That judgment be entered in favor of Plaintiff and against Defendants, jointly and severally, on each of the respective Claims for Relief set forth above;

2. That a judgment for punitive damages be entered in favor of Plaintiff and against Metromont and Chomorat in an amount to be determined at trial;

3. Any judgment against Defendants be trebled and Plaintiff be awarded its reasonable attorney fees plus interest pursuant to N.C. Gen. Stat. § 75-16.1;

4. That Plaintiff be awarded its reasonable attorneys fees as allowed by law;

5. That the costs of this action be taxed against Defendants as allowed by law; and

6. For such other and further relief as the Court may deem just and proper.

THIS the 10th day of February, 2016.

HAMILTON STEPHENS
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