

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

CHARLES COLOMBE,
Individually and as an Officer
of BBC Entertainment, Inc., a dissolved
Minnesota corporation,

Plaintiff,

v.

**ROSEBUD SIOUX TRIBE, ROSEBUD
SIOUX TRIBAL COURT, and JUDGE
SHERMAN MARSHALL**, in his Official and
Individual Capacities,

Defendants.

Civ. 11-3002

**PLAINTIFF’S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

St. Regis

It is Plaintiff’s position that the Supreme Court of the Rosebud Sioux Tribe exceeded its jurisdiction by voiding the admitted agreement between BBC and the Rosebud Sioux Tribe (Tribe) on the grounds that the agreement amounted to a modification of the Management Agreement and did not comply with IGRA. In Plaintiff’s brief in support of his motion for summary judgment, Plaintiff relied on the express language of *U.S. ex rel. The Saint Regis Mohawk Tribe v. President R.C.--St. Regis Mgmt. Co.*, 451 F.3d 44 (2d Cir. 2006) which states that if a tribe wishes to void an agreement “on the ground that it was a contract not submitted for approval as required by IGRA,” then the tribe can request a hearing before the Chairman of NIGC. *Id.* at 50-51. When a tribe proceeds directly to court, the tribe impermissibly seeks a determination outside the administrative review scheme crafted by Congress. *Id.* at 51.

Lien

The Tribal Defendants are again trying to avoid the Tribe's express agreement with BBC and the express language of *St. Regis* by cloaking their argument as one of "contract validity" to fit within the narrow holding of the Eighth Circuit Court of Appeals in *Bruce H. Lien Co. v. Three Affiliated Tribes*, 93 F.3d 1412 (8th Cir. 1996) and what they must believe is salvation from the administrative exhaustion requirements of IGRA and *St. Regis*. However, the Tribal Defendants will find no such exemption in *Lien*. Absent from the Tribal Defendants' Memorandum of Law is the following passage from *Lien*, which is most relevant to, and ultimately dispositive of, the question before this Court:

As previously indicated, we agree with the District Court's assessment that **the NIGC has exclusive authority to determine a contract's compliance with IGRA and its regulations**, but we disagree (as do both parties) that said agency has "exclusive jurisdiction" regarding a contract's legal validity.

Id. at 1420. (emphasis supplied).

Lien is consistent with *St. Regis* in all aspects relevant to this case. Both hold that the exclusive authority to determine a contract's compliance with IGRA and its regulations lies with the NIGC.

Rosebud Supreme Court Ruling

The Rosebud Supreme Court, in reversing Judge Jones' judgment of January 12, 2004, concluded:

[T]he oral agreement of the parties to fund the OER through mutual monthly contributions of 7.5% for their net profits was a modification of the Management Contract. Such a modification expressly requires approval of the NIGC. 25 U.S.C. § 2711. Failure to obtain the required NIGC approval for any management contract modification renders the modification "void."

(Memorandum Opinion and Order, July 20, 2006, p. 5 – Ex. 4, Affidavit of Counsel, February 11, 2011 (Doc. 9-4, p. 7)). The Rosebud Supreme Court's decision was not the type of "contract

validity” analysis found in *Lien* where the issue centered on the authority of the tribal chairman to bind the tribe in an agreement. Rather, the Rosebud Supreme Court made a finding that there was an agreement that amounted to a modification of the Management Contract, that such modification required approval under IGRA and failure to obtain the approval rendered the agreement void. In short, the Rosebud Supreme Court ruled the agreement was not in “compliance with IGRA and its regulations” – the exact type of determination *St. Regis* and *Lien* conclude is within the exclusive authority of the NIGC. The Rosebud Supreme Court’s only basis for reversing the January 12, 2004 judgment of Judge Jones was the alleged failure of the agreement to comply with IGRA. Based on the express language of *St. Regis* and *Lien*, the Rosebud Supreme Court did not have the authority to make such a decision.

CONCLUSION

Plaintiff respectfully requests that this Court enter an Order vacating the judgment against BBC and ordering the dismissal of the Tribe’s tribal court claims. The Tribe has failed to comply with the mandatory statutory duty under IGRA and therefore the Rosebud Supreme Court was without jurisdiction to reverse the judgment of the Rosebud Tribal Court.

Dated this 26th day of September, 2012.

/s/ Clint Sargent

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