

STEVEN D. SANDVEN

L A W O F F I C E

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February 17, 2009

Clerk of Court
Rosebud Sioux Tribal Court
P.O. Box 129
Rosebud SD 57570

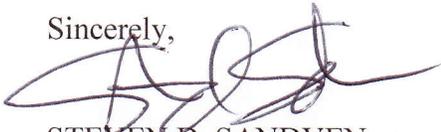
**RE: ROSEBUD SIOUX TRIBE V. BBC ENTERTAINMENT, INC., CHARLES COLOMBE AND
WAYNE BOYD**

Dear Clerk of Court:

Please find for filing the COMPLAINT in the above-described matter and filing fee of \$35.00.

Please contact me if there are any questions.

Sincerely,



STEVEN D. SANDVEN
Attorney for Rosebud Sioux Tribe

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**ROSEBUD SIOUX TRIBE
IN TRIBAL COURT**

ROSEBUD SIOUX TRIBE,

Plaintiff,

v.

BBC ENTERTAINMENT, INC., CHARLES
COLOMBE and WAYNE BOYD,

Defendants.

CASE NO. CIV ____

COMPLAINT

Plaintiff, the ROSEBUD SIOUX TRIBE, (hereinafter the "Tribe"), by and through its undersigned counsel, Steven D. Sandven, 300 North Dakota Avenue, Suite 106, Sioux Falls, South Dakota, 57104, files the following Complaint against Defendants BBC ENTERTAINMENT, INC., CHARLES COLOMBE, and WAYNE BOYD (collectively the "Defendants"). In support thereof, the Tribe states the following:

PRELIMINARY STATEMENT

1. This case arises out of a judgment entered by this Court on October 16, 2007, in Rosebud Sioux Tribe v. BBC Entertainment, Inc. (CIV 01-230) against the

Defendant BBC Entertainment, Inc. in the amount of \$399,353.61 plus interest that had accrued from August 15, 1999 in the amount of \$127,793.15. **Exhibit 1.**

2. Minutes of Defendant BBC Entertainment, Inc. and the Rosebud Sioux Tribe both illustrate that Defendant Colombe owns 50% of BBC Entertainment, Inc. and John Boyd and Defendant Wayne Boyd own 25% each. *See* Exhibits 13, 15, and 16.

3. Defendant Wayne Boyd disputes ownership of BBC Entertainment, Inc. but has provided no evidence to the contrary.

4. It is undisputed that a change of corporate structure in BBC Entertainment, Inc. would have required approval from the National Indian Gaming Commission. *See* Exhibit 17. Upon information and belief, no submissions evidencing a change in BBC Entertainment, Inc.'s corporate structure have been made or approved by either the Rosebud Sioux Tribe or the National Indian Gaming Commission.

5. Upon information and belief, the Defendants utilized BBC Entertainment, Inc. as an alter ego to mask their personal interests in the Management Agreement executed with the Rosebud Sioux Tribe for the management and operation of its gaming facility.

6. Upon information and belief, the Defendants intentionally failed to observe corporate formalities resulting in the dissolution of BBC Entertainment, Inc. by the South Dakota Secretary of State on November 6, 2006, thereby precluding the Rosebud Sioux Tribe from executing upon the judgment ordered by this Court.

PARTIES

7. Plaintiff, the Rosebud Sioux Tribe, is a federally recognized Tribe who is, and was at all times relevant hereto, a party to the management contract with BBC

Entertainment, Inc. The Tribe's address is 11 Legion Avenue, Rosebud, South Dakota 57570.

8. Defendant, BBC Entertainment, Inc. was a corporation organized and existing under the laws of the State of Minnesota. On November 6, 2006, the South Dakota Secretary of State revoked the articles of BBC for failure to file an annual report, and therefore, upon information and belief, the corporation no longer has a principal place of business. *See* Exhibit 25.

9. Defendant Charles Colombe is a natural person and was at all times relevant hereto, an owner of fifty percent (50%) of Defendant BBC Entertainment, Inc. Defendant Colombe resides at P.O. Box 21, Mission, South Dakota 57555-0021.

10. Defendant Wayne Boyd is a natural person, and upon information and belief, was at all times relevant hereto, an owner of twenty five (25%) of Defendant BBC Entertainment, Inc. Defendant Wayne Boyd resides approximately two miles south of Mission, South Dakota 57555 on the west side of Highway 83.

11. John Boyd, an owner of twenty five (25%) of Defendant BBC Entertainment, Inc., is deceased.

JURISDICTION

12. The injuries to and the damages suffered by the Plaintiff and the occurrences upon which this action is based occurred within the jurisdiction of the Rosebud Sioux Tribe.

13. At all times relevant hereto, Defendants have conducted, and continue to conduct, business within the jurisdiction of the Rosebud Sioux Tribe.

14. This Court has jurisdiction over all causes of action and claims for relief herein pursuant to Chapter Two, Section 4-2-6 of the Law and Order Code of the Rosebud Sioux Tribe.

INTRODUCTORY STATEMENT OF COMMON FACTS

15. On February 9, 1993, the shareholders of BBC Entertainment, Inc. held their first meeting that was attended only by Defendant Colombe. **Exhibit 2.** Being the only shareholder at the meeting, Defendant Colombe made motions, seconded and unanimously carried the motions. Id.

16. On or about February, 1993, BBC Entertainment, Inc. held its organizational meeting in which all Defendants attended. **Exhibit 3.** At this meeting, it was determined that BBC Entertainment, Inc. would operate without Bylaws. Id. Defendant Colombe was selected President, Defendant Wayne Boyd would serve as Secretary/Treasurer, and John Boyd would act as Vice-President. Id. The Defendants then resolved as follows: (1) Defendant Colombe would purchase 50,000 shares of the \$.10 par value common stock; (2) Defendant Wayne Boyd was to purchase 25,000 at the \$.10 par value common stock; and (3) John Boyd would purchase 25,000 of the \$.10 par value common stock. Id. Finally, the Defendants elected themselves as directors “to serve as such until their successors shall be duly elected and qualified, or they shall terminate their relationship as shareholder.” Id.

17. On March 19, 1993, BBC Entertainment, Inc. was incorporated in the State of Minnesota. **Exhibit 4.**

18. On June 2, 1993, Defendant BBC Entertainment, Inc. and the Tribe entered into a management contract that was submitted to the National Indian Gaming

Commission on June 3, 1993. **Exhibit 5.** The Management Agreement was executed by Defendant Colombe as President and Defendant Wayne Boyd. **Exhibit 6.** The Agreement expressly recognized that the “Agreement must be, and shall not be effective notwithstanding the date of the signatures of the parties until, approved in writing by the Chairman of the National Indian Gaming Commission pursuant to the IGRA, which exercises the federal government’s authority over Indian gaming.” Id.

19. On December 7, 1993, BBC Entertainment Inc. holds a shareholder meeting with only Defendant Colombe present where he raises concerns about the Boyds’ inability to contribute financially to the project. **Exhibit 7.** The minutes reflect that Defendant Colombe was at this time the sole shareholder of BBC Entertainment, Inc. Id. As the sole shareholder present Defendant Colombe held a “discussion” and authorized himself “to act unilaterally on behalf of the corporation relative to the said contract to make any decisions that might be necessary and to execute the contract on behalf of the corporation in such form as he shall deem appropriate and most expedient.” Id. The minutes reflected that the existing officers and directors were to continue in their respective positions until further action of the shareholders.” Id.

20. On March 11, 1994, BBC Entertainment, Inc. holds a shareholder meeting with only Defendant Colombe present where he discussed termination of the Boyds’ ownership interests. **Exhibit 8.** The minutes now declare Defendant Colombe as the “sole shareholder” and the “sole director.” Id. Defendant Colombe “authorized” himself to execute a termination agreement with the Boyds. Id.

21. On March 11, 1994, an agreement was executed by Defendant BBC Entertainment, Inc. (signed by Defendant Colombe), Defendant Wayne Boyd and John

Boyd where the parties purport to “mutually terminate all right, title and interest that John Boyd and Wayne Boyd might have in and to any of the shares of stock of BBC.” **Exhibit**

9. The Agreement indicated that Defendant Wayne Boyd and John Boyd resigned as officers and/or directors of Defendant BBC Entertainment, Inc. Id. The Agreement also specifically provided:

Wayne Boyd shall continue work with the Management of the Rosebud Project as a part of the casino company, and may be a member of the Board of Directors and/or a salaried employee of the management team. In consideration thereof, and in consideration of their efforts to date, it is agreed that an amount of 20% of BBC’s income from the Rosebud Casino shall be paid to John and Wayne. Income purposes of this agreement shall be the gross income received by BBC less accounting expenses incurred by BBC and the cost of one General Manager. All sums due John and Wayne will be paid monthly at the same time as the Rosebud Sioux Tribe receives their share of the profits. Id.

22. On June 14, 1994, the National Indian Gaming Commission approved the Management Agreement between Rosebud Sioux Tribe and BBC Entertainment, Inc.

Exhibit 10.

23. On July 11, 1994, BBC Entertainment, Inc. holds a shareholder meeting with only Defendant Colombe present as sole shareholder and sole director. **Exhibit 11.**

24. On August 23, 1994, Defendant submits memorandum to the Commission stating “the key management personnel licensed pursuant to our management agreement do not change for the Rosebud project and therefore would not violate our agreement with the Rosebud Sioux Tribe.” **Exhibit 12.**

25. On September 26, 1994, the Rosebud Sioux Tribal Council required that BBC Entertainment, Inc. be placed into the initial corporate structure that included John Boyd, Defendant Wayne Boyd, and Defendant Charles Colombe in order to comply with

representations made to the National Indian Gaming Commission and the Rosebud Sioux Tribe. **Exhibit 13.**

26. On September 30, 1994, Terry Pechota, Esq. submits a memorandum to President Kindle stating “Ronald Valandra made a motion to have BBC revert to its corporate structure as originally represented to the Tribe. It is my recollection that BBC agreed to this and indicated that course as one of the solutions even before Ronald Valandra made the motion.” **Exhibit 14.** According to attorney Pechota, a change in the structure of BBC would have violated the agreement between BBC and the Tribe. Id.

27. On October 25, 1994, BBC Entertainment, Inc. held a meeting where it was determined that “pursuant to Tribal resolution, and based on the discussion with Defendant Wayne Boyd and John Boyd it was determined to structure the Boyd stock ownership on a preferred basis, to insure their rights of any later distribution of corporate assets in the event of a liquidation the stock ownership of the Boyds stock interest would be superior and redeemed prior to any other shareholder.” **Exhibit 15.** John Boyd and Defendant Wayne Boyd were issued 25,000 Series A preferred stock. Id. New officers of BBC Entertainment, Inc. were appointed as follows: (1) Defendant Colombe – President; (2) John Boyd – Vice-President; and (3) Defendant Wayne Boyd – Secretary. Id.

28. On November 3, 1994, Defendant Colombe submits BBC Entertainment Inc. minutes to the Gaming Commission dated October 13, 1994 to alleviate the Tribe’s concerns regarding the corporate structure of BBC Entertainment, Inc. **Exhibit 16.**

29. On April 7, 1995, Defendant Wayne Boyd submits a memorandum to the Director of the Gaming Commission discussing the possibilities of selling his shares in

BBC Entertainment, Inc. to the Tribe. Defendant Wayne Boyd states that “[a]ny change in the interest is required to be reported to the Tribal Gaming Commission. Since John and I are not aware of any other shares, nor have either you or the NIGC been notified of any changes, then we must assume that there are no other legal shares outstanding. John and my shares entitle us to 50% of the voting rights to BBC Entertainment, Inc, as well as the right to elect officers to the Board of Directors.” **Exhibit 17.**

30. On April 10, 1995, Terry Pechota, Esq. submits a memorandum to the Tribal Gaming Commission noting that Defendant Wayne Boyd’s proposal is based upon the October 25, 1994, agreement thereby implying that the attempt to terminate the Boyds’ interest on March 11, 1994, was not carried out. **Exhibit 18.**

31. Filings on record with the South Dakota Secretary of State show Defendants Wayne Boyd and Charles Colombe, as directors of BBC Entertainment, Inc. from its inception to its dissolution. **Exhibit 19.**

32. After the attempted termination of his interests in BBC Entertainment, Inc. Defendant Wayne Boyd still appeared before the Council as a representative of BBC Entertainment, Inc. **Exhibit 20.**

33. On September 10, 1998, the Vice-President of the Tribe submits memorandum to Gaming Commission stating that “[a]fter discussing these issues with Wayne Boyd, an owner/partner of BBC Entertainment, Inc., I am even more concerned. Mr. Boyd told me that he is not aware of any of the discrepancies and/or alleged violations that I inquired about.” **Exhibit 21.** The memorandum did not mention that Defendant Wayne Boyd and John Boyd were no longer owners and/or directors of BBC Entertainment, Inc.

34. On August 20, 1999, President Kindle of the Rosebud Sioux Tribe submits a memorandum to Defendant Colombe stating that “[i]n the few days following the transfer of the casino to the Tribe, we have identified nearly one million dollars in transfers to BBC, to your wife, Vi Colombe, and to Western Events, your own business enterprise - - all made within the last month. While you may be entitled to some of these funds, we have serious questions about the amounts and timing of many of the payments, and whether a substantial portion of them should have been made at all.” **Exhibit 22.**

35. On September 8, 2003, Judge B.J. Jones entered an order in Rosebud Sioux Tribe v. BBC Entertainment, Inc., CIV 01-230 (hereinafter the “BBC litigation”), that noted “Congress provided in IGRA for the modification of Management Agreements, which may not be amended without NIGC approval.” Court denied motion for summary judgment. **Exhibit 23.**

36. Upon information and belief, amendments to the management agreement were never submitted to the National Indian Gaming Commission regarding the corporate structure of Defendant BBC Entertainment, Inc. Accordingly, upon information and belief, Defendant Wayne Boyd, Defendant Charles Colombe and John Boyd (deceased) remain the lawful owners of BBC Entertainment, Inc.

37. On July 20, 2006, the RST Supreme Court reversed the opinion issued by Judge B.J. Jones that no illegal modification of the Management Agreement occurred. **Exhibit 24.**

38. On November 6, 2006, the South Dakota Secretary of State revoked the articles of BBC for failure to file an annual report. **Exhibit 25.**

39. Despite the lack of an amendment to the management agreement, Defendant Charles Colombe continues to insist that that he is the “primary shareholder, president and a director of defendant, BBC Entertainment, Inc...” **Exhibit 26.**

40. Upon information and belief, at all relevant times to the action underlying the BBC litigation, Defendant Colombe, Defendant Wayne Boyd and John Boyd (deceased) were the sole shareholders of BBC Entertainment, Inc.

41. Upon information and belief, at all relevant times to the action underlying the BBC litigation, Defendant Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased) served as officers and/or directors of BBC Entertainment, Inc.

42. Upon information and belief, at all relevant times Defendant Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased) functioned as the dominant and controlling directors and/or officers of BBC Entertainment, Inc., and no other officer or director of this entity functioned independently of or contrary to their dictates.

43. Upon information and belief, Defendant Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased) exercised control over the assets and business decisions of BBC Entertainment, Inc.

44. Upon information and belief, Defendant Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased) orchestrated BBC Entertainment, Inc.’s decisions underlying the BBC litigation, including the decision to unilaterally take money from casino accounts.

45. Upon information and belief and as evidenced by the South Dakota Secretary of State’s dissolution, BBC Entertainment, Inc. failed to observe corporate formalities or keep proper corporate records.

46. Upon information and belief, when taking into account its obligations, including its obligations to the Rosebud Sioux Tribe, at all relevant times BBC Entertainment, Inc. has been undercapitalized and functioned essentially as a corporate shell.

COUNT 1
PIERCING THE CORPORATE VEIL

47. Plaintiff incorporates herein by this reference and re-alleges paragraphs 1 through 46 of this Complaint as if fully set forth herein.

48. Upon information and belief, piercing the corporate veil of BBC Entertainment, Inc. is warranted for at least the following reasons:

- (a) At all relevant times, no officer or director other than Defendants Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased), the dominant and only officers and/or directors of BBC Entertainment, Inc., actually functioned in the business decision-making of BBC Entertainment, Inc.
- (b) At all relevant times, Defendants Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased) used their control over the assets and business decisions of BBC Entertainment, Inc. to further their personal interests as the ultimate owners of BBC Entertainment, Inc.
- (c) At all relevant times, BBC Entertainment, Inc. failed to observe corporate formalities resulting in their administrative dissolution on 2006. *See* Exhibit 39.
- (d) At all relevant times, BBC Entertainment, Inc. failed to keep corporate records.
- (e) At all relevant times, when taking into account its obligations, including its obligations to the Rosebud Sioux Tribe, BBC Entertainment, Inc. was undercapitalized and functioned essentially as a corporate shell.

49. Upon information and belief, Defendants Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased), for personal gain, orchestrated the actions of

BBC Entertainment, Inc. to cause this entity to breach its obligations under the Management Agreement.

50. Upon information and belief, Defendants exercised their control over BBC Entertainment, Inc., to the detriment of the Rosebud Sioux Tribe, with the belief that they could dissolve, or cause the corporate to be dissolved, precluding the Rosebud Sioux Tribe from executing upon any judgment.

51. Upon information and belief, Defendants exercised their control over BBC Entertainment, Inc., to the detriment of the Rosebud Sioux Tribe to insulate themselves from any liability that might arise from their individual failure to satisfy their obligations under the Management Agreement.

52. Upon information and belief, as the dominant officers and directors of BBC Entertainment, Inc., Defendants controlled the business decisions at all relevant times in a manner that rendered its corporate form a sham and a façade for their personal benefits.

53. By virtue of, *inter alia*, Defendants' domination and control over the business decisions and assets of BBC Entertainment, Inc., they are the alter egos of this entity.

54. Given the facts and circumstances stated herein, justice and public policy demand piercing the corporate veil of BBC Entertainment, Inc.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully demands judgment in its favor and against the individual Defendants for the following:

- a. Damages in the amount of \$527, 146.76 as ordered in Rosebud Sioux Tribe v. BBC Entertainment, Inc. (CIV 01-230);
- b. All legal costs, including legal fees and costs of this suit; and
- c. For such other relief and further relief as the Court deems just and appropriate.

February 17, 2009

STEVEN D. SANDVEN, Law Office

By:



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**ROSEBUD SIOUX TRIBE
IN TRIBAL COURT**

ROSEBUD SIOUX TRIBE,

Plaintiff,

v.

BBC ENTERTAINMENT, INC., CHARLES
COLOMBE and WAYNE BOYD

Defendants.

CASE NO. CIV __

AFFIDAVIT OF STEVEN D. SANDVEN

Steven D. Sandven being first duly sworn on oath deposes and states as follows:

1. I am the Attorney for the Plaintiff in this action.
2. A true and correct copy of the judgment entered by this Court on October 16, 2007, in Rosebud Sioux Tribe v. BBC Entertainment, Inc. (CIV 01-230) against the Defendant BBC Entertainment, Inc. in the amount of \$399,353.61 plus interest that had accrued from August 15, 1999 in the amount of \$127,793.15 is attached hereto as Exhibit "1".

3. A true and correct copy of Minutes of Organization of Board of Directors of BBC Entertainment, Inc. dated February 9, 1993 is attached hereto as Exhibit "2".
4. A true and correct copy of the Minutes of Organization of Board of Directors of BBC Entertainment, Inc. dated on or about February, 1993 is attached hereto as Exhibit "3."
5. A true and correct copy of the South Dakota Secretary of State posting of BBC Entertainment, Inc. incorporation date of March 19, 1993 is attached hereto as Exhibit "4".
6. A true and correct copy of RST President Lunderman's June 3, 1993 memorandum to the National Indian Gaming Commission is attached hereto as Exhibit "5".
7. A true and correct copy of the Management Agreement between the Rosebud Sioux Tribe and BBC Entertainment, Inc. dated February 11, 1993 is attached hereto as Exhibit "6".
8. A true and correct copy of Minutes of Meeting of Shareholders of BBC Entertainment, Inc. dated December 7, 1993 is attached hereto as Exhibit "7".
9. A true and correct copy of Minutes of Combined meeting of Shareholder and Director of BBC Entertainment, Inc. dated March 11, 1994 is attached hereto as Exhibit "8".
10. A true and correct copy of a March 11, 1994 agreement executed by Defendant BBC Entertainment, Inc. (signed by Defendant Colombe) and Defendants John Boyd and Wayne Boyd is attached hereto at Exhibit "9".

11. A true and correct copy of a June 14, 1994 memorandum to the Rosebud Sioux Tribe from the National Indian Gaming Commission is attached hereto as Exhibit "10".
12. A true and correct copy of the Minutes of Combined Meeting of Shareholder and Director of BBC Entertainment, Inc. dated July 11, 1994 is attached hereto as Exhibit "11".
13. A true and correct copy of the August 23, 1994 memorandum from Defendant Wayne Boyd to the Tribal Gaming Commission is attached hereto as Exhibit "12".
14. A true and correct copy of the Rosebud Sioux Tribal Council Special Meeting Minutes dated September 26, 1994 is attached hereto as Exhibit "13."
15. A true and correct copy of the September 30, 1994 memorandum from Terry Pechota, Esq. to President Kindle is attached hereto as Exhibit "14".
16. A true and correct copy of the Minutes of Combined Meeting of Shareholders and Directors of BBC Entertainment, Inc. dated October 25, 1994 is attached hereto as Exhibit "15".
17. A true and correct copy of the November 3, 1994 memorandum from Defendant Colombe to the Tribal Gaming Commission is attached hereto as Exhibit "16".
18. A true and correct copy of the April 7, 1995 memorandum to the Tribal Gaming Commission is attached hereto as Exhibit "17".

19. A true and correct copy of the April 10, 1995 memorandum from Terry Pechota, Esq. to the Tribal Gaming Commission is attached hereto as Exhibit "18".
20. A true and correct copy of the Secretary of State Annual Reports are attached hereto as Exhibit "19".
21. A true and correct copy of the Rosebud Sioux Tribal Council Meeting Minutes dated January 11, 1996 is attached hereto as Exhibit "20".
22. A true and correct copy of the September 10, 1998 memorandum from RST Vice President to the Tribal Gaming Commission is attached hereto as Exhibit "21".
23. A true and correct copy of the August 20, 1999 memorandum from the RST President to Defendant Colombe is attached hereto as "Exhibit "22".
24. A true and correct copy of this Court's September 8, 2003 Notice of Entry of Order in RST v. BBC Entertainment, Inc. is attached hereto as Exhibit "23".
25. A true and correct copy of the RST Supreme Court's Memorandum Opinion and Order in RST v. BBC Entertainment, Inc. dated July 20, 2006 is attached hereto as Exhibit "24".
26. A true and correct copy of the South Dakota Secretary of State Certificate of Revocation dated November 6, 2006 is attached hereto as Exhibit "25".
27. A true and correct copy of the April 10, 2007 Affidavit of Defendant Colombe in Support of Summary Judgment is attached hereto as Exhibit "26".

February 17, 2009

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By:



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