

IN THE COURT OF APPEALS
FOR THE
ROSEBUD SIOUX TRIBE

HAL JASON FULLER and
DAVID PAXTON, doing business
under the firm name and style
of LAKOTA ELECTRIC,

CA 91-04
Plaintiffs/Appellants

vs.

BLAZE CONSTRUCTION CO. INC.,
A Corporation, and SEABOARD
SURETY COMPANY,

Defendants/Appellees.

NOTICE OF ENTRY OF ORDER

TO: Paul Jensen and Eric Antoine

PLEASE TAKE NOTICE that an Order and Opinion was duly entered
by this Court of Appeals for the Rosebud Sioux Tribe, Todd County,
State of South Dakota, in the above-entitled action on the 4th
day of January, 1993 and also on the 25th day of January, 1993.



Denita Marshall
Appellate Clerk

I, Denita Marshall, Clerk of the Court of Appeals for the
Rosebud Sioux Tribe, hereby certify that I mailed a certified
copy of the Order and Opinion entered in the above-entitled
action to: Paul Jensen, Jensen & Massa, P.O. Box 706, Winner,
South Dakota 57580 and to Eric Antoine, Dakota Plains Legal
Services, P.O. Box 727, Mission, South Dakota 57555, by
first-class certified mail, postage prepaid on this 25th day
of January, 1993.



Denita Marshall
Appellate Clerk

IN THE COURT OF APPEALS
FOR THE
ROSEBUD SIOUX TRIBE

HAL JASON FULLER and
DAVID PAXTON, doing business
under the firm name and style
of LAKOTA ELECTRIC,

PLAINTIFFS/APPELLANTS

vs.

BLAZE CONSTRUCTION CO. INC.,
A Corporation, and SEABOARD
SURETY COMPANY,

DEFENDANTS/APPELLEES.

ORDER

This case having received complete appellate review, including oral argument, and the Court having issued an opinion and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED, that the Memorandum Decision is reversed and remanded to the trial court.

IT IS FURTHER ORDERED that the trial court is directed to commence proceedings for the purposes of making additional findings on the following issues:

- 1) Whether the Federal District Court, Eastern District of Washington would have subject matter jurisdiction over the case, and if so, whether it should defer to tribal court jurisdiction.
- 2) Whether the public policy of the Rosebud Sioux Tribe favors venue selection clauses contracted by private parties that effectively divest the tribal court of jurisdiction it would otherwise have.


Dated this 14th day January, 1993.

BY THE COURT:



Frank Pommershiem
Chief Appellate Justice

Attest:


Denita Marshall
Appellate Clerk of Courts

ROSEBUD SIOUX TRIBE
COURT OF APPEALS

* * * * *

HAL JASON FULLER,
and DAVID PAXTON, doing
business under the firm
name and style of Lakota
Electric,

Plaintiffs and Appellants,

vs.

BLAZE CONSTRUCTION CO., INC.,
A Corporation, and SEABOARD
SURETY COMPANY,

Defendants and Appellees.

CA91-04

ORDER

* * * * *

BLAZE CONSTRUCTION CO., INC., and SEABOARD SURETY COMPANY, Defendants/Appellees herein, filed a motion to dismiss the appeal of HAL JASON FULLER and DAVID PAXTON (DBA LAKOTA ELECTRIC), the Plaintiffs-Appellants herein, as not being timely. Specifically, the Appellees allege that the Appellants' notice of appeal, which was filed on October 18, 1991, was not timely in that it was filed 31 days after the notice of the entry of judgment was filed on September 17, 1991 in violation of Rule 2 of the Rules of Procedure of the Rosebud Sioux Tribe Court of Appeals. Rule 2 provides, inter alia, that the "Notice of Appeal shall be filed within thirty days of notice of entry of judgment in all civil cases."

The Rules of the Rosebud Sioux Tribal Court of Appeals do not address the issue whether the applicable time limits are affected when notice is provided by mail (as the serving of the Notice of Entry of Judgment in this case). In such cases, Rule 15 of the

Rosebud Sioux Rules of Civil Procedure directs the Court to the tribal code or if the situation is not covered by the tribal code, to the Federal Rules of Civil Procedure.

The Rosebud Sioux Tribal Rules of Civil Procedure,¹ as well as the Federal Rules of Civil Procedure,² the Federal Rules of Appellate Procedure³ and for good measure, the South Dakota Rules of Civil Procedure⁴ all provide for a three (3) day extension in such circumstances. All use similar language:


Wherever a party has the right or is required to do some act within a specified period after the service of a notice or other paper upon him, or whenever such service is required to be made a specified period before a specific event, and notice or paper is served by mail, three days shall be added to the prescribed period.⁵

This three-day extension clearly makes the Plaintiffs/Appellants' Notice of Appeal timely filed and the Defendants/Appellees' motion to dismiss is hereby denied.

IT IS SO ORDERED.


Frank Pommersheim
Chief Justice


Robert Grey Eagle
Associate Justice


Marvin Amiotte
Associate Justice

Dated: December 23, 1991

¹ Rule 6(d) of the Rosebud Sioux Tribe Rules of Civil Procedure.

² See e.g., Rule 6(e) of Federal Rules of Civil Procedure.

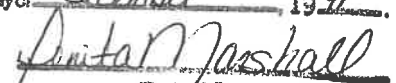
³ See e.g. Rule 26(c) of Federal Rules of Appellate Procedure.

⁴ See e.g., SDCL 15-6-6(e).

⁵ See e.g., Rule 6(d), supra note 1.

FILED
in the
ROSEBUD SIOUX TRIBAL COURT OF APPEALS

The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above-captioned action by this Court on the 30th day of December, 1991.


Anita Marshall
Clerk of Appeals