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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

<p>EAGLE BEAR, INC. and WILLIAM BROOKE, Plaintiff,</p> <p>v.</p> <p>THE BLACKFEET INDIAN NATION and THE BLACKFEET TRIBAL COURT Defendant.</p>	<p>Cause No. 4:21-cv-00088-BMM</p> <p>BLACKFEET NATION’S NOTICE OF UNITED STATES FILING OF MOTION TO DISMISS THE BANKRUPTCY ADVERSARY PROCEEDING REGARDING THE FORMER BUREAU OF INDIAN AFFAIRS (BIA) LEASE NO. 5B033889621 (EAGLE BEAR LEASE)</p>
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COMES NOW, the Defendants Blackfeet Indian Nation and Blackfeet Tribal Court, through counsel, and hereby submit this Notice of United States Filing of Motion to Dismiss the Bankruptcy Adversary Proceeding Regarding the Former Eagle Bear Lease:

BACKGROUND

Plaintiffs commenced this action by filing a Complaint for declaratory and injunctive relief against the Blackfeet Indian Nation and its Court, asking this

Court to declare that the Blackfeet Nation had no jurisdiction over either of the Plaintiffs. Central to the Plaintiffs' jurisdictional challenge to the authority of the Blackfeet Nation is their claim that a former business and recreation lease between the Blackfeet Nation and the Plaintiffs which was cancelled in 2008 by the Bureau of Indian Affairs is somehow still in effect.

In prior hearings before the Court and in the Court's November 17, 2021 Order on Preliminary Injunction, the Court has focused on the administrative record of the lease and lease cancellation before the BIA. Because of the importance of the BIA record to the question of the 2008 lease cancellation, the Court has asked the parties to keep it advised regarding efforts to obtain the full record. To this end, both parties have filed post-briefing notices of filings of the BIA administrative record. On September 8, 2022 the Blackfeet Nation Defendants filed the entire BIA administrative record, the purpose of which was to provide the critical information which the Court required to decide the matters pending before it, including the Defendants' Motion to Dismiss, the Plaintiffs' Complaint and Second Motion for A Preliminary Injunction and Temporary Restraining Order. The Defendants also have a Motion to Withdraw the Reference from the Bankruptcy Court with respect to the 2008 lease cancellation issue pending before this Court.

Notwithstanding that they have routinely supplemented the record of this case by filing documents from the BIA administrative record (including decisions and pleadings from the IBIA matter), Plaintiffs appear to urge the Court not to consider the BIA record or use that record to decide the matters pending.

1. The Question of the BIA's 2008 Cancellation of the Former Lease is Pending Before this Court.

Whether the BIA cancelled the former lease between Plaintiff Eagle Bear and the Defendant Blackfeet Nation is before this Court through the Plaintiffs' initial Complaint and their Motion for a Preliminary Injunction, and through the Defendants' Motion to Dismiss. While the Plaintiffs have filed a Chapter 11 petition in Bankruptcy Court, the Defendants' have filed a Motion to Withdraw the Reference from the Bankruptcy Court with respect to the main issue in that Court, which is the 2008 lease cancellation.

Plaintiffs' counsel admitted in the hearing on the Defendants' Motion to Withdraw the Reference that the so-called automatic stay provision of 11 U.S.C § 361 does not apply to this proceeding to determine the jurisdiction of Defendants over the Plaintiffs. The issue of the 2008 lease cancellation has been thoroughly briefed and argued before this Court. The only issue apparently preventing the Court from reaching a final decision on the 2008 lease cancellation was whether there was a BIA action on the record in 2008 or 2009 withdrawing, setting aside, reversing or rescinding the June 10, 2008 decision cancelling the lease. The Court

now has all the information that is necessary to decide the 2008 lease cancellation question. There was (is) no BIA record decision in 2008 or 2009 withdrawing, reversing, setting aside or rescinding the 2008 lease cancellation.

As the Blackfeet Nation Defendants have noted, the Plaintiffs no longer are claiming that the BIA made such a record decision. Rather the Plaintiffs assert the already rejected argument that some employee of the BIA verbally told them that their lease was current and that they could withdraw their appeal of the 2008 lease cancellation. They erroneously attempt to assert, without any legal authority whatsoever, that their January 5, 2009 letter to the Blackfeet Agency Superintendent withdrawing their appeal of the lease cancellation was the equivalent of a BIA decision affirming that the lease was never cancelled. That argument has been rejected by this Court, by the only Federal Circuit Court to address the issue, as well as the IBIA. *See, e.g.*, (Doc. 27 at 11-13); *Moody v. United States*, 931 F.3d 1136, 1140-41 (Fed. Cir. 2019); *Strom, et al. v. Northwest Regional Director*, 44 IBIA 153, 165-166 (2007); *Flynn v. Acting Rocky Mountain Regional Director*, 42 IBIA 206, 213 (2006)(erroneous advice by BIA could not operate to grant rights not authorized by law or inconsistent with the regulations).

2. Neither the Bureau of Indian Affairs Nor Independence Bank are Necessary Parties.

Plaintiffs assert (once again) that the BIA is an indispensable party to this proceeding and assert for the first time that Independence Bank is a necessary

party. Plaintiffs further assert that neither the BIA nor the Bank can be joined in this matter because it is only about jurisdiction, but that both will be joined in the Bankruptcy proceeding. While the Bankruptcy Court recently incorrectly granted a motion by Independence Bank to intervene in the Bankruptcy proceeding, the United States has filed a Motion to Dismiss Eagle Bear's adversary Complaint in that matter. *See* Defendants' Exhibits, Foundational Affidavit of Derek E. Kline (DEK aff.), Exhibits 1 & 2.

Resisting the Plaintiffs' attempts to bring it into the Bankruptcy Court and to make a current decision on the 2008 lease cancellation (a matter over which this Court has said that BIA no longer has authority, Doc. 27 at 18-19), the United States asserts that Plaintiff Eagle Bear has failed to state a statutory basis for jurisdiction and relying on *Moody v. United States*, that it is not a party to the lease. *See* DEK aff., Exhibit 2, 4:22-ap-04001-BPH, Doc. 39, at 3-4; *see also Wapato Heritage, LLC v. United States*, 637 F.3d 1033, 1037-38 (9th Cir. 2011), cited by the United States.

Similarly, the United States asserts that because it is not a party to the lease, it has no duty to Independence Bank and is not subject to suit by the Bank. The United States argues that it has not waived any sovereign immunity as to the claims of Independence Bank and Eagle Bear.

The bottom line is that the United States is not going to be willingly brought into this litigation, and it is not going to be forced by the Bankruptcy Court to make a further decision regarding the 2008 lease cancellation. Importantly, this Court has already determined that the United States is not an indispensable party as to the jurisdictional issues regarding the Blackfeet Nation pending in this court. (Doc. 27 at 18-19); *see also In re Shape*, 25 B.R. 356 (Mont. B.R. 1982)(Bankruptcy Court must follow and apply federal Indian leasing law when dealing with Indian trust land).

Both Independence Bank and Eagle Bear are attempting to re-litigate the 2008 lease cancellation by raising issues not raised in Eagle Bear's June 18, 2008 appeal of the June 10, 2008 lease cancellation decision. As the Blackfeet Nation Defendants have abundantly set forth in prior pleadings, pursuant to IBIA/BIA administrative law, Eagle Bear is bound by the issues raised in its initial appeal; it cannot raise new issues 13-14 years after the fact. *See Wind River Alliance v. Rocky Mountain Regional Director*, 52 IBIA 224, 227 (2010). In its June 18, 2008 appeal Eagle Bear made only one false claim regarding the 2008 lease cancellation: Eagle Bear falsely claimed that it had paid the delinquent payment for which the lease was cancelled on June 6, 2008 before receiving the cancellation letter. Eagle Bear made no claims that it had not received adequate prior notice or that Independence Bank had not received notice of the cancellation; and it did not

pay the delinquent payment until June 16, 2008 after it received the notice that the lease had been cancelled.¹

3. Because It Has Presented No Cognizable Legal Theory Against the Blackfeet Nation Defendants Regarding the BIA's 2008 Cancellation of the Former Lease, Continued Discovery by the Plaintiffs is Nothing More Than Costly Delay Contrary to the Spirit And Language of the Rules.

Consistent with their approach in this matter of delay, denial and obfuscation, the Plaintiffs assert that even if the Court now has the entire administrative record of the BIA's administration of the former lease between the Blackfeet Nation and Plaintiff Eagle Bear, the Court should allow the Defendants to engage in meaningless discovery including depositions of numerous former BIA and Blackfeet Nation employees.

The purpose of the Federal Rules of Civil Procedure is to "secure the just, speedy, and inexpensive determination of every action and proceeding." F.R.Civ.Pro., Rule 1. The Plaintiffs have failed to articulate any legal claim regarding BIA's 2008 lease cancellation that has been accepted by any legal forum. They have made no claim regarding the Blackfeet Nation's involvement in BIA's 2008 lease cancellation which would affect that cancellation. The Plaintiffs' case comes down to their legally indefensible claim that some staff person at the BIA

¹ In any event, Eagle Bear and the Bank *did* receive actual notice of the possibility of Lease cancellation in 2008 for non-payment of rent. See Doc. 81-2 (April 4, 2008 letter from BIA to Eagle Bear in Bank's files with hand-written note at the bottom of letter from Bank's President memorializing a discussion with Plaintiff William Brooke on 4-7-08 about BIA's letter).

Blackfeet Agency told them to withdraw their appeal of the 2008 lease cancellation because the BIA had received their late payment, accepted that payment and Eagle Bear was current on the lease. That argument has already been rejected by this Court, the Federal Circuit Court of Appeals and the IBIA. Allowing Eagle Bear to continue discovery over a failed and rejected legal argument is not in the spirit of the Rules.

CONCLUSION

The record of BIA's 2008 cancellation of the former lease between the Blackfeet Nation and Eagle Bear, Inc. is now complete and before the Court. This Court has clear jurisdiction over the issue of the 2008 lease cancellation, and it has the necessary factual record to resolve that issue. Only the decision of this Court can truly finally resolve the issue of the 2008 lease cancellation and in so doing, start to bring to an end this costly, lengthy and protracted litigation.

The Blackfeet Nation respectfully urges the Court to do so by granting the Blackfeet Nation's Motion to Withdraw the Reference for the 2008 lease cancellation issue from the Bankruptcy Court and to grant the Blackfeet Nation's Motion to Dismiss the Plaintiffs' underlying Complaint in this matter.

DATED this 21st day of September, 2022.

/s/ Derek E. Kline

Derek E. Kline

Attorney for The Blackfeet Indian Nation and
The Blackfeet Tribal Court

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2), I hereby certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 point; is double-spaced; and the word count, calculated by Microsoft Office Word, is 1879 words, excluding the Exhibits and the Certificate of Compliance.

/s/ Derek E. Kline

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