

James A. Patten (ID #1191)
Molly S. Considine (ID #13800)
PATTEN, PETERMAN, BEKKEDAHN & GREEN, P.L.L.C.
2817 2nd Avenue North, Ste. 300
P.O. Box 1239
Billings, MT 59103-1239
Telephone (406) 252-8500
Email: apatten@ppbglaw.com
mconsidine@ppbglaw.com

Neil G. Westesen
Uriah J. Price
Griffin B. Stevens
CROWLEY FLECK PLLP
P.O. Box 10969
Bozeman, MT 59719-0969
Telephone: (406) 556-1430
Fax: (406) 556-1433
Email: nwestesen@crowleyfleck.com
uprice@crowleyfleck.com
gstevens@crowleyfleck.com

Thane P. Johnson
JOHNSON BERG & SAXBY, PLLP
P.O. Box 3038
Kalispell, MT 59903-3038
Telephone: (406) 755-5535
Facsimile: (406) 756-9436
Email: tjohnson@jbsattorneys.com

Attorneys for Debtor/Plaintiff

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

IN RE EAGLE BEAR, INC.

Debtor.

Case No. 22-40035-11-BPH

EAGLE BEAR, INC.

Plaintiff,

v.

BLACKFEET INDIAN NATION,
and DARRYL LaCOUNTE, DIRECTOR OF
THE BUREAU OF INDIAN AFFAIRS,

Defendants.

Adversary Proceeding No. 22-04001

SECOND AMENDED COMPLAINT

EAGLE BEAR, INC., (“Eagle Bear”) Debtor and Plaintiff above-named, by and through counsel, above-named, for its complaint against the Blackfeet Indian Nation (“Blackfeet Nation”) and Darryl LaCounte, Director of the Bureau of Indian Affairs (“BIA”), states and alleges as follows:

INTRODUCTION

1. Eagle Bear filed a voluntary chapter 11 bankruptcy case on May 23, 2022.
2. Eagle Bear is a debtor-in-possession within the meaning of 11 U.S.C. § 1107.
3. This adversary proceeding is brought pursuant to F. R. Bankr. Pro. 7001(2) and (9).
4. This case is a “core” proceeding as it involves the use and lease of property, proceedings affecting the liquidation of assets of the estate, adjustment of the relationship between Eagle Bear and the Blackfeet Nation, and whether Eagle Bear’s leasehold interest in certain lands owned by the Blackfeet Nation is an asset of the bankruptcy estate. This Court has jurisdiction over this matter and the parties pursuant to 28 U.S.C. §§ 157(b)(1), (2) and 1334 and pursuant to the Bankruptcy Code, including 11 U.S.C. §§ 106, 362, 363, 365, 502, 503, 506, 524, 542, 543, 1141, and 1142. Any sovereign immunity to which the BIA may have been entitled has been waived, including by 5 U.S.C § 702 and 11 U.S.C. §§ 106.
5. To the extent necessary, Eagle Bear consents to this Court entering a final judgment in this adversary proceeding.

GENERAL ALLEGATIONS

6. On or about April 11, 1997, Eagle Bear entered into a 25-year lease, as lessee, with the Blackfeet Nation as lessor (the “Lease”). The Lease was approved by the BIA acting on behalf of the Blackfeet Nation.
7. On or about May 1, 2007, Eagle Bear encumbered its leasehold interest in the Lease to the Independence Bank. The Lease expressly allows Eagle Bear the right to encumber

the Lease for purposes of obtaining short- and long-term financing for the improvement and/or operation of the campground operated by Eagle Bear. On or about May 24, 2007, the Independence Bank obtained approval of the Bureau of Indian Affairs Blackfeet Agency Superintendent (“Agency Superintendent”) of its encumbrance.

8. The Lease requires that at least 30 days prior to the termination of the Lease for default by Eagle Bear, either the Blackfeet Nation or the BIA is to provide notice to any encumbrancer expressing the intention to terminate the Lease and describing the default. Further, the Lease provides that the Lease shall not be terminated if within 30 days after receipt of notice to terminate the encumbrancer shall cure the default.

9. BIA regulations also required the BIA to give Eagle Bear written notice of any alleged default and opportunity to cure the default before cancelling the Lease. The regulations required that such notice be sent by certified mail, and the time to cure was triggered by “receipt” of the notice.

10. On or about June 10, 2008, the Agency Superintendent sent Eagle Bear a letter in which the Agency Superintendent wrote: “Payment of rent due for this lease has not been received. The payment was due November 30, 2007 in the amount of \$15,000. You are advised that this lease is hereby cancelled.” This was the first notice Eagle Bear received of the alleged past-due rent or the Agency Superintendent’s intention to cancel the Lease.

11. Independence Bank, as an encumbrancer under the Lease was required by the terms of the Lease to be given 30 days notice before a lease cancellation by the Blackfeet Nation or the BIA. Independence Bank received no notice of cancellation.

12. On or before June 16, 2008, Eagle Bear paid the \$15,000.00 of rent the Agency Superintendent claimed was due.

13. On or about June 18, 2008, Eagle Bear appealed the Agency Superintendent's June 10, 2008 letter and decision to cancel the Lease to the Regional Director of the Bureau of Indian Affairs ("Regional Director").

14. On or about June 18, 2008, Eagle Bear gave notice by certified mail to the Blackfeet Nation of the appeal and of the Agency Superintendent's June 10, 2008 letter.

15. On or about June 20, 2008, the BIA received and deposited Eagle Bear's \$15,000 payment.

16. In July 2008, the Regional Director gave the Blackfeet Nation notice of the Eagle Bear appeal.

17. In or about December 2008 or January 2009, Eagle Bear was orally advised by the Agency Superintendent or one of its officers, that with the \$15,000 payment made in June 2008, the Lease was deemed in good standing and that Eagle Bear could conditionally withdraw its appeal.

18. On or about January 5, 2009, Eagle Bear conditionally withdrew its appeal to the Regional Director on the condition and understanding that rental payments were current and that the Lease would remain in full force and effect. Eagle Bear provided notice of the conditional withdrawal to the BIA and the Blackfeet Nation.

19. For the next eight years, Eagle Bear, the Blackfeet Nation, and the BIA proceeded with the understanding that the Lease was in full force and effect. Eagle Bear made significant capital improvements to the Campground, operated the Campground, the BIA collected rent under the Lease, and the Blackfeet Nation received the Lease and royalty payments.

20. On or about April 26, 2017, the Blackfeet Nation alleged Eagle Bear was in default of the Lease for failure to pay the Tribe's Lodging Tax. Eagle Bear disputed the Blackfeet Nation's claim. The Agency Superintendent determined that the Blackfeet Nation was required to arbitrate its claims and ordered the Blackfeet Nation to do so.

21. On or around October 20, 2017, however, the Agency Superintendent reversed course and purported to retract her prior decision and cancel the Lease. Eagle Bear appealed to the Bureau of Indian Affairs Regional Director. The Regional Director reversed the Agency Superintendent's modified decision, determined the Lease remained in full force and effect, and ordered the Blackfeet Nation to arbitrate its claims. The Blackfeet Nation appealed that order to the Interior Board of Indian Appeals ("IBIA").

22. The initial term of the Lease was set to expire while the IBIA appeal was pending. Pursuant to the terms of the Lease, the initial 25-year Lease term expired on April 4, 2021. However, the Lease gave Eagle Bear the option to extend the Lease term for one additional twenty-five year period, subject only to the Blackfeet Nation's right to purchase that twenty-five year extension term.

23. Eagle Bear exercised its option to extend the Lease for a second twenty-five year term on October 1, 2020. The BIA and the Blackfeet Nation received Eagle Bear's notice of such extension on October 5, 2020.

24. On December 9, 2020—65 days after its receipt of Eagle Bear's extension notice—the Blackfeet Nation sent Eagle Bear notice of its intent to purchase the additional lease term. However, the Lease required the Blackfeet Nation to exercise its right to purchase the term within 60 days of receipt of Eagle Bear's extension. By failing to exercise the right within that 60-day period, the Blackfeet Nation waived its right to purchase the second twenty-five year lease term.

25. On or about July 19, 2021, the Blackfeet Nation filed a complaint in Blackfeet Tribal Court ("Tribal Court Complaint"). In the Tribal Court Complaint, the Blackfeet Nation abandoned its argument that Eagle Bear had breached the Lease in 2017 and instead argued that the BIA had effectively and forever cancelled the Lease in 2008. On that basis, the Blackfeet

Nation sought to evict Eagle Bear from the leased campground and to recover damages from Eagle Bear and its president at the time, Will Brooke.

26. The damages the Blackfeet Nation sought to recover in its Tribal Court Complaint included the very same damages the Blackfeet Nation had sought in its April 26, 2017 letter to Eagle Bear and which the BIA ordered the Blackfeet Nation to arbitrate.

27. After filing its Tribal Court Complaint, the Blackfeet Nation moved to dismiss the IBIA appeal as “moot” in light of the alleged 2008 Lease cancellation. In that motion, the Blackfeet Nation argued that because the Lease was cancelled in 2008, the BIA’s actions on the Blackfeet Nation’s 2017 breach of lease claims and the preceding 4 years of BIA and IBIA proceedings were meaningless.

28. The IBIA initially denied the Blackfeet Nation’s motion on August 10, 2021, reasoning that the Blackfeet Nation had not “exhausted its administrative remedies within BIA concerning the purported 2008 cancellation of the Lease.” Following the Blackfeet Nation’s petition for reconsideration, however, the IBIA noted that the record before it was incomplete with respect to the alleged 2008 cancellation. It subsequently vacated its August 10, 2021 decision and remanded the matter to the BIA so that the BIA could consider the Blackfeet Nation’s arguments that the Lease was cancelled in 2008 as part of the underlying 2017 appeal.

29. The Blackfeet Nation has since resorted to self-help. Maintaining that the Lease was cancelled, it blocked Eagle Bear’s access to the Campground and prevented Eagle Bear from operating its business. The Blackfeet Nation maintains that the Lease was cancelled in 2008.

COUNT 1

30. Eagle Bear realleges and restates the foregoing paragraphs 1 through 29.

31. The Bureau of Indian Affairs did not effectively cancel the Lease in 2008.

32. The Lease remains in full force and effect.

33. The Lease was not cancelled in 2008 because the BIA failed to comply with its regulations and the terms of the Lease when it purported to cancel the Lease. For example, the BIA failed to give sufficient notice of Eagle Bear's alleged default to either the Independence Bank or Eagle Bear and failed to give sufficient opportunity to cure before purporting to cancel the Lease.

34. Eagle Bear timely cured any alleged default on which the purported June 2008 cancellation was based.

35. Eagle Bear's appeal to the Regional Director stayed the purported June 2008 cancellation from taking effect. Because no final decision of the Regional Director affirmed the June 2008 cancellation letter, the Lease was never cancelled and remains in effect.

COUNT 2

36. Eagle Bear realleges and restates the foregoing paragraphs 1 through 35.

37. Eagle Bear has paid all amounts due under the Lease.

38. Eagle Bear has not been provided with specific information by either the Blackfeet Nation or the BIA as to any amounts claimed as unpaid.

39. Eagle Bear will pay any amount actually due under the Lease as proven by either the Blackfeet Nation or the BIA.

PRAYER FOR RELIEF

WHEREFORE the foregoing, Eagle Bear, Inc. respectfully prays that this Court:

1. Order, adjudge and decree that the purported 2008 cancellation of the Lease is void and of no effect;

2. Order, adjudge and decree that the payment made by Eagle Bear, Inc. in 2008 cured any default notwithstanding the failure of the Bureau of Indian Affairs Blackfeet Agency to withdraw its notice of termination;

3. Order, adjudge and decree that the Bureau of Indian Affairs Blackfeet Agency and the Blackfeet Nation failed to give Eagle Bear or Independence Bank sufficient notice of the purported cancellation of the Lease and sufficient opportunity to cure;
4. Order, adjudge and decree that Eagle Bear, Inc. is current in all respects with its obligations to the Blackfeet Nation under the Lease for all time periods prior to January 1, 2022;
5. Order, adjudge and decree that the Lease remains in full force and effect;
6. Order, adjudge and decree that the Lease is an asset of the Eagle Bear, Inc. bankruptcy estate;
7. Award Eagle Bear, Inc. its costs and reasonable attorney's fees incurred herein; and
8. Enter such other and further relief as is just and reasonable.

DATED this 21st day of September, 2022.

PATTEN, PETERMAN, BEKKEDAHL & GREEN
2817 2nd Ave North, Suite 300
PO Box 1239
Billings, MT 59103

By: /s/JA Patten

James A. Patten

CROWLEY FLECK PLLP
900 N Last Chance Gulch #200
Helena, MT 59601

By: /s/Neil Westesen

Neil Westesen

JOHNSON, BERG & SAXBY
221 1st Ave E
Kalispell, MT 59901

By: /s/Thane Johnson

Thane Johnson

Attorneys for Eagle Bear, Inc.