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Attorney for Defendants THE BLACKFEET  
INDIAN NATION and THE BLACKFEET  
TRIBAL COURT

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

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**EAGLE BEAR, INC. and WILLIAM )  
BROOKE,**

**Plaintiffs,**

**v.**

**Cause No. 4:21-cv-00088-BMM**

**THE BLACKFEET INDIAN NATION) )  
and THE BLACKFEET TRIBAL )  
COURT,**

**Defendants.**

**DEFENDANTS' BRIEF IN  
OPPOSITION TO THE  
PLAINTIFFS' MOTION TO  
VACATE MAY 24, 2022 HEARING**

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COMES NOW the Blackfeet Nation and Blackfeet Nation Court and  
respectfully submit their Brief in Opposition to the Plaintiffs' Motion to Vacate the  
May 24, 2022 hearing, as follows:

The underlying case in this court is a challenge to the Blackfeet Nation's  
jurisdiction over the Plaintiffs and claims brought against them in the Blackfeet

Nation court. Plaintiffs continue to assert without any actual evidence or authority that a 2008 lease cancellation by the Bureau of Indian Affairs was not final and has not become a final agency action. The Blackfeet Nation has moved to dismiss on the grounds that the 2008 lease cancellation was a final agency action on which the statute of limitations has now run.

Plaintiffs have now made a last-ditch desperate effort to illegally occupy Blackfeet Nation land by filing a questionable petition for Chapter 11 Bankruptcy. In that Petition, notwithstanding this Court's prior findings that Eagle Bear failed to pay required rents in a timely manner which in turn generated interest which has remained unpaid, Eagle Bear fails to name either the Blackfeet Nation or the Bureau of Indian Affairs, Department of the Interior, United States government as creditors.

It is difficult to understand how Eagle Bear could now be filing for bankruptcy when just a short time ago they were making significant offers attempting to resolve the dispute with the Blackfeet Nation. And now they claim that they are bankrupt.

Contrary to Eagle Bear's claims, the Blackfeet Nation's land is not their land and is not property of the Debtor in bankruptcy pursuant to 11 U.S.C Sec. 362(a)(3). That Eagle Bear falsely claims that it has a leasehold interest in

Blackfeet Nation property does not make that statement true and does not make Blackfeet Nation property Eagle Bear's property.

The property which Eagle Bear formerly leased is Blackfeet Nation property which is held in trust by the United States government. Neither the United States nor the Blackfeet Nation are named as creditors or parties in Eagle Bear's bankruptcy petition. That is tantamount to an acknowledgement that Eagle Bear has no right to occupy Blackfeet Nation property.

Pursuant to Title 11 of the United States Code, Section 365(c)(3), the bankruptcy court does not have jurisdiction over non-residential leases which have been terminated pursuant to non-bankruptcy law prior to an order for relief. 11 U.S.C. Sec. 365. The former lease was terminated pursuant to non-bankruptcy law in 2008. However, in accordance with Section 21 of the former lease upon which the Plaintiffs rely, the act of filing a petition for bankruptcy triggered the Blackfeet Nation's right to unilaterally terminate the lease and re-take possession of its land. That provision reads in pertinent part:

21. DEFAULT.

....

Any action taken or suffered by Lessee as a debtor under any insolvency or bankruptcy act shall constitute a default of this lease. In such event, the Lessor and the Secretary shall have the options set forth in Sub-Paragraph A and B above.

....

... The bankruptcy, receivership, or insolvency of the Lessee shall be considered a breach which cannot reasonably

be cured by encumbrancer and one not curable by the payment of money.

Doc. 1, 1- 2 Lease.

Sub-Paragraphs A and B of Section 21 give the Secretary, and because of the bankruptcy, the Blackfeet Nation as Lessor, the following rights:

A. Proceed by suit or otherwise to enforce collection of monies due.

B. Re-enter the premises and remove all persons and property therefrom, excluding the persons and property belonging to authorized sub-lessees and either:

(1) Re-let the premises without terminating this lease, as the agent and for the account of Lessee, but without prejudice to the right to terminate the lease thereafter, and without invalidating any right of Lessor and the Secretary of any obligation of Lessee hereunder. Terms and conditions of such re-letting shall be at the discretion of Lessor and the Secretary, who shall have the right to alter and repair the premises as they have deemed advisable, and to re-let with or without any equipment or fixture situated thereon.

(2) Terminate this lease at any time even though Lessor and the Secretary have exercised rights as outlined in (1) above.

Id. Sec. 21.

Applying the foregoing law and lease provisions, it is abundantly clear that there is no lease which allows Eagle Bear to occupy Blackfeet Nation land. The filing of the bankruptcy action triggered the Blackfeet Nation's unilateral right to both terminate the former lease (once again) and to re-take possession of its own land. The Blackfeet Nation has taken steps to again terminate the former lease – for the 4<sup>th</sup> time (2008, 2017, lease expired in 2021, and now).

## **CONCLUSION**

The Plaintiffs' last desperate effort to illegally occupy Blackfeet Nation land should be rejected. There has been no lease since 2008. This matter is not subject to Eagle Bear's bad faith bankruptcy filing.

DATED this 24<sup>th</sup> day of May, 2022.

\_\_\_\_/s/\_\_\_\_Joseph\_J.\_ McKay\_\_\_\_\_  
Joseph J. McKay, Attorney-at-Law  
Defendants Attorney