

1 MICHAEL ROSE
2 NORTH STAR LAW GROUP, LLC.
3 4300 B STREET, STE. 206
4 ANCHORAGE, AK 99503
(907) 205-4434
Michael@northstarlawgroup.com

5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ALASKA**

7
8 Jason Matyascik,
9 Plaintiff,

10 v.

11 Arctic Slope Native Association, Ltd.
12 d/b/a Samuel Simmonds Memorial
13 Hospital,
14 Defendant.

Case No. 2:19-cv-00002-HRH

15 **MEMORANDUM IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS**

16 Plaintiff Jason Matyascik (“Matyascik”), by and through undersigned counsel, opposes
17 the Motion to Dismiss filed by Defendant Arctic Slope Native Association Ltd. (“ASNA”).
18 ASNA misses the key application of an important precedent from the Alaska Supreme Court
19 analyzing Alaska nonprofit corporations formed jointly by multiple tribes. In short, because
20 any resultant monetary judgment from this matter cannot by law be executed from ASNA’s
21 member tribes, ASNA is not vested with sovereign immunity.
22

23 **FACTUAL BACKGROUND**

24
25 Matyascik’s few objections to ASNA’s description of the factual background in its
26 brief are not necessary to address in this briefing. Matyascik is a physician who worked at the
27 hospital operated by ASNA. Near the end of his May 2018 contract term, Matyascik
28

1 contracted with ASNA for the following year. One of the primary disputes between the
2 parties is whether the terms for the subsequent work period were agreed and a contract
3 formed. Matyascik submits that careful review of the parties' correspondence on May 14,
4 2018 establishes that an agent of ASNA offered contract terms and, on the same day,
5 Matyascik communicated his unequivocal acceptance. ASNA thereafter unilaterally
6 repudiated the newly formed contract. Though the merits weigh in his favor, Matyascik
7 anticipates ASNA to take the position that there was no contract formed.
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10 Matyascik also brings causes of action under other theories. After ASNA informed
11 Matyascik that his contract would not be renewed, and while Matyascik was out-of-state,
12 ASNA evicted him without proper notice. ASNA's unlawful ouster of Matyascik
13 necessitated an unplanned scramble by Matyascik where he attempted to, unsuccessfully,
14 move or dispose of his personal property. Finally, ASNA failed to cooperate in good faith
15 with transitioning Matyascik's healthcare and retirement plans following the end of his
16 tenure. This suit followed.
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19 ARGUMENT

20 I. ASNA is not vested with sovereign immunity in this case because its member tribes 21 are not the real parties in interest. 22 23

24 As argued thoroughly in ASNA's briefing, Indian tribes retain sovereign immunity
25 from suit in State and Federal courts. However, ASNA is not itself an Indian tribe, but a
26 separate and distinct nonprofit corporation created and operated by multiple member tribes.
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1 The single most important issue for this Court to determine is whether to extend sovereign
2 immunity to this separate and distinct nonprofit corporation.

3
4 The Alaska Supreme Court in *Runyon ex Rel. BR v. AVCP*¹ addressed this issue
5 directly and held that an association of tribes forming an Alaska nonprofit corporation should
6 not retain sovereign immunity when the member tribes are not the “real parties in interest.”²
7
8 The Court reasoned that if the member tribes of a nonprofit corporation were not answerable
9 for the nonprofit corporation’s debts, the nonprofit corporation was not entitled to sovereign
10 immunity.³

11
12 In *Runyon*, the nonprofit corporation at issue, AVCP, consisted of fifty-six Alaska
13 Native villages in the Bethel area, each a federally recognized tribe.⁴ The corporation
14 provided a variety of social services, including a Head Start program, designed to assist the
15 self-governing interests of the member tribes.⁵ AVCP’s board of directors was comprised of
16 one representative from each member village, each having a single vote in the association.⁶

17
18 According to AVCP, its role was to

19
20 operate a wide range of traditionally governmental programs
21 designed to benefit the member tribes, almost exclusively with
22 state and federal funding. These programs include a variety of
23 governmental social service programs including General
24 Assistance and Temporary Assistance for Needy Families
25 (TANF), juvenile programs, vocational rehabilitation, elder
programs, and tribal development and technical assistance. AVCP
also coordinates regional village law enforcement through the

26 ¹ 84 P.3d 437 (Alaska 2004).

27 ² *Id.*, at 440-441.

28 ³ *Id.*

⁴ *Id.*, at 438.

⁵ *Id.*

⁶ *Id.*

1 Village Public Safety Officer Program. AVCP contracts many
2 other programs and services with the United States Government
3 under the Indian Self-Determination and Educational Assistance
4 Act, 25 U.S.C. 450 *et seq.* All AVCP services are designed to
promote the welfare of our member tribal governments and
preserve and protect the Yup'ik culture of all tribal members.⁷

5 Truly, it appears from AVCP's position in *Runyon* that it served traditional government
6 functions, the primary rationale behind ASNA's reasoning here for it to be vested with
7 sovereign immunity.
8

9 The Court in *Runyon* started with the premise that subdivisions of tribal governments
10 or corporations attached to tribes may be so closely allied with and dependent upon the tribe
11 that they are effectively arms of the tribe.⁸ Admittedly, even an entity formed of multiple
12 tribes, "such as a joint agency" could be similarly extended tribal status.⁹ In such a case, the
13 tribe or tribes are the "real parties in interest" and suit could be barred under sovereign
14 immunity.¹⁰
15

16 However, the Court in *Runyon* held that in order to determine the real party in interest,
17 the critical issue "of paramount importance" was the entity's financial relationship with the
18 tribe.¹¹ This relationship was of such importance because "preventing judgments from
19 depleting state treasuries" is a key reason for the analogous states' sovereign immunity under
20 the Eleventh Amendment.¹² The Court in *Runyon* then set forth the Alaska rule: "if a
21 judgment against [the entity] will not reach the tribe's assets or if [the judgment] lacks the
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26 ⁷ *Id.*, at 438-439.

27 ⁸ *Id.*, at 439.

28 ⁹ *Id.*, at 440.

¹⁰ *Id.*

¹¹ *Id.*

1 ‘power to bind or obligate the funds of the tribe, it is unlikely that the tribe is the real party in
2 interest.”¹³ “If, on the other hand, the tribe would be legally responsible for the entity’s
3 obligations, it may be an arm of the tribe. In such a case other factors, relating to how much
4 control the tribe exerts or whether the entity’s work is commercial or governmental, may
5 assist in the determination” of whether the tribe is the real party in interest.¹⁴
6

7
8 The Court’s analysis in *Runyon* then hinged on the Alaska Nonprofit Corporation Act.
9 Under this Act, “[t]he directors, officers, employees, and *members* of the corporation are not
10 as such, liable on its obligations.”¹⁵ Hence, it was categorically impossible for any monetary
11 judgment against AVCP to reach the coffers of its member tribes.¹⁶ Likewise, because ASNA
12 is an Alaska nonprofit corporation, its member tribes will never have to answer directly for
13 any judgment against ASNA.
14

15
16 Without question, the secondary factors referenced but not analyzed by the Alaska
17 Supreme Court in *Runyon* would likely have strongly weighed in favor of AVCP being an
18 arm of its constituent tribes. Clearly, the entity’s functions were more governmental than
19 commercial in nature, the entity derived almost all, if not all, of its funding from state and
20 federal governments, the entity was formed by and managed by representatives of its
21 constituent tribes, and the entity existed to promote self-determination of Alaska Native
22 peoples.
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26 ¹² *Id.*, quoting *Harter v. Vernon*, 101 F.3d 334, 337 (4th Cir.1996) (citing *Hess v. Port Authority Trans-Hudson Corp.*, 513
27 U.S. 30 (1994)).

¹³ *Id.*, at 440.

¹⁴ *Id.*, at 440-441.

¹⁵ A.S. 10.20.051(b) (emphasis added).

¹⁶ *Id.*, at 441.

1 None of that mattered, though, because the threshold issue, the factor of “paramount
2 importance,” was that the tribes decided to form a nonprofit corporate shell that insulated
3 their sovereign treasuries. Similarly, ASNA in the case at bar boasts exactly the same set of
4 secondary factors, but ultimately its argument fails for the same reason as AVCP in *Runyon*,
5 because its corporate structure prevents access to the assets of its member tribes. To this
6 point, ASNA’s CEO has testified in her affidavit that any funds to pay a damages award
7 would come from the U.S. federal government, not from the tribes.¹⁷
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10 Other courts, such as New York’s high court, have followed *Runyon*’s approach.¹⁸ The
11 cases upon which ASNA relies, however, either predate *Runyon*¹⁹ or otherwise do not seem to
12 have analyzed *Runyon*. For instance, in the District Court ruling in *Barron v. Alaska Native*
13 *Tribal Health Consortium* (“ANTHC”), the Plaintiff failed to raise the financial insulation
14 argument at all, focusing instead on applications of 42 U.S.C. 1981 and Title VII of the Civil
15 Rights Act of 1964 to the issue of tribal sovereign immunity.²⁰ When the District Court in
16 *Barron* extended sovereign immunity to ANTHC, it did so 1) without highlighting the
17 importance of the threshold factor analyzed in *Runyon*, 2) by finding other factors in favor of
18 sovereign immunity, such as the governmental purpose and the management of the entity by
19 the constituent tribes, and 3) mentioning financials only by stating: “[f]inally, ANTHC
20 receives federal funding to carry out governmental functions critical to Alaska Native
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27 ¹⁷ Dkt. 10, at 4 (paragraph 7).

¹⁸ *Sue/Perior Concrete & Paving, Inc. v. Lewiston Golf Course Corp.*, 25 N.E.3d 928, 935 (NY 2014).

¹⁹ E.g., *Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185 (9th Cir. 1998); *Barnes v. Bristol Bay Area Health Corp.*, No. A92-459 CI (D.Alaska Apr. 22, 1993).

²⁰ Case No. 3:18-cv-00118-SLG (Plaintiff’s Opposition to Defendant’s Motion to Dismiss, Dkt. 12).

1 tribes.”²¹ That brief remark cannot be read in harmony with *Runyon*, and was likely
2 overlooked because the Plaintiff there failed to advise the District Court of the *Runyon* test.
3

4 Nor was the financial insulation argument a relevant consideration in the Ninth Circuit
5 case listing several relevant factors that should be found *if an entity is entitled to sovereign*
6 *immunity*.²² While the Ninth Circuit included the financial relationship between tribe and
7 entity as *a* factor, it gave no guidance or analysis as to the relative import *between* the factors.
8

9 Nor would examining *Runyon* have changed the holding because the entity in *White*
10 was “funded exclusively by the Tribes.”²³ Unlike ASNA, a nonprofit corporation formed
11 under Alaska law, the entity in *White* was a joint committee formed under tribal resolutions of
12 its constituent tribes, funded entirely by the tribes themselves.²⁴ In *White*, there was no
13 corporate structure to insulate the tribes’ treasuries from the debts of their joint committee, so
14 the Ninth Circuit properly considered other factors and determined the committee was an arm
15 of the tribes. *White* and *Runyon* can be read in harmony by giving the proper “paramount
16 importance” to the financial insulation factor. By doing so, this Court can remain consistent
17 with Ninth Circuit precedent set by *White* while also integrating the well-reasoned approach
18 taken by the Alaska Supreme Court in *Runyon*. In other words, *White* counsels this Court to
19 only find sovereign immunity exists after examination of all the *White* factors, but the
20 absence of the financial dependence leads to the necessary conclusion espoused by *Runyon*.
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27 ²¹ Case No. 3:18-cv-00118-SLG (Order re: Motion to Dismiss, Dkt. 14).

28 ²² *White v. Univ. of Calif.*, 765 F.3d 1010 (9th Cir. 2014).

²³ *Id.*, at 1025.

²⁴ *Id.*, at 1018.

1 Of special note is the Alaska State Superior Court case referenced by ASNA: *Bekkum*
2 *v. Samuel Simmonds Mem'l Hosp.*²⁵ ASNA overstates the order in that case, and brief review
3 of the procedural history shows that the sovereign immunity issue was not tested. The
4 plaintiff in *Bekkum* filed suit in state court.²⁶ ASNA responded by filing a motion to dismiss
5 in the state court, and the following day removed the case to Federal Court.²⁷ The plaintiff
6 failed to file any opposition to the motion to dismiss in the state or federal court whatsoever.²⁸
7
8 The plaintiff then attempted to voluntarily dismiss the case, and ASNA agreed by
9 stipulation.²⁹ The District Court dismissed the case with prejudice by stipulation pursuant to
10 F.R.C.P. 41(a), on July 21, 2015.³⁰ In the meantime (on June 19, 2015, over a month earlier),
11 and without jurisdiction, the Alaska State Superior Court had inexplicably signed ASNA's
12 proposed order to dismiss the state court case.³¹ Lest this Court be led to believe the Superior
13 Court's order in that case was well-reasoned after the benefit of full briefing, it should
14 consider that not only was the order issued against a party who filed no opposition
15 whatsoever, but the state court also had no power to act once the case had been removed to
16 federal court.³² Hence, that state court order is void.
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21 The rationale behind *Runyon* is strong, sensible, and salient. The Court should follow
22 that rationale, find that ASNA is not an arm of its constituent tribes, and deny ASNA's
23 motion to dismiss.
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26 ²⁵ Case No. 2BA-15-00097CI.

27 ²⁶ Exhibit 1 (courtview docket for 2BA-15-00097CI).

28 ²⁷ Exhibit 1; 2:15-cv-00003-SLG (Notice of Removal of State Court Action to United States District Court, Dkt. 1).

29 ²⁸ See generally, docket of 2:15-cv-00003-SLG.

30 ²⁹ *Id.*, at Dkt. 17 (Plaintiff's Notice of Dismissal as to the Arctic Slope Native Association and Jeff Prater, July 21, 2015).

31 ³⁰ *Id.*, at Dkt. 21 (Order of Dismissal with Prejudice, July 27, 2015); See, also, Exhibit 1.

32 ³¹ Order on Motion to Dismiss, Dkt. 9-2.

II. Plaintiff Matyascik’s single tort claim for conversion should be dismissed without prejudice pending exhaustion of administrative remedies.

ASNA also raises the defense of failure to exhaust administrative remedies as to Matyascik's tort claim for conversion.³³ ASNA is correct in that, as a general rule, administrative remedies must be exhausted before a plaintiff files suit in federal court under the Federal Tort Claims Act ("FTCA").³⁴ However, Matyascik filed a state court case, one which was removed by ASNA. Under these circumstances, the precedent set by the recent Ninth Circuit holding in *D.L. by and through Junio v. Vassilev*³⁵ controls. In *D.L. by and through Junio*, the Ninth Circuit observed that the FTCA's exhaustion requirement did not arise until after removal to district court, so there was no reason for the plaintiff to have exhausted administrative remedies before filing his state court case.³⁶ Instead, the Ninth Circuit held a plaintiff is permitted to later amend his complaint to add the FTCA claim back once he goes through the administrative process and his claim becomes ripe.³⁷

Like the plaintiff in *D.L.*, Matyascik did not intend to file a federal case, and had no reason to exhaust administrative remedies first. ASNA removed this case, triggering the FTCA's exhaustion requirement. Following the guidance of the Ninth Circuit, this Court should dismiss Matyascik's conversion claim *without prejudice*, which would permit him to pursue his administrative remedies. Because a determination is due within six months of

³² 28 U.S.C. 1446(d) (“[after notice of removal]... the State court shall proceed no further unless and until the case is remanded”).

³³ Dkt. 1-1, at 6 (Claims 1, 2, 4, and 5 are contract or statutory claims, not tort claims. *See, Id.* at 5-6).

³⁴ 28 U.S.C. 2675(a).

³⁵ 858 F.3d 1242 (9th Cir. 2017).

³⁶ *Id.* at 1246-1248.

³⁷ *Id.*

1 filing an administrative claim,³⁸ there will be plenty of time to amend his complaint in this
2 matter to add that claim back once it becomes ripe.³⁹

3 4 CONCLUSION

5 The factors presented by ASNA undeniably would weigh in favor of sovereign
6 immunity, but this Court does not get to those factors until after examining the financial
7 dependence pursuant to the reasoning in *Runyon*. ASNA's argument, though seeming at first
8 blush to be thorough, fails to account for the primacy of the financial dependence factor.
9 Because ASNA's member tribes chose (probably wisely so) to insulate their sovereign
10 treasuries by creating an Alaska nonprofit corporate shell, the tribes are not answerable for
11 ASNA's debts, ASNA is not an arm of the tribes, and ASNA's motion must be denied.

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15 DATED: June 14, 2019

16 /s/ Michael Rose
17 Michael Rose
18 Alaska Bar No. 1211110

19 Certificate of Service

20 I certify that on June 14, 2019, a copy of the foregoing document was served via ECF on:

21 Rebecca A. Patterson
22 rebecca@sonosky.net
23 Kendri M. M. Cesar
24 kendri@sonosky.net

25 By: /s/ Michael Rose

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27
28 ³⁸ 28 U.S.C. 2675(a) ("The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section").

³⁹ Or, admittedly, if the Court disagrees with Matyascik's *Runyon*-based argument, this FTCA issue is ultimately moot.