

FILED  
Court of Appeals  
Division II  
State of Washington  
8/16/2022 4:53 PM

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/17/2022  
BY ERIN L. LENNON  
CLERK

No. 101179-2

IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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No. 55811-4  
COURT OF APPEALS, DIVISION II

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SAWYER FALLS CO., LLC, a Washington limited  
Liability company,

Respondent,

v.

CAPRI INVESTMENTS, L.L.C., a Washington limited  
liability company; RENAISSANCE UNITED LIMITED, a  
Singapore exchange listed entity; and any other  
individual/entity claiming any right, title, lien or other interest  
in the real property described herein,

Petitioners,

v.

WONG CHIN YONG; and LEONARD TEOH HOOI LEONG,

Third-Party Defendants.

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CAPRI INVESTMENTS, L.L.C.'S PETITION FOR  
REVIEW

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Rylan Weythman, WSBA #45352  
Devra R. Cohen, WSBA #49952  
FOSTER GARVEY PC  
1111 Third Avenue, Suite 3000  
Seattle, WA 98101  
Telephone: 206-447-4400  
Email: [rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)  
[devra.cohen@foster.com](mailto:devra.cohen@foster.com)

*Attorneys for Petitioner Capri  
Investments, L.L.C.*

**TABLE OF CONTENTS**

I. IDENTITY OF PETITIONER..... 1

II. CITATION TO COURT OF APPEALS  
DECISION..... 1

III. ISSUES PRESENTED FOR REVIEW ..... 1

IV. STATEMENT OF THE CASE..... 2

    A. After Eighteen Years Of Near Silence,  
    Sawyer Falls Threatens Litigation On The  
    Note..... 2

    B. Sawyer Falls Attempts To Change Its  
    Management Structure..... 3

    C. Relevant Procedural History..... 7

V. ARGUMENT ..... 9

    A. The Court Of Appeals Decision Is Contrary  
    To Nearly Universal Precedent From Courts  
    Around The Country And Conflicts With  
    This Court’s Precedent Rejecting Attempts  
    To Avoid The Statute Of Limitations..... 10

    B. This Case Involves An Issue Of Substantial  
    Public Interest That Should Be Determined  
    By The Supreme Court. .... 18

        1. This case addresses issues of first  
        impression in Washington..... 18

2.	The Court of Appeals decision has broad implications as ratification arises in a wide variety of contexts. ....	20
3.	Permitting ratification to avoid the statute of limitations would render the limitations period meaningless, undermining the legislature's declared public policy. ....	25
VI.	CONCLUSION.....	29

## TABLE OF AUTHORITIES

### Cases

<i>Allen v. State</i> , 118 Wn.2d 753, 826 P.2d 200 (1992).....	17
<i>Atchison v. Great W. Malting Co.</i> , 161 Wn.2d 372, 166 P.3d 662 (2007).....	17
<i>Benjamin v. V.I. Port Auth.</i> , 684 F. App'x 207 (3d Cir. 2017) .....	11, 13, 22, 23
<i>City of Port Townsend v. Eisenbeis</i> , 28 Wash. 533, 68 P. 1045 (1902) .....	26
<i>Cost Mgmt. Servs., Inc. v. City of Lakewood</i> , 178 Wn.2d 635, 310 P.3d 804 (2013).....	17, 25, 26
<i>Fed. Election Comm'n v. NRA Political Victory Fund</i> , 513 U.S. 88, 115 S. Ct. 537, 130 L. Ed. 2d 439 (1994).....	passim
<i>First Telebank Corp. v. First Union Corp.</i> , No. 02-80715-CIV-GOLD/TURNOFF, 2007 WL 9702557 (S.D. Fla. Aug. 6, 2007) .....	passim
<i>In re W.R. Grace &amp; Co.</i> , 316 F. App'x 134 (3d Cir. 2009) .....	12, 25
<i>In re W.R. Grace &amp; Co.</i> , 366 B.R. 302 (Bankr. D. Del. 2007).....	passim
<i>Kittinger v. Boeing Co.</i> , 21 Wn. App. 484, 585 P.2d 812 (1978).....	27
<i>Miernicki v. Duluth Curling Club</i> , 699 N.W.2d 787 (Minn. Ct. App. 2005).....	12, 13, 14, 24

<i>Mission Towers v. Grace</i> , No. 07-287, 2007 WL 4333817 (D. Del. Dec. 6, 2007).....	12
<i>Rental Hous. Ass’n of Puget Sound v. City of Des Moines</i> , 165 Wn.2d 525, 199 P.3d 393 (2009).....	27
<i>Ruth v. Dight</i> , 75 Wn.2d 660, 453 P.2d 631 (1969).....	passim
<i>Sawyer Falls Co., L.L.C. v. Capri Invs., L.L.C.</i> , Wn. Ct. App. No. 558811-4-II (June 14, 2022).....	1, 9, 15, 19
<i>Sidis v. Brodie/Dohrmann, Inc.</i> , 117 Wn.2d 325, 815 P.2d 781 (1991).....	26
<i>Summerrise v. Stephens</i> , 75 Wn.2d 808, 454 P.2d 224 (1969).....	26
<i>Town of Nasewaupsee v. City of Sturgeon Bay</i> , 251 N.W.2d 845 (Wis. 1977).....	passim
<i>Twp. of N. Fayette v. Guyaux</i> , 992 A.2d 904 (Pa. Super. Ct. 2010).....	12, 13, 24
<i>Virgin Islands Taxi Ass’n v. V.I. Port Auth.</i> , No. 08-142, 2015 WL 5535237 (D.V.I. Sept. 16, 2015).....	11, 13, 14, 23

**Other Authorities**

Restatement (Second) of Agency § 90.....	13, 14, 16
--	------------

**Rules**

Fed R. App. P. 32.1 .....	11
GR 14.1 .....	11, 19

Internal Operating P. of the U.S. Ct. of App. for the Third Cir.  
5.7..... 11

RAP 12.3 ..... 1

RAP 13.4 ..... passim

## **I. IDENTITY OF PETITIONER**

Petitioner Capri Investments, L.L.C. (“Capri”) respectfully submits this Petition for Review.

## **II. CITATION TO COURT OF APPEALS DECISION**

Capri respectfully requests review of *Sawyer Falls Co., L.L.C. v. Capri Investments, L.L.C.*, No. 558811-4-II, Division II of the Court of Appeals decision issued on June 14, 2022.<sup>1</sup> The Court of Appeals issued its decision as an Unpublished Opinion. Capri filed a timely Motion to Publish Opinion on July 5, 2022. RAP 12.3(e). The Court of Appeals denied that motion on July 19, 2022.

## **III. ISSUES PRESENTED FOR REVIEW**

Whether ratification of an unauthorized act after the statute of limitations has run works to avoid the statute of limitations.

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<sup>1</sup> The unpublished decision is available on commercial databases at 2022 WL 2125880 and 2022 Wash. App. LEXIS 1243.



#### IV. STATEMENT OF THE CASE

In 2002, Capri purchased Falling Water—a residential development in Pierce County, Washington—from Sawyer Falls. CP 37, 177. Related to this purchase, Capri and Sawyer Falls executed a Promissory Note on July 22, 2002. CP 10–11. The Promissory Note contemplates two categories of payment: a “Fixed Amount” for approximately \$404,200; and an unknowable “Indeterminate Amount,” with payment conditioned on the occurrence of certain events. CP 10–11.

Full payment on the Fixed Amount was due on July 22, 2014. CP 10. Full payment on the Indeterminate Amount—if any—was due “within fourteen (14) years following the date of this Note,” i.e., July 22, 2016. CP 10–11.

##### **A. After Eighteen Years Of Near Silence, Sawyer Falls Threatens Litigation On The Note.**

Capri had almost no further contact with Sawyer Falls related to the Note for the 18 years following Capri’s purchase of Falling Water. CP 178. Then, on July 16, 2020, counsel for Capri received an email from counsel purporting to represent

Sawyer Falls threatening to bring legal action on the Note. CP 108, 178. Sawyer Falls' Counsel proposed that the parties execute a Tolling Agreement so the parties could discuss alternatives to litigation and demanded an almost immediate response. CP 108.

Wanting to avoid litigation and under immense time pressure, Capri relied on Sawyer Falls' representations that the individual signing the Tolling Agreement—Mr. Wong Chin Yong (“Mr. Wong”)—had authority to do so. CP 21, 104. Capri and Mr. Wong executed the Tolling Agreement effective July 17, 2020. CP 20–22. Mr. Wong signed the Tolling Agreement on behalf of Sawyer Falls, purportedly as its “Manager.” CP 22. Capri reserved its defenses. CP 20.

**B. Sawyer Falls Attempts To Change Its Management Structure.**

Between 2002 and 2020, unbeknownst to Capri, Sawyer Falls attempted to make changes to its management structure.

The Second Amended and Restated Limited Liability Company Agreement of Sawyer Falls Co., L.L.C. (the

“Operating Agreement”), effective February 25, 2002, provided for two Members of Sawyer Falls: Newton Centre Development Limited, a British Virgin Islands limited company (“Newton Centre”) and Innopac Holdings Ltd., f/k/a Imo-Pacific Holdings Ltd. (a formerly publicly traded company on the Singapore stock exchange) (“Innopac”). CP 112, 144; *see* CP 39, 178. The Operating Agreement required two Managers and gave Newton Centre “the exclusive right to appoint the Managers and to remove any of them from office at any time in Newton’s sole discretion.” CP 119 §§ 3.2, 3.3. The Operating Agreement designated Teoh Hooi Leong (also known as Leonard Teoh) and Thong Mee Yuen as Managers of Sawyer Falls. CP 119 § 3.3; CP 145.

Pursuant to the Operating Agreement, in making corporate decisions, the Managers must act “collectively through meetings and written consents,” “through committees” designated by the Managers, and/or “through officers to whom authority and duties have been delegated.” CP 119 § 3.5.1. Any action by written

consent must be signed by every Manager of Sawyer Falls (or by members of a designated committee). CP 120–21 § 3.7. Leonard Teoh signed the Operating Agreement on behalf of Newton Centre as its “Sole Director.” CP 143.

In September 2020, Mr. Teoh admitted his role with Newton Centre had ended around 2013 or 2014,<sup>2</sup> when Mr. Lee Chai Huat assumed control. CP 178–79, 180–81. As of January 17, 2013, Mr. Lee Chai Huat was the substantial shareholder and director of Newton Centre. CP 178–79, 477–78. Mr. Lee Chai Huat declared bankruptcy on July 11, 2017 and died on August 18, 2017. CP 179, 479–84.<sup>3</sup>

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<sup>2</sup> After Capri filed its Motion for Summary Judgment, Mr. Teoh submitted a declaration claiming that “from 2002 to July 2018 I was Newton’s authorized representative with respect of [Sawyer Falls] at all material times.” CP 808. Beyond this statement, there is no evidence substantiating this new claim.

<sup>3</sup> Sawyer Falls submitted a purported “resignation letter” of Mr. Huat dated October 24, 2013, attached to the declaration of Mr. Wong. CP 1085. Mr. Wong provided no foundation for that document, nor did he attest to its authenticity. CP 1009–10.

Following Mr. Lee Chai Huat's bankruptcy, Newton Centre was struck off the BVI Register in November 2017. CP 474. It was not restored until February 2021. CP 1009, 1075.

On June 29, 2018—while Newton Centre was struck off the BVI Register—Mr. Wong, allegedly on behalf of Innopac, and Leonard Teoh, allegedly on behalf of Newton Centre, executed an Amendment of Second Amended and Restated Limited Liability Company Agreement and Appointment of Managers of Sawyer Falls Co., L.L.C. (“the Amendment” or the “2018 Amendment”). CP 149–50. This Amendment purports to remove all existing Managers of Sawyer Falls and appoint Mr. Wong and Philip Leng Yew Chee as new Managers. CP 149 § 3. The Amendment also provides Innopac with the exclusive right to appoint and remove Managers. CP 149 § 2.

The Amendment was not effective when signed because Newton Centre was struck from the BVI Register and thus could not take any corporate action as a matter of BVI law. *See* CP 171

(British Virgin Islands Business Companies Act of 2004 (“BVI Business Companies Act”) § 215(1)(a)–(c)).

**C. Relevant Procedural History.**

On November 30, 2020, Sawyer Falls sued Capri. *See* Supp. CP 1743. Sawyer Falls filed the operative First Amended Complaint on December 3, 2020, suing Capri and its parent company, Renaissance United Limited f/k/a IPCO International Ltd. on the Note (collectively “Defendants”). *See* CP 1.

The Superior Court granted Defendants’ motion for partial summary judgment and dismissed all of Sawyer Falls’ claims on April 2, 2021. CP 1664–67. The court denied Sawyer Falls’ motion for reconsideration. CP 1738. The Superior Court then certified the case for appeal pursuant to CR 54(b). CP 1771–77.

On appeal, Capri argued that Mr. Wong did not have authority to act on behalf of Sawyer Falls when he signed the Tolling Agreement. Newton Centre was struck off the BVI Register at the time it purported to appoint Mr. Wong as manager of Sawyer Falls via the 2018 Amendment. *See* CP 149–50, 474,

1075. While it was stricken, Newton Centre lacked *any* authority to act as a matter of law. *See* CP 171 (BVI Business Companies Act § 215(1)(a)–(c)). Newton Centre was not restored to the register until February 2021, three months after this case was filed and after the statute of limitations for claims on the Note would have expired absent the Tolling Agreement. CP 1075, 1743. While Newton Centre’s restoration may have ratified the 2018 Amendment for general corporate purposes, because restoration occurred after the statute of limitations expired, its restoration did not ratify Mr. Wong’s unauthorized signing of the Tolling Agreement. Under well-established precedent from courts around the country, including the U.S. Supreme Court, ratification of an unauthorized action after the statute of limitations has expired is not effective as to the rights of third parties like Capri. *See, e.g.*, Respondents’ Br. at 1–3, 15–31.

The Court of Appeals rejected this argument, reversing the Superior Court’s opinion in part.<sup>4</sup> Relevant here, the Court of Appeals concluded that under both Washington’s Uniform Business Organizations Code and BVI law, “once Newton was reinstated, the reinstatement related back as if Newton was never dissolved. Thus, Wong’s appointment as a manager of SFC was valid at the time it was entered. As a result, Wong had authority to enter into” the Tolling Agreement. Slip Op. at 8. Although the Court of Appeals criticized Respondents for “erroneously confl[at]ing the concepts of ‘relating back’ and ratification,” *id.* at 9, the practical effect of the court’s decision is to allow ratification—by reinstatement—of an action after the statute of limitations expired.

## V. ARGUMENT

The Court of Appeals’ decision answered issues of first impression in Washington in a way that conflicts with both well-

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<sup>4</sup> The Court of Appeals affirmed the Superior Court’s dismissal of Renaissance United Limited. *See* Slip Op. at 13–17.



established law from other jurisdictions and this Court's repeated refusal to allow avoidance of the statute of limitations. The decision—which is the sole authority on the effect of ratification on the statute of limitations in Washington—has a wide reach, undermines the legislature's declaration of public policy, and is an issue of substantial public interest. The Court should grant review. *See* RAP 13.4(b)(1), (2), (4).

**A. The Court Of Appeals Decision Is Contrary To Nearly Universal Precedent From Courts Around The Country And Conflicts With This Court's Precedent Rejecting Attempts To Avoid The Statute Of Limitations.**

To the best of Petitioner's Counsel's knowledge, the Court of Appeals decision is the first case in Washington to address the impact of corporate reinstatement on the statute of limitations. It is also, as far as Petitioner's Counsel are aware, the first case in Washington to address whether ratification of an action after the statute of limitations expires is effective, thus allowing avoidance of the limitations period.

This is not, however, the first time that any Court has addressed the question of whether ratification after the statute of limitations expires is effective. Courts around the country have addressed this question in a wide variety of contexts. Almost universally, the answer has been a resounding *no*—ratification after the statute of limitations expires is not effective as to third parties; thus, the limitations period cannot be avoided. The Court of Appeals’ opposite conclusion conflicts with this precedent. *See Fed. Election Comm’n v. NRA Political Victory Fund*, 513 U.S. 88, 90, 98–99, 115 S. Ct. 537, 130 L. Ed. 2d 439 (1994); *Virgin Islands Taxi Ass’n v. V.I. Port Auth.*, No. 08–142, 2015 WL 5535237, at \*4–5 (D.V.I. Sept. 16, 2015), *aff’d sub nom. Benjamin v. V.I. Port Auth.*, 684 F. App’x 207, 212 (3d Cir. 2017) (unpublished)<sup>5</sup>; *In re W.R. Grace & Co.*, 366 B.R. 302, 306–07

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<sup>5</sup> Although, “by tradition” the Third Circuit Court of Appeals does not cite to non-precedential opinions, it is permissible to do so. *See* Internal Operating P. of the U.S. Ct. of App. for the Third Cir. 5.7; Fed R. App. P. 32.1(a) (“A court may not prohibit or restrict the citation of” unpublished federal decisions issued on or after January 1, 2007); GR 14.1(b) (party may cite

(Bankr. D. Del. 2007), *aff'd sub nom. Mission Towers v. Grace*, No. 07-287, 2007 WL 4333817, at \*5–6 (D. Del. Dec. 6, 2007), *aff'd sub nom. In re W.R. Grace & Co.*, 316 F. App'x 134, 136 (3d Cir. 2009) (unpublished); *First Telebank Corp. v. First Union Corp.*, No. 02-80715-CIV-GOLD/TURNOFF, 2007 WL 9702557, at \*8–11 (S.D. Fla. Aug. 6, 2007); *Town of Nasewaupsee v. City of Sturgeon Bay*, 251 N.W.2d 845, 848–49 (Wis. 1977); *Miernicki v. Duluth Curling Club*, 699 N.W.2d 787, 788–89 (Minn. Ct. App. 2005); *Twp. of N. Fayette v. Guyaux*, 992 A.2d 904, 906 (Pa. Super. Ct. 2010).

As these cases explain, while “[o]rdinarily, a subsequent ratification relates back to the time of the original transaction. . . . that rule is not applicable when the rights of others have intervened by the passage of time.” *Town of Nasewaupsee*, 251 N.W.2d at 848; *see also First Telebank Corp.*,

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unpublished decisions of other jurisdictions “if citation to that opinion is permitted under the law of the jurisdiction of the issuing court”).

2007 WL 9702557, at \*10. That is because “[t]he intervening rights of third persons cannot be defeated by the ratification. In other words, it is essential that the party ratifying should be able not merely to do the act ratified at the time the act was done, *but also at the time the ratification was made.*” *Fed. Election Comm’n*, 513 U.S. at 98 (emphasis in original) (quoting *Cook v. Tullis*, 85 U.S. 332, 338, 21 L. Ed. 933 (1874)); *see also Benjamin*, 684 F. App’x at 212; *Virgin Islands Taxi Ass’n*, 2015 WL 5535237, at \*4; *Town of Nasewaupee*, 251 N.W.2d at 848.

These cases rely on a fundamental principle of law: “If an act to be effective in creating a right against another or to deprive him of a right must be performed before a specific time, an affirmance is not effective against the other unless made before such time.” Restatement (Second) of Agency § 90; *see also Fed. Election Comm’n*, 513 U.S. at 98; *Virgin Islands Taxi Ass’n*, 2015 WL 5535237, at \*4; *In re W.R. Grace & Co.*, 366 B.R. at 306; *Town of Nasewaupee*, 251 N.W.2d at 848; *Miernicki*, 699 N.W.2d at 789; *Twp. of N. Fayette*, 992 A.2d at 906. “The

bringing of an action, or of an appeal, by a purported agent can not be ratified after the cause of action or right to appeal has been terminated by lapse of time.” Restatement (Second) of Agency § 90 cmt. a; *see also Town of Nasewaupee*, 251 N.W.2d at 848; *In re W.R. Grace & Co.*, 366 B.R. at 306. “Thus, ratification attempted after the statute of limitations has run on a cause of action is ineffective.” *First Telebank Corp.*, 2007 WL 9702557, at \*10; *see also, e.g., Fed. Election Comm’n*, 513 U.S. at 99 (“‘after-the-fact’ authorization does not relate back” to “unauthorized filing so as to make it timely”); *Virgin Islands Taxi Ass’n*, 2015 WL 5535237, at \*5 (“Because the statute of limitations has expired on all claims, ratification comes too late and is ineffective to authorize this suit.”); *In re W.R. Grace & Co.* 366 B.R. at 307 (because claimants “would not be permitted to file proofs of claims after the bar date,” they therefore “held no ability to ratify [the law firm’s] act when the ratification was made” after the bar date); *Miernicki*, 699 N.W.2d at 789 (“Because appellants’ ratification of the action filed in their name

occurred after the statute of limitations had expired, the filing was ineffective against [Duluth Curling Club].”).

The Court of Appeals rejected this well-established precedent, disregarding the basic premise that ratification and relation back *are* interrelated. Indeed, the fundamental question in these cases is whether ratification should *relate back* such that it would avoid the statute of limitations. *Compare* Slip Op. at 9 (stating “Respondents erroneously conflate the concepts of ‘relating back’ and ratification”), *with, e.g., Fed. Election Comm’n*, 513 U.S. at 98 (determining whether “‘after-the-fact’ authorization *relates back* to the date of the FEC’s unauthorized filing so as to make it timely” (emphasis added)); *Town of Nasewaupee*, 251 N.W.2d at 848 (explaining when “ratification *relates back* to the time of the original transaction” (emphasis added)). Contrary to the great weight of authority, the Court of Appeals concluded that ratification of an unauthorized action *does* relate back to the original action, even when doing so interferes with the right of third parties to be free from suit.

*Contra, e.g., Town of Nasewaupée*, 251 N.W.2d at 848–49. It effectively held that a party need not ratify an action before the statute of limitations runs. *Contra, e.g., Restatement (Second) of Agency* § 90 cmt. a; *Fed Election Comm’n*, 513 U.S. at 98; *First Telebank Corp.*, 2007 WL 9702557, at \*10. In other words, a party need not have the ability to do the act ratified at the time of ratification. *Contra, e.g., Fed. Election Comm’n*, 513 U.S. at 98. A party can therefore avoid the statute of limitations by ratifying an unauthorized act after the limitations period has run.

The Court of Appeals’ decision not only contradicts well-established precedent from other jurisdictions, but also runs afoul of this Court’s recognition that “as a matter of basic justice” courts “have a cogent reason to give limitation statutes a literal and rigid reading, and to declare that the right to sue begins with the wrongful acts and ends with the statutory period.” *Ruth v. Dight*, 75 Wn.2d 660, 665, 453 P.2d 631 (1969), *superseded by statute*, RCW 4.16.350, *as recognized by Winbun v. Moore*, 143 Wn.2d 206, 214 n.3, 18 P.3d 576 (2001). In line with this

principle, this Court regularly refuses to allow parties to avoid the statute of limitations. *See Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wn.2d 635, 651, 310 P.3d 804 (2013) (explaining “[t]he statute of limitations is ‘a legislative declaration of public policy which the courts can do no less than respect,’” and holding the administrative process could not be used “to provide a way around the statute of limitations” (quoting *J.M. Arthur & Co. v. Burke*, 83 Wash. 690, 693, 145 P. 974 (1915))); *Atchison v. Great W. Malting Co.*, 161 Wn.2d 372, 382, 166 P.3d 662 (2007) (holding the statute of limitations for wrongful death does not toll whenever an appointed personal representative was a minor when the action accrued, explaining that holding otherwise “would allow clever litigants to sidestep the statute of limitations by choosing a personal representative who happened to be a minor when the action accrued”); *Allen v. State*, 118 Wn.2d 753, 759, 826 P.2d 200 (1992) (holding “[a]lthough certainly understandable, [a grieving widow’s]



difficulties in dealing with her husband's death do not excuse her failure to exercise due diligence").

The Court of Appeals' sharp departure from well-established precedent of other jurisdictions and this Court's guidance on prohibiting avoidance of the statute of limitations warrants review. *See* RAP 13.4(b)(1), (2).

**B. This Case Involves An Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court.**

**1. This case addresses issues of first impression in Washington.**

As noted above, this case addresses two issues of first impression in Washington: First, whether reinstatement of a corporation ratifies all actions taken against third parties, even after the statute of limitations has run. Second, whether ratification of an action avoids the statute of limitations.

As to the first issue, the Court of Appeals essentially accepted Appellant's proposition that if a stricken corporation were the proverbial Humpty Dumpty, regardless of what occurs while it is stricken, reinstatement makes it as if Humpty never

fell in the first place. *See* Reply Br. of Appellant at 9. The Court of Appeals held this was so even if Humpty happened to injure bystanders in the process. *See* Slip Op. at 6–9. According to the Court of Appeals’ decision, those bystanders have no recourse because reinstatement magically erased the fact of the fall—despite that the bystanders are left with injuries as a result of it.

Petitioner does not disagree that reinstatement generally relates back when dealing with a corporation’s *internal* affairs. But if Humpty Dumpty harms someone in his fall, the law does not allow him to pretend that the fall never occurred; it does not leave those third parties without recourse. Yet that is what the Court of Appeals ruled. In doing so, the Court of Appeals answered the second question—whether ratification after the statute of limitations is effective—in the affirmative, contrary to decisions of courts around the country.

Although the Court of Appeals decision is unpublished, it may still be cited and accorded persuasive value. *See* GR 14.1(a). As it is the only Washington case that addresses whether

ratification (or reinstatement) can avoid the statute of limitations, it is likely that future litigants will cite it, and future courts will give it more weight than if there were a multitude—or *any*—other Washington cases addressing this topic. The Court should accept review to issue a definitive ruling on these issues of first impression. *See* RAP 13.4(b)(4).

**2. The Court of Appeals decision has broad implications as ratification arises in a wide variety of contexts.**

While this case specifically addressed ratification in the context of restoration/reinstatement of a stricken corporation, the Court of Appeals decision is not so limited. As discussed above, the practical effect of the court's decision is to allow ratification (here, by reinstatement) of an action after the statute of limitations expired, thereby avoiding the statute of limitations.

Ratification arises in a wide variety of contexts—it is not limited to reinstated corporations. Indeed, cases from other jurisdictions that have *rejected* ratification after the statute of

limitations expired illustrate the myriad contexts in which ratification arises.

For example, in both *Federal Elections Commission* and *Town of Nasewaupée*, the court rejected an attempt by a governmental actor to ratify an action after the limitations period ran. In *Federal Elections Commission*, the Solicitor General attempted to authorize a petition for certiorari filed by the Federal Election Commission after the 90-day deadline to file a petition had passed. 513 U.S. at 90, 98. As the Solicitor General “could not himself have filed a petition for certiorari” on the date of the attempted authorization “because the 90-day time period for filing a petition had [already] expired,” the Court rejected the attempted “‘after-the-fact’ authorization.” *Id.* at 98–99.

In *Town of Nasewaupée*, the Wisconsin Supreme Court rejected a town board’s attempt to ratify an action challenging an annexation when “[t]he ratification of the unauthorized commencement” of suit came after the limitations period expired. 251 N.W.2d at 846. The Court held that “the attempted

ratification was a nullity,” because “the attempted ratification came after the time the right of action had been extinguished by the running of the sixty-day period of limitations.” *Id.* at 848–49. “No action subsequent to the running of that period could deprive the defendants . . . of their right to defend on the ground that the action had not been timely brought.” *Id.*

Courts have likewise rejected attempted ratification in the corporate context. For example, in *Benjamin*, the Third Circuit affirmed dismissal of a suit brought by the Virgin Islands Tax Association (“VITA”) and individual taxi drivers. 684 F. App’x 207. The court first concluded that the “committee” that instituted the suit did not have power to do so. *Id.* at 211. It then affirmed the district court’s conclusion that an attempted ratification, which occurred *after* the statute of limitations for each of VITA’s claims expired, “came too late to be effective.”

*Id.* at 212<sup>6</sup>; see also *Virgin Islands Taxi Ass’n*, 2015 WL 5535237, at \*4–5.

Similarly, in *First Telebank Corp.*, the Board of Directors of a bank attempted to ratify the filing of a suit brought by a former director, acting president, and chief executive officer. 2007 WL 9702557, at \*1, 8–10. The court concluded that the attempted ratification failed as a matter of law because the statute of limitations expired prior to the attempted ratification. *Id.* at \*1, \*8–11. The court held that the attempted ratification was not effective because the rights of the defendant bank “[had] been affected: specifically, its right to be free from suit under the statute of limitations.” *Id.* at \*10.

Courts have similarly held that untimely ratification is ineffective to revive an individual’s claim. In *Miernicki*, the

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<sup>6</sup> The court affirmed dismissal of three of the drivers for the same reason: there was no record that the plaintiffs “authorized the suit at the time it was filed, and their subsequent attempts to ratify the suit came too late to be effective.” *Benjamin*, 684 F. App’x at 212.

Court of Appeals of Minnesota concluded that an attempt to ratify the filing of a dram-shop action filed by an attorney retained by plaintiffs' uncle was ineffective when plaintiffs had not retained the attorney, were not aware of the complaint being filed, and did not attempt to ratify those actions until after the statute of limitations expired. 699 N.W.2d 787.

Similarly, in *Township of North Fayette*, the court held plaintiff's power of attorney allowing her son to sign a notice of appeal on her behalf "did not have retroactive effect" because plaintiff's purported ratification occurred months after the appeal period ended. 992 A.2d at 906.

These same principles have even been applied in bankruptcy proceedings. In *In re W.R. Grace & Co.*, the bankruptcy court disallowed property damage claims filed and signed by a law firm whose written authority to file the claims was either undated or dated after the deadline. 366 B.R. at 303–04. The court explained that because the claimants "would not be permitted to file proofs of claims after the bar date," they "held

no ability to ratify [the law firm's] act when the ratification was made" after the bar date. *Id.* at 307. In affirming the decision, the Third Circuit held, "the intervening bar date vitiates claimants' argument because ratifications are deemed ineffective in the face of an intervening deadline. Claimants' attempted ratifications were thus ineffective ratifications." 316 F. App'x at 136 (internal citation omitted).

These cases demonstrate the wide reach of the Court of Appeals decision and its significant public importance. *See* RAP 13.4(b)(4).

**3. Permitting ratification to avoid the statute of limitations would render the limitations period meaningless, undermining the legislature's declared public policy.**

The Court of Appeals decision permits a party to avoid the statute of limitations by ratifying an unauthorized action after the limitations period has passed. This "render[s] the limitations periods meaningless," *First Telebank Corp.*, 2007 WL 9702557, at \*10, undermining the legislature's declared public policy, *see Cost Mgmt. Servs., Inc.*, 178 Wn.2d at 651.



“[S]tatutes of limitations are founded upon sound public policy, and, as they tend to the peace and welfare of society, they are considered as being among the most beneficial of our statutory laws.” *City of Port Townsend v. Eisenbeis*, 28 Wash. 533, 537, 68 P. 1045 (1902). Accordingly, courts construe them strictly and “will not, as a general rule, read into statutes of limitation an exception which has not been embodied therein . . . .” *Cost Mgmt. Servs.*, 178 Wn.2d at 651 (omission in original) (quoting *Rushlight v. McLain*, 28 Wn.2d 189, 199–200, 182 P.2d 62 (1947)); *see also Ruth*, 75 Wn.2d at 665.

“The purpose of the statute of limitations is to compel actions to be commenced within what the legislature deemed to be a reasonable time, and not postponed indefinitely.” *Summerrise v. Stephens*, 75 Wn.2d 808, 812, 454 P.2d 224 (1969); *see also Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 330, 815 P.2d 781 (1991) (same). They “contemplate that a qualified freedom from unending harassment of judicial process is one of the hallmarks of justice.” *Ruth*, 75 Wn.2d at 664. After

all, “[n]o civilized society could lay claim to an enlightened judicial system which puts no limits on the time in which a person can be compelled to defend against claims brought in good faith, much less whatever stale, illusory, false, fraudulent or malicious accusations of civil wrong might be leveled against him.” *Id.*

Fundamentally, statutes of limitations serve two goals: repose—instilling “a measure of certainty and finality into one’s affairs by eliminating the fears and burdens of threatened litigation”—and protection against stale claims, which “are more likely to be spurious and consist of untrustworthy evidence than are fresh claims.” *Kittinger v. Boeing Co.*, 21 Wn. App. 484, 486–87, 585 P.2d 812 (1978); *see also, e.g., Rental Hous. Ass’n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 540, 199 P.3d 393 (2009) (“Undeniably, statutes of limitation serve a valuable purpose by promoting certainty and finality, and protecting against stale claims.”).

“While it has been a long cherished ambition of the common law to provide a legal remedy for every genuine wrong, it is also a traditional view that compelling one to answer stale claims in the courts is in itself a substantial wrong. After all, when an adult person has a justiciable grievance, he usually knows it and the law affords him ample opportunity to assert it in the courts.” *Ruth*, 75 Wn.2d at 665. The Court of Appeals’ decision, if allowed to stand, undermines the policy of statutes of limitations by allowing litigants to sit on their hands, belatedly ratifying an unauthorized action after the limitations period expires. It permits a litigant to override the legislature’s public policy decision.

Courts have recognized this danger as a reason to hold that ratification *cannot* avoid the statute of limitations. As the Southern District of Florida explained, “were a party to have the unilateral power to retroactively ratify its agent’s actions years after their occurrence, a defendant could be exposed to liability for an indefinite period of time. Limitations are designed to

prevent precisely that type of prolonged exposure to suit.” *First Telebank Corp.*, 2007 WL 9702557, at \*10; see also *Fed. Election Comm’n*, 513 U.S. at 99 (recognizing “[i]f the Solicitor General were allowed to retroactively authorize otherwise unauthorized agency petitions after the deadline had expired, he would have the unilateral power to extend the 90-day statutory period for filing certiorari petitions by days, weeks, or, as in this case, even months. Such a practice would result in the blurring of the jurisdictional deadline.”).

The public has an undeniable interest in the finality that the statutes of limitations bring. The Court of Appeals decision undermines this finality, eroding the “basic justice” of enforcing the legislature’s determination of an appropriate limitations period. *Ruth*, 75 Wn.2d at 665; see RAP 13.4(b)(4).

## VI. CONCLUSION

For the reasons stated above Petitioner respectfully requests that this Court accept review.

DATED this 16th day of August, 2022.

*I certify that this petition contains 4,957 words, excluding the parts of the document exempted from the word count by RAP 18.17, in compliance with RAP 18.17.*

FOSTER GARVEY PC

*/s/ Rylan Weythman*

Rylan Weythman, WSBA #45352

Devra R. Cohen, WSBA #49952

1111 Third Avenue, Suite 3000

Seattle, WA 98101

Telephone: 206-447-4400

Email: [rylan.weythman@foster.com](mailto:rylan.weythman@foster.com)

[devra.cohen@foster.com](mailto:devra.cohen@foster.com)

*Attorneys for Petitioner Capri*

*Investments, L.L.C.*

**DECLARATION OF SERVICE**

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on August 16, 2022, I caused to be served this document as follows:

Stephen M. Hansen	<input type="checkbox"/> via hand delivery
Law Offices of Stephen M. Hansen, P.S.	<input checked="" type="checkbox"/> via email
1821 Dock Street, Suite 103	<input checked="" type="checkbox"/> via electronic filing
Tacoma, WA 98402	
Email: <a href="mailto:steve@stephenmhansenlaw.com">steve@stephenmhansenlaw.com</a>	

DATED this 16th day of August, 2022, at Poulsbo, Washington.

*s/ Sandra D. Lonon*

\_\_\_\_\_  
Sandra D. Lonon, Legal Practice Assistant

# APPENDIX

June 14, 2022

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

SAWYER FALLS CO., L.L.C., a Washington  
Limited liability company,

Appellant,

v.

CAPRI INVESTMENTS, L.L.C., a  
Washington limited liability company;  
RENAISSANCE UNITED LIMITED, a  
Singapore exchange-listed entity; and any  
other individual/entity claiming any right, title,  
lien or other interest in the real property  
described herein,

Respondents,

v.

WONG CHIN YONG; LEONARD TEOH  
HOOI LEONG,

Third-Party Defendants.

No. 55811-4-II

UNPUBLISHED OPINION

PRICE, J. — Sawyer Falls Co., LLC (SFC) appeals the superior court’s entry for summary judgment for Capri Investments, LLC (Capri) and Renaissance United Limited with regard to SFC’s breach of contract claims. On appeal, SFC argues that: (1) the agreement tolling the statute of limitations was valid when it was entered into, (2) Capri’s agreement to pay under the Indeterminate Amount is a valid written contract subject to the six-year statute of limitations, and (3) Capri is the “alter ego” of Renaissance Untied Limited and therefore, SFC can pierce the corporation veil and include Renaissance United Limited in its claims for breach of contract. We



agree with SFC regarding its first two arguments but disagree regarding the third. Accordingly, we reverse in part and affirm in part.

## FACTS

### I. BACKGROUND

SFC, a Washington limited liability company (LLC), owned a large, 450+ acre parcel of property for residential development. The LLC members were Newton Centre Development, Ltd.,<sup>1</sup> a British Virgin Islands (BVI) company and Innopac Holdings Limited, headquartered in Singapore.

In 2002, SFC sold the property to Capri, also a Washington LLC. Capri's sole owner was Renaissance United Limited (RUL), a Singapore entity.

To secure the purchase of the property, Capri executed a promissory note on July 22, 2002, in favor of SFC. The promissory note anticipated that Capri would engage in phased construction on the property and outlined two separate payment obligations, one for a "Fixed Amount" and one for an "Indeterminate Amount." Payment under the Fixed Amount was due in 2014, 12 years following the date of the note. Payment under the Indeterminate Amount was due in 2016, 14 years following the date of the note. Assuming a six-year statute of limitations applied to the Fixed Amount agreement, the statute of limitations for a failure to pay claim would run in 2020. *See* RCW 4.16.040(1).

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<sup>1</sup> With the use of the suffix "Ltd.," Newton is identified as a limited company. Neither party argues that this specific business type as compared to other business types has relevance to the issues addressed here.

During this time, SFC had internal complications with its membership. SFC's LLC agreement gave its member, Newton, a BVI entity, the sole authority to appoint the managers of SFC. But unbeknownst to SFC, Newton was stricken from the Registry of Companies of the British Virgin Islands in 2017 for its inadvertent failure to pay its annual licensing fees. However, it was not dissolved, meaning it was eligible for restoration under BVI law.

In 2018, during the time that Newton was stricken from the BVI registry, Newton continued to be active. For example, it agreed to amend the LLC agreement to give SFC's other member, Innopac, the right to appoint and remove managers of SFC. The amendment removed all current SFC managers and replaced them with Innopac's chosen managers, Wong Chin Yong and Phillip Leng Yew Chee.

Meanwhile, Capri failed to complete the construction phases and failed to make payment under either of its obligations. The new SFC manager, Wong, was subsequently given authority to act on behalf of SFC with regard to its potential claims against Capri for these failures. On July 16, 2020, SFC informed Capri that it intended to pursue claims under the promissory note.

The parties engaged in negotiations. Because the six-year statute of limitations deadline for the Fixed Amount (July 22, 2020) was quickly approaching, Wong entered into an agreement with Capri tolling the statute of limitations for the promissory note until September 30, 2020. The agreement stated, "This Agreement shall be interpreted and enforced according to the laws of the State of Washington." Clerk's Papers (CP) at 21. Wong also entered into additional agreements to amend the initial tolling agreement so as to further extend the deadline to October 21, 2020 and November 31, 2020.

After the parties were apparently unable to reach a resolution, SFC brought an action against Capri and RUL (collectively referred to as Respondents) raising various claims including breach of contract for Capri's failure to make payment under the promissory note. SFC argued that RUL, as the sole owner and "alter ego" of Capri, should also be liable. CP at 2.

In their answer, Respondents raised several affirmative defenses including the statute of limitations, fault of plaintiff, and mutual mistake. Respondents also brought counterclaims for equitable modification, reformation of the promissory note, and equitable rescission of the tolling agreement.

Following the initiation of the lawsuit, all parties became aware, for the first time, that Newton had not been validly registered in BVI since 2017. Quickly thereafter, Newton reinstated its administrative status and was restored to the BVI registry on February 25, 2021. SFC argued that this restoration retroactively cured any deficiency.

## II. SUMMARY JUDGMENT

On February 8, 2021, SFC moved for partial summary judgment against the Respondents solely on the issue of Capri's failure to make payment on its obligations under the promissory note for both the Fixed Amount and the Indeterminate Amount.

Respondents cross-moved for partial summary judgment on February 26, 2021. Respondents argued that since Newton was unregistered when it agreed to amend SFC's LLC agreement, all of SFC's actions under the amended LLC agreement were invalid, including appointing Wong as a manager and executing the agreement tolling the statute of limitations. Therefore, SFC's claims were barred by the statute of limitations.

Respondents also argued that the Indeterminate Amount agreement was insufficiently certain in its terms to be a “written contract” and, therefore, any claims related to it would be subject to a three-year statute of limitations, not the typical six-year statute applicable to written contracts. CP at 95-98. As such, SFC’s claim under the Indeterminate Amount was barred regardless of the validity of the tolling agreement. Finally, Respondents argued that RUL was not the “alter ego” of Capri, and therefore, SFC’s claims against RUL should be dismissed.

In response, SFC provided a certificate from the BVI registrar that stated that, as of March 8, 2021, Newton was in “good standing” and listed on the BVI registry. CP at 811. SFC also produced a declaration from a former manager of SFC explaining that Newton had been stricken from the registry “due to its inadvertent failure to comply with the BVI’s annual licensing renewal requirements but has since been restored to the BVI Registry as of February 25, 2021.” CP at 808. SFC also argued that the terms of the Indeterminate Amount agreement were sufficiently certain to be considered a written agreement. And, finally, SFC defended its inclusion of RUL in the lawsuit by arguing that Capri and RUL commingled their assets to such an extent that RUL’s corporate veil should be pierced.

The superior court granted Respondents’ motion for partial summary judgment, dismissing SFC’s claim for breach of contract on statute of limitations grounds. SFC filed a motion for reconsideration that the superior court also denied.

SFC appeals.

## ANALYSIS

### I. STANDARD OF REVIEW

We review summary judgment motions de novo. *M.E. through McKasy v. City of Tacoma*, 15 Wn. App. 2d 21, 31, 471 P.3d 950 (2020), review *denied*, 196 Wn.2d 1035 (2021). “Summary judgment is appropriate if the pleadings, affidavits, depositions, and admissions demonstrate the absence of any genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Id.*; CR 56(c). A fact is material if it affects the outcome of the litigation. *Id.*

### II. EFFECT OF REINSTATEMENT

#### A. LEGAL PRINCIPLES

Under BVI law, when a company has been struck from the register but not dissolved, it may be reinstated:

Where a company has been struck off the Register, but not dissolved, the Registrar may, upon receipt of an application in the approved form and upon payment of the restoration fee and all outstanding fees and penalties, restore the company to the Register and issue a certificate of restoration to the Register.

CP at 172 (The BVI Business Companies Act of 2004 § 217(1)). “Where a company is restored to the Register under this section, *the company is deemed never to have been struck off the Register.*” CP at 172 (§ 217(6)) (emphasis added).

Similarly, Washington law allows for reinstatement of an LLC that has been administratively dissolved for failure to pay its fees to the secretary of state. RCW 23.95.615(1), 23.95.610, 23.95.605(1). Reinstatement “relates back to and takes effect as of the effective date of the administrative dissolution.” RCW 23.95.615(4)(a). Furthermore:

The domestic entity resumes carrying on its activities and affairs *as if the administrative dissolution had never occurred*, except for the rights of a person

arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.

RCW 23.95.615(4)(b) (emphasis added). Washington law also has identical provisions that apply to corporations. See RCW 23.95.605(1), .610(1), .615(1) and (4). BVI and Washington both share what has been characterized as the majority rule. See *Fairbanks Arctic Blind Co. v. Prather & Assoc., Inc.*, 198 S.W.3d 143, 144 (Ky. 2005) (“The majority rule [among states] is that reinstatement validates a dissolved corporation’s interim acts.”).

The purpose of these reinstatement provisions, which provide that the action of reinstatement “relates back” as if the administrative dissolution had never occurred, is to “create a seamless functional existence when the company wishes to continue doing business rather than closing up shop.” *Pannell v. Shannon*, 425 S.W.3d 58, 74 (Ky. 2014). The reasoning behind permitting this seamless functional existence is that a “failure to pay franchise taxes is an issue solely between the [entity] and the State since the franchise tax statutes are for revenue[-]raising purposes alone.” *Frederic G. Krapf & Son, Inc. v. Gorson*, 243 A.2d 713, 715 (Del. 1968); *William A. Eastman & Co. v. Watson*, 72 Wn. 522, 524-25, 130 P. 1144 (1913) (annual licensing fee statute “ ‘is a revenue measure, and the prohibition of suits or actions on the part of corporations without alleging and proving payment of the license fee is intended as a measure to enforce the collection of the tax’ ”) (quoting *North Star Trading Co. v. Alaska-Yukon-Pac. Exposition*, 63 Wn. 376, 379, 115 P. 855 (1911), *rev’d on other grounds* by 69 Wn. 457, 123 P.2d 605 (1912)). An entity’s failure to pay fees has no effect on its ability to operate as an entity outside of its relationship with the state. See *Gorson*, 243 A.2d at 715.

B. APPLICATION

SFC argues that under BVI law, Wong’s appointment as a manager of SFC was valid because Newton was reinstated and, therefore, the tolling agreements for the statute of limitations he negotiated and executed were also valid. We agree.

At oral argument, both parties conceded that there is no meaningful difference under either BVI or Washington law for this case. Under both BVI and Washington law, once Newton was reinstated, the reinstatement related back as if Newton was never dissolved. Thus, Wong’s appointment as a manager of SFC was valid at the time it was entered. As a result, Wong had authority to enter into agreements with Capri on SFC’s behalf to toll the statute of limitations for claims regarding the promissory note.

Respondents argue that “ratification” of an “unauthorized action” cannot act to toll a statute of limitations. Resp’t Br. at 17. Respondents cite to several agency cases for the proposition that “ ‘[t]he bringing of an action, or of an appeal, by a purported agency [cannot] be ratified after the cause of action or the right to appeal has been terminated by lapse of time.’ ” Resp’t Br. at 18 (quoting RESTATEMENT (SECOND) OF AGENCY: RATIFICATION § 90, at 230 (AM. LAW INST. 1958)). In each of the cases on which Respondents rely, an action that was invalid or unauthorized at the time it was taken was subsequently ratified after the passing of the deadline to take the action.<sup>2</sup> Each of the courts concluded that these “after-the-fact” authorizations did not relate back to the

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<sup>2</sup> *Fed. Election Comm’n v. NRA Pol. Victory Fund*, 513 U.S. 88, 115 S. Ct. 537, 130 L. Ed. 2d 439 (1994); *Miernicki v. Duluth Curling Club*, 699 N.W.2d 787 (Minn. Ct. App. 2005); *Town of Nasewaupée v. City of Sturgeon Bay*, 251 N.W.2d 845 (Wis. 1977); *First Telebank Corp. v. First Union Corp.*, No. 02-80715-CIV-GOLD/TURNOFF, 2007 WL 9702557 (S.D. Fl., Aug. 6, 2007); *Township of North Fayette v. Guyaux*, 992 A.2d 904 (Pa. Super. Ct. 2010); *In re W.R. Grace & Co.*, 366 B.R. 302 (Bankr. D. Del. 2007).

date of the action to make them timely. Respondents argue that this principle also applies here. They contend that because Newton was not reinstated to the BVI registry until after the statute of limitations had run, Newton's reinstatement cannot retroactively ratify the tolling agreement to thereby extend the statute of limitations.

However, Respondents erroneously conflate the concepts of "relating back" and ratification. Unlike the cases Respondents rely on, there was no after-the-fact ratification of the tolling agreements after that statute of limitations had passed. Here, because the reinstatement of Newton related back as if it had never been removed from the BVI registry, the tolling agreements are deemed to have been valid and authorized on the date they were entered.

Respondents argue that SFC's position undermines the purpose of the statute of limitations and renders it meaningless by exposing defendants to liability for an "indefinite period of time." Resp't Br. at 31-33. According to Respondents, "The purpose of the statute of limitations is to compel actions to be commenced within what the legislature deemed to be a reasonable time, and not postponed indefinitely." *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 330, 815 P.2d 781 (1991) (quoting *Summerrise v. Stephens*, 75 Wn.2d 808, 812, 454 P.2d 224 (1969)); Resp't Br. at 32. Respondents claim that acceptance of SFC's position would permit litigants to "sit on their hands" and then belatedly ratify an unauthorized action. Resp't Br. at 33.

Beyond repeating their conflation of the concepts of ratification and reinstatement, Respondents also exaggerate the implications for the statute of limitations on these facts. No party "sat on their hands." Prior to the running of the statute of limitations, SFC approached Capri about entering into a tolling agreement, and Capri agreed to do so. Respondents were not exposed to potential liability for an indefinite period of time, rather it was only for the precise time period to



which Capri agreed. Therefore, a finding in favor of SFC does not undermine the purpose of the statute of limitations as Respondents argue.

Respondents' complaints are similar to those of the United States in a case involving the government's contract with a construction company. *Holpuch Co. v. United States*, 102 Ct. Cl. 795, 58 F. Supp. 560 (Ct. Cl. 1945). In *Holpuch*, the plaintiff construction company negotiated the contract with the United States at the time when it happened to be administratively dissolved. 102 Ct. Cl. at 799-800. When the company sued the United States for breach of the contract, the United States argued that the contract was null and void because it was negotiated and entered while the company was dissolved. *Id.* at 800. The court disagreed, holding that the subsequent corporate reinstatement of the company validated the "exercise of the corporate franchise," and explained:

[T]he defendant here [the United States] cannot complain; its rights were in nowise prejudiced thereby. Only the State levying the taxes is interested in the nonenforcement of contracts entered into without prior payment of them. The other contracting party is not injured thereby. If defendant has breached its contract with plaintiff, certainly it should not escape liability therefore because the corporation did not pay its taxes when due, where the State, in consideration of the payment of penalties, has forgiven the corporation therefor.

*Id.* at 802.

As in *Holpuch*, Newton's failure to pay its fees to the BVI registry did not prejudice Capri or otherwise impact its rights under the promissory note. Accordingly, we determine that SFC had the authority to enter into the tolling agreement and, therefore, reverse the superior court's entry of summary judgment in favor of Respondents on this issue.

### III. INDETERMINATE AMOUNT

The parties next dispute whether SFC's claims related to the Indeterminate Amount should be dismissed on statute of limitations grounds. SFC argues that the Indeterminate Amount was a complete written contract and, therefore, subject to a six-year statute of limitations. Because it is subject to a six-year statute of limitations and the payment became due in 2016, SFC argues that its claim under the Indeterminate Amount was not untimely regardless of the validity of the tolling agreement. Respondents counter that the Indeterminate Amount was too indefinite to be considered a written contract and, therefore, is subject to a three-year statute of limitations, making SFC's claims untimely. We agree with SFC.

#### A. LEGAL PRINCIPLES

Under Washington law, an action on a written agreement is subject to a six-year statute of limitations. RCW 4.16.040(1). An action on an oral agreement is subject to a three-year statute of limitations. RCW 4.16.080(3).

To be subject to the six-year statute of limitations, a written agreement must contain all the essential elements of a contract: the subject matter, parties, terms and conditions, and price or consideration. *Browning v. Howerton*, 92 Wn. App. 644, 649, 966 P.2d 367 (1998). "If resort to parol evidence is necessary to establish any material element, the contract is partly oral and the three-year statute of limitations applies." *Id.*

Although the price or consideration is an essential element of a contract, the exact amount of compensation need not be specified for the contract to be a valid written agreement:

The general rule is that failure to agree upon the precise amount of compensation does not defeat the existence of a contract. In other words, once the fact of compensation is established, failure to agree upon the precise degree of

compensation does not vitiate the performing party's right to reasonable compensation.

*Rutcosky v. Tracy*, 89 Wn.2d 606, 610, 574 P.2d 382 (1978). “ ‘[I]f a promise indefinite as to price is capable of being made certain by an objective standard through extrinsic facts, it will be enforced.’ ” *Kloss v. Honeywell, Inc.*, 77 Wn. App. 294, 299, 890 P.2d 480 (1995) (quoting 1 S. Williston, *Contracts* § 4:22, 518–520 (4th ed. 1992)).

#### B. APPLICATION

SFC argues that the indeterminate amount was a valid written contract and is therefore subject to the six-year statute of limitations. Respondents argue that because the Indeterminate Amount did not set a specific amount due to SFC, it is a partly oral contract and therefore subject to the three-year subject of statute of limitations. We determine that the Indeterminate Amount provision is a valid written contract that is subject to the six-year statute of limitations.

The Indeterminate Amount provision states:

The maker shall fully develop, at the maker's sole expense, and *shall pay to the holder the net proceeds* from the sale of an additional eighty-five (85) single-family residential lots within the final development phase of Falling Water [the property] after deduction of (i) the costs of sale, including but not limited to, marketing expenses and real estate commission fees and other closing costs, including but not limited to, accrued real estate taxes, excise taxes, title insurance, escrow fees and related closing costs of each of the eighty-five (85) lots, and (ii) pro-rata traffic, parks, schools mitigation fees and related utility fees allocable to each of the eighty-five (85) lots. *The specific lots within the final development phase of Falling Water to which this obligation shall apply shall be selected solely by the maker.* The net proceeds payable with respect each of said lots, shall be due contemporaneously with the conveyance thereof. The maker shall have completed making all payments required by this Paragraph 2 within fourteen (14) years following the date of this Note.

CP at 10-11 (emphasis added).

As SFC points out, Respondents appear to be arguing that because the term regarding the amount payable due to SFC under the Indeterminate Amount needs additional information, it is “missing.” Reply Br. of Appellant at 16. This proposition is unsupported by case law. A failure to state a specific amount of compensation does not mean the term is missing. The Indeterminate Amount requires that Capri pay to SFC the net proceeds from the sale of 85 lots. Although the provision does not specify the actual amount due, it provides a clear method for calculating the proceeds. Moreover, although the provision allows Capri to choose which lots it will pay the proceeds from, this discretion does not mean that the term setting the amount due is missing from the provision. Because Capri’s promise to pay is capable of being made certain through extrinsic facts, it is therefore enforceable and the promise to pay under the Indeterminate Amount was sufficient for a valid written contract.<sup>3</sup> Accordingly, we hold that the Indeterminate Amount is governed by a six-year statute of limitations.

#### IV. PIERCING THE CORPORATE VEIL

Respondents challenge the inclusion of RUL in this suit because it was not a contracting party to the promissory note. SFC argues that RUL is the “alter ego” of Capri, and therefore, it can “pierce the veil” and include RUL in its claim for breach of contract. Because RUL, as the sole owner of Capri, commingled assets and received profits from Capri’s sale of the land covered by the promissory note, SFC argues that RUL is also liable for the breach of contract. We disagree.

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<sup>3</sup> Respondents also appear to argue on appeal that Capri was excused from performance because the Indeterminate Amount contained a condition precedent to Capri’s duty to make a payment that did not occur. However, because SFC’s motion for summary judgment was limited in scope to a determination that Capri did not make payments under the promissory note and left unaddressed all of Respondent’s affirmative defenses and counterclaims, we refrain from addressing this issue.

A. LEGAL PRINCIPLES

An LLC “is a statutory business structure that is like a corporation in that members of the company are generally not personally liable for the debts or obligations of the company.” *Chadwick Farms Owners Ass’n v. FHC, LLC*, 166 Wn.2d 178, 186-87, 207 P.3d 1251 (2009). “It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation [or LLC] (so-called because of control through ownership of another corporation’s stock) is not liable for the acts of its subsidiaries.” *Minton v. Ralston Purina Co.*, 146 Wn.2d 385, 398, 47 P.3d 556 (2002) (internal quotations omitted) (quoting *United States v. Bestfoods*, 524 U.S. 51, 61, 118 S. Ct. 876, 141 L. Ed. 2d 43 (1998)). However, under certain circumstances, where respecting the LLC form would result in injustice, courts may disregard the separate existence of the LLC and impose personal liability on its members. *Chadwick Farms*, 166 Wn.2d at 200.

The test to determine the propriety of piercing the corporate veil is also used to determine the propriety of piercing the veil for LLCs. *Id.*; RCW 25.15.061. To pierce the LLC veil, a plaintiff must prove that the form of the LLC “was used to violate or evade a duty and that the [LLC form] must be disregarded in order to prevent loss to an innocent party.” *Chadwick Farms*, 166 Wn.2d at 200.

“To pierce the . . . veil and find a parent corporation liable, the party seeking relief must show that there is an overt intention . . . to disregard the . . . entity in order to avoid a duty owed to the party seeking to invoke the doctrine.” *Minton*, 146 Wn.2d at 398. This generally requires a showing that the LLC “manipulated the entities in order to avoid the legal duty.” *Id.*

The corporate veil may be pierced in situations involving “a parent or principal corporation and subsidiary corporations which merely acquiesce in and register the decrees of their principal.” *Kueckelhan v. Fed. Old Line Ins. Co.*, 69 Wn.2d 392, 411, 418 P.2d 443 (1966), *superseded on other grounds by State v. WWJ Corp.*, 138 Wn.2d 595, 980 P.2d 1257. “ ‘If one corporation so dominates and controls another as to make that other merely an adjunct to it, the courts will look beyond the fiction of the distinct corporate entity.’ ” *Id.* (quoting *Briggs & Co. v. Harper Clay Products Co.*, 150 Wn. 235, 272 P. 962 (1928)).

In an attempt to pierce the LLC veil, summary judgment in favor of the LLC may be appropriate where “the plaintiff fails to show evidence of ‘either the requisite manipulation, or the perpetration of a fraud on the plaintiffs.’ ” *Minton*, 146 Wn.2d at 398 (quoting *Peterick v. State*, 22 Wn. App. 163, 185, 589 P.2d 751 (1980)). The mere fact that there is common ownership of stock or overlap in officers and employees does not, alone, justify a disregard of the separate entities unless there is also evidence of fraud. *Id.* at 399 (determining that even though corporations had a common headquarters and one held itself out as subsidiary of the other, because plaintiff has not asserted that the corporations were attempting to perpetrate a fraud on a third party, there was no genuine issue of material fact on the issue of piercing the corporate veil); *One Pac. Towers Homeowners’ Ass’n v. HAL Real Est. Invs., Inc.*, 108 Wn. App. 330, 350, 30 P.3d 504 (2001) (Washington courts “will not imply an overt intent to disregard the corporate form from the presence of common directors, shareholders, or a common business address”), *aff’d in part and rev’d on other grounds by* 148 Wn.2d 319, 61 P.3d 1094 (2002).

B. APPLICATION

SFC argues that the evidence of Capri and RUL's commingling of property rights and interests combined with the fact that RUL is the sole owner of Capri creates a question of fact as to "whether the entities are intended to function as one," and whether allowing them to function as two separate entities would allow the commission of fraud upon third parties. Appellant's Opening Br. at 36. Accordingly, SFC claims that it is entitled to include RUL as a party in this action. We disagree.

SFC claims that it has presented evidence of Capri and RUL commingling property rights as well as co-management and payment of part of the proceeds from the sale of the property from Capri to RUL. SFC also claims that it presented evidence that RUL was insolvent and received \$3,000,000 in proceeds from the sale of the property. SFC further claims Capri recently sold the property at the direction of RUL. These actions, according to SFC, represent a "proverbial 'shell game' with RUL (apparently insolvent) siphoning off monies paid to Capri for the sale of lots . . . to the detriment of a creditor, SFC." Reply Br. of Appellant at 19 (footnote omitted).

It is true that SFC presented evidence of RUL's cash difficulties and that RUL received money from the proceeds of the sale of the property. However, SFC's story of a corporate "shell game" involving extensive comingling of assets and misuse of corporate structures is simply not sufficiently supported by its citations to the record. Whereas SFC alleges RUL received \$3,000,000 from the sale of the property, the record only shows RUL received substantially less than that. And SFC provides no explanation for the context of this payment or how it, by itself, represents manipulation of the business structures. For SFC allegations that Capri sold the

property at the direction of RUL, its citation to the record only establishes that several of the lots on the property could not be developed.

Simply stated, SFC fails to show support in the record that creates a question of fact for its claims of a corporate “shell game.” That RUL is the sole owner of Capri and that they had a financial relationship are insufficient to create a question of fact to survive summary judgment. Rather, SFC must present evidence that RUL has so dominated and controlled Capri that Capri is merely RUL’s adjunct. SFC has failed to present such evidence, and we will not independently search the record to support SFC’s theories. *State v. Brousseau*, 172 Wn.2d 331, 353, 259 P.3d 209 (2011) (court “declin[e]s to search for applicable portion of the record in support of [appellant’s] argument” where appellant fails to support their statements with citations to the record) (citing *Mills v. Park*, 67 Wn.2d 717, 721, 409 P.2d 646 (1966)). Accordingly, we determine that because SFC has failed to demonstrate a question of fact regarding the piercing of the corporate veil, the superior court did not err in granting Respondents’ motion for summary judgment with regard to SFC’s claims against RUL.

#### V. ATTORNEY FEES

Both parties make claims regarding attorney fees. SFC requests that we reverse the superior court’s award of attorney fees for Respondents. Respondents request attorney fees on appeal. Because we reverse the trial court’s entry of summary judgment and remand for further proceedings, we decline to award either party their fees on appeal and leave the question of any future award of attorney fees to the determination of the trial court.



CONCLUSION

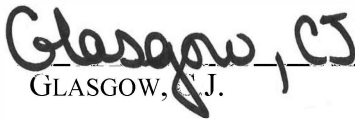
In conclusion, we hold that because the reinstatement of Newton related back as if it was never stricken from the BVI registry, the agreement tolling the statute of limitations was valid at the time it was entered. We also hold that a six-year statute of limitations applies to the Indeterminate Amount provision. Therefore, the superior court erred in dismissing SFC's claims against Capri on summary judgment on the basis of statute of limitations. However, we determine that because SFC has failed to demonstrate a material issue of fact on whether Capri is the alter ego of RUL, the superior court did not err in dismissing SFC's claims against RUL. Thus, we reverse in part and affirm in part.<sup>4</sup>

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



PRICE, J.

We concur:

  
GLASGOW, C.J.  
CRUSER, J.

<sup>4</sup> Neither party on appeal addresses SFC's motion for summary judgment. At oral argument, SFC confirmed that its motion was limited solely to the issue of non-payment under the promissory note and was not intended to address any of Capri's defenses or counterclaims. Although Capri's non-payment under the promissory note appears uncontested, we decline to address issues the parties fail to brief. *See* RAP 10.3.

July 19, 2022

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

SAWYER FALLS CO., L.L.C., a Washington  
Limited liability company,

Appellant,

v.

CAPRI INVESTMENTS, L.L.C., a  
Washington limited liability company;  
RENAISSANCE UNITED LIMITED, a  
Singapore exchange-listed entity; and any  
other individual/entity claiming any right, title,  
lien or other interest in the real property  
described herein,

Respondents,

No. 55811-4-II

ORDER DENYING  
MOTION TO PUBLISH

Respondents move for publication of the Court's June 14, 2022, opinion. Upon consideration, the Court denies the motion. Accordingly, it is

**SO ORDERED.**

**PANEL:** Jj. GLASGOW, CRUSER, PRICE

**FOR THE COURT:**

  
PRICE, J.

**FOSTER GARVEY PC**

**August 16, 2022 - 4:53 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 55811-4  
**Appellate Court Case Title:** Sawyer Falls Co., LLC, Appellant v. Capri Investments, LLC, et al, Respondents  
**Superior Court Case Number:** 20-2-08573-7

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