NO. 101179-2

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

No. 55811-4

IN THE COURT OF APPEALS
DIVISION II

SAWYER FALLS CO., L.L.C., 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,

Petitioner.

ANSWER TO PETITION FOR REVIEW

Stephen M. Hansen
LAW OFFICE OF
STEPHEN M. HANSEN, P.S
1821 Dock Street, Suite 103
Tacoma, WA 98402
Tel: (253) 302-5955
Fax: (253) 301-1147

steve@stephenmhansenlaw.com
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES **PAGE(S)**

OTHER AUTHORITIES **PAGE(S)**

I. INTRODUCTION

Defendant-Respondent Capri Investments, LLC's ("Capri") Petition for Review fails to meet any test for discretionary review under RAP 13.4(b). The Court of Appeals' opinion ("Opinion") does not conflict with decisions of this Court or any Court of Appeals; nor does it raise any significant question of law or issue of substantial public interest.

Sawyer Falls Co., LLC ("SFC") is a Washington limited liability company formed in 1994. In 2002 SFC conveyed approximately 500 acres of valuable real estate to Capri in exchange for Capri's specific promise to pay SFC based on the property's development. Despite having generated millions of dollars through the property, Capri has not paid a single dollar to SFC. Capri's defaults under the Promissory Note are beyond dispute and are without justification.

In order to avoid litigation, SFC entered into a tolling agreement with Capri on July 17, 2020. Despite that agreement, Capri defended against SFC's eventual suit by

claiming that SFC's claims were time barred. Rather than honor its debts, Capri's lawyers developed a creative – but demonstrably ill-founded – legal argument that one of SFC's members (Newton Centre Development, Ltd.) lacked authority to execute a pre-suit Tolling Agreement because Newton (a British Virgin Islands entity) was temporarily stricken from the BVI Registry for non-payment of its annual licensing fee. When Newton was properly reinstated, thereby being deemed under Washington and BVI law to have *never been stricken in the first place*, Capri bizarrely argued that the reinstatement was an improper after-the-fact "ratification." As the Court of Appeals correctly held, Capri presented no Washington authority in support of its contention, nor do the facts of this case support its contention.

Capri's petition lacks any merit and should be denied.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Was the Court of Appeals' decision that under the licensing statutes regulating corporate entities, the reinstatement of an entity related back as if the entity was never dissolved consistent with applicable precedent?

2. Did the Court of Appeals' evaluation of the licensing statutes regulating corporate entities and its holding that the reinstatement of an entity related back as if the entity was never dissolved raise any significant question of law or raise any issue of substantial public interest?

III. STATEMENT OF THE CASE

SFC is a Washington entity formed on December 14, 1994. CP at 1006. SFC's members were/are Newton Centre Development, Limited, ("Newton") a British Virgin Islands entity, and Innopac Holdings Limited ("Innopac"), headquartered in Singapore. CP at 1006. CP at 1045. Until March 2019, Mr. Wong Chin Yong ("Mr. Wong") served as

Chairman and Chief Executive Officer of Innopac, which holds 67% of the SFC's common units. CP at 1008 and 1045.

SFC's 2002 Second Amended and Restated Limited Liability Company Agreement ("2002 LLC Agreement") gave Newton the sole authority to appoint managers to manage SFC. CP at 1020. At that time, Newton appointed Mr. Teoh Hooi Leong (commonly known as "Leonard Teoh") and Ms. Thong Mee Yuen." CP at 1046. The 2002 LLC Agreement was signed by Newton through Mr. Teoh, Newton's "Sole Director," and Innopac through Mr. Wong and the Innopac board of directors. CP at 1044. Ms. Thong resigned as manager of SFC on March 28, 2002, and SFC appointed Mr. Teoh and Ms. Chiang Kuei Chuan to serve as its managers. CP at 1051.

Shortly after its formation, SFC took title of an approximately 500-acre parcel of real property situated in Pierce County, Washington (the "Falling Water Property"). CP at 1006. Capri purchased the Falling Water Property from SFC

on July 22, 2002. *Id.* As part of Capri's purchase, Capri executed a Promissory Note and a Deed of Trust in favor of SFC, which are the subject of this suit. CP at 10 – 18.

Under the Promissory Note, Capri agreed to two distinct payment obligations, a "Fixed Amount" obligation and an "Indeterminate Amount" obligation. CP at 10 – 11. Under the "Fixed Amount" obligation, Capri agreed to pay SFC the principal sum of $404,214.38 as follows:

> (a) The sum of Ten Thousand Dollars ($10,000.00) per finished single-family residential lot shall be due and payable contemporaneously with the conveyance by Buyer of each finished single-family residential lot closing in the final development phase of Falling Water; and
>
> (b) The sum of Five Thousand Dollars ($5,000.00) per unfinished single-family residential lot shall be due and payable contemporaneously with the conveyance by Buyer of each unfinished single-family residential lot in the final development phase of Falling Water;

CP at 11. The principal balance owed, together with all accrued and previously unpaid interest, became due "twelve (12) years following the date of this Note", *i.e.*, July 22, 2014. CP at 11.

The "Indeterminate Amount" provided a manner of calculating the second sum Capri owed to SFC following the sale of 85 additional single-family residential lots. SFC's payments under the "Indeterminate Amount" obligation were due 14 years after the Promissory Note's execution, *i.e.*, July 22, 2016. CP at 11.

In June of 2018, the Innopac's Board of Directors requested that Innopac be made the Manager of SFC and to have the right to appoint SFC's Managers. CP at 808, 1007. Based upon this request, on June 29, 2018, Innopac and Newton executed the 2018 Amendment to the Amendment of Second Amended and Restated Limited Liability Company Agreement of SFC. CP at 1053 – 54. The 2018 Amendment replaced the prior managers with Innopac's appointees, Mr. Wong and Mr. Philip Leng Yew Chee. CP at 1007, 1053 – 1054. The 2018 Amendment was executed by Mr. Wong as Chairman and CEO for Innopac and Mr. Teoh for Newton. CP at 1054.

In 2020, SFC made a demand for payment to Capri. CP at 29. On July 17, 2020, the parties executed a "Tolling Agreement" to facilitate a discussion of SFC's "alleged claims and remedies against Capri". CP at 20 – 22. The tolling agreement tolled "all statutes of limitations and statutes of repose" for a "Tolling Period" terminating on September 30, 2020. CP at 20. Relying on Capri's stated willingness to discuss a resolution, SFC executed the agreement via its Manager Mr. Wong. The parties extended the termination date of the tolling agreement to November 30, 2020, via two amendments to the agreement. CP at 23 – 26.

SFC's attempts to resolve its claims were fruitless. SFC filed its Complaint for breach of contract/foreclosure on November 30, 2020, and its First Amended Complaint ("FAC") on December 3, 2020. CP at 1 – 29. Capri, in its Answer, admitted executing the Promissory Note on July 22, 2002, in favor of SFC. CP at 31. Capri also admitted that the "Indeterminate Amount" obligation was "an independent

covenant" from the "Fixed Amount") in its Answer at ¶ 5.3. CP at 32. During discovery, Capri admitted that it could not identify *any* payments made to SFC towards the Promissory Note obligations. CP at 52 – 53; 76 – 77.

Based on the undisputed evidence of Capri's default, on February 6, 2021, SFC moved for partial summary judgment. CP at 50 – 57. SFC's motion asked the Superior Court for partial summary judgment to confirm Capri's non-payment/non-performance of its "Fixed Amount" and "Indeterminate Amount" obligations under the Promissory Note. CP at 50, 55 – 56. Despite the admitted absence of any evidence of performance, Capri sought a continuance of the hearing pursuant to CR 56(f) (CP at 669 – 676) and its request was granted. CP at 784 – 785.

On February 26, 2021, Capri moved for partial summary judgment on statute of limitations grounds. CP at 85 – 102. Capri argued that the Tolling Agreements were not enforceable against Capri because Newton had been stricken from the

BVI's Registry at the time Newton executed the 2018 Amendment appointing Mr. Wong as one of SFC's managers. CP at 92 – 93. Capri challenged the validity of the 2018 Amendment, arguing that Mr. Teoh possessed no authority to sign on behalf of Newton, and argued that Ms. Thong was a required signatory to a Consent Action appointing Mr. Wong as the President of SFC. CP 89 – 90, 93 – 94.

Capri further argued that as of November 1, 2017, the date Newton had been stricken from the BVI registry, Newton "could not take any action subsequent to" that date and that "any action purportedly taken by Newton Centre — or by someone purporting to act on its behalf — would be legally ineffective *barring restoration by the BVI government*." CP at 92 – 93 (emphasis added). Capri argued that since Newton could not lawfully execute the 2018 Amendment to SFC's operating agreement to appoint Mr. Wong as one of SFC's managers, the Tolling Agreements were not enforceable against Capri. CP at 94 – 95.

SFC opposed Respondents' Motion and provided indisputable evidence that Mr. Teoh had authority to act on Newton's behalf at all times. SFC provided a declaration from Mr. Teoh confirming that from 2002 to July 2018, he served as Newton's authorized representative with respect to SFC until being replaced by Mr. Wong and Mr. Philip Leng Yew Chee in June 2018. CP at 795, 807 – 809. SFC also demonstrated that Ms. Thong had resigned from her position as manager of SFC on or about March 28, 2002 making her consent unnecessary. CP at 1007, 1051. As to the challenge to Mr. Wong's authority to act on behalf of SFC, SFC demonstrated, that Mr. Wong acted on behalf of Innopac, that he was a duly appointed manager and that Innopac had authority to appoint managers of SFC. CP at 1006 – 1009.

To address Capri's claims about Newton having been struck from the BVI Registry, SFC produced a "Certificate of Good Standing" from the BVI Registrar of Corporate Affairs confirming Newton's "good standing" as of March 8, 2021 and

confirming Newton's listing on the Register of Companies. CP at 808, 811. Mr. Teoh explained that Newton temporarily had been stricken due to its inadvertent failure to comply with the BVI's annual licensing renewal requirements but had since been restored to the BVI registry as of February 25, 2021. CP at 808.

As to the legal effect of Newton's restoration to the BVI registry, SFC demonstrated that under BVI law, although Newton had been stricken from the BVI registry, it had not been dissolved, making it eligible for restoration under §217(1) of BVI law. CP at 797. Under §217(6) of the BVI law, when a company is restored to the Register "the company is *deemed never to have been struck off the Register*." CP at 796 - 797 (emphasis added). SFC also demonstrated that the language of the Promissory Note's "Indeterminate Amount" obligation contained all essential elements of the contract to preclude the Court from having to resort to parol testimony. CP at 797 – 803.

Capri's reply did not dispute SFC's evidence/argument that once restored, under BVI law, Newton was deemed to have never been stricken from the BVI registry. *See* CP at 1613 – 1625. Instead, Respondents argued for the first time (without citing any authority) that such restoration merely "ratified" the 2018 Amendment appointing Mr. Wong as SFC's manager and, citing no authority, such "ratification" did not toll the application of the statute of limitations. CP at 1615 – 1617. Capri also argued, again without citation to BVI law, that for the "same reasons", Mr. Wong "lacked standing" to bring suit on behalf of SFC. CP at 1617 – 1619.

At oral argument, the Superior Court initially questioned Capri's argument, correctly observing as follows:

> I guess I'm – I'm – this is what I'm having trouble grasping. If the law says, if BVI law says it's as if it never happened, okay, how is it that you can apply the detriment of not being authorized to sign the tolling agreement? If the law recognizes, look, corporations, they get delisted for a number of reasons. Lots of times, because some CFO, you know, fell down on the job and then didn't pay the annual fee. But apparently, under BVI law, there is

> a provision that says, okay, you can get your corporation back so long as nobody else claims the name for it in the intervening period and we're going to act as if nothing ever happened. (VRP 7:11 – 7:23)

Verbatim Report of Proceedings ("VRP") at 7. In response, Capri argued, for the first time during oral argument, (and without citing any authority), that (1) "we are unaware of any authority that would indicate that BVI law applies to the judicial process in the United States"; and (2) "that the tolling agreement itself explicitly states the domestic law and the law of – specifically, the law of Washington applies to the tolling agreement." VRP at 8. Asserting that Washington law controlled, Capri argued, without citation to any Washington authority, that "post-expiration ratification of an unauthorized act doesn't have retroactive effect when that effect would interfere with the rights of a third-party limitations." VRP at 7 – 8.

The Superior Court thereafter summarized Capri's argument (VRP at 17 – 18) and then granted summary judgment, stating

> I am certainly sympathetic to Mr. Hansen's argument here. However, I don't believe, because the lawsuit is here, is in Washington, and the agreement itself says you can follow Washington law, that, essentially, restoring the corporation under BVI law acts to extend the statute of limitations. Statute of limitations had already expired, and the reasons for having the statute of limitations or the policies behind it would be undermined if the Court were to allow this suit to go forward. Therefore, I'm granting the motion for summary judgment.

VRP at 22 – 23; CP at 1664 – 67.

Because the trial court did not have the parties' briefing as to the effect of BVI law "to the judicial process in the United States", SFC moved for reconsideration, arguing that (1) that under choice of law principles, BVI law applied, and (2) regardless of whether the court applied BVI or Washington law, the effect of Newton's restoration to the BVI registry was the *same* – i.e., it was as if the lapse *had never happened*. CP at

1668 – 1679. The trial court denied the motion for reconsideration on April 19, 2021. CP at 1738. SFC timely appealed.

In an unpublished opinion the Court of Appeals reversed the dismissal of Capri and remanded for further proceedings. *Sawyer Falls Co. v. Capri Invs., LLC*, No. 55811-4-II, 2022 WL 2125880 (Wash. Ct. App. June 14, 2022). The Court of Appeals denied Capri's motion for publication on July 19, 2022.

Having compared the relevant provision of the BVI Business Companies Act of 2004 § 217(1)(6) ("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)) with RCW 23.95.615(4)(a) (Reinstatement "relates back to and takes effect as of the effective date of the administrative dissolution.") and RCW 23.95.615(4)(b) ("The domestic entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred") (WL

2125880, at *3), while acknowledging Capri's concession that "there is no meaningful difference under either BVI or Washington law for this case", the Court of Appeals held that under both BVI and Washington law, once Newton was reinstated, the reinstatement related back as if Newton was never dissolved. WL 2125880, at *4. As a result, "Wong's appointment as a manager of SFC was valid at the time it was entered" and "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." *Id*.

The Court of Appeals rejected Capri's "ratification" arguments, holding that

> 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.

Id. Since SFC had the authority to enter into the tolling agreement, Capri's statute of limitations defense failed. 2022 WL 2125880, at *5.

As to Capri's arguments to the Promissory Note's "Indeterminate Amount", the Court of Appeals found the arguments were "unsupported by case law" 2022 WL 2125880, at *6. The Court of Appeals agreed with SFC that Capri's promises under the Promissory Note's "Indeterminate Amount" are capable of being made certain through extrinsic facts and therefore enforceable. *Id*. The Court of Appeals concluded that Indeterminate Amount provisions are governed by a six-year statute of limitations. *Id*.

IV. ARGUMENT

This Court accepts review of a decision of the Court of Appeals only under the limited circumstances delineated in RAP 13.4(b). Review is appropriate if a Court of Appeals' decision conflicts with a decision of the Supreme Court or another Court of Appeals or if "the petition involves an issue of

substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(3), (4). Neither circumstance is presented here.

A. The Court of Appeals' Decision Regarding the Effect of Newton's Restatement is Consistent with Washington Law.

Capri's Petition (*see* pp. at 10 – 18) fails to present a single Washington case or statute concerning the impact of corporate reinstatement on the statute of limitations. There is good reason for this, as Capri's argument is premised upon cases where the unauthorized actions of an agent were later "ratified" following the expiration of the applicable statute of limitations. The Court of Appeals correctly recognized that this argument "erroneously conflate[d] the concepts of "relating back" and "ratification." 2022 WL 2125880, at *4.[1]

[1] Nor does Capri ever define "ratification," despite its heavy reliance on the word. In Washington, ratification "involves one party approving the unauthorized actions of another party." *Nichols Hills Bank v. McCool*, 104 Wn.2d 78, 84 – 85, 701 P.3d 1114 (1985); *see also Nw. Poultry & Dairy Prods. Co. v. A. C. Fry Co.*, 27 Wn.2d 35, 54, 176 P.2d 324 (1947).

Capri presented no case, let alone any Washington case, where a corporation was reinstated with language similar to the Washington or BVI statutes or even considered whether the effect of reinstatement resulted in some type of post-reinstatement "ratification." The reason for this is that the Washington and BVI statutes treat the advent of striking from the Registry (under BVI law) and dissolution (under Washington law) *as if they had never occurred*. The legal effect of the restoration is specifically stated in §217(6) as follows: "Where a company is restored to the Register under this section, the company is deemed never to have been struck off the Register." Under Washington law via RCW 23.95.615, reinstatement "relates back to and takes effect as of the effective date of the administrative dissolution." (RCW 23.95.615(4)(a)) and "[t]he domestic entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred, . . ." RCW 23.95.615(4)(b).

No "ratification" was required under BVI or Washington law as reinstatement of Newton's registration did not constitute a "ratification." Both Washington law and BVI law designate this event a "reinstatement," not a "ratification."[2] This is because one cannot "ratify" that which (according to the BVI or Washington statutes) is *deemed to have never occurred*. The wording of the BVI statute provides that in the event of restoration to the Register, "the company is deemed never to have been struck off the Register."[3] Under Washington law, reinstatement "relates back to and takes effect as of the effective date of the administrative dissolution." RCW 23.95.615(4)(a); *see also Equipto Div. Aurora Equip. Co. v. Yarmouth*, 134 Wn.2d 356, 365-366, 950 P.2d 451 (1998)

---

[2] RCW 23.95.615(4)(a); RCW 25.15.289 ("A limited liability company that has been administratively dissolved under RCW 23.95.610 may apply to the secretary of state for reinstatement in accordance with RCW 23.95.615."); BVI statute §217(6).
[3] BVI statute at §217(6).

(reinstatement dates back to the date of dissolution as if the administrative dissolution had never occurred).

As the Court of Appeals correctly observed as to the Washington reinstatement statutes:

> 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)).

2022 WL 2125880, at *3. The Court of Appeals observed that "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." *Id*.; (citing *Gorson*, (supra) 243 A.2d at 715).

In Washington, when reinstatement of a corporate entity occurs under RCW 23.95.615(4)(a), the reinstatement "relates back to and takes effect as of the effective date of the administrative dissolution." *See Equipto Div. Aurora Equip. Co. v. Yarmouth*, 134 Wn.2d 356, 365, 950 P.2d 451 (1998); *Tagliani v. Colwell*, 10 Wn. App. 227, 232, 517 P.2d 207, 210 (1973); *Karnes v. Flint*, 153 Wash. 225, 233, 279 P. 728, 731 (1929).

The reinstatement works exactly the same for limited liability companies under Washington law: first, RCW 25.15.289 authorizes reinstatement for administratively dissolved limited liability companies by application "in accordance with RCW 23.95.615."

As to the rights of third parties, Washington law provides a mechanism for a board of directors or shareholders to ratify "defective corporate action." RCW 23B.30.030. When "ratified," the defective corporate action is "not void or voidable" and is "deemed to be a valid corporate action taken on the date of the defective corporate action." RCW 23B.30.060(1)(a) – (b). "Any corporate action taken subsequent to the date of the defective corporate action ratified or validated in accordance with [chapter 23B RCW] in reliance on that defective corporate action having been validly taken. . . is deemed to be valid as of the time that corporate action was taken." RCW 23B.30.060(3). The statutes make no distinction between internal corporate actions and those affecting the rights of third parties.

The Court of Appeals correctly recognized this here, citing to *Holpuch Co. v. United States*, 102 Ct. Cl. 795, 58 F.

Supp. 560 (Ct. Cl. 1945)[4], it concluded that Newton's failure to pay its fees to the BVI registry did not prejudice Capri or otherwise impact its rights under the promissory note. 2022 WL 2125880, at *5.

There are good policy reasons behind the statutes authorizing reinstatement. The requirement of the payment of

---

[4] In *Holpuch*, the plaintiff construction company negotiated the contract with the United States at the time it was 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

an annual corporate licensing fee is "but a revenue measure."[5] As other courts have observed, the penalty for non-payment of licensing fees "does not deny the claim [possessed by the corporation] itself."[6] Reinstatement to good standing by payment of fees simply "restores the corporation's ability to sue and to defend in the courts of this state . . . [to] proceed on any viable claims that it has."[7] Once the requirement of the payment of an annual corporate licensing fee ("a revenue measure") is met, there should be no reason why any additional penalty should be imposed on the corporation once delinquent fees have been paid. Such considerations are separate from the timely commencement of a suit.

B. Capri's Petition Presents No Significant Question of Law or Issue of Substantial Public Interest.

---

[5] *Roger Lee Const. Co. v. Toikka*, 62 Wn. App. 87, 91, 813 P.2d 161 (1991) (quoting *Nw. Motor Co. v. Braund*, 89 Wash. 593, 154 P. 1098 (1916)).

[6] *See* e.g., *Williams v. Smith & Nephew, Inc*., 2009 OK 36, 21, 212 P.3d 484 (2009).

[7] *Id*.

Capri premises its claim of "broad implications" (pp. at 20 – 25) on the false narrative of there being an after-the-fact "ratification." No ratification happened here, as Newton had executed the amendment to SFC's operating agreement appointing Mr. Wong as one of SFC's managers two years prior to the July 22, 2020 deadline to commence suit for breach of the Promissory Note's "Fixed Amount" obligation. In contrast, the cases relied upon by Capri (cited *for the first time* in reply)[8] involve agency law where the principal made "after the fact" attempts to ratify lawsuits commenced by the agent without first obtaining principal's authorization. Unlike this case, in those cases the principal's purported "ratification" did not occur until after the expiration of the applicable statute of limitation.

Federal Election Com'n v. NRA Political Victory Fund, 513 U.S. 88, 115 S.Ct. 537, 130 L.Ed.2d 439, 63 USLW 4027 (1994), involved a petition for Certiorari by the Federal

[8] SFC's Motion to strike the reply (CP 1644 – 1649) was denied. (VRP at 5).

Election Commission (FEC), which was made without the authorization of the United States Solicitor General until after the time for filing it had expired. 513 U.S. at 90. The question presented was whether the Solicitor General's May 26, 1994, letter authorizing the FEC's petition related back to the date of the FEC's unauthorized filing so as to make it timely. *Id*. at 91. The Supreme Court ruled that the subsequent authorization was ineffective because Congress had specifically conferred the sole authority in the Solicitor General under 26 U.S.C. §§ 9010(d), 9040(d). *Id*. at 96 - 97.

Miernicki v. Duluth Curling Club, 699 N.W.2d 787 (2005) involved a claim for injuries under a Minnesota Dram Shop Act, (Minn. Stat. § 340A.802 (2002)), which required notice of a potential dram-shop action within 240 days of retaining counsel and also required commencement of suit within two years of the injury. 699 N.W.2d at 788. The injured party's brother retained an attorney without knowledge or permission. On December 20, 2002, two days before the statute

of limitations expired, the attorney filed a complaint (without the injured party's knowledge/permission) in the name of the injured party and his three adult children. *Id*. Citing the *Restatement (Second) of Agency* § 90 (1958), the Court held that the subsequent ratification of the uncle's unauthorized retention of the attorney was ineffective. *Id*. at 789.

Town of Nasewaupee v. City of Sturgeon Bay, 77 Wis. 2d 110, 251 N.W.2d 845 (1977) was (again) decided on the same basis of principal-agent law as to the principal's retroactive ratification of the act of its agent. There, the town board attempted to ratify its actions after the time had been extinguished by the sixty-day period of limitations. 251 N.W.2d at 848. Here, the opposite is true, all actions were undertaken by SFC's members prior to the running of the statute of limitations. As such, they were timely, as under BVI law no member has been stricken. Other cases cited by Respondents were decided on the same principal-agent laws

where the principal had attempted to ratify an untimely act of the agent.

No case involved (as here) the restoration of an entity by operation of law where all actions were timely performed: the 2018 Amendment was executed two years prior to the 2020, Tolling Agreement. BVI law did not ratify Newton's actions *after the fact* but instead deemed those actions as lawful at the time they occurred, i.e., June 29, 2018. Once restored, under BVI law all actions taken are deemed to have occurred as if the company had never been stricken from the Register. This case does not involve ratification after the fact. BVI law "cured the claimed defect" as Newton has been deemed to have never been stricken. The same result occurs under RCW 23.95.615(4).

C. This Case Presents No Implications Concerning the Statute of Limitations.

Capri's contention that this case somehow permits a party to circumvent the statute of limitations is based upon the same false "ratification" narrative presented throughout its

petition. This is the same argument, as the Court of Appeals recognized, where Capri erroneously "conflate[d] the concepts of 'relating back' and ratification." WL 2125880, at *4.

SFC demonstrated its membership had authorized Mr. Wong to act on its behalf a full two years ago prior to the execution of the tolling agreement. The Court of Appeals correctly recognized there was no "unauthorized act" to ratify the after the fact. Had there been, nothing would have prevented Capri from asserting the defense it incorrectly argues here. Nothing about this case raises any significant question of law or issue of substantial public interest.

V. CONCLUSION

As Capri has not satisfied any of the criteria for review by this Court, its Petition for Review should be denied.

The undersigned hereby certifies that this Reply consists of 4,984 words.

RESPECTFULLY SUBMITTED September 15, 2022.

STEPHEN M. HANSEN, WSBA #15642

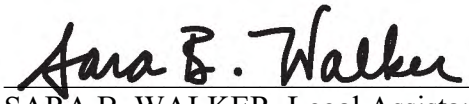
1821 Dock Street, Suite 103
Tacoma, WA 98402
Tel: (253) 302-5955
Fax: (253) 301-1147
steve@stephenmhansenlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the 15th day of September, 2022, I filed the above document with the Washington State Appellate Courts' Portal and [X] e-mailed [ ] mailed via regular U.S. mail [ ] faxed [ ] delivered by legal messenger a true and correct copy of this document to:

Rylan Weythman
Devra Cohen
Foster Garvey, PC
1111 Third Avenue
Suite 3000
Seattle, WA 98101
rylan.weythman@foster.com
devra.cohen@foster.com

DATED this 15th day of September, 2022, at Tacoma, Washington.



SARA B. WALKER, Legal Assistant

LAW OFFICES OF STEPHEN M. HANSEN

September 15, 2022 - 3:28 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,179-2
Appellate Court Case Title:	Sawyer Falls Co., LLC v. Capri Investments, LLC, et al.
Superior Court Case Number:	20-2-08573-7

The following documents have been uploaded:

- 1011792_Answer_Reply_20220915152809SC639427_2534.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 2022-09-15 Response to Petition for Review FINAL.pdf

A copy of the uploaded files will be sent to:

- devra.cohen@foster.com
- litdocket@foster.com
- rylan.weythman@foster.com

Comments:

Sender Name: Sara Walker - Email: sara@stephenmhansenlaw.com
Filing on Behalf of: Stephen Michael Hansen - Email: steve@stephenmhansenlaw.com (Alternate Email:)

Address:
1821 Dock Street, Suite 103
Tacoma, WA, 98372
Phone: (253) 302-5955

Note: The Filing Id is 20220915152809SC639427