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69235-6

NO. 69235-6-1

IN THE COURT OF APPEAL  
OF THE STATE OF WASHINGTON  
DIVISION I

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DELTA INN, INC., an Oregon corporation, SUNG LEE KIM, an  
individual, and HUNG GUNG KIM, an individual,

Appellants/Defendants,  
v.

SOON IM KIM, an individual,

Respondent/Plaintiff.

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BRIEF OF RESPONDENT

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## INTRODUCTION

For decades, Sung and Soon Kim have used Delta Inn funds as their own personal funds, purchasing everything from a waterfront home, condominium, two cars, and a boat, to everyday sundries. They have also taken large cash lump sums, giving \$720,000 to their son, loaning \$1.1 million to friends, and donating \$1.3 million to political campaigns. And in one transaction, they took \$4 million for a personal investment.

Hung Kim was fine with all of these expenditures. Indeed, Hung and Sung agree that Hung's broad Power of Attorney gave Sung the authority to take as much as he wanted from Delta Inn and spend it as he saw fit. Sung and Soon did not seek Hung's pre-approval, but viewed Delta Inn's money as their own.

But now, seeing an opportunity to take money away from Soon, Sung and Hung claim that Sung lacked the authority to give Soon Delta Inn funds. Decades of unchecked personal spending say otherwise.

Whether actual or apparent, Sung had Hung's authority to use Delta Inn funds however he wanted. This Court should reject the *post-hoc* attempt to limit this otherwise unchecked authority and affirm.

## **RESTATEMENT OF ISSUE**

1. Did Sung have actual or apparent authority to give Soon Delta Inn funds where: (a) Sung and Hung agree that Sung had authority to take as much as he needed and spend it however he wanted; (b) Sung did so for decades, spending more than \$9 million on personal expenses; (c) Hung never pre-approved the personal expenditures or objected after-the-fact; and (d) how Sung used Delta Inn funds has never mattered until Sung and Hung saw an opportunity to take money back from Soon?

## **STATEMENT OF PROCEDURE AND BACKGROUND**

Appellants are Delta Inn, Inc., and brothers Sung Kim ("Sung") and Hung Kim ("Hung"). Respondent is Soon Kim ("Soon"). During trial, Sung and Soon were in the process of a divorce. CP 1626, FF 3. Their divorce still has not been finalized.

Soon and Sung were married in Korea on October 14, 1976, but spent most of their married life living in the United States. CP 248; CP 1626, FF 3. When they married, Sung had already been living in the United States and Soon moved shortly after their marriage. CP 248. Soon later learned that Sung had previously been married to an Oregon woman. CP 86. Soon and Sung lived

in Oregon until they moved to Bellevue Washington in 2002. CP 248.

From 1988 to 2010, Sung had a Power of Attorney for Hung and his late wife Un, and acted as their agent. CP 185; CP 1634, FF 32; CP 1638, FF 40. Sung and Soon also acted as Delta Inn's corporate officers and/or directors. CP 1634, FF 32. Between 2000 and 2010, Hung gave Sung and Soon "significant leeway to pursue personal projects and provided generous compensation for their continued work for Delta Inn." CP 1638, FF 40.

Soon endured an abusive marriage for many years. CP 87-88. Sung drank heavily and often, abused his wife and daughter, and often threatened to divorce Soon. *Id.* Finally unable to take any more, Soon filed for divorce in March 2010. *Id.*; CP 1638, FF 41.

After Soon filed for divorce, Sung began moving large sums from Delta Inn's accounts. CP 254. When Soon raised a concern that Sung would try to withhold their assets, Sung showed her Delta Inn's deposit statement with a \$1 million-plus balance to demonstrate he was not hiding funds. CP 254-55. Sung said, "[s]ee, this is all ours, I am not hiding it from you!" CP 255.

Soon told Sung that she did not have enough money, so Sung offered her \$600,000 from Delta Inn accounts, and told her to collect a \$400,000 loan Sung had previously made to a friend. CP 1462. Soon accepted these funds. *Id.*

Neither Sung nor Hung made any effort to collect this money from Soon until after she brought the underlying suit to establish her ownership interest in Delta Inn. CP 1-8, 979. Then, over a year after the transfer, Hung and Sung brought a counterclaim against Soon, arguing of the first time that Sung lacked the authority to take the money from Delta Inn. CP 16-25, 979-80. Hung claims that he has “done everything in his power to object” after-the-fact, yet to this day, Hung has made no effort to collect from Sung. *Compare* BA 19-20 *with* CP 979.

Soon moved for summary judgment that she was entitled to keep the \$1 million as a matter of law. CP 975-88. The trial court granted her motion, ruling that for “decades” Sung had constantly exercised his broad authority to use Delta Inn funds for personal expenses. RP 44. This was “comparable.” *Id.*

The parties went to trial to resolve Delta Inn’s ownership. CP 1625. The trial court ultimately ruled that Hung is the sole

owner of Delta Inn. CP 1644-45. Although Soon disagrees, she does not challenge that decision, and dismisses her cross-appeal.

Appellants appeal only the trial court's summary judgment ruling that Soon may keep the \$1 million Sung gave her. BA 3. They do not challenge any findings of fact entered after trial. *Id.* Pertinent to the challenged summary judgment ruling, the court ultimately found on the merits as follows:

Between 2000 and 2010, Hung Kim gave Sung Kim and Soon Kim significant leeway to pursue personal projects and provided generous compensation for their continued work for Delta Inn. Sung continued to have a Power of Attorney and the served as President.

. . . .

[Sung and Soon] enjoy[ed] all the benefits of ownership, such as millions of dollars (including their Lake Sammamish home) to [their] family.

CP 1638, FF 40; CP 1640, FF 46.

#### STATEMENT OF THE CASE

- A. Hung gave Sung “a very strong power of attorney,” endowing him with “full authority to do whatever [he] wanted.”<sup>1</sup>**

In his October 2010 deposition, Sung testified that Hung gave him a “very strong power of attorney . . . that gave [him] the full authority to do whatever [he] wanted.” CP 994. Sung later

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<sup>1</sup> CP 994.

continued that he “was given a full power of attorney to take as much as [he] needed.” CP 1486. This included money to buy the family home. *Id.*

Longtime Delta Inn employee George Crews agreed that the Power of Attorney gave Sung “complete power over [Delta Inn] to do as he wished.” CP 1492. Although Crews was not specifically aware of Sung transferring funds to his or Soon’s personal accounts, Crews did not start controlling the accounts until 2010, after Hung supposedly “fired” Sung. *Id.*; CP 248, 1000.

**B. Sung used nearly \$5.4 million (at least) of Delta Inn funds on personal expenses, including campaign contributions, loans to friends, and gifts to children.**

Hung gave Sung the authority to use Delta Inn funds for all sorts or personal expenses (CP 1457):

As an owner of the Delta Inn, I’ve given the authority to operate and manage the funds of the Delta Inn to my younger brother, Sung Lee Kim. In return, I’ve permitted Sung Lee Kim to use the funds, as needed, for business, investments, legal and proper expenses, such as, for his housing, automobile, and other necessary expenses from the Delta funds.

He never questioned one single expenditure until now. CP 1084.

Soon unequivocally testified that the parties used Delta Inn funds to pay “nearly *all* of the family’s expenses, [including their] home, automobiles, clothes, food, and other sundry items.” CP 908

(italics original). Sung does not disagree, and does not challenge the trial court's finding that the parties enjoyed the benefit of "millions of dollars" of Delta Inn funds. CP 1640, FF 46.

It appears that the earliest documented use of Delta Inn funds for personal expenses occurred in April 2001, when Sung used \$300,000 to purchase a Carl's Jr. Restaurant for DeltaKor, a company owned by Sung and Soon. CP 1497. In 2001, he also began using Delta Inn funds to pay personal attorney fees, totaling \$771,077.66 from 2001 through 2005. CP 1497-98.

In February 2002, Sung used \$220,000 of Delta Inn funds to pay a personal tax liability after he was convicted of tax fraud. CP 1497, 1505. Also in 2002, Sung used Delta Inn funds to purchase the family's waterfront home. CP 248, 908; CP 1640, FF 46.

In February 2005, Sung began making personal loans to friends using Delta Inn funds. CP 1498. These loans totaled nearly \$1.1 million. CP 1498-99.

In June 2005, Sung used Delta Inn funds to purchase a "[p]ersonal [v]ehicle" – a \$63,000 BMW. CP 1495. Sung later purchased a second "[p]ersonal [v]ehicle" for over \$50,000. *Id.*

In March 2007, Sung began using Delta Inn funds for large "personal presidential campaign payments." *Id.* (capitalization

omitted). These totaled nearly \$1.3 million over four months. CP 1498-99.

During that same time, Sung also used nearly \$650,000 to purchase a condominium in California. CP 1498. He also gave \$500,000 to his son, Scott Kim. CP 1499.

In January 2008, Sung took \$100,000 for “[p]ersonal [p]ayments” – \$50,000 for a boat and another \$50,000 to Scott. *Id.* In June, Sung gave another \$50,000 to Scott (and Angela Kim). *Id.*

In July 2009, Sung again took nearly \$100,000 for “personal payments.” *Id.* This included over \$35,000 spent on a boat, and over \$44,000 spent on a car. *Id.*

In January 2010, Sung gave Scott another \$120,000. *Id.* In total, he gave Scott (and Angela Kim) \$720,000 from Delta Inn. *Id.*

These personal expenses total \$5,373,444.52. *Id.* The trial court found that Sung and Soon took millions from Delta Inn. CP 1640, FF 46.

**C. Sung also took another \$4 million in Delta Inn funds for one personal investment.**

In 2001, Sung and Soon decided to invest in Mirae Bancorp, a newly-formed bank holding company. CP 253. Soon was one of Mirae's directors. *Id.* Over the years, Sung and Soon invested

over \$4 million of Delta Inn funds in Mirae. *Id.* Hung was “fine” with Sung and Soon taking \$4 million for this personal investment. CP 840.

**D. Hung and Sung agreed that Sung had the authority to use Delta Inn funds for personal expenses.**

Hung states that he gave Sung the “authority to operate and manage” the Delta Inn funds. CP 1457. Hung stated that Sung was permitted to use Delta Inn funds for any “legal and proper” expenses, including houses and cars. CP 1457. Attempting to explain the limit he claims to have placed on Sung’s authority, Hung claimed that Sung “does not have the authority to liquidate all hotels and donate the remaining funds to charities, persons or institutions as a gift.” *Id.*

Sung testified that Hung “provided [him] with the authority to use the Delta Inn assets . . . for reasonable and legitimate personal expenses.” CP 1462. Again, Sung unequivocally stated that Hung’s Power of Attorney permitted Sung “to do whatever [he] wanted” and “to take as much as [he] needed” for personal expenses. CP 994, 1486.

**E. Sung and Hung agreed that Sung did not need Hung's pre-approval for these large cash expenditures.**

Sung unequivocally stated that he did not need Hung's pre-approval before taking large sums from Delta Inn:

Q. Was it your custom to ask your brother, before that time, before you took large amounts of money out of Delta Inn?

A. No, I didn't ask.

CP 1084. Hung never questioned Sung's large cash expenditures after-the-fact:

Q. Did he ever inquire of you about other large amounts of money that you took out of the Delta Inn account?

A. No, because we are doing business together, you know? . . .

CP 1084-85. Contradicting his prior statement, Sung then claimed that he has sought Hung's pre-approval, stating "[b]efore that incident, I have asked the approval before. You know, small, you know, amount, you know, my brother, you know, doesn't care." *Id.*

But Hung agreed that Sung did not need his approval to use large sums of Delta Inn money for his personal expenses. CP 840. Hung testified that Sung had been so successful with growing Delta Inn that Hung was "fine" with Sung taking large cash rewards at his own "discretion." *Id.*

**F. Naturally, Sung and Hung asserted that the payment to Soon was somehow different from the \$9-plus million Sung had taken from Delta Inn over the years.**

Admitting that he “permitted” Sung to use Delta Inn funds for personal expenses, Hung nonetheless claimed that Sung did not have the authority to give Soon Delta Inn funds. CP 1457. Hung agreed that Sung “had discretion to use [Delta Inn] money as he wished,” but maintained that giving \$1 million to Soon was “arbitrar[y]” – not a business investment or “necessary personal expense.” CP 1421, 1457.

Despite unequivocally stating that he had Hung’s authority “to take as much as [he] needed,” and to “do whatever [he] wanted,” Sung then claimed, in opposition to Soon’s summary judgment motion, that Hung “never gave [him] authority to do whatever [he] wanted.” *Compare* CP 994 and 1486 *with* CP 1462. Sung claimed that his authority was limited: “I never thought I had authority to give . . . away the assets of Delta Inn arbitrarily to whoever I wanted.” CP 1462. But again, Sung gave \$720,000 to his son, loaned over \$1.1 million to personal friends, donated \$1.3 million to political campaigns, and personally invested \$4 million. CP 253, 1497-1499.

Sung also claimed that he had obtained Hung's pre-approval "for large expenses paid from Delta Inn funds." CP 1462. But Sung's "poor recollection" permitted him to recall only one occasion on which he supposedly withdrew more than \$50,000 without Hung's pre-approval. CP 1085. There is no evidence in the record that any of the large gifts, loans, contributions or investments were pre-approved. Hung was "fine" with these. CP 840.

## **ARGUMENT**

### **A. Standard of Review.**

This Court reviews review summary judgment orders *de novo*. **Levy v. Snohomish Cnty.**, 167 Wn. App. 94, 98, 272 P.3d 874 (2012). The Court will affirm when "the supporting materials, viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." **Levy**, 167 Wn. App. at 98 (citing CR 56(c); **Oltman v. Holland Am. Line USA, Inc.**, 163 Wn.2d 236, 243, 178 P.3d 981 (2008)).

**B. Sung plainly had authority to use Delta Inn funds for personal expenses, including providing support to Soon.**

Hung and Sung agree that Sung was Hung's agent at all relevant times. BA 16. Thus, the sole issue on appeal is whether Sung had the authority to use Delta Inn funds as he saw fit. The answer – from the mouths of Sung and Hung – is yes. This Court should reject Hung and Sung's argument that for decades, Sung had the authority to spend millions in Delta Inn funds on personal expenses except on this one occasion.

**1. The issue is Sung's authority to use Delta Inn funds as he saw fit – not whether he could use \$1 million to prevent his divorce.**

As discussed in detail above and below, Sung had broad authority to use Delta Inn funds however he saw fit. Sung did so, spending over \$9 million on gifts, loans, campaign contributions, real property, cars, and more. This \$9 million-plus figure includes only large-ticket items, not the "sundr[ies]" Sung also purchased with Delta Inn funds for "decades." RP 43-44; CP 908; CP 1639, FF 46. Hung never questioned any of these expenses. CP 1084.

Largely ignoring Sung's broad authority and the history of massive expenditures, Sung and Hung claim *ad nauseam* that the only issue before this Court is Sung's authority to pay Soon not to

divorce him. BA 2, 3, 6, 7, 8, 10-11, 15-16, 17, 19, 23, 25, 26. The trial court plainly disagreed with Sung's attempt to mischaracterize this as a "bribe," calling it "over the end," and "beyond the pale."<sup>2</sup> RP 41-42. Sung was not buying Soon, or a longer marriage, he was supposedly giving her money to assure her that he was not absconding with funds while the two tried to salvage their marriage. CP 254-55, 1462. In reality, Sung was buying time to hide assets. CP 977.

The trial court saw this case for exactly what it is – a question of Sung's authority to use Delta Inn funds as he saw fit, not one of Sung's "motivation," *i.e.*, how he intended to use the money. RP 43. The court ruled that for "decades" Sung spent millions in Delta Inn funds on personal expenses without prior permission and that Hung never protested after-the-fact. RP 43-44. Thus, Hung and Sung cannot, for the first time ever, claim that this particular personal expense was somehow different (RP 44):

[T]here seems to be such a broad use of the money that [Sung] takes from the corporation without prior permission that it would -- well, let me back up and say this. That it is really the issue of whether he can take that money from the corporation for his personal expenses rather than

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<sup>2</sup> Similarly beyond the pale is Sung's attempt to compare this payment to a "gambling addiction" or "fees at a sex club." BA 17

characterizing one personal expense as okay and another personal expense as not okay or subject to approval.

Obviously Hung did express disapproval of paying a million dollars to Soon Kim, but that was after decades of being able to take sums that were comparable with that sum and pay it for any personal expense.

So I look at it in terms of whether he had the authority to take it, not how he spent it. And I think the record establishes sufficiently that he had the authority to pay it without any other prior approval by Hung. In fact, in this case when he got the million dollars, he did take it without prior approval, as he did many other times.

In short, this would be a non-issue if the parties were not divorcing. It is undisputed that Hung was “fine” with Sung spending over \$9 million of Delta Inn funds on personal expenses. *Supra*, Statement of the Case, §§ B & C; CP 840, 1497-99; CP 1640 FF 46. The nature of the personal expense never mattered until Hung and Sung saw an opportunity to take money back from Soon. Hung’s *post-hoc* claim that personal expenses must be “necessary” and that this one was “arbitrar[y],” conflicts with decades of spending. CP 1457, 1462. Campaign contributions and large cash gifts while perhaps laudable, are certainly not necessary. *Supra*, Statement of the Case §B. Sixty-thousand dollar cars, waterfront homes, and a \$4 million personal investment are not necessary. *Id.* at §§ B & C.

Equally unbelievable is Sung's claim, raised for the first time in response to summary judgment, that he sought Hung's prior approval for any expense over \$50,000. CP 1085. Sung previously stated that he had the authority to "take as much as [he] needed." CP 1486. Both Sung and Hung agreed that Sung had broad "discretion" to use Delta Inn funds however he saw fit, and he did just that for decades. *Supra*, Statement of the Case §§ D & E. Nothing in the record supports Sung's belated assertion that he obtained pre-approval. Sung acknowledged that he often took large sums from Delta Inn without prior approval. RP 44.

In sum, the issue before this Court is Sung's authority to use Delta Inn funds for personal expenses. Sung's specific reason for giving Soon this money is irrelevant. This Court should affirm.

**2. Sung had express actual authority.**

Hung and Sung agree that the Power of Attorney authorized Sung to take as much money as he wanted from Delta Inn and spend it as he saw fit. CP 994, 1009, 1486, 1492, 1495. He did so for decades, and Hung never questioned even one single expenditure. *Supra*, Statement of the Case § B. Their *post-hoc* effort to limit that broad power is unavailing. This Court should affirm.

An agent's actions will bind his principal if the agent has actual or apparent authority. **King v. Riveland**, 125 Wn.2d 500, 507, 886 P.2d 160 (1994); **Smith v. Hansen, Hansen & Johnson, Inc.**, 63 Wn. App. 355, 363-64, 818 P.2d 1127 (1991), *rev. denied*, 118 Wn.2d 1023 (1992). Actual and apparent authority both must flow from the principal's objective manifestations. **King**, 125 Wn.2d at 507 (citing **Smith**, 63 Wn. App. at 363 (citing Restatement (Second) of Agency § 7 cmt. b, at 29 (1958))). With actual authority, the principal's objective manifestations are made to the agent, while with apparent authority, they are made to a third person. **King**, 125 Wn.2d at 507 (citing **Smith**, 63 Wn. App. at 363).

Actual authority may be express or implied. **King**, 125 Wn.2d at 507. Express actual authority is created by the principal's manifestations to the agent, creating a reasonable belief on the agent's part that he is authorized to act on the principal's behalf. 125 Wn.2d at 507. In other words, express actual authority is the authority the principal expressly grants the agent. *Id.*

The Power of Attorney is Sung's express actual authority to use Delta Inn funds however he saw fit. In Sung's own words, the Power of Attorney gave him "full authority to do whatever [he] wanted":

I was given a full power of attorney, and this came from Korea. It's a very strong power of attorney, so – and that gave me the full authority to do whatever I wanted.

CP 994. Specifically, this “full power of attorney” permitted Sung to “take as much as [he] needed.” CP 1486. Longtime Delta Inn employee George Crews agreed (CP 1492):

Q. . . . So, in your mind, he had the authority to move money or withdrawal money as he wished; is that right?

A. According to the power of attorney, he had complete power over [Delta Inn] to do as he wished, yes.

Sung's belief that the Power of Attorney authorized him to “take as much as [he] needed” was reasonable, where Hung too acknowledged that Sung had the “discretion to use [Delta Inn] money as he wished.” *Compare* CP 1486 with CP 1495; **King**, 125 Wn.2d at 507. Sung's “discretion” included the authority to take “big reward[s]” (CP 1009):

Q. . . . Isn't it true that from the very beginning, Sung Kim had complete discretion to pay himself what he wanted to pay?

A. So what I'm saying, you know, Sung Kim worked hard and throughout the process of this building up the business, he fully actualized his potential for the business, and not only that, he increased the investment value by 10 fold of the original investment. So if he took big reward for himself on his own discretion, that was fine with me. . . .

Hung and Sung's argument that Sung lacked the authority to give Soon Delta Inn funds flies in the face of their repeated and consistent admissions that the Power of Attorney authorized Sung to take as much from Delta Inn as he needed and use it however he saw fit. CP 994, 1009, 1486, 1495. Since the Power of Attorney was first executed in 1988, Hung has not once questioned Sung's expenditures. CP 185, 1084. Even looking back, Hung still does not question many millions in gifts, loans, contributions and investments, yet claims that giving Soon a fraction of those amounts was outside Sung's otherwise unchecked authority. The trial court saw this claim for exactly what it is – contrary to Sung's decades-old express authority to take as much as he needed and spend it however he wanted. This Court should affirm.

**3. Sung had implied actual authority.**

Sung also had implied authority. Again, Sung consistently exercised his discretion to use Delta Inn funds for personal expenses totaling over \$9 million. If Hung did not expressly authorize him to do so, his failure to object (even once) tacitly sanctioned Sung's practice. This is the essence of implied actual authority. This Court should affirm.

“Implied authority is actual authority, circumstantially proved, which the principal is deemed to have actually intended the agent to possess.” **King**, 125 Wn.2d 507 (citing **Deers, Inc. v. DeRuyter**, 9 Wn. App. 240, 242, 511 P.2d 1379 (1973) (citing 3 Am. Jur. 2d Agency § 71 (1962))). If an agent is expressly authorized to perform particular services, he has the implied authority to perform those acts necessary to accomplish the authorized services. **King**, 125 Wn.2d at 507 (citing **Walker v. Pacific Mobile Homes, Inc.**, 68 Wn.2d 347, 351, 413 P.2d 3 (1966)). Implied actual authority typically arises when the agent consistently exercises a power the principal did not expressly grant, and the principal knows and does not object:

One authority states that the most usual example of implied actual authority is found in those instances where the agent has consistently exercised some power not expressly given to the agent and the principal, knowing of the same and making no objection, has tacitly sanctioned continuation of the practice.

**King**, 125 Wn.2d at 507 (citing Harold G. Reuschlein and William A. Gregory, *Agency and Partnership* § 15, at 40-41 (1979)).

Sung explained that he withdrew large amounts of money from Delta Inn accounts without prior approval from Hung and that Hung never inquired about these withdrawals:

Q. Was it your custom to ask [Hung] before that time, before you took large amounts of money out of Delta Inn?

A. No, I didn't ask.

Q. Did [Hung] ever inquire of you about other large amounts of money that you took out of the Delta Inn account?

A. No, because we are doing business together, you know.

CP 1002. Hung agreed that Sung had the "discretion" to take large cash rewards from Delta Inn. CP 1009.

Indeed, history proves that Sung had the authority to take as much from Delta Inn as he wanted and to use it as he saw fit. Hung did not protest when Sung gave large cash gifts to Sung and Soon's son, totaling \$720,000. CP 1497-1499. Hung did not raise an eyebrow when Sung lent \$1.1 million to friends or contributed \$1.3 million to political campaigns, or personally invested \$4 million. CP 253, 1497-99. He never questioned Sung's expenditures on the families' cars, boats, condo, home, and living expenses. CP 252, 908, 1497-1499.

Knowing of all these expenditures and more, and "making no objection," Hung "tacitly sanctioned continuation of [Sung's] practice." *King*, 125 Wn.2d at 507 (citing Reuschlein and Gregory, *supra* at 40-41). Objecting for the first time after-the-fact is too late.

Hung's implied actual authority binds him to Sung's acts, including taking money out and giving it to Soon. *King*, 125 Wn.2d at 507. This Court should affirm.

**4. Sung had apparent authority.**

A principal's objective manifestations to a third person support a finding of apparent authority when they "cause the one claiming apparent authority to actually, or subjectively, believe that the agent has authority to act" and the claimant's belief is objectively reasonable. *Ranger Ins. Co. v. Pierce Cnty.*, 164 Wn.2d 545, 555, 192 P.3d 886 (2008) (quoting *King*, 125 Wn.2d at 507 (citing *Smith*, 63 Wn. App. at 363)). Apparent authority may be inferred from the principal's acts, so long as the principal knew about the agent's acts at issue. *State v. French*, 88 Wn. App. 586, 595, 945 P.2d 752 (1997) (citing *State v. Parada*, 75 Wn. App. 224, 231, 877 P.2d 231 (1994) (quoting *Mauch v. Kissling*, 56 Wn. App. 312, 316, 783 P.2d 601 (1989))).

There is no question that Soon thought she and Sung could use Delta Inn funds however they saw fit. Sung and Soon used Delta Inn funds "for nearly all of the family expenses," without ever seeking Hung's permission:

[W]e, my family and I, treated Delta Inn as *our* family business. Sung did not take a large salary, but we used the

Delta Inn bank account to draw money for nearly *all* of the family's expenses. These expenses included our home, automobiles, clothes, food, and other sundry items. We never asked permission to use the Delta Inn funds from anybody because we didn't need to.

CP 908 (emphasis original). Sung did not take a large salary from Delta Inn, but "regularly" used Delta Inn funds to pay all family expenses (CP 252):

Sung and I treated [Delta Inn] as our own. Sung did not take a large salary, but we used the Delta Inn bank account to draw money whenever we needed any. We never had to account to anyone else for this, as it was our money.

As the trial court put it, Sung and Soon "enjoy[ed] all the benefits of ownership, such as millions of dollars . . . ." CP 1640, FF 46.

Soon's belief that she and Sung had unfettered access to Delta Inn funds was "objectively reasonable." *Ranger*, 164 Wn.2d at 555. Soon was aware of Sung's Power of Attorney allowing him to use Delta in funds as he saw fit. CP 1295; *supra*, Argument § A 2. Sung and Soon treated Delta Inn funds as their personal funds for decades, paying all family expenses including houses, cars, boats, and sundries, making large cash gifts, political donations, and investments, and loaning large sums to personal friends. *Supra*, Statement of the Case §§ B & C. Before the payment at issue, the record is devoid of even one instance where Sung and Soon's use of Delta Inn funds was limited in any way.

Hung's knowledge of these expenditures and his failure to object creates, at a minimum, Sung's apparent authority to use Delta Inn funds for personal expenses. *French*, 88 Wn. App. at 595. Far from objecting, Hung agrees that Sung had broad authority to use Delta Inn funds as he saw fit, including taking large cash rewards. CP 1009, 1456. Hung does not challenge the trial court's finding that he gave Sung and Soon "significant leeway" to use Delta Inn funds for personal expenses. BA 3; CP 1638, FF 40.

Sung and Hung's principal argument on this point is that Soon reasonably should have doubted Sung's authority and inquired further. BA 22-23, 24-25. They claim that this transaction was "private and intimate," that it plainly affected Sung's personal interest, and that Hung "stood to gain nothing." BA 23-25. The decades-old history of using Delta Inn funds to cover all personal expenses plainly contradicts this argument. CP 252, 908.

This transaction was "personal" to Sung and Soon, but no more so than giving money to children, loaning money to friends, donating money to campaigns, or investing money for personal gain. BA 25; *supra*, Statement of the Case §§ B & C. Hung did not directly gain from those transactions either, but gained much from Sung and Soon's operation of Delta Inn. He allowed Sung and

Soon to take such large cash rewards because they had made Delta Inn so profitable. BA 25; *supra*, Statement of the Case § E. Sung and Soon never sought Hung's permission to take many millions of dollars – Soon had no reason to do so on this one occasion. *Supra*, Statement of the Case § E.

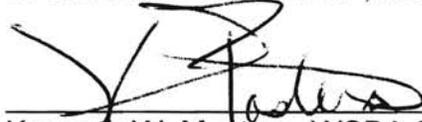
In short, Soon's belief that Hung authorized the transaction at issue is entirely reasonable given Sung's unfettered discretion to use Delta Inn funds as he saw fit. Hung is bound, as he was well aware of the decades-old history of spending, but never objected until now.

### **CONCLUSION**

History proves that Hung authorized Sung to use Delta Inn funds however he wanted, including to make over \$9 million in personal expenditures in the past 10 years. Hung and Sung's claim that this until-now unchecked authority is limited is unavailing. This Court should affirm.

RESPECTFULLY SUBMITTED this <sup>th</sup> 12 day of March,  
2013.

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**CERTIFICATE OF SERVICE BY MAIL**

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 12<sup>th</sup> day of March, 2013, to the following counsel of record at the following addresses:

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