

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

ELEANOR AHERN,

Appellant,

vs.

BROWNSTEIN HYATT FARBER
SCHRECK, LLP,

Respondent.

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District Court Case No.:
P-09-066425-T

Appeal from the Eighth Judicial
District Court, The Honorable Gloria
Sturman Presiding

RESPONDENT'S ANSWERING BRIEF

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SUPREME COURT OF NEVADA
NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to Nevada Rule of Appellate Procedure 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made so that the judges of this court may evaluate possible disqualification or recusal:

1. There are no corporations or entities subject to disclosure; and
2. The following law firms have represented Respondent:
 - (a) Brownstein Hyatt Farber Schreck, LLP

Dated this 22nd day of December, 2017.

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TABLE OF CONTENTS

I.	<u>JURISDICTIONAL STATEMENT</u>	1
II.	<u>ROUTING STATEMENT</u>	1
III.	<u>INTRODUCTION</u>	2
IV.	<u>STATEMENT OF THE ISSUES PRESENTED FOR REVIEW</u>	3
V.	<u>STATEMENT OF THE CASE/FACTS</u>	3
A.	<u>The Parties Execute the Fee Agreement</u>	3
B.	<u>BHFS Zealously Represents Ms. Ahern, But Is Forced To Withdraw As Counsel Because Of A Fundamental Disagreement With Ms. Ahern</u>	5
C.	<u>Ms. Ahern Fails To Pay Her Outstanding Invoices to BHFS, And BHFS Properly Serves Her With A Notice of Attorneys' Lien</u>	6
D.	<u>BHFS Is Forced To File A Motion To Adjudicate Attorney's Lien, And The Only Opposition Thereto Was Filed By The Successor Trustee And Did Not Challenge The Reasonableness Of The Fees And Costs Sought By BHFS</u>	7
E.	<u>The Court Holds A Hearing On BHFS' Motion to Adjudicate, Grants The Same, And Enters Judgment In Favor Of BHFS</u>	9
F.	<u>Ms. Ahern Appeals The Order And Judgment, But Fails To Articulate Any Grounds For This Court To Reverse The Order</u>	12
VI.	<u>SUMMARY OF ARGUMENT</u>	14
VII.	<u>STANDARD OF REVIEW</u>	14
VIII.	<u>ARGUMENT</u>	15

A.	<u>This District Court Had Jurisdiction To Adjudicate BHFS’ Lien Rights</u>	15
1.	<i>Relevant Law</i>	15
2.	<i>The District Court properly exercised its jurisdiction to adjudicate BHFS’ rights relating to its Lien</i>	17
B.	<u>BHFS Satisfied The Procedural Requirements Enumerated By NRS 18.015</u>	18
1.	<i>There are four statutory requirements that must be satisfied</i>	18
2.	<i>BHFS satisfied each of the requisite statutory requirements</i>	20
C.	<u>The District Court Properly Imposed The Attorney’s Lien On Ms. Ahern’s Beneficiary Interest In The Trust To Ensure That BHFS Is Timely Paid For Its Outstanding Invoices</u>	20
D.	<u>The Fees BHFS Sought Were Reasonable</u>	21
1.	<i>This Court has articulated four factors that must be satisfied to demonstrate reasonableness of attorneys’ fees</i>	21
2.	<i>BHFS satisfied each of the Brunzell factors</i>	22
IX.	<u>CONCLUSION</u>	26

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Argentena Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish</i> , 125 Nev. 527, 216 P.3d 779 (2009).....	16, 17, 18
<i>Brunzell v. Golden Gate Nat’l Bank</i> , 85 Nev. 345, 455 P.2d 31 (1969).....	<i>passim</i>
<i>Cadle Co. v. Woods & Erickson, LLP</i> , 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015).....	12
<i>C.H.A. Venture v. G. C. Wallace Consulting</i> , 106 Nev. 381, 383, 794 P.2d 707, 708 (1990).....	16
<i>In re Davis’ Estate</i> , 10 Misc. 2d 347, 169 N.Y.S.2d 983 (N.Y. Sur. Ct. 1957)	17
<i>Earl v. Las Vegas Auto Parts</i> , 73 Nev. 58, 63, 307 P.2d 781, 783 (1957).....	16
<i>Frantz v. Johnson</i> , 116 Nev. 455, 999 P.2d 351 (2000).....	14
<i>Johnston v. Stephens</i> , 206 Ky. 83, 266 S.W. 881 (Ky. 1924).....	17
<i>Leventhal v. Black & LoBello</i> , 305 P.3d 907 (Nev. 2013).....	19
<i>Nelson v. Peckham Plaza Partnerships</i> , 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994)	14
<i>Novak v. Fay</i> , 236 Cal. App. 4th 329 (Cal. Ct. App. 2015).....	21

<i>Rhoads v. Sommer</i> , 401 Md. 131, 931 A.2d 508 (Md. 2007).....	17
--	----

<i>Shuette v. Beazer Homes Holdings Corp.</i> 124 P.3d 530 (Nev. 2005).....	21
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Statutes

NRS 18.015	<i>passim</i>
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I. JURISDICTIONAL STATEMENT

This is an appeal from the District Court's final Decision and Order Re: Brownstein Hyatt Farber Schreck, LLP's ("BHFS") Motion to Adjudicate Attorney's Lien entered on February 27, 2017, and the Judgment entered in favor of BHFS and against Appellant for attorneys' fees entered on March 17, 2017. Pursuant to Nevada Rule of Appellate Procedure 3A(b)(1), "[a]n appeal may be taken from the following judgments and orders of a district court in a civil action: A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." As such, this Court has jurisdiction to hear this appeal.

II. ROUTING STATEMENT

Pursuant to NRAP 17(a)(1), this matter should be heard and decided by the Supreme Court because it is one invoking the original jurisdiction of the Supreme Court (NRAP 3A(b)(1)), and is not a case that is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b).

III. INTRODUCTION

Upon a review of the brief filed by Ms. Ahern, it is clear that she takes issue with certain actions of the Trustee, Fred Waid, Esq. ("Successor Trustee"), and that she is unhappy with certain substantive decisions made in the underlying case relating to the trust at issue therein. (Doc. No. 17-40412). What is not entirely clear, however, is her basis for appealing the District Court's decision to grant BHFS its attorneys' fees, to adjudicate the lien based thereon, and to enter judgment in favor of BHFS in the amount of its lien. (*See id.*).

When the irrelevant "facts" and arguments are stripped away, all that is left is Ms. Ahern's argument that she should not be held responsible for attorneys' fees incurred *after* BHFS withdrew from representation. (*See id.*). A simple review of the documents Ms. Ahern submitted in her Appendix evidence the fallacy in this argument – BHFS moved to withdraw on November 14, 2016, and the final invoice that was submitted to the Court in support of BHFS' request for an adjudication of its lien and which provided the basis for the amount of the Judgment was dated November 14, 2016. Logically, therefore, Ms. Ahern is not being held responsible for any fees incurred *after* BHFS withdrew as her counsel.

Given Ms. Ahern's *pro se* status and the fact that her pleadings are held to a lesser standard, BHFS, in an abundance of caution, has addressed herein the

District Court's ruling in its entirety. As demonstrated below, the ruling was supported by ample legal authority, BHFS satisfied all of the requisite statutory factors, and the fees sought and awarded were reasonable. Thus, there is no justification for Ms. Ahern's request that this Court take any action in this regard. The District Court's ruling should be affirmed.

IV. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the District Court engaged in a manifest abuse of discretion when it granted BHFS' Motion to Adjudicate Attorney's Lien ("Motion to Adjudicate") after finding that BHFS satisfied all requisite factors enumerated by this Court and that the attorneys' fees sought were reasonable in light of the satisfaction of those factors.

V. STATEMENT OF THE CASE/FACTS¹

A. The Parties Execute The Fee Agreement.

On April 20, 2015, Ms. Ahern and BHFS (the "Parties") entered into a fee agreement, whereby BHFS agreed to act as legal counsel for Ms. Ahern in connection with the underlying matter and such other matters that Ms. Ahern may request and BHFS agrees to undertake ("Fee Agreement"). (AR 8588-90).

¹ While a large majority of Ms. Ahern's facts focus on the merits of the underlying matter, the Successor Trustee's conduct in the matter, and her position on whether certain actions taken by *others* were proper, because the scope of this appeal is limited to BHFS' attorneys' fees and costs, BHFS will not belabor those issues herein.

BHFS represented in the Fee Agreement that (i) fees for its services are rendered on an hourly basis, (ii) that Mr. Lenhard's hourly billing rate is \$595.00, (iii) that Tammy Beatty Peterson's hourly billing rate is \$545.00, (iv) that BHFS attorneys' hourly rates range from \$240.00 to \$995.00, and (v) that assistants and paralegals bill at an hourly rate of \$90.00 to \$275.00. (*See id.*) Ms. Ahern acknowledged and agreed to the foregoing. (*See id.*)

Further, BHFS represented, and Ms. Ahern acknowledged and agreed, that BHFS would charge for certain out-of-pocket costs, which are "covered by an administrative fee, currently equal to 2.5% of the legal fees charged." (*See id.*) The Parties also agreed in the Fee Agreement that Ms. Ahern would be billed for other fees, such as filings fees, service of process fees, etc., and that these would be itemized and billed separately. (*See id.*)

Additionally, the Fee Agreement detailed that BHFS would bill on a monthly basis, that "[p]ayment is due within 30 days of receipt of a statement," and that the failure to timely submit payment could result in a late fee at 18% per annum. (*See id.*) Moreover, Ms. Ahern agreed to pay a retainer and to supply further advances as needed at BHFS' request. (*See id.*) As is particularly relevant to the appeal, BHFS informed Ms. Ahern that there are certain circumstances in which it may be required or permitted to withdraw from

representation of Ms. Ahern. (*See id.*) There were no modifications to the foregoing terms.

B. BHFS Zealously Represents Ms. Ahern, But Is Forced To Withdraw As Counsel Because Of A Fundamental Disagreement With Ms. Ahern.

After Ms. Ahern retained BHFS to represent her, the attorneys assigned to the matter zealously advocated on Ms. Ahern's behalf, including, but not limited to, defeating a motion to hold her in contempt, a motion to forfeit her interest in the trust and a motion to impose punitive damages, and appearing in Court on numerous occasions concerning discovery related issues and issues regarding the protection of her attorney client privilege. (AR 8572).

However, due to a fundamental disagreement between Ms. Ahern and counsel regarding the proper course of action to take in this matter, on November 14, 2016, BHFS filed a Motion to Withdraw as Counsel of Record on Order Shortening Time ("Withdrawal Motion"). (AR 8569-8608). Contrary to Ms. Ahern's characterization, she was never told to sign any document without having the benefit of reading it; rather, Ms. Ahern refused to take the advice of BHFS, which resulted in a fundamental disagreement described in the Withdrawal Motion, leading to counsel's withdrawal.

The Court heard and granted the Withdrawal Motion at the November 23, 2016, hearing on the matter. (AR 8563). The Order granting the Withdrawal Motion was entered on December 13, 2016. (AR 8563-64).

C. Ms. Ahern Fails To Pay Her Outstanding Invoices To BHFS, And BHFS Properly Serves Her With A Notice Of Attorneys' Lien.

As of November 14, 2016, the total amount of outstanding fees and costs Ms. Ahern owed BHFS was **\$311,784.12** ("Outstanding Invoices"). (AR 8592). BHFS attempted to collect this amount from Ms. Ahern by sending her monthly invoices in accordance with the Fee Agreement, but such efforts were fruitless. (AR 8577). Therefore, BHFS was left with no choice but to serve Ms. Ahern and all parties to this action with a Notice of Attorneys' Lien for **\$311,784.12** ("Lien"). (AR 8594-8600).

Ms. Ahern, however, refused to accept the Lien via certified mail. (AR 8604-05). Ms. Ahern was, however, undoubtedly aware of the Lien. To begin, at the hearing on the Withdrawal Motion, counsel who made a special appearance for the purpose of determining if he would agree to represent Ms. Ahern acknowledged that he had reviewed a copy of the Lien. (AR 8547). Presumably, Ms. Ahern provided him with a copy of the same. Additionally, in an abundance of caution, BHFS emailed Ms. Ahern a copy of the Lien on November 14, 2016, and on November 22, 2016, Ms. Ahern responded to the

email asking for the monthly billing entries supporting the amount of the Lien. (AR 8607-08). Thereafter, BHFS sent Ms. Ahern a copy of all of the invoices in the matter. (*See id*). Despite being in receipt of the Lien and seeking billing entries relating to the outstanding amount, Ms. Ahern failed to satisfy the Lien. (AR 8573).

D. BHFS Is Forced To File A Motion To Adjudicate Attorney's Lien, And The Only Opposition Thereto Was Filed By The Successor Trustee And Did Not Challenge The Reasonableness Of The Fees And Costs Sought By BHFS.

Because Ms. Ahern failed to satisfy the Lien and refused to pay the attorney's fees due and owing to BHFS, it was forced to file the Motion to Adjudicate on January 18, 2017. (AR 8569-8608). In the Motion to Adjudicate, BHFS walked the Court through the Fee Agreement between the parties, BHFS' representation of Ms. Ahern, and Ms. Ahern's failure to pay her Outstanding Invoices. (AR 8576-78).

BHFS also provided argument as to (i) the District Court's jurisdiction to adjudicate BHFS' lien rights, (ii) how BHFS satisfied the procedural requirements under NRS 18.015, (iii) the Court's imposition of the Lien on Ms. Ahern's beneficial interest in the Trust to ensure that BHFS is timely paid for its Outstanding Invoices, and (iv) the reasonableness of BHFS' fees. (AR 8578-8583). With regard to the reasonableness of BHFS' fees, BHFS outlined how it

satisfied each of the factors articulated in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969). (AR 8581-83).

This was supported by the Affidavit of Kirk Lenhard, Esq., wherein he testified as to the (a) qualities of BHFS as an advocate, (b) the ability, training, education, experience, professional standing and skill of the attorneys working on the matter, (c) the character of the work performed on Ms. Ahern's behalf, (c) the work actually performed on this matter, including the number of hours, billing rates, costs incurred, etc.², and (d) the result of the work performed by BHFS on behalf of Ms. Ahern – BHFS defeating a motion to hold Ms. Ahern in contempt of Court. (AR 8581-83). BHFS attached to the Motion to Adjudicate for the Court's review, the BHFS Fee Agreement, the BHFS Final Invoice, the Notice of Attorneys' Lien, the Certified Mail Returned to Sender, and a November 14, 2016, Email Chain between BHFS' office and Ms. Ahern. (AR 8586-8608).

On February 3, 2017, the Successor Trustee, through counsel, filed a Response to Motion to Adjudicate Attorneys Lien ("Response"), arguing that the Lien cannot attach to Ms. Ahern's beneficial interest in the Trust because (i) BHFS has no authority for such an attachment, and (ii) the attachment would

² BHFS offered to submit billing records *in camera* for the Court's review if the Court requested the same. (AR 8583).

violate the spendthrift provision of the Trust. (AR 8621-8625). Notably, the Response did not in any way challenge the reasonableness of the fees sought by BHFS, the satisfaction of any of the *Brunzell* factors, or the District Court's jurisdiction to adjudicate the Lien. (*See id.*)

BHFS filed a Reply In Support Of Motion to Adjudicate Attorneys' Lien on February 14, 2017, wherein in it addressed the limited issues raised in the Response and argued that the request sought in the Motion to Adjudicate was proper and should be granted. (AR 8645-50).

E. The Court Holds A Hearing On BHFS' Motion To Adjudicate, Grants The Same, And Enters Judgment In Favor Of BHFS.

The Court held a hearing on the Motion to Adjudicate on February 22, 2017. (AR 8662). The "primary objection" raised during the hearing by the Successor Trustee was to BHFS' request that the Lien attach to the Trust or Ms. Ahern's beneficial interest, on the grounds that (i) Ms. Ahern had not agreed to her fees being paid from her beneficial interest, (ii) an assignment of her interest is prohibited by the spendthrift provision, and (iii) Ms. Ahern's share was suspended and could not be assigned. (*See id.*)

On February 23, 2017, the District Court issued its Decision and Order Re: Brownstein Hyatt Farber Schreck, LLP's Motion to Adjudicate Attorney's Lien ("Order"). (AR 8662-65). After outlining the substantive facts

surrounding the trust dispute, the District Court addressed the merits of BHFS' Motion to Adjudicate. (AR 8663-65). Specifically, the District Court held that BHFS properly perfected its Lien, reasoning that, contrary to the Successor Trustee's argument that the Lien cannot attach because no proceeds were "recovered" by Ms. Ahern, "[t]he requirement that an attorney lien is enforced against an "affirmative recovery" is a generalized requirement so that the lien may attach to something of value," and "[h]ere, the fees charged by BHFS arise from their defense of Eleanor in defeating a motion to hold her in contempt, a motion to forfeit her interest in the Trust, and a motion to impose punitive damages." (AR 8663).

The Court further held that because the "litigation continued as to the amounts to be charged against Eleanor for breach of fiduciary duty, and enforcement of the no-contest clause against her beneficial interest," the lien may attach to the sums she is affirmatively defending and/or claiming." (AR 8664).

With regard to the Successor Trustee's argument that the attachment would violate the spendthrift provision, the Court held that "[n]o distinction is made in the cases interpreting NRS 18.015 which would suggest that a party who is affirmatively defending their right to continue to receive funds from a Trust would have a defense to paying her attorneys by virtue of the fact that the

Trust contains a spendthrift clause," and that to find otherwise would put attorneys who represent clients in trust matters at a disadvantage. (*See id.*)

The District Court also addressed how BHFS satisfied each of the *Brunzell* factors:

The Court has considered the BHFS lien claim in light of the factors identified in *Brunzell Golden Gate National Bank*, 85 Nev. 345, 455 P. 2d 312 (1969) factors and finds that the rates charged are reasonable in the community given (1) the qualities of the advocate(s) who have expertise, experience, and specialization in the field of commercial and complex litigation; (2) the character of the work which was complex and difficult, important to the outcome of the case, requiring significant time and skill and the need for counsel to familiarize themselves with the history of the case within a relatively shortened timeframe; (3) the work performed required skill time and attention; and (4) the successful outcome defeating a motion to hold her in contempt, a motion to forfeit her interest in the trust, and a motion to impose punitive damages, until such time as the relationship broke down over Eleanor's refusal to follow the advice of BHFS.

(*See id.*)

In addition to finding that all of the requisite factors are satisfied, the District Court also found that the "fee and cost request accurately reflects the amounts described in the retainer agreement, which was signed by Eleanor in her individual capacity," and that the rates or amount billed were not challenged by any party. (*See id.*) Based on the *Brunzell* factors, the Retainer Agreement, and the fact that the Successor Trustee expressly stated that there was no

opposition to the amount of fees sought, the District Court held that the fees requested were reasonable. (AR 8664-65). The District Court declined, however, to find that the costs sought by BHFS were specific enough under *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015). (AR 8665). As such, the Court granted the Motion to Adjudicate as to BHFS' fees, and sought additional information on BHFS' costs. (*See id.*) Thereafter, on March 17, 2017, judgment was entered in favor of BHFS and against Ms. Ahern in the amount of \$311,320.72 ("Judgment"). (AR 9008).

F. Ms. Ahern Appeals The Order And Judgment, But Fails To Articulate Any Grounds For This Court To Reverse The Order.

Following entry of the Judgment in favor of BHFS, Ms. Ahern filed her Notice of Appeal. (Doc. No. 17-13921). After engaging in motion practice, Ms. Ahern filed her Informal Brief on November 22, 2017. (Doc. No. 17-40412). Although the Informal Brief indicates that BHFS is the respondent, a large majority of the facts and arguments pertain to other parties, including the Successor Trustee and Ms. Ahern's family members, and do not in any way relate to BHFS. (*See id.*).

The only purported factual allegations that involve BHFS are (i) that the Successor Trustee didn't pay BHFS until after it had withdrawn from

representation of Ms. Ahern,³ (ii) she was told by Mr. Lenhard that she had to sign the settlement agreement, which was not even written yet, without actually reading it, (iii) Mr. Lenhard threatened to withdraw if she did not sign the settlement agreement, and (iv) that Mr. Lenhard "told Fred he knows Fred is going to try to separate me from my client," and that not getting paid for all of 2015 "certainly caused Kirk to withdraw." (*See id*). As discussed herein, none of these "facts" are accurate.

Further, the only request for relief that BHFS can glean from the Informal Brief relating to the Motion to Adjudicate is that that Ms. Ahern should not have to pay attorneys' fees incurred after BHFS withdrew from representation. (*See id*). Ms. Ahern also makes a request to the Court for a "demand" to BHFS to provide Ms. Ahern with a full copy of her file, and asserts that she was never provided with the same.⁴ (*See id*).

In the interest of brevity, BHFS will not address herein those factual allegations and arguments that do not relate to its Motion to Adjudicate or Judgment, as they are completely irrelevant to the issue before this Court. As discussed below, the issue before this Court – whether the District court abused its discretion in granting BHFS' Motion to Adjudicate and entering Judgment in

³ The Successor Trustee never paid BHFS' fees and costs.

⁴ Ms. Ahern was provided with her entire case file several times by BHFS.

its favor – can be answered succinctly: No. As such, the Court should not disturb the District Court's findings in this regard.

VI. SUMMARY OF ARGUMENT

The District Court's Order granting BHFS' Motion to Adjudicate was well-reasoned and supported by the record. Not only did the Court properly find that the Lien can attach to Ms. Ahern's beneficial interest in the Trust, but it appropriately analyzed each of the *Brunzell* factors and found that BHFS' fees were reasonable in light of the same. As such, there is no basis in law or fact to disturb this Order, and Ms. Ahern has failed to articulate any such basis. The Order and Judgment should, therefore, be affirmed in their entirety.

VII. STANDARD OF REVIEW

"A district court's award of attorney fees will not be disturbed on appeal absent a manifest abuse of discretion." *Frantz v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351, 361 (2000) (citing *Nelson v. Peckham Plaza Partnerships*, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994)).

Here, Ms. Ahern appears to be challenging the reasonableness of BHFS' fees inasmuch as she contends that she should not be responsible to pay fees incurred after BHFS withdrew as her counsel. As such, the District Court's Order should only be disturbed if this Court finds that the District Court manifestly abused its discretion, which it did not.

VIII. ARGUMENT

While it is unclear from Ms. Ahern's Informal Brief what her grounds are for challenging the District Court's Judgment and attorney's fee award, she appears to be arguing that the Court should reverse the District Court's Order because she should not be required to pay any fees to BHFS for services rendered after BHFS withdrew from representation. (Doc. No. 17-40412).

While the dates of the Withdrawal Motion (November 14, 2016) and the Final Invoice (November 14, 2016) speak for themselves and evidence that Ms. Ahern is not, in fact, being asked to pay for any fees that were incurred *after* BHFS withdrew from representation, in an abundance of caution, BHFS addresses herein the reasonableness of its fees, in their entirety, and the fact that the District Court did not abuse its discretion in issuing the Order and Judgment in this matter.

A. This District Court Had Jurisdiction To Adjudicate BHFS's Lien Rights.

1. Relevant Law.

Nevada recognizes two types of liens: (i) "a special or charging lien on the judgment or settlement [that] the attorney has obtained for the client," which is created by statute, and (ii) "a general or retaining lien, which allows a discharged attorney to withhold the client's file and other property until the court, at the request or consent of the client, adjudicates the client's rights and

obligations with respect to the lien," which is established at common law. *Argentina Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 532, 216 P.3d 779, 782 (2009) (citation omitted). Here, BHFS sought adjudication of a special or charging lien.

Before the District Court can adjudicate such a lien, however, it must establish jurisdiction over the parties and the subject matter. That is, this Court has held that "[a] district court is empowered to render a judgment either for or against a person or entity only if it has jurisdiction over the parties and the subject matter." *Id.* at 532-33 (quoting *C.H.A. Venture v. G. C. Wallace Consulting*, 106 Nev. 381, 383, 794 P.2d 707, 708 (1990)).

As is relevant here, "[t]he district court's in personam jurisdiction to adjudicate a fee dispute based on a charging lien is derived from the fact that the client has already submitted himself or herself to the court's jurisdiction and the court has personal jurisdiction over the attorney due to the attorney's appearance as the client's counsel of record." *Argentina Consol. Mining Co.*, 125 Nev. at 533 (citing *Earl v. Las Vegas Auto Parts*, 73 Nev. 58, 63, 307 P.2d 781, 783 (1957)).

With regard to subject matter jurisdiction, "the court has in rem jurisdiction to resolve a fee dispute between an attorney and client, which arises from a charging lien, because the attorney's fee 'is recovered on account of the

suit or other action." *Argentena Consol. Mining Co.*, 125 Nev. at 533 (citing NRS 18.015(3)); *see also e.g., Johnston v. Stephens*, 206 Ky. 83, 266 S.W. 881, 882 (Ky. 1924) (stating that "the judgment [with respect to a charging lien] in the absence of pleadings, summons, or entrance of appearance would be in rem only"); *Rhoads v. Sommer*, 401 Md. 131, 931 A.2d 508, 523 (Md. 2007) (concluding that proceedings to enforce charging liens are proceedings in rem); *In re Davis' Estate*, 10 Misc. 2d 347, 169 N.Y.S.2d 983, 989 (N.Y. Sur. Ct. 1957) (same). Consequently, the Court "acquires incidental jurisdiction over the parties and the subject matter." *Argentena Consol. Mining Co.*, 125 Nev. at 533 (citing *Earl*, 73 Nev. at 63, 307 P.2d at 783.)

2. *The District Court properly exercised its jurisdiction to adjudicate BHFS' rights relating to its Lien.*

Here, the District Court had both subject matter and personal jurisdiction. First, in personam jurisdiction existed because Ms. Ahern "already submitted...herself to the court's jurisdiction" and attorneys from BHFS appeared in this action as Ms. Ahern's counsel of record. (*See generally*, Appellant's Appendix); *see also Argentena Consol. Mining Co.*, 125 Nev. at 533. Second, the District Court had subject matter jurisdiction to resolve this dispute regarding attorneys' fees because the fees that are the basis for the Lien are recovered on account of the underlying action. (AR 8569-84); *see also*

Argentina Consol. Mining Co., 125 Nev. at 533. Thus, the District Court had jurisdiction to adjudicate the Lien.

B. BHFS Satisfied The Procedural Requirements Enumerated By NRS 18.015.

1. There are four statutory requirements that must be satisfied.

Because the District Court had jurisdiction over the Lien, the next step is to determine whether BHFS complied with the statutory requirements. Nevada Revised Statute 18.015 provides, in relevant part, as follows:

1. An attorney at law shall have a lien:
 - (a) Upon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in the attorney's hands by a client for suit or collection, or upon which a suit or other action has been instituted.
 - (b) In any civil action, upon any file or other property properly left in the possession of the attorney by a client.
2. A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.
3. An attorney perfects a lien described in subsection 1 by serving notice in writing, in person or by certified mail, return receipt requested, upon his or her client and, if applicable, upon the party against whom the client has a cause of action, claiming the lien and stating the amount of the lien.
4. A lien pursuant to:
 - (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action; and
 - ...
6. On motion filed by an attorney having a lien under this section, the attorney's client or any party who has been served with notice of the lien, the court shall, after 5 days' notice to all

interested parties, adjudicate the rights of the attorney, client or other parties and enforce the lien.

NRS 18.015(1)-(4) & (6).

This Court has viewed NRS 18.015 as mandating that in order to obtain an attorneys' lien, the following four steps must be taken: (i) there must be a "claim, demand or cause of action, . . . which has been placed in the attorney's hands by a client for suit or collection, or upon which a suit or other action has been instituted," and "[t]he lien is in the amount of the agreed-upon fee or, if none has been agreed upon, a reasonable amount for the services rendered "on account of the suit, claim, demand or action," (ii) "the attorney must perfect the lien by serving "notice in writing, in person or by certified mail, return receipt requested, upon his or her client and upon the party against whom the client has a cause of action, claiming the lien and stating the interest which the attorney has in any cause of action," (iii) once perfected, the "lien attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action, from the time of service of the notices required by this section," and (iv) "the attorney must timely file and properly serve a motion to adjudicate the lien." *Leventhal v. Black & LoBello*, 305 P.3d 907, 909 (Nev. 2013).

2. *BHFS satisfied each of the requisite statutory requirements.*

Here, each factor was satisfied. First, the Fee Agreement expressly provides for BHFS to render services for Ms. Ahern in connection with the underlying matter and such other matters that Ms. Ahern may request and BHFS agrees to undertake. (AR 8588-90). Second, BHFS properly perfected its Lien by serving notice of the Lien on Ms. Ahern and all other parties in this action. (AR 8594-8600, 8604-05).

Third, by serving the notices and perfecting the Lien, the Lien against Ms. Ahern attached to any verdict, judgment or decree, any money or property that is recovered, or the corpus of the Trust that is the subject of this action and/or Ms. Ahern's beneficial interest therein that would satisfy the outstanding invoices that Ms. Ahern is required to pay under the Fee Agreement. Fourth, BHFS filed its Motion to Adjudicate asking the Court to adjudicate the Lien in accordance with NRS 18.015(6). (AR 8569-8608). Thus, BHFS satisfied the requisite steps for the Court to adjudicate its rights and enforce the Lien.

C. The District Court Properly Imposed The Attorney's Lien On Ms. Ahern's Beneficiary Interest In The Trust To Ensure That BHFS Is Timely Paid For Its Outstanding Invoices.

Not only did BHFS satisfy the statutory requirements for obtaining an attorneys' lien, thus providing the District Court with the ability to adjudicate BHFS' rights and to enforce the Lien, but the District Court had the authority to

attach the Lien to Ms. Ahern's beneficial interest in the Trust and to order that distributions to Ms. Ahern made in the future be directly paid to BHFS to satisfy its Lien. *See e.g., Novak v. Fay*, 236 Cal. App. 4th 329, 339 (Cal. Ct. App. 2015) (adjudicating an attorney's fee lien upon assets which were distributed from a trust). As such, the District Court properly found that the Lien could attach to the Trust.

D. The Fees BHFS Sought Were Reasonable.

1. This Court has articulated four factors that must be satisfied to demonstrate reasonableness of attorneys' fees.

In addition to meeting the requirements for adjudication of the Lien, BHFS established that its fees were reasonable. As this Court is aware, the reasonableness of BHFS's request for fees and costs is measured by the factors set forth in *Brunzell*, 85 Nev. at 455 P.2d at 33. *See Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 549 (Nev. 2005). Specifically, the District Court is to address the following four factors:

- (1) Qualities of the advocate: ability, training, education, experience, professional standing and skill;
- (2) The character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the possibility imposed and the prominence and character of the parties where they affect the importance of the litigation;

- (3) The work actually performed by the lawyer: the skill, time and attention given to the work; and
- (4) The result: whether the attorney was successful and what benefits were derived.

Brunzell, 85 Nev. at 349, 455 P.2d at 33. This Court has appropriately directed that “good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight.” *Id.* at 349-50. As demonstrated in the Motion to Adjudicate and found by the District Court, BHFS' fees and costs which provide the basis of the Lien were reasonable.

2. *BHFS satisfied each of the Brunzell factors.*

In the Motion to Adjudicate, Mr. Lenhard submitted an affidavit supporting the satisfaction of the *Brunzell* factors. (AR 8572-75). Therein, he testified that the qualities of Brownstein as an advocate are well-known in the community – “By using a team approach to the practice of law, clients benefit from the team experience, training, and knowledge of each member of the firm. This approach was used by BHFS from the moment it was retained.” (*See id.*) Mr. Lenhard also provided the Court with a detailed analysis of the ability, training, education, experience, professional standing and skill of counsel who worked on Ms. Ahern's case:

10. The work in this matter was primarily performed by me, Tammy Beatty Peterson, Esq. ("Mrs. Peterson") and Benjamin Reitz, Esq. ("Mr. Reitz").

11. I have been practicing law since 1975. My practice focuses on commercial and complex litigation, and I have served many high profile clients, including Clark County, McCarran Airport, Republic Services, the Las Vegas Metropolitan Police Department and the City of Henderson. As an experienced trial attorney, I have taken over 175 trials to verdict, and have argued before all courts in the state of Nevada, as well as the Ninth Circuit Court of Appeals. Additionally, I was selected to be a fellow by the American College of Trial Lawyers, an organization comprised only of those lawyers demonstrating unparalleled skill in their practice. I have also been a perennial selection in the Top 75 Mountain State Super Lawyers. My hourly rate is \$595.00.

12. Mrs. Peterson's practice focuses on commercial and complex litigation. Representing both individuals and large public and private corporations, her diverse practice encompasses business torts, partnership breakups, breach of contract disputes, class actions and intellectual property disputes. An experienced trial attorney, Tammy has taken over 30 jury trials to verdict, and has successfully argued before all courts in the state of Nevada. Additionally, she has been recognized in *Benchmark Litigation*, the *Mountain States SuperLawyers* and is a fellow with the Litigation Counsel of America. Mrs. Peterson's hourly rate is \$545.00.

13. Mr. Reitz focuses his practice on commercial litigation, representing plaintiffs and defendants in multi-party business disputes in state and federal court, including matters involving real estate, contracts, creditors' rights, fraud, fiduciary duties, deceptive trade practices, attorney general inquiries, and appeals in a wide range of industries. He has experience arguing motions and taking depositions, and in seeking the best resolution for his clients both in and out of court. Prior to joining BHFS, Ben worked as an intern for the Honorable Kristina Pickering (then Chief Justice of the Nevada Supreme Court), for the general counsel's office of The Cosmopolitan of Las Vegas, and as a consultant in New York. Mr.

Reitz' hourly rate is \$280.00.

(AR 8573-74). As such, the first factor was satisfied and the District Court did not abuse its discretion in finding the same.

The second factor – the difficulty, intricacy, importance, and the time and skill required in its work – was also satisfied and supported by Mr. Lenhard's Affidavit. As demonstrated in his Affidavit and the Motion to Adjudicate, BHFS researched complex legal issues, drafted numerous pleadings, engaged in voluminous discovery, ultimately defeated a motion to hold Ms. Ahern in contempt, a motion to forfeit her interest in the trust and a motion to impose punitive damages, and appeared in Court on numerous occasions concerning discovery related issues and issues regarding the protection of her attorney client privilege. (AR 8569-8583). This factor, therefore, supports a finding of the reasonableness of BHFS' attorneys' fees. The District Court's Order finding the same was, therefore, not an abuse of discretion.

With regard to the third factor, both the Affidavit of Mr. Lenhard and the Motion to Adjudicate set forth (i) that the total number of hours expended were 715.10 and the outstanding costs incurred in this case total \$463.40, which were reasonable, and in fact necessary, in light of the nature of the case and the aggressive litigation tactics of the parties, (ii) that the hourly rates of the BHFS' attorneys are well within the range of prevailing market rates in the Las Vegas

area, and (iii) that the costs represented therein were actually incurred by BHFS on behalf of Ms. Ahern in this matter, and the invoices for fees and costs were actually billed to Ms. Ahern in this matter. (*See id*). The third factor was, therefore, satisfied. Thus, there was no abuse of discretion on the part of the District Court.

Fourth and finally, the result of the work performed by BHFS on behalf of Ms. Ahern was self-evident. That is, BHFS defeated a motion to hold Ms. Ahern in contempt, a motion to forfeit her interest in the trust and a motion to impose punitive damages. (AR 8583). This successful result, together with the other *Brunzell* factors, provided ample support for the District Court's adjudication of the rights of the parties as it relates to the Lien and the outstanding invoices Ms. Ahern failed to pay. *See Brunzell*, 85 Nev. at 349, 455 P.2d at 33.

In its Order, the District Court properly addressed and dismissed each of the Successor Trustee's arguments relating to the ability of the Lien to attach to Ms. Ahern's beneficial interest in the Trust, and supported its decision to grant the fees sought by performing an analysis of each of the *Brunzell* factors discussed herein. (AR 8662-65). As such, the District Court did not engage in any manifest abuse of discretion in finding that BHFS' attorneys' fees were reasonable. The Order and Judgment should not be disturbed.

IX. CONCLUSION

Based on the foregoing, BHFS respectfully requests that this Court refuse to grant any and all relief sought in the Informal Brief and affirm the District Court's Order and Judgment in their entirety.

Dated this 22nd day of December, 2017.

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NRAP 32(a)(9)(C) CERTIFICATE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

- ☒ [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word, Version 2010 in 14-point Times New Roman font; or
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2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

- ☒ [X] Proportionately spaced, has a typeface of 14 points or more, and contains 5,988 words; or
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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be

supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 22nd day of December, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **APPELLANT'S ANSWERING BRIEF** by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

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