

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORPORATION; DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Respondents/Cross-Appellants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORPORATION; DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Respondents.

Electronically Filed
Aug 08 2019 12:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case

No. 77678 consolidated with No. 78176

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County
The Honorable Tierra Jones, District Judge

APPELLANTS' APPENDIX

VOL. 3 PART 1 of 3

Appellants' Appendix – Consolidated Cases 77678 and 78176
Edgeworth, et al. v. Daniel Simon, et al.

Date Filed	Document Title	VOL. No.	Bates Number
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCp 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> • Simon's Invoices • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's 	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs 	2	AA000479

Appellants' Appendix – Consolidated Cases 77678 and 78176
Edgeworth, et al. v. Daniel Simon, et al.

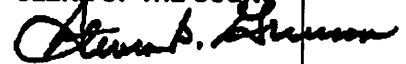
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17) 	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

Appellants' Appendix – Consolidated Cases 77678 and 78176
Edgeworth, et al. v. Daniel Simon, et al.

Date Filed	Document Title	VOL. No.	Bates Number
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> • Simon's Invoices • Email to Simon labeled "Contingency • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's 	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17) 	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
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11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
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12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

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12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 MONDAY, AUGUST 27, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1**

22 APPEARANCES:

23 For the Plaintiff:

ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

24 For the Defendant:

JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 making sure --

2 MR. VANNAH: You know what? It's hard to spit the big
3 numbers out.

4 THE COURT: It's all right, but you're talking about the \$6
5 million settlement?

6 MR. VANNAH: I am, and I --

7 THE COURT: Okay.

8 MR. VANNAH: So, the \$6 million settlement had occurred,
9 was over with. Mr. Simon had the clients, both Mr. and Mrs. Edgeworth,
10 come to his office, and he had prepared a fee agreement saying, look, I
11 want to be fair about this to myself and this is what I want you guys to
12 sign. I want you to sign this fee agreement that gives me basically a \$2
13 million bonus. And he showed it to them, and then he said -- they said,
14 well, you know, we're not prepared to -- for you to bring us in out of the
15 blue and show us this. And we're not at all happy about it, but having
16 said that, he said, well, then you need to get independent counsel.
17 That's me. I'm the independent counsel.

18 So, they obviously retained me, and I did a get written fee
19 agreement. Of all cases, this is the one I'm going to get a written fee
20 agreement on. I have a written fee agreement. There's nothing in the
21 margins, but in the subpoena, it said to bring everything with me, which
22 would have included my notes that day. Those are attorney-client notes.
23 He's, obviously -- he's not entitled to even that, but it's his fee agreement
24 where I got retained.

25 I don't -- there's no constructive discharge. So, the only

1 thing left in the case, at that point, was to do the releases. They looked
2 at the release and signed them, the case was settled, so I --

3 THE COURT: But this is prior to the Lange settlement, but
4 this is the settlement with --

5 MR. VANNAH: But there was an offer --

6 THE COURT: -- Viking?

7 MR. VANNAH: -- there was an offer on the table in Lange.

8 THE COURT: Okay. So, the offer was still pending, but
9 Lange had -- Lange hadn't settled?

10 MR. VANNAH: It hadn't settled.

11 THE COURT: Okay.

12 MR. VANNAH: It was on the table, and there was an offer.
13 The clients asked me to look at it. Mr. Simon gave me the information.
14 We talked. I looked at it and I concluded that the best interests in the
15 clients, in my opinion, was -- my advice to them was, you know what, if I
16 were you, rather than to continue with Danny on this case and bring in
17 somebody else, just take the settlement; accept it. That was it, that was
18 my advice, accept the settlement. They wanted me to put that in writing,
19 I put it in writing, and I explained it to the client and, based on everything
20 we're looking at, they wanted to accept it; please accept the settlement.

21 The communication had broken down really badly between
22 the clients, you know, the client and the other lawyer. So, I said, look,
23 you know, it doesn't seem to me a great idea for you guys to be having
24 meetings and stuff. My clients don't want to meet with you anymore,
25 but you are counsel of record, go ahead and finish it up, do the releases,

1 and sign whatever you have to do to get the Lange settlement done.

2 Just accept it. Accept it and whatever you have to do, that's it. Do what
3 you have to do with the Judge, and you do that.

4 I'm not -- I'm not substituting in as counsel. I'm not
5 associating as counsel. I made that very clear. You guys are counsel of
6 record. If you want to withdraw -- if that's your threat, you're going to
7 withdraw from the case, you can withdraw, but if you withdraw from the
8 case at the last minute, and I have to come into the case because you
9 withdraw and spend 40, 50 hours bringing myself up to speed, you
10 know, I -- the client is not going to be very happy about that. And I'm not
11 even sure Your Honor would allow them to withdraw with that going on.
12 The case was over. I mean, the \$600,000 settlement had been made. It
13 was over, signed and gone --

14 THE COURT: Six million, Mr. Vannah? Six million?

15 MR. VANNAH: Six million, I'm sorry. And the settlement for
16 the 100- was on the table, and my sole part in that was to say my clients
17 want to accept it, do whatever you got to do to accept it, which is his
18 obligation. And he did, accepted it, and then we came to court because
19 you wanted me to be in court when this thing went down to just express
20 our opinions that we're happy with that. We had that settlement
21 agreement with Teddy Parker who was hearing everybody, and then I
22 wasn't going to say anything, but I asked to say that -- stand up and say
23 that's what the client wants to do, and I said, yeah, I'm communicating,
24 they're here too, but that's what they want to do. They want to settle the
25 case. Now that's it.

1 So, my fee agreement it's -- there's no relevance to it. It's --
2 I'm -- it's just a fee agreement with a client, and it's a fee agreement I had
3 that Mr. Simon suggested that they do, to go out and hire somebody to
4 be independent counsel and to -- you know, he's trying to get them to
5 sign some fee agreement they don't want to sign, and they want to know
6 what their rights are. So, he said get independent counsel. They did,
7 and here I am, and that's how they got to where they got to. So, I don't
8 see any relevance whatsoever to this fee agreement between me and the
9 Edgeworths. That's the bottom line.

10 THE COURT: Okay. Well, I mean, this issue of constructive
11 discharge, the issue that's hanging there, and I agree with Mr.
12 Christensen's legal analysis of, if there is constructive discharge, then we
13 have a whole completely different discussion in regards to the contract.
14 So, based upon this Court having to make that determination, Mr.
15 Vannah, I believe that the fee agreement is relevant, but only the fee
16 agreement itself. No notes, no notes you took that day, no
17 conversations, just the fee agreement itself. So, I'm going to order you
18 to provide a copy of that to Mr. Christensen. Can you --

19 MR. VANNAH: I got it right now.

20 THE COURT: Okay. I was going to say; I know you have
21 people at your office who work there --

22 MR. VANNAH: No, no, we brought it.

23 THE COURT: -- you can -- okay. So --

24 MR. CHRISTENSEN: Have his people do it.

25 THE COURT: Okay. So, can you just make sure he has that

1 by the -- is that going to become relevant to someone's testimony today?

2 MR. VANNAH: I'll have it to him right now. It's just going to
3 take a second. I have it.

4 THE COURT: Okay.

5 MR. VANNAH: So, we can get that over with and --

6 THE COURT: And then we'll be ready.

7 MR. VANNAH: I think it's one page, right?

8 THE COURT: Because it's just the agreement. It's no notes
9 or anything --

10 MR. VANNAH: No, no, no, just a one-page agreement. So,
11 when they hired me, they paid me so much dollars per hour, and that's
12 it.

13 THE COURT: Okay.

14 MR. VANNAH: Simple as that.

15 THE COURT: Okay. So, this is the motion to -- in regards to
16 adjudicating the lien. The motion was filed by you Mr. Christensen. Are
17 you ready to call your first witness?

18 MR. CHRISTENSEN: Your Honor, if you could just -- I'm not
19 quite as fast a reader as I used to be.

20 THE COURT: It's okay. Me either.

21 [Pause]

22 MR. CHRISTENSEN: Okay. We do have an opening
23 PowerPoint --

24 THE COURT: Okay.

25 MR. CHRISTENSEN: -- that we'd like to go through --

1 THE COURT: Okay.

2 MR. CHRISTENSEN: -- if that's acceptable to the Court?

3 THE COURT: Sure. Any objection, Mr. Vannah?

4 MR. VANNAH: I don't care.

5 THE COURT: Okay. And I was wondering if this was a
6 PowerPoint or if this was going to be demonstrative to like share photos.

7 MR. CHRISTENSEN: Right.

8 THE COURT: I wasn't sure.

9 MR. CHRISTENSEN: Okay. Okay.

10 DEFENDANT'S OPENING STATEMENT

11 BY MR. CHRISTENSEN:

12 Your Honor, we believe that the theme of this case is no
13 good deed goes unpunished. What you see is, this is a --

14 MR. VANNAH: I'm not sure whether that's evidence, Your
15 Honor, so are we going to have evidence like an opening statement or
16 are we going to have argument? I mean --

17 THE COURT: Counsel?

18 MR. VANNAH: -- this is clearly argument; no good deed goes
19 unpunished. That's -- is this going to be an opening argument or is this
20 an opening statement, I guess?

21 THE COURT: Well, it's going to be an opening statement and
22 we're going to get to what they -- what the evidence is going to show.

23 Mr. Christensen?

24 MR. CHRISTENSEN: Your Honor, we believe the evidence
25 will show that no good deed goes unpunished. What you see here is a

1 street-side picture of the house where the flood occurred. This is
2 available on the internet. This is one of those pictures that was made
3 available when the house was being marketed for sale.

4 THE COURT: And this is 2017, so this is after the flood, right?

5 MR. CHRISTENSEN: Correct, that's a post-flood picture.
6 That's after the certificate of occupancy has been issued. All original
7 construction and any repair and remediation after the fire sprinkler flood
8 has already been taken of.

9 That's a picture of the interior. That's essentially the area
10 where the flood occurred. Of course, water goes where water goes, so.
11 There was also damage in the kitchen area. The cabinets in that area are
12 quite expensive. They're several hundred thousand dollars, and they
13 sustained some damage in the flood. This is another picture, another
14 angle of that same general area of the home. The costs to repair, for the
15 flood, as you can see, it's quite a nice home with very nice finishes, was
16 approximately in the ballpark of a half a million dollars.

17 So as things developed, Mr. Edgeworth tried to handle the
18 claim on his own, didn't reach much success. He probably should have
19 been able to, truth be told, be able to handle it on his own, but he was
20 dealing with a plumber that was being rather recalcitrant and he -- Viking
21 wasn't stepping up. He didn't have course of construction coverage. He
22 didn't have any other route of recovery, so he first asked Mr. Simon to
23 give him some suggestions as to attorneys who could help him out.
24 Those attorneys all quoted very high numbers to him. He didn't want to
25 lay out \$50,000 for a retainer or something of that sort.

1 So, there was a meeting at Starbucks and in connection with
2 that, Mr. Simon agreed to send a few letters. I think that's actually the
3 quote from the email. And that was in May of 2016. And from then on,
4 the case progressed until it was filed in June, and then when it became
5 active really in late 2016 through 2017 before Your Honor.

6 So, we are here because, of course, there was a very large
7 settlement. Mr. Simon got a result, and there's a dispute over the fees.
8 So, the first question we have is whether there was an expressed
9 contract to the fees or expressed contract regarding the retention. We all
10 know, and we all agree, there was no expressed written contract. It
11 started off as a friends and family matter. Mr. Simon probably wasn't
12 even going to send them a bill if he could have triggered adjusters
13 coming in and adjusting the loss early on, after sending a letter or two.

14 So, the claim of Mr. Edgeworth is that, in the -- as stated in
15 the complaint, is that there was an expressed oral contract formed in
16 May of 2016 to pay Mr. Simon \$550 per hour. So, a meeting of the
17 minds exist when the parties have agreed upon the contract's essential
18 terms.

19 MR. VANNAH: I'm sorry, Your Honor, this isn't facts
20 anymore. Now, we're arguing the law. We're getting beyond what -- I
21 mean, I thought this was going to be a fact -- opening statement is
22 supposed to be the factual presentation. This is an argument of the law.
23 If we're going to do that, that's fine, I guess, but I don't think it's proper.

24 THE COURT: Mr. Christensen?

25 MR. CHRISTENSEN: Your Honor, the evidence is going to

1 show that there was no meeting of the minds in May of 2016, that the
2 parties agree that Mr. Simon was going to work on this friends and
3 family matter for 550 an hour.

4 MR. VANNAH: That's not what --

5 MR. CHRISTENSEN: The evidence is going to show
6 otherwise, that there was no expressed payment term reached in May of
7 2016, or at any time.

8 MR. VANNAH: Again, here's my problem. I mean, the
9 evidence isn't going to show citations, and this is a statement of law,
10 citations. I mean, he wouldn't do this in front of a jury, he wouldn't do
11 this in a bench trial. This is argument, pure and simple. Now, we're
12 even arguing what the law is in the case. I thought this was going to be
13 a factual presentation of what the facts were going to show. We're way
14 beyond all that.

15 MR. CHRISTENSEN: Your Honor, if I could. First of all, we're
16 not arguing what the law is. The law is the law, but I mean, we might be
17 arguing over its application of the case, but that's a whole other issue.

18 Secondly, this is a lien adjudication hearing. This is not
19 opening statement. We don't have a jury. This is being presented to the
20 Court in order for the Court to have a full understanding of the facts as
21 they come in. We believe this is useful and will be helpful to the Court.
22 There's really no rules governing what you can say or can't say in an
23 introductory statement to a court in an adjudicatory -- in a adjudication
24 hearing. I mean, when we submitted our briefs to you, we submitted
25 law, and we submitted facts, and we argued the application of the law to

1 the outset was May 27th or May 28th, right?

2 A That's incorrect.

3 Q Sir, I didn't write these, and I didn't sign them.

4 A Okay.

5 Q Right? You said you retained Danny May 27th, right?

6 A Correct.

7 Q Then you said at the outset, he told you his fee was 550 an

8 hour and that's what you agreed to, correct?

9 A Correct.

10 Q That's a fantasy. That's not true, correct?

11 A No, it's not. That's ridiculous. The -- it's --

12 Q Mr. Edgeworth --

13 A -- a 24-month case. You're trying to define the outset as one

14 day and not one week later. It's a general term.

15 Q Sort of like when you write all these affidavits saying that he

16 told you his associate was going to bill you at 275 an hour, and then hit

17 the stand and agree in front of Her Honor that you never knew that until

18 14 or 15 months after he was retained?

19 MR. GREENE: Your Honor, these questions have been

20 asked --

21 THE WITNESS: Is that a question, sir?

22 MR. GREENE: -- and answered.

23 MR. CHRISTIANSEN: It is.

24 THE COURT: Hold on --

25 THE WITNESS: No.

1 THE COURT: -- sir.

2 THE WITNESS: Is there a question on the end of it?

3 THE COURT: Hold on, Mr. Edgeworth.

4 THE WITNESS: Sorry.

5 MR. GREENE: Your Honor, this is like the fourth or fifth time
6 this question has been asked and answered. It just keeps getting asked,
7 Your Honor. We'd ask that he be asked to move on.

8 THE COURT: Well, I mean, he said that 275 was never told to
9 him until 14 months later, Mr. Christiansen. He's already acknowledged
10 that, so we can ask another question.

11 MR. CHRISTIANSEN: Okay.

12 BY MR. GREENE:

13 Q Other than yourself, Mr. Edgeworth, did anybody else hear
14 Danny Simon tell you his rate was 550 an hour at the outset?

15 A I don't know if anybody was on the phone at his end.

16 Q Anybody on your end on the phone?

17 A No.

18 Q Did you record it?

19 A No.

20 Q There's -- Mr. Christensen had some estimation for pages of
21 emails over here.

22 A How many pages?

23 Q A lot more than I felt like reading this weekend, I can tell you
24 that much. Did you find a single email from yourself confirming that
25 rate?

1 A I didn't look through the emails, sir.

2 Q Can you point me to a single email confirming that rate?

3 A Yeah, Danny Simon emailed me bills constantly.

4 Q That's not what I asked you, sir. I asked you can you point

5 me to an email of yours confirming the rate of Danny Simon at 550 an

6 hour from the outset of this litigation that you told the Judge he took as

7 a favor?

8 A I don't know. I'd have to look.

9 Q So, is that a different way of saying you've never been able

10 to identify an email confirming that in writing?

11 A I guess so.

12 Q Okay. Getting a little out of order, which is making Ms. Ferrel

13 nervous, but let's turn to paragraph 11. As I understand from listening to

14 Mr. Vannah's opening statement this morning and from reading your

15 affidavits, it's your contention that Danny -- or that you really did all the

16 heavy lifting in the case that effectuated or made it worth 6 million bucks

17 against Viking, correct?

18 A Definitely.

19 Q Okay. And sir -- and I mean this not in a pejorative sense, but

20 you're not a lawyer, fair?

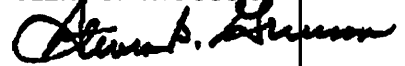
21 A No, I'm not a lawyer, sir.

22 Q You can't walk into a courtroom in the 8th Judicial District

23 Court for the State of Nevada, County of Clark and make an appearance,

24 correct?

25 A I don't know. Can I? I don't know.



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 TUESDAY, AUGUST 28, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 2**

22 APPEARANCES:

23 For the Plaintiff:

ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

24 For the Defendant:

JAMES R. CHRISTENSEN, ESQ.
PETER. S. CHRISTIANSEN, ESQ.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 MR. GREENE: Well, it's relevant to show that Brian -- well,
2 actually, I'll withdraw that, forget that.

3 BY MR. GREENE:

4 Q At any time in the beginning of your relationship with Danny,
5 did he ever ask for a contingency fee agreement?

6 A No.

7 Q Was it ever discussed?

8 A No until we started having the discussion in the airport bar.

9 THE COURT: In where?

10 THE WITNESS: The San Diego --

11 BY MR. GREENE:

12 Q And what date was that?

13 A August 9th, I believe, 2017.

14 Q Did Danny have a structure -- a structured discussion with
15 you on what the -- what the attorney/client relationship' would be?

16 A No, it was -- you mean in the airport bar --

17 Q No, back up, I'm sorry. I'm sorry to confuse you. Let's go
18 back to June of 2016. Did he have a structured relationship with you?
19 There's discussion with as to what the nature of the fee agreement
20 would be?

21 A Yes. I would pay him \$550 an hour, and he would represent
22 me in this case. He would file the lawsuit, and follow-up and did
23 everything that lawyers do in cases.

24 Q I appreciate that.

25 THE COURT: And was this at the bar in San Diego?

1 up to you as the client deciding to settle that claim?

2 A Just there was -- the whole case was overwhelming. The
3 number was good, it was fair. And I just wanted the whole thing to end,
4 you know. Right after I said I'd accept, I had remorse. I thought we
5 could get them to pay fifteen million because they had subrogated the
6 326 claims that I found and stuffed other insurance companies with the
7 payments.

8 So that alone to them is worth 25 million that they're covering up
9 just from the spreadsheet; because they made all the homeowners'
10 insurance pay for it and then they would pay the fee that you pay with an
11 insurance company, you know; what's it called? You pay like \$1,000 and
12 then the insurance company fixes your house, pays for the rest of it.

13 THE COURT: A deductible?

14 MR. GREENE: Is that deductible?

15 THE WITNESS: Deductible. I'm sorry, I couldn't think of the
16 term. Viking and Zurich would pay the deductibles and then leave the
17 other insurance companies with all the damage. And I've been told that
18 that would --

19 MR. CHRISTIANSEN: Objection. Hearsay.

20 THE COURT: Okay. Sir, can we get back to the point?

21 THE WITNESS: Sorry.

22 THE COURT: The question was, how did you settle this case?

23 MR. GREENE: Yeah.

24 BY MR. GREENE:

25 Q What were the primary considerations and what went

1 through your mind as a client to settle this case?

2 A I wanted it over. I just wanted to put it behind me, just get
3 on, you know, back to construction and do what I wanted to do.

4 Q Because Mr. Simon had given you good counsel to settle for
5 six million; hadn't he?

6 A Yes, definitely.

7 Q Followed that counsel?

8 A Yes, I did.

9 Q Glad you followed that counsel?

10 A Yes, I am.

11 Q This case was your life; wasn't it?

12 A For that period, yes.

13 Q Closure's good; isn't it?

14 A I don't know. I'll let you know when I have closure, but yes,
15 closure's good.

16 Q Let's talk about the invoices for a moment now that the
17 primary case is settled. We'll get into Lange again in a few moments.
18 What role did you have in paying the invoices in this case, Brian?

19 A I looked them over, I signed off on them, and I gave them to
20 our accountant, and he would cut the check; everything except the first
21 invoice I just cut the check myself.

22 Q So, Brian, the Judge has seen evidence who knows how
23 many times and at this hearing, as well, that there were four invoices for
24 fees and costs presented to you beginning in December of 2016 going
25 through September of 2017. Do you have an understanding whether any

1 other -- during that timeframe were there any other invoices sent to you
2 from Mr. Simon's office for you to pay?

3 A No.

4 Q Did you review those invoices before you paid them?

5 A Yes.

6 Q Did you pay them in full?

7 A Yes, I did.

8 Q How long did it take for you to pay those after you received
9 them?

10 A Sometimes the same day.

11 Q Did you have an opportunity to review those invoices, Brian,
12 what the hourly rate was for Danny?

13 A Yes.

14 Q Sorry. Mr. Simon.

15 A Yes.

16 Q And what was that each time?

17 A Five hundred and fifty dollars an hour.

18 Q Did you ever see any of Mr. Simon's entries in which he
19 billed anything other than \$550 per hour?

20 A No, I did not.

21 Q Did you ever get bored and count the number of billing
22 entries that Mr. Simon put on those first four invoices?

23 A No, I did not.

24 Q Okay. Did you get an understanding as to what Ms. Ferrel's
25 hourly rate was in each of those invoices where her time was contained?

1 A Two hundred and seventy-five dollars an hour.

2 Q Every entry?

3 A Every entry.

4 Q Did you pay that invoice in full, all those invoices in full in
5 which her time was on?

6 A Yes.

7 Q How about Ben Miller, he hasn't been all that involved in the
8 handling of this case, so he prepared almost \$6,000 worth of time; is that
9 your understanding, as well?

10 A Yes.

11 Q Did you gain an understanding as to what his hourly rate
12 was?

13 A Two hundred and seventy-five dollars an hour.

14 Q Did he ever bill at any other rate?

15 A No.

16 Q Did you pay those invoices in full?

17 A Yes.

18 Q Brian, we talked about this Exhibit 5. Again, the Judge has
19 seen this a bazillion times. That's the invoice that was produced towards
20 late January of 2018. Did you take the opportunity to review that
21 invoice?

22 A I'm sorry, I don't know which invoice it was. Can I just see it?

23 Q Of course you can. It's kind of thick. I'm not sure if we have
24 the witness binder up there, but.

25 A Oh, is this --

1 Q To you?

2 A No. Out of -- my guess would be to James Christensen.

3 Q No, no, no.

4 THE COURT: That's what that means, Mr. Greene.

5 MR. GREENE: No. I'm am dumb, not quite that dumb.

6 BY MR. GREENE:

7 Q But is this the label that you had put on this email when you
8 sent it to Mr. Simon?

9 A Yeah. I wrote Contingency in the subject line.

10 Q Right there?

11 A Correct.

12 Q What did Mr. Simon communicate with you, if anything, at
13 the bar in San Diego until August 22nd of 2017 following your discussion
14 in the bar about a contingency fee --

15 A About this --

16 Q -- or anything fee related?

17 A He hadn't -- he hadn't explained anything about this topic.

18 And I was coming up to the point where I needed to think about how to
19 get more money, what options I was going to -- going to have to take.

20 And so, I thought I'd email him and see if this a dead deal or not.

21 Move on. If I can't do it, that's fine, I don't care. I would just keep paying
22 the 550. I'd borrow the money. I'd likely have to sell some assets if the
23 bills kept accumulating, but nothing was responded to.

24 Q First line, We never really had a structured discussion about
25 how this might be done. Do you read that?

1 A Three hundred and something with interest.

2 Q So how was she going to be paid back through this hybrid
3 agreement that you would have -- that you had at least entertained for
4 Mr. Simon?

5 A Well, he would give me some money back, and I would take
6 whatever I was stealing in the kitty from my working capital, and I would
7 pay her right off and get rid of one of the loans.

8 Q The sentence goes on, Probably explore a hybrid of hourly
9 on the claim and then some other structure that incents both of us to go
10 after the appeal that these scumbags will file. What did you mean by
11 that, Brian?

12 A I was told around this time that most large judgments would
13 be appealed, which scared the daylights out of me because I had no idea
14 how long that takes. And this whole thing was timely. I needed cash to
15 keep building houses. The whole thing with construction is you need
16 cash; you need to convert stuff into cash.

17 So, this would get me out of the cash flow disaster of the lawsuit,
18 paying for the lawsuit, and all the way through the appeal, which could
19 be a year or two years. It could be anything. It would just give me a lot
20 of financial flexibility.

21 Q As a consumer and as the client who owns the case and the
22 settlement, did there come a time in this case where you believed that
23 the value of the case had increased?

24 A Yes.

25 Q When was that?

1 A Right after talking to Harold Rogers I found it had gone up
2 substantially.

3 THE COURT: When is that, sir?

4 THE WITNESS: July -- July 26, two thousand -- or I spoke
5 with him on the 24th, July 24th, 2017.

6 BY MR. GREENE:

7 Q Did that have anything to do with the number of activations,
8 initial activations, that were revealed?

9 A Yeah. I didn't have evidence of each of them, but I had his
10 numbers of how many were out there, and I had a clear path on how I
11 was going to start tracking them down to make that spreadsheet that I
12 made.

13 Q So when you put in here, Obviously that could not have been
14 done earlier, since who could have thought this case would meet their
15 hurdle of punitives at the start, what did you mean by that?

16 A That was -- the hurdle of punitives was the email on August
17 1st of 2017 that he had forwarded saying do we meet -- and I
18 misunderstood it. I thought we had to meet all three hurdles; the malice,
19 the oppression, and the fraud, I believe they were.

20 Q Are you saying Ben Miller's email?

21 A Correct. Ben Miller's email of August 1st. And we had it on
22 -- I had evidence on all three of them, so I felt yeah, this can meet the
23 hurdle because I didn't know it was an or between each one. I thought it
24 was an and. Just my mistake.

25 Q Okay. But things changed value-wise?

1 A Definitely.

2 Q As you were evaluating what to do as a consumer in this
3 case, did those additional activations have any kind of a swaying factor
4 with you on what to do?

5 A As we gathered more and more evidence of the wrongdoing,
6 it made my percentage in my head, the percentage I put on the chance of
7 me winning, go higher and higher and higher. And then it gave a lot of
8 credibility to at this point maybe we can get punitive damages, how are
9 they valued, everything else, or we can force a settlement.

10 Q Did these increased number of activations and therefore
11 meeting the burden of punitives, did that have any bearing upon you as
12 a consumer on what you would have been willing to entertain from Mr.
13 Simon in this hybrid fee agreement that you asked him to give to you?

14 A You know, on this date he would have gotten a much better
15 deal out of me. As the avalanche of evidence against them kept coming,
16 and then I just wouldn't have given up as much because I -- you know, at
17 that point you paid more in the kitty, there's -- to Mr. Simon there's less,
18 you know, fees left until the light at the end of the tunnel, so why would
19 you give up more; you've taken all the risk.

20 Q You mean who?

21 A Me as Brian Edgeworth, why would I give up more of the
22 settlement? Every day that goes by, this deal would get a little bit worse
23 for Mr. Simon because a lot of the risk in the deal has been abated.

24 Q Finishing up with this email, beginning with "I could," do you
25 see that?

1 A Yes.

2 Q I could also swing hourly for the whole case unless I am off
3 what this is going to cost. What did you mean before the paren, I could
4 also swing hourly for the whole case?

5 A Don't worry about it, keep working on my case, I can get the
6 money and keep paying you as our original agreement.

7 Q And did you?

8 A Yes, I did.

9 Q Did you have to get additional loans from the date of this
10 email forward to pay Mr. Simon's invoices?

11 A Yes, I did.

12 Q About how much?

13 A After this date I think I took one more for 200 out.

14 Q Did you use that money to pay his invoice in full?

15 A Yes, I did. I received an invoice approximately a month after
16 this email for \$255,000, some of which were costs and the rest of which
17 were fees. I don't know the breakdown. And I paid it in full.

18 Q Let's cover that now before we finish up with this email. Did
19 Mr. Simon ever provide you with the proposal that you asked for, hybrid
20 or otherwise?

21 A Never.

22 Q What did you get instead?

23 A A bill -- an hourly bill of \$550 an hour and \$275 per hour for
24 his associate.

25 Q Looking at the new superbill of January 2018, what was

1 every entry of that billed out? We already talked about that, 550?

2 A Five fifty an hour for Mr. Simon and \$275 an hour for Mr.
3 Miller and Ms. Ferrel.

4 Q Any hybrid language in the invoice that you paid?

5 A No.

6 Q Any hybrid invoice in the superbill?

7 A No.

8 Q Any hybrid email that was sent to you?

9 A No.

10 Q Any hybrid letter that was sent to you?

11 A No.

12 Q What did you mean by unless I am off what this is going to
13 cost; what were you concerned about there?

14 A That's my biggest frustration. He didn't answer the one
15 question that would allow me to plan or even evaluate if he gave me a
16 proposal how much more is this going to cost at 550 bucks an hour? I
17 need to know. I need to plan cash flow because I'm running businesses
18 that have to keep the working capital above a certain level. I need to
19 plan in advance. I can't be surprised, especially at this point in time
20 where I was already stretched.

21 Q How many employees were you employing at the time that
22 this contingency email was sent to Mr. Simon?

23 A Two hundred and ten world-wide.

24 Q Did their wellbeing factor in at all about your concerns for
25 knowing what this litigation was going to cost?

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORPORATION; DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Respondents/Cross-Appellants.

Supreme Court Case

No. 77678 consolidated with No. 78176

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORPORATION; DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County
The Honorable Tierra Jones, District Judge

APPELLANTS' APPENDIX

VOL. 3 PART 2 of 3

Appellants' Appendix – Consolidated Cases 77678 and 78176
Edgeworth, et al. v. Daniel Simon, et al.

Date Filed	Document Title	VOL. No.	Bates Number
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> • Simon's Invoices • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's 	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs 	2	AA000479

Appellants' Appendix – Consolidated Cases 77678 and 78176
Edgeworth, et al. v. Daniel Simon, et al.

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17) 	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

Appellants' Appendix – Consolidated Cases 77678 and 78176
Edgeworth, et al. v. Daniel Simon, et al.

Date Filed	Document Title	VOL. No.	Bates Number
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> • Simon's Invoices • Email to Simon labeled "Contingency • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's 	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17) 	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

Appellants' Appendix – Consolidated Cases 77678 and 78176
Edgeworth, et al. v. Daniel Simon, et al.

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs 	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 A Yes.

2 Q How so?

3 A Whenever you pull down your working capital to a certain
4 point, you put your risk of bankruptcy very high. Most companies go
5 bankrupt not because they had a big loss that year, it's because they ran
6 out of money. And you can run out of money in a lot of ways. Mostly
7 it's when you're draining your working capital. That's when you get low
8 on working capital, you need to do detailed planning to make sure you
9 don't run out of cash. And that's what I was trying to do. I just needed --
10 that's why I kept asking him for bills, too, because I couldn't have
11 surprises. I couldn't just get a huge bill and then not have the money in
12 the bank.

13 UNIDENTIFIED SPEAKER: Can I go to the restroom?

14 MR. GREENE: Sure.

15 BY MR. GREENE:

16 Q You talked about borrowing some more money, the next line
17 down, you went to borrow another 450 from Margaret. Did you read
18 that?

19 A Yes.

20 Q Is that what happened?

21 A Yeah, except not in the order I wrote. I borrowed -- I signed a
22 new contract for 200 and 200 for 400 total and I took the first 200 on it.

23 Q Okay. How about sell the house to pay these fees?

24 A I listed both the houses. The house that I was living in -- the
25 house that I was living in is on the same street as the house that's the

1 spec building. They're two doors apart. So, I listed both houses. The
2 house with no flood problems overhanging it, I was told would be likely
3 to sell quicker. We moved out of that house to stage it and get it ready
4 for sale and moved into the new house.

5 And I had both of them listed. I believe Mr. Simon knew. I'm
6 basically saying I can get cash from one of these house sales to keep
7 financing the -- the lawsuit, too. I'm just giving him an open look at my
8 sources to pay him. And I'm giving him from a negotiation standpoint
9 where I want to be negotiating another deal, I'm giving him a great look.
10 I'm laying all my cards on the table. I should be the easiest person to
11 negotiate whatsoever because you know the other steps I'm going to
12 take if I don't get a deal with you.

13 Q Finally, well, did you sell any of those two houses?

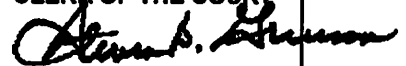
14 A I sold the 637 St. Croix house in December of 2017 after this.
15 I sold it for cash because the guy would close in six days and this had
16 started, and I needed cash.

17 Q This wasn't the flood house you sold, correct?

18 A No. I sold the older house, which is 637. It's two doors down
19 from the flood house.

20 Q If it had come to that, what would have been involved in
21 selling the Bit Coin investment to be able to pay Mr. Simon's hourly
22 fees?

23 A I had already gone to Roger, which was my partner and my
24 brother and told them that I needed out. I couldn't keep on with them.
25 And I had already taken my share out, and I sold a bunch to start



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 WEDNESDAY, AUGUST 29, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

22 APPEARANCES:

23 For the Plaintiff:

ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

24 For the Defendant:

JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Q All right. Then you go down to the next item. Finalize and
2 serve Nevada revised civil procedure 30(b)(6), notice of deposition. That
3 time took two-and-a-half hours, right?

4 A Yes, sir.

5 Q Or two-and-a-half, right? So, if we add those two things
6 together on 9/13, on the bill that got paid, you -- the firm got paid for 8.75
7 hours of your time for 9/13/2017, right?

8 A Yes, sir.

9 Q Then if I understand correctly, then you went back, and we've
10 talked about that a little bit, and created among other things -- so this --
11 you created more time for -- that the firm wanted to be reimbursed, for
12 example, on this date, the very same day, 9/13/2017, correct? That's
13 what you entered in timewise, correct?

14 A Yes.

15 Q Okay. Now, let's talk about that. So, the time in addition to
16 the 8.75 hours that you came up with in this task that you undertook was
17 an additional 14.1 hours to bill for on 9/13/2017, right?

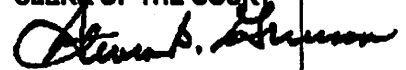
18 A Yes, sir.

19 Q Now, when you add that up, I come up with really close to 23
20 hours. Do you see that?

21 A Yes, sir.

22 Q All right. And in all due candor, I think you've said that
23 earlier, and I know you're an honest person, you didn't work anywhere
24 near 23 hours that day, correct --

25 A Likely not that day.



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

CASE#: A-16-738444-C

DEPT. X

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

CASE#: A-18-767242-C

DEPT. X

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
THURSDAY, AUGUST 30, 2018

20 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4**

21 **APPEARANCES:**

22 For the Plaintiff:

ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

24 For the Defendant:

JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 to him?

2 Because I got the impression, and correct me if I'm wrong,
3 you were kind of drafting these -- you testified you were kind of drafting
4 these for later down the road, if there's a settlement with Lange and
5 there's an attorney's fee provision in their policy?

6 THE WITNESS: Yeah.

7 THE COURT: And so, when you forwarded them to
8 Edgeworth was it more informational, or was it forwarding like, you need
9 to pay these?

10 THE WITNESS: No. I expected costs to be reimbursed, I
11 didn't expect the actual attorney's fees part of it to be paid, but I wanted
12 to show him what I was producing, and he was creating the calculation
13 of damages on his spreadsheet --

14 THE COURT: Right.

15 THE WITNESS: -- that kept going.

16 THE COURT: Right.

17 THE WITNESS: So, and obviously, we gave him a ton of
18 information on this case, I mean, pretty much everything that --
19 information that that was being generated we were giving it to him. So,
20 yeah, I sent it to him. We didn't have a discussion; I want this paid. But
21 when he got it, he did pay it, I did put, you know, some good amount of
22 work into it at that point. But I thought with that bill being generated
23 Lange was going to trigger coverage, and I could have just -- really just
24 forwarded it to Lange.

25 So, I didn't really expect payment on the first one for that

1 this meeting. He instructs you to go ahead and file the lawsuit, and
2 there's absolutely no discussion about fees whatsoever, right?

3 A I don't recall talking about fees.

4 Q Okay. And then later, you determined, that it being in the
5 best interest of the client, on the Lange portion of the indemnity, to
6 prepare a bill for your time in the case, when you do that first invoice,
7 and you determined that that would be a good thing to do is prepare a
8 bill and give that to the Lange people so they can see that you're
9 spending a lot of time on the case, and ultimately, they're going to have
10 to pay this, right?

11 A Yes.

12 Q All right. It was -- you presented a bill to Mr. Edgeworth,
13 right, but you didn't expect him to pay the bill. Is that -- that was your
14 testimony, you didn't expect him to pay the bill, he wasn't required to,
15 and you didn't expect him to pay the bill? Is that fair? That's what you
16 said yesterday.

17 A Yeah, and I said that -- oh, yeah, the initial bill that was sent
18 was generated for the Lange case, and I sent it to him so he could see
19 what was going on, and he just turned around and paid it right away.

20 Q But you didn't expect him to pay it?

21 A Not that quickly, and we never had a discussion, and if he
22 didn't pay it, I didn't expect him to pay it, but he paid it and so, okay.

23 Q All right. Then -- I want to go into a lot of detail, and you
24 remember how you came up with the 550 because you got -- Judge
25 Gizel [phonetic] said 600 would be reasonable in a mistrial, and you took

1 a few dollars off and said let's just make it 550 and -- right?

2 A Yes, yes.

3 Q All right. I remember that. So, then you generated a second
4 invoice, right?

5 A Correct.

6 Q That was also, I take it, submitted to Lange, his -- whoever
7 did the damages, correct?

8 A Yes.

9 Q And you sent a copy of that to Mr. Edgeworth and he paid
10 that bill, did he not?

11 A He did.

12 Q And before this meeting in August, that you guys had in the
13 bar, you know, in the airport, did you ever have a conversation, you,
14 personally, with Mr. Edgeworth or Angela, where you said look, I don't
15 know why you guys are paying these bills. I didn't really mean for you to
16 pay them. I'm going to have you pay me my fee at the end of the case.
17 Did you ever tell them that before this meeting, any time before this
18 meeting in San Diego, that we're going to go to?

19 A The entire term of our relationship, from day one throughout
20 the process, was we will just continue to do what is fair. I created the
21 bills so he could see what was going on as far as his damages and they
22 would turn around and pay it, and that was part of what he started to
23 want to do because he wanted -- he was taking out these loans.

24 So, he wanted to pay these bills, for whatever reason. We didn't
25 have a specific conversation to pay them, but he did want them to see

1 what I was doing so he could increase his damages.

2 Q So, you know, so you surely recognize that he's borrowing
3 money at a pretty high interest rate to pay these bills, right?

4 A Yes.

5 Q And I assume that you recognized that coming before
6 Judge Jones, here one day, and having her rule on whether or not
7 paying 30 percent interest on the loans, the interest, itself, was really a
8 reasonable element of damages, even if the Court were to determine
9 that the legal fees were reasonable. Do you see what I'm saying?

10 In other words, Judge Jones, you surely recognize at Lange, if they
11 were still in the case, would say wait a minute. Yeah, I mean you went
12 out and borrowed money at 30 percent interest. Maybe the legal fees -
13 maybe we owe the legal fees, maybe we don't, but, but we certainly --
14 where you got the money and the fact you paid 30 percent interest, did
15 you not recognize that certainly would be an issue that would be hotly
16 contested, that the interest and the -- on those loans, or did you know
17 that?

18 A Are you talking about the Lange, because you said you
19 were --

20 Q I meant Lange.

21 A -- digressing into being reimbursed by Lange under the
22 attorney fee provision.

23 Q That's --

24 A Did you mean Viking, also?

25 Q No, no. Viking doesn't owe you any money.

1 Q He's a smart guy.

2 A He's a smart guy when it comes to finance, and yes.

3 Q All right. So, when he -- when he's telling you in August, I

4 just am having a hard time, he's telling you in August, look, I can go out

5 and borrow more money and just keep paying you hourly and I'm willing

6 to do that. Then you sent him an hourly bill after that, right?

7 A Yeah.

8 Q And he pays it.

9 A He wanted a bill so he could pay it for his depo, so he didn't

10 have to -- he had to justify his loans, Mr. Vannah. If he goes into a

11 deposition and he's -- and they say how much have you paid, right, and

12 he says nothing, but it's owed in the future, then they're going to say

13 well, what's all this interest on these loans that you took out allegedly for

14 these bills?

15 Q Can you answer my question?

16 A Oh, I'm sorry. Go ahead.

17 Q My question was simple. When he -- after the meeting in

18 August, when he's -- since the email, and he's basically saying I can

19 borrow money to continue paying your bills. He tells you I can borrow

20 money to pay your bills, you send him another bill, right?

21 A Another bill was sent after that, yes.

22 Q And it's like for \$220,000 or so, right?

23 A I don't know about that.

24 Q Well, I can show you.

25 A There's a lot of costs going on at that time, so, you know,

1 You don't read it that way? You don't see where he's saying there's
2 ways for me to get money and I can go get it and I'll give it and I'll pay
3 your hourly bills if that's what you want to do.

4 But then you see in there that he's saying yeah, I can do it, but it's
5 kind of stressful. I would sure like to work something different out. Did
6 you not read it that way?

7 A Mr. Vannah, he was whining about the cost of repair from
8 day one. He was whining about what this is going to take and how
9 everybody's not stepping up to the plate to satisfy this claim. That was
10 from day one. He was whining all the way up through August, and that's
11 why all of those things weren't billed in all my bills either, because he
12 was always complaining about how much things cost.

13 So, this email was just some more reiteration of what he's been
14 whining about the entire time. And I know it was stressful for him. I had
15 to talk him off the ledge many times because he was so stressed out
16 about what does this mean, what does that mean. And he had -- it was
17 very stressful this litigation for him. No doubt about it, and I was there
18 to help him through that process.

19 Q I appreciate that, and you're billing him \$550 an hour to do
20 so, right?

21 A We created bills for \$550 an hour, correct, that didn't include
22 a fraction of my time, correct.

23 Q And when you're working for somebody, regardless of how
24 you're being paid, you're going to do the best job you can do because
25 that's who you are; isn't that true?

1 MR. VANNAH: You know what, I'll just withdraw the
2 question. We've covered it before.

3 THE WITNESS: Okay.

4 MR. VANNAH: I think I got my point out before. But I want
5 to kind of move along, because I do want to get Mr. Kemp on the stand.
6 All right.

7 BY MR. VANNAH:

8 Q One of the things I wanted to ask you about, is, you said you
9 included this fee agreement, the first one you ever drafted, this retainer
10 agreement. I'm going to show it to you. This is Exhibit 48 and 49. This
11 is the retainer agreement that you sent with the letter saying that you
12 want them to sign this, right?

13 A Yes.

14 Q And this is the first written agreement you ever asked them
15 to sign, right?

16 A Correct.

17 Q And this is days after you'd reached, in principle, a
18 settlement for \$6 million, correct?

19 A It was November 27th.

20 Q Right.

21 A And the final agreement wasn't reached until after that.

22 Q December 1st. That's why I said --

23 A Right. December 1st, so, yeah.

24 Q You settled the case, in principle, for \$6 million?

25 A Yeah. But there was still some things to work out, and

1 whether or not it was going to be a done deal or not, that wasn't, you
2 know, a 100 percent confirmed. The number was, in principle, but the
3 remaining terms still had to be worked out.

4 Q It settled three days later, right, in writing?

5 A Yes.

6 Q Okay.

7 A Fair enough.

8 Q All right.

9 A Yeah.

10 Q Now you point out here, the fee for legal services shall be the
11 sum of \$1,500,000 for services rendered to-date; do you see that?

12 A Yes.

13 Q All right. And then you say I'm going to give you credit for
14 what you've already paid --

15 A Right.

16 Q -- I see that. But then you say, for the future, for any future
17 fees with Lange, I thought I read that, any future fees in pursuing the
18 Lange case, we're going to have to have a different agreement for that.

19 A Correct.

20 Q Now they never signed this agreement, right?

21 A Correct.

22 Q And you tell them, see this, you tell them at this meeting and
23 in writing, if you think I'm wrong about this, why don't you go talk to
24 some other attorneys and ask them, people you may trust, and see if I'm
25 right or wrong. You tell him that, right, go ask someone else?

1 A I always encourage anybody who has questions who wants
2 to see other counsel, feel free to see him, and I'm happy to talk to him,
3 and explain things to him at any point in time.

4 Q So you can't be offended that they took you up on that, and
5 came to my office and said, what do you think about this? That doesn't
6 offend you, does it, that they did that?

7 A I'm not offended.

8 Q And, certainly, there was an email I sent you, I don't want to
9 go back over it, but after -- the Lange case settled on the same day of
10 December 1st. They hadn't signed a release yet, but you had accepted
11 the \$100,000 offer, pursuant to our request that you wrap that up; you
12 accepted it, correct?

13 A I think that --

14 Q The one that Teddy Parker offered?

15 A I think that was all still pending around December 7th.

16 Q No. Because you wrote a letter on December 1st and said, I
17 accepted it, I accepted your offer. I can show you to it, do you really
18 want to see it? I'll show it to you.

19 A Yeah. I mean, the timing is I guess somewhat important.

20 Q Yeah. I know, I have no problem with that.

21 [Counsel confer]

22 MR. GREENE: The Judge has it.

23 MR. VANNAH: Judge, do you have that -- oh, I need to give
24 you back the one you gave me.

25 THE COURT: Oh, no, Mr. Greene gave it back already, Mr.

1 Vannah. It's one of the ones you admitted today?

2 MR. VANNAH: Yeah. I'm sorry, I guess we gave you our
3 copy, so --

4 THE COURT: Okay. Let's see, 10 is Mr. Hale's letter, 11 is the
5 original settlement agreement, and then 12 is the Gmail?

6 MR. VANNAH: That might be, Your Honor.

7 THE COURT: I think that's it; I think it's 12.

8 MR. VANNAH: I think it is.

9 THE COURT: I gather you're referring to the second part of
10 12.

11 MR. VANNAH: Yes, I am, Your Honor.

12 BY MR. VANNAH:

13 Q So showing you Exhibit 12 again. This is dated November
14 30th, not even December 1st; this is November 30th. At the very same
15 day, on the very same day that you filed for the first time that the clients
16 had taken up your suggestion, and just come over consulted me. That's
17 the first day you learned that, right, November 30th?

18 A Yes.

19 Q And on November 30th, you're right, we'll just go down to
20 the last part.

21 Additionally, this morning, you asked me to approach Lange
22 to accept the 25,000 offer from the mediation. Since this
23 time, I was able to secure a \$100,000 offer, less all monies
24 Lange is claiming they are owed. Lange, within this missed
25 their claims against Viking, allowing the client to avoid the

1 motion for determination of a good faith settlement, as part
2 of the settlement. Please advise that the clients want to
3 move forward do finalize a settlement with Lange pursuant
4 to these terms.

5 And then you say, let's move quickly. And then we communicated
6 with you that we did want to settle that, wrap it up, right?

7 A All right. The timing of this, so just we're clear, Mr. Vannah,
8 because I know you want to be clear on this.

9 Q I do.

10 A All right. So, there's the \$25,000 offer, right?

11 Q Right.

12 A On November 30th, Teddy and I talked over the phone, he
13 offered a 100 grand, but he also wanted his clients, Lange Plumbing paid
14 back for what was outstanding, were due at the Edgeworth house during
15 the construction, which was 22,000.

16 Q And that all happened, didn't it, the settlement --

17 A Eventually. But the timing of all this is, that was the offer
18 that was communicated to you, and then -- right, and then you had to go
19 talk, take that offer to the clients who wouldn't talk to me, and then that's
20 what ultimately led to the consent to settle.

21 Q No. I had already authorized you on behalf of the clients to
22 take 25,000 for -- do you see that right here? It says right here --

23 A Yeah --

24 Q This morning -- let me read it. This morning you asked me to
25 approach Lange to accept the \$25,000 offer for remediation?

1 A Agreed, it says that.

2 Q I said, take it, take the 25,000. So, you went back to him and
3 talked, and listen, I'm grateful for you, and you used your skills, which
4 are legendary. You've got good skills. You will use your skills, and not
5 only did you get 25 you got it up to a 100, and they had to pay back 22,
6 but they still -- now they're getting 75 instead of 25, which means you've
7 done better than what all authority you had.

8 So, basically, on that day, and that turned out to be exactly what
9 was eventually signed and settled, right?

10 A Yes.

11 Q And when we came to Court, I mean, I want to -- because Mr.
12 Christensen who maybe wasn't here that day, and I don't want to
13 impugn him, but at Court you point out, oh, I'm not, Mr. Vannah is the
14 one that's on that settlement document; he's the one that signed it, not
15 me.

16 Well, that's because, when we're standing here, and I can pull that
17 document out, you said, I don't want to sign, I don't want to sign it
18 because Mr. Vannah has talked to these people, and the judge said, Mr.
19 Vannah, do you have any trouble signing this? I'm like, I'm not even in
20 this case. Now, I have that, I could read that transcript, but if you doubt
21 me, we can --

22 A I know exactly what the transcript says.

23 Q Yeah. And I said, I'm not even in that case, but if you want
24 me to sign it, fine, I'll sign it, because I want this thing to wrap up, and
25 it's not a big deal to me, and I remember I said, it's trivial, is the words I

1 used, it's trivial, whether I sign it, or you sign it. But if you want me to
2 sign it, I'll sign it. Even though it wasn't my name on it, it was yours.

3 A What you quoted was, I don't know anything about the
4 underlying case, but I'm happy to sign it.

5 Q Okay. And that's how I ended up signing that, right?

6 A Right. Because I'm not -- I didn't feel like I was their lawyer
7 anymore.

8 Q Okay.

9 A But I'm coming to these appearances because --

10 Q Because? When did you withdraw?

11 A I've never --

12 Q When did you -- you've never withdrawn.

13 A I've never withdrawn.

14 Q If you feel like that you can't wrap -- you had this case
15 wrapped up on December 30th -- by December 1st. By December 1st
16 you had a signed agreement with Viking, and you had accepted the
17 \$100,000, you had 40, and you accept 25 and you got a 100, and that
18 turned out to be the amount. I mean, that all happened on November
19 30th, frankly, right here.

20 MR. CHRISTENSEN: Objection. Foundation and compound.

21 THE WITNESS: The Viking settlement was --

22 THE COURT: Hold on just one second --

23 THE WITNESS: Sorry.

24 THE COURT: -- Mr. Simon. Mr. Vannah?

25 MR. VANNAH: Yes.

1 THE COURT: What is your response to the objection?

2 MR. VANNAH: Well, it's not compound. And I don't know

3 what lack of foundation we're talking about. I mean, he's the person that

4 did it. I'm just asking --

5 MR. CHRISTENSEN: May I respond, Your Honor?

6 MR. VANNAH: -- did this happen that way?

7 THE COURT: Mr. Christensen?

8 MR. CHRISTENSEN: It's compound because of all the

9 information in there. There's two or three different questions, I actually

10 lost track. There's a lack of foundation because although Mr. Vannah

11 keeps on saying you accepted. There's no evidence that backs that up.

12 THE COURT: Okay.

13 BY MR. VANNAH:

14 Q Well, you were told to accept it.

15 THE COURT: Well, hold on --

16 BY MR. VANNAH:

17 Q You were --

18 THE COURT: -- Mr. Vannah, I haven't ruled yet.

19 MR. VANNAH: Oh, I'm sorry.

20 THE COURT: I'm still here.

21 MR. VANNAH: I was just going to try to make it easier.

22 THE COURT: Well, Mr. Vannah, re-ask the question. I mean,

23 is the question, did Mr. Simon wrap the Lange and the Viking

24 settlements on November 30th?

25 MR. VANNAH: He wrapped up -- he did.

1 THE COURT: But, I mean, is that the question?

2 MR. VANNAH: Yeah.

3 THE COURT: Okay. Mr. Simon, can you answer that
4 question?

5 THE WITNESS: Yeah. The Viking settlement was December
6 1st, and your Lange settlement was December 7th.

7 BY MR. VANNAH:

8 Q That's when you signed, the documents were signed for
9 Lange.

10 A Right. That's when the settlement was done. I'm
11 communicating to you this better offer that you're going to go take to the
12 clients, which led to a discussion for a consent to sell on December 7th.

13 Q I didn't take it to the clients, because it was more than the
14 authority I had. It said, oh, if we have more authority do it.

15 A Well, the consent to settle that is from -- drafted by your
16 office has both of their signatures saying that you advised them.

17 Q I did.

18 A About the 100,000?

19 Q I did that too. But I already had authority at 25.

20 A Oh, okay, well, I just heard you say that you --

21 THE COURT: Okay, you guys. I don't really know what's
22 happening here, but there's not any questions being asked. You two are
23 having some sort of conversation.

24 THE WITNESS: Fair enough.

25 MR. VANNAH: I know.

1 THE COURT: Can we get back to the question section.

2 BY MR. VANNAH:

3 Q November 30th, I told you. Clients have authorized a
4 settlement for \$25,000 with Lange.

5 A That's what the email says, yes.

6 Q Go do it. That's what it's --

7 A Yes.

8 Q -- saying, go take it?

9 A Right.

10 Q They had authority at 25, so when he came back and said, I'll
11 pay you a 100, even though you got to pay 22 back, that's certainly better
12 than 25, right?

13 A Right.

14 Q I mean, haven't you ever had authority from a client, where
15 the client says, I'll take a million dollars, and you came back, and you
16 said, guess what, I got you a million-one, did you think you had to go
17 back and talk to him about that?

18 A This particular deal, yes.

19 Q All right.

20 A Because Teddy Parker was requiring 22 be paid back to
21 Lange Fleming, who that man over there despised at the time.

22 Q All right. In any event the Lange Plumbing settlement
23 documents were all signed by December 7th, with exactly what we
24 talked about, the 100,000 --

25 A Yes.

1 Q -- minus the 22?

2 A Agreed.

3 Q And got paid?

4 A Agreed.

5 Q Okay. And the rule is if you -- anyway, you didn't withdraw

6 from the case, you're still attorney of record. I am not attorney of record,

7 am I?

8 A No. You never provided a substitution attorney, correct?

9 Q I didn't sub --

10 A And you didn't associate-in either?

11 Q I didn't substitute-in, I didn't associate-in, and I even -- when I

12 came to Court I clearly said I can show you that, to the Judge. I don't --

13 I'm not here representing them on this case as Mr. Simon, he's attorney

14 of record. Do you want me to sign a document? I'll sign anything you

15 want to get the case to go down, but at no time did you ever withdraw

16 from the case or become not the attorney of record, correct?

17 A Correct.

18 Q Okay.

19 MR. VANNAH: Let me see if there's anything else.

20 [Counsel confer]

21 MR. VANNAH: One second, Your Honor, if you don't mind?

22 THE COURT: No problem.

23 MR. VANNAH: I don't have any further questions. Thank

24 you.

25 THE COURT: Okay. Mr. Christensen, do you have any

1 that Lange was supposed to pay, just further evidence of the attorney fee
2 provision.

3 MR. CHRISTENSEN: Your Honor, I'm going to -- this is from
4 Office Exhibit 56, Bate 468, the construction agreement between
5 American Grating and Lange.

6 THE COURT: Okay.

7 BY MR. CHRISTENSEN:

8 Q Is this essentially the clause you're talking about here, Mr.
9 Simon?

10 A Yes.

11 Q Contractor shall also assume full responsibility for enforcing
12 manufacturer's warranty on all products provided and/or installed by
13 contractor?

14 A Correct.

15 Q This provision shall survive the completion of the project and
16 contractor's work?

17 A Yes.

18 Q And ten in italics, *only for Lange Plumbing scope of work?*

19 A Correct.

20 Q Who installed the defective Viking fire sprinkler?

21 A Lange Plumbing.

22 Q So it was within their scope of work?

23 A Correct.

24 Q So in essence you were doing Lange's work for them?

25 A That's the premise of the entire claim.

1 Q We have a little bit of a timeline issue, that I'd like to address,
2 if I could. I believe this is the Edgeworths' new Exhibit 11. This is the
3 email where you send the release?

4 A Yes.

5 Q And the time and date on that is November 30, 2017 at 8:38
6 a.m.?

7 A Yes.

8 Q And then you receive notice, I'm going to show the Court
9 exhibit -- Office Exhibit 43, Bate 420. This is the, as you can see from
10 here, this is the fax from Brian Edgeworth, saying he's hired Vannah &
11 Vannah?

12 A Yes.

13 Q And this fax came in at -- boy, it says 11/30/2017, 9:35 a.m.?

14 A Yes.

15 Q Do you get all the faxes immediately upon them hitting your
16 office?

17 A When I -- they come in immediately, but whether I look at
18 them immediately is another question.

19 Q Right. Well, take a look at Exhibit 12. It indicates later on
20 throughout that day at some point in time you got some better terms for
21 the Edgeworths?

22 A Yes.

23 Q Despite maybe any conversations that you had with Mr.
24 Greene, or that fax that you received; is that correct?

25 A Right.

1 Q When you receive that fax and/or when you received the call
2 did you just drop everything on the file?

3 A What do you mean?

4 Q Did you stop work on the file?

5 A No, of course not.

6 Q Could stopping work place the clients in jeopardy?

7 A It depends on the situation.

8 Q But at any rate you continued to do some work on the file
9 and actually increased offers for them, correct?

10 A Yes.

11 Q Now that work all occurred on November 30th, correct?

12 A Yes.

13 Q We were shown, this is Edgeworth Exhibit 3, this is Bate 1,
14 this is that infamous contingency email of August 22, 2017?

15 A Yes.

16 Q And the forward on this indicates that you sent it to me on
17 December 1, 2017?

18 A Yes.

19 Q So you went out and consulted your own lawyer?

20 A Yes.

21 Q Why did you do that?

22 A Because I felt that I was terminated, when he's meeting with
23 other lawyers, and I'm getting letters that I'm supposed to be talking to
24 other lawyers about a case that I had been representing on for a
25 substantial time and did amazing work on and gave amazing advice.

1 And the only reason for that would -- for another law firm to get involved
2 is if I'm out.

3 Q And you were in an awkward position, weren't you? As I
4 think Mr. Vannah made abundantly clear you never did move to
5 withdraw?

6 A Right.

7 Q Why not.

8 A Number one, I'm not going to just blow up any settlements,
9 number one. I've never done that, never will. I continue to work, and I
10 always put the client's interest above mine, which I did in this case, even
11 after I'm getting all of these letters.

12 Number two, even later, Mr. Vannah was making it abundantly
13 clear that they were coming after me, if I decided to do something that
14 might even remotely be considered adverse to the client.

15 So, I'm in an awkward position, I'm going to fulfill my duties
16 regardless, and it was clear they didn't want to pay me. But I'm still
17 going to do it, and do my job for the client regardless, and payment is
18 going to be an issue that we deal with later.

19 Q And that's the same day I believe you filed your first
20 attorney's lien?

21 A Yes.

22 THE COURT: And what was the first day you consulted with
23 Mr. Christensen to represent you? Do you remember?

24 THE WITNESS: I don't, but it would have been around that
25 time, or a few days or more, before, when I felt that I wasn't getting

1 A Yes.

2 Q I will need to consider all options available to me.

3 A Okay.

4 Q So what you're telling him, I mean, as I'm reading the letter,
5 if I were a client, I'm reading the letter and it says, if you're not
6 agreeable to signing this fee agreement, then I cannot continue to lose
7 money to help you, to me that would say, I can't continue to work on
8 this case because I'm losing money; is that what you're telling him?

9 A Unless we work something out.

10 Q And then you say, I will need to consider all options available
11 to me?

12 A Yeah.

13 Q One of those is to withdraw from the case, right?

14 A I don't know. I didn't know what my options were at that
15 time.

16 Q Well, you talked to Mr. Christensen by then, hadn't you?

17 A Around that time, I guess, yeah.

18 Q Okay.

19 A Because I needed to learn my options, because I haven't had
20 any communication with them, verbally, since November 25th, and
21 they're promising to meet with me, and they were being cagey about it,
22 and, you know, so I needed to figure out what my options were.

23 Q I understand. But when you make the statement, if you were
24 not agreeable, then I cannot continue to lose money to help you, I will
25 need to consider all options available to me. Did that not dawn on you

1 when you wrote that in there, that that probably -- that they're probably
2 going to take up your suggestion that they might want to confer with
3 someone else? Because at that point in time you two have a little bit of
4 disagreement here, right?

5 A Oh, yeah.

6 Q You want him to sign this new fee agreement -- or not a new
7 one, you want him to sign a fee agreement, first time ever --

8 A Yeah.

9 Q -- and they are obviously balking at doing that, right?

10 A As we're talking about money, right?

11 Q Right.

12 A Yeah.

13 Q So you're --

14 A We're talking about what's fair, and we're having that
15 discussion back and forth, and they weren't giving me a number that
16 they even thought was fair.

17 Q No, and I appreciate -- not only that, sir, you actually said,
18 here's what I want you to sign?

19 A Yeah.

20 Q I mean, you no longer -- nobody is pussyfooting around, you
21 are saying, I want you to pay me \$1,500,000 right now --

22 A Yeah.

23 Q -- giving you credit for what you've paid, I want \$1,500,000
24 and then I want to have an agreement with what we're going to do with
25 Lange in the future; that's what you're telling him?

1 A Yes.

2 Q And you say, if you're not going to agree, then I can't
3 continue losing money on a case, which is a veiled threat, that I'm going
4 to withdraw, that's a veiled threat, right?

5 A No. It's not a veiled threat, because if you look at my actions
6 afterwards I didn't do anything of the sort.

7 Q But we're not looking at your actions afterwards, we're
8 looking at your actions on the date that the client is receiving this letter.

9 A Right.

10 Q Well, the date the client is receiving the letter they don't
11 know what you're going to do, because you're telling them that I can't
12 continue to lose money on this case if you don't sign this agreement.
13 What does that mean to client when you say, I can't continue? Doesn't
14 that mean to the client that they should be concerned as to whether or
15 not you're going to wrap this thing up or not?

16 A They should have come -- they should have had a
17 conversation with me, which they were refusing to have.

18 Q Or follow your advice. Your other advice was, you know
19 what, you can go out and talk to any other attorney in town and they'll
20 tell you the same thing I'm telling you, this is fair?

21 A Absolutely.

22 Q Well, then they took up your advice and they came and
23 talked to me.

24 A And I guess --

25 Q I guess they got the one guy that didn't think it was fair.

1 A Well, the one guy who didn't think it was fair, I think if you
2 were sitting in my seat you'd have a different opinion.

3 Q Well, I'm not, so.

4 A I get it.

5 Q And then when you said, I will need to consider all options
6 available to me. I guess they should consider all option available, they
7 don't care; is that fair?

8 A I guess so.

9 Q And obviously they shouldn't be coming to you to get advice
10 as to whether or not this fair or not, because you guys, at this point have
11 -- you want them to sign the agreement, and they don't want to. So, at
12 that point they probably should get independent advice, right?

13 A I don't know that they didn't want to. After this agreement
14 was sent to them Mr. Edgeworth sent an email to me, saying, hey,
15 thanks for the agreement. Brian is on his way back; we are going to
16 meet with our attorney before we sign.

17 Q Yeah.

18 A Right?

19 Q They did.

20 A So that seemed they were considering signing it --

21 Q Oh, I --

22 A -- but then wanted just to double check with an attorney, and
23 that's when I guess you told them not to and decided to take the path
24 that we took.

25 Q I suppose that would be true. I think that's pretty

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORPORATION; DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Respondents/Cross-Appellants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORPORATION; DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Respondents.

Supreme Court Case

No. 77678 consolidated with No. 78176

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County
The Honorable Tierra Jones, District Judge

APPELLANTS' APPENDIX

VOL. 3 PART 3 of 3

Appellants' Appendix – Consolidated Cases 77678 and 78176
Edgeworth, et al. v. Daniel Simon, et al.

Date Filed	Document Title	VOL. No.	Bates Number
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> • Simon's Invoices • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's 	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs 	2	AA000479

Appellants' Appendix – Consolidated Cases 77678 and 78176
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12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17) 	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

Appellants' Appendix – Consolidated Cases 77678 and 78176
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Date Filed	Document Title	VOL. No.	Bates Number
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> • Simon's Invoices • Email to Simon labeled "Contingency • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's 	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17) 	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

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12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs 	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
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1 straightforward. Okay.

2 A All right.

3 Q All right. Thank you.

4 A You're welcome. Thank you.

5 THE COURT: Not so quick, Mr. Simon. Mr. Christensen, did
6 you have any follow-up?

7 MR. CHRISTENSEN: Yes, Your Honor.

8 THE COURT: I assume you do, you're at the podium.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. CHRISTENSEN:

11 Q Nevada has an option for an attorney to secure a fee in a
12 case? Do you know --

13 THE COURT: Who has the option, I'm sorry?

14 MR. CHRISTENSEN: To secure a fee in a case.

15 THE COURT: But you said -- who --

16 MR. CHRISTENSEN: An option, Nevada does.

17 THE COURT: Nevada, okay. I was just was, what's the first
18 name.

19 THE WITNESS: What do you mean by "secure"?

20 BY MR. CHRISTENSEN:

21 Q Protect, perceive?

22 A Oh, yeah.

23 Q What is that?

24 A That is the Attorney Lien Statute 18.015.

25 Q And when did you file an attorney's lien?