

Exhibit C

Exhibit C



1 JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
2 ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
3 VANNAH & VANNAH
400 S. Seventh Street, 4th Floor
4 Las Vegas, Nevada 89101
5 jgreene@vannahlaw.com
Telephone: (702) 369-4161
6 Facsimile: (702) 369-0104
Attorneys for Plaintiffs

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **--o0o--**

11 EDGEWORTH FAMILY TRUST; AMERICAN
GRATING, LLC,

12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan corporation;
15 SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan corporation; and
16 DOES I through V and ROE CORPORATIONS
VI through X, inclusive,

17 Defendants.
18

CASE NO.: A-16-738444-C
DEPT. NO.: X

**PLAINTIFFS' OPPOSITION TO
SIMON'S MOTION FOR FEES AND
COSTS**

19 EDGEWORTH FAMILY TRUST; AMERICAN
GRATING, LLC,

20 Plaintiffs,

21 vs.
22

23 DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORPORATION; DOES I through X, inclusive,
24 and ROE CORPORATIONS I through X,
25 inclusive,
26

27 Defendants.
28

CASE NO.: A-18-767242-C
DEPT. NO.: XXIX

VANNAH & VANNAH
400 S. Seventh Street, 4th Floor • Las Vegas, Nevada 89101
Telephone (702) 369-4161 Facsimile (702) 369-0104

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC
2 (PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and
3 JOHN B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Opposition
4 to the Motion of DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A
5 PROFESSIONAL CORPORATION (SIMON) for Attorney's Fees and Costs (the Motion).

6 This Opposition is based upon the attached Memorandum of Points and Authorities; the
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; NRC
8 11 & 12(b)(5); NRS 18.010 & 18.015; and, any oral argument this Court may wish to entertain.
9 PLAINTIFFS also incorporate by this reference all of their factual and legal assertions, arguments
10 made, exhibits presented, and Motions and Oppositions made to and filed before this Court from
11 the inception through the filing of this Opposition.
12

13 DATED this 17 day of December, 2018.

14 VANNAH & VANNAH

15 
16 ROBERT D. VANNAH, ESQ.

17
18
19 I.

20 SUMMARY

21 As stated in recent submissions, the facts of this matter are well known to this Court. (The
22 Court is getting more familiar with each motion and opposition filed, though PLAINTIFFS
23 were—and remain—content to stop this madness after this Court issued the initial orders
24 following the evidentiary hearing on SIMON'S Motion to Adjudicate Attorney's Lien. But,
25 SIMON isn't ready to and apparently won't stop unless he's stopped.) The path to this intricate
26 knowledge was gained by, but not limited to, having listened to five days of comprehensive
27
28

1 testimony on SIMON'S Motion to Adjudicate Lien; by having reviewed the totality of the
2 evidence presented; by having read hundreds of pages of pre and post hearing briefing, exhibits,
3 notes, and arguments; and, by having carefully crafted two sets of factual findings and orders.
4 Therefore, PLAINTIFFS will spare this Court yet another complete recitation of the facts.
5 However, highlights are necessary to illuminate the darkness that is SIMON'S latest Motion.

6 This ordeal began when SIMON, the attorney, failed to perform the remedial step of
7 preparing a written hourly fee agreement for PLAINTIFFS to sign way back in May or June of
8 2016. Had SIMON simply performed that basic task, arguably none of this would have ever been
9 necessary. SIMON doubled down on his basic error on November 17, 2018, when he told
10 PLAINTIFFS that he wanted to be paid far more than the \$550.00 per hour and the \$387,606.25
11 he'd been paid to that point by PLAINTIFFS in attorneys' fees (incurred from May of 2016
12 through the fourth invoice that was paid in full by PLAINTIFFS on September 25, 2017).

13 While SIMON repeatedly stated in several briefs and testified under oath at the
14 evidentiary hearing that he was not seeking a contingency fee from PLAINTIFFS, he's seeking a
15 contingency fee from PLAINTIFFS one way or the other. SIMON first laid his eyes on that
16 contingency prize in August of 2017, a time when adverse facts against Viking had caused the
17 risk of loss to begin to rapidly diminish and the prospect of a substantial settlement becoming
18 more and more real. However, it is undisputed that SIMON never scratched that itch with an
19 alternative fee proposal until November 17, 2018, when he demanded a very hefty portion of the
20 Viking settlement from PLAINTIFFS.

21 SIMON again made his desire for far more in fees clear in his written Motion to
22 Adjudicate Lien, and it was his consistent theme at the multi-day evidentiary hearing on that
23 motion. He once again made that wish clear in his Motion to Reconsider at page 19:9-10, when
24 he asked for \$1.9 million, the same basic number he'd asked for since he served his Amended
25 Lien in January of 2018 for \$1,977,843.80 in additional fees. Even a political science major can
26
27
28

1 see that simple math shows that 40% of the Viking settlement of \$6 million is \$2.4 million, an
2 amount that is eerily similar to what PLAINTIFFS had already paid SIMON in fees, plus the
3 amount of his Amended Lien.

4 If that desire weren't so, why would SIMON not have just sent PLAINTIFFS another
5 invoice for fees and costs as PLAINTIFFS undisputedly requested via email on November 15,
6 2018, as opposed to demanding a percentage of the Viking settlement two days later? And why
7 would SIMON then demand \$1,100,000 ten days after that? And then demand \$1,500,000
8 several days after that? And why would SIMON then serve the Amended Lien for \$1,977,843.80
9 the following month? If SIMON thought keeping concurrent time sheets was a miserable chore,
10 try keeping track of the moving target that has been his demands for more in fees.

11
12 Now that he lost his bid for a contingency fee in his Motions to Adjudicate Lien and to
13 Reconsider/Clarify, SIMON impermissibly seeks to shake down PLAINTIFFS for more in fees
14 and costs when: 1.) The fees and costs SIMON is now seeking were incurred litigating the
15 Motion to Adjudicate Lien, not SIMON'S collateral Motion to Dismiss on NRCP 12(b)(5)
16 grounds; 2.) An award of additional attorney's fees and costs to seek and obtain an award of
17 attorneys fees under NRS 18.015 isn't contemplated under that statute; 3.) SIMON was not and is
18 not a prevailing party; and, 4.) PLAINTIFFS' complaints were filed and maintained in good faith.

19
20 For all of the reasons that this Court has entertained thus far in properly managing and
21 containing this matter, PLAINTIFFS respectfully request that SIMON'S latest Motion for Fees
22 and Costs be denied in its entirety.

23
24 ///

25 ///

26 ///

27 ///

28 ///

II.

ARGUMENTS

A. SIMON'S FEES AND COSTS IN HIS MOTION WERE ALL INCURRED IN THE EVIDENTIARY HEARING TO ADJUDICATE HIS LIEN IN THE GROSSLY INFLATED AMOUNT OF \$1,977,843.80.

It's difficult to choose an appropriate word to describe SIMON'S latest Motion. Remarkable is a tame selection; sanctionable is yet another (though PLAINTIFFS don't seek sanctions at this time—just closure). Why? SIMON has caused to be filed under NRCP 11(b)(1) & (3) a Motion that asks for fees under the pretense of being incurred arguing a Motion to Dismiss when the overwhelming evidence supports a finding that they were actually incurred litigating his Motion to Adjudicate Lien. SIMON knows this to be true, though he still caused this Motion to be filed. Under NRCP 11(b)(1), that's an improper purpose designed to increase PLAINTIFFS fees and costs. Under NRCP 11(b)(3), it's a Motion that lacks factual and evidentiary support.

How do we know this for sure? First, this is all about SIMON'S Motion to Adjudicate. At the hearing on February 20, 2018, James R. Christensen, Esq., told this Court that: "We move for adjudication under a statute. The statute is clear. The case law is clear." (Please see excerpts of the transcript of that hearing attached as Exhibit 1, at p. 13:5-6.) He went on to state that: "If you look through literally every single case in which there's a lien adjudication in the State of Nevada, in which there is some sort of dispute...the Court can take evidence...or set an evidentiary hearing...This is the way you resolve a fee dispute under the lien." (Id., at p 13:11-15; and, 14:1-2.) Mr. Christensen also said: "If the Court wants to set a date for an evidentiary hearing...Let's get this done...But there's nothing to stop that lien adjudication at this time." (Id., at 14:8-12.) This Court then ordered the parties to attend a settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a status check to be held on April 3, 2018.

1 At that hearing on April 3, 2018, the Court denied SIMON'S Anti-SLAPP Motion to
2 Dismiss (Please see Excerpts from Transcript attached as Exhibit 2, at p. 15:18-19) and ordered
3 that SIMON'S Motion to Adjudicate Lien to be: "Set for Evidentiary Hearing on the dates as
4 Follows: 05-29-18 1:00 a.m., 5-30-18 at 10:30 a.m., and 5-31-18 at 9:00 a.m." (Please see
5 minutes of the Court attached as Exhibit 3.) The minutes also indicate that the Court would rule
6 on the NRCP 12(b)(5) Motion to Dismiss at the conclusion of the hearing. (Id.) What hearing
7 was the Court referring to? The evidentiary hearing for SIMON'S Motion to Adjudicate Lien, a
8 proceeding that this Court deemed "...very, very important...." (See Exhibit 2, at p. 2:19-20.)
9 The Court also ordered the parties to submit briefs prior to the hearing.
10

11 On that note, how much ink did SIMON use in his Brief re: Evidentiary Hearing to discuss
12 the merits of PLAINTIFFS' Amended Complaint and whether or not it should be dismissed
13 pursuant to NRCP 12(b)(5)? Absolutely none. Rather, every argument made, each exhibit
14 attached, and the only expert report submitted focused solely on reasons for SIMON to get either
15 a contingency fee via quantum meruit or another \$692,120 in fees from his super bill. Similarly,
16 how much time or effort did SIMON spend, incur, and/or make at the multi-day evidentiary
17 hearing on his Motion to Dismiss? Fifteen minutes? Likely much, much less, if any.
18

19 For example, the purpose for the participation of Peter S. Christiansen, Esq., in all of this
20 was to take the lead in the evidentiary hearing. To highlight this obvious point, while Mr.
21 Christiansen was present on behalf of SIMON at court proceedings on February 8 & 20, 2018,
22 those hearings did not involve arguments on SIMON'S Motions to Dismiss, and he merely noted
23 his appearances. At the April 3, 2018, hearing on SIMON'S Motions to Dismiss, Mr.
24 Christiansen wasn't present at all.
25

26 Rather, a perusal of court minutes clearly shows that Mr. Christiansen's first substantive
27 appearance occurred when the evidentiary hearing on the Motion to Adjudicate Lien was initially
28 scheduled. Thereafter, all of his time, questions and arguments at the multi-day evidentiary

1 hearing were directed at establishing and/or increasing SIMON'S fee. There is nothing in the
2 minutes that PLAINTIFFS found where Mr. Christiansen directed any measurable amount of time
3 to matters concerning SIMON'S pending Motion to Dismiss on NRCP 12(b)(5) grounds. Rather,
4 he focused solely on SIMON'S Motion to Adjudicate Lien and getting more compensation for
5 SIMON. And, he did an excellent job for his client.

6 On the topic of sole purpose and focus, what were those of David Clark, Esq., and Will
7 Kemp, Esq.? Both were used to establish and bolster the reputation of SIMON and/or the amount
8 of additional fees that SIMON should get in quantum meruit. A simple re-reading of Mr. Kemp's
9 Report retells that story in full. And all of his testimony focused on case value and fees. Neither
10 offered a word of opinion or a morsel of testimony on the merits of PLAINTIFFS' Amended
11 Complaint or whether or not it should be dismissed on any ground.

12 Why, then, would SIMON file this Motion and make the representations he did that
13 \$280,534.21 in fees and costs was spent getting PLAINTIFFS' Amended Complaint dismissed
14 pursuant to NRCP 12(b)(5)—a collateral matter to the Motion to Adjudicate Lien—when that is
15 patently false by any measure? And why was the evidentiary hearing on Motion to Adjudicate
16 Lien necessary? One, because SIMON filed the motion (on an OST) and, per Mr. Christensen, an
17 evidentiary hearing to adjudicate a lien is how it's done under Nevada law. Two, because
18 SIMON wasn't content with the largesse that was an hourly rate of \$550 totaling hundreds of
19 thousands of dollars in fees paid to him by PLAINTIFFS and instead demanded a percentage of
20 the Viking settlement for himself.

21 Three, because SIMON demanded an additional \$1,114,000 in fees from PLAINTIFFS on
22 November 27, 2018, without any evidentiary or legal basis. Four, because SIMON sent a letter to
23 PLAINTIFFS' then co-counsel on December 7, 2018, stating that SIMON'S additional fees "may
24 well exceed \$1.5M." Five, because SIMON served an Amended Attorney's Lien attaching
25 PLAINTIFFS settlement proceeds to the tune of \$1,977,843.80, knowing full well (as the attorney
26
27
28

1 of the stature and reputation as described by Mr. Clark and Mr. Kemp) that: a.) the Rules
2 precluded him from getting a contingency fee without a written contingency fee agreement; and,
3 b.) his hourly fees for work performed on the case would never come even close to the amount of
4 his Amended Lien. And, of course, SIMON'S additional billed fees were far less than his
5 estimates, coming in at \$692,120.

6 Last, and most importantly, despite all of the above, SIMON would not agree to release
7 PLAINTIFFS settlement proceeds (that remain on deposit) that are in excess of SIMON'S largest
8 additional fee estimate of \$1.5M. In fact, SIMON still won't release PLAINTIFFS settlement
9 proceeds in excess of the \$484,982.50 that this Court awarded him on November 19, 2018.
10 That's the subject of yet another pleading that PLAINTIFFS did not want to file but were left with
11 no other reasonable option due to SIMON'S refusal to put this matter behind us all.

12 For SIMON to replay the victim card and tell this Court in his Motion at page 27 (!) that
13 this lien adjudication should have been simple and easy like all his others, he's just not seeing
14 either the error of his ways or what the rest of us are seeing. He did a really bad thing when he
15 violated the Nevada Rules of Professional Conduct out of the gate and compounded his
16 unbecoming conduct when he continued (and continues) to lay claim to a substantial sum of
17 money that was not and now is not his to claim. In short, PLAINTIFFS did not ask for any of
18 this, though they did ask SIMON on November 15, 2018, to provide them his invoice for fees and
19 costs owed, which SIMON promptly ignored. Instead, PLAINTIFFS have had to fight, and have
20 to continue to fight, to get their settlement proceeds. As such, PLAINTIFFS respectfully request
21 that SIMON'S Motion be denied.
22
23
24

25 ///

26 ///

27 ///

28 ///

B. AN AWARD OF ADDITIONAL ATTORNEYS FEES AND COSTS TO SEEK OR OBTAIN AN AWARD OF FEES AND COSTS UNDER NRS 18.015 ISN'T CONTEMPLATED IN THE STATUTE.

If there were a basis or authority for SIMON to request or obtain fees and costs in order to obtain fees and costs pursuant to NRS 18.015, SIMON would have cited it over and over. But, there isn't so he didn't. Rather, to quote SIMON'S counsel, who was addressing the issue of discovery in general in lien adjudication proceedings: "It's not contemplated in the statute. If you have a problem with the statute, appear in front of the legislature and argue against it." (See Exhibit 1, at p. 20:21-22.) Getting fees for pursuing fees under NRS 18.015 isn't contemplated in the statute, either. It's not there. If SIMON has a problem with the fact that he can't get fees and costs to obtain fees and costs per NRS 18.015, he can take it up with the folks in Carson City. However, it's inappropriate to ask for or receive them in these proceedings. As a result, SIMON'S Motion must be denied.

C. SIMON WAS NOT AND IS NOT THE PREVAILING PARTY OF ANYTHING OF MERIT.

As argued above, NRS 18.015 does not contemplate an award of fees and costs in a lien adjudication proceeding filed to obtain fees and costs. Thus, awarding fees and cost under that statute would be improper. Furthermore, NRS 18.010 states that a prevailing party cannot recover fees if that party has recovered more than \$20,000. Even if one could assume that SIMON is a prevailing party, which he is not, SIMON has sought additional fees from PLAINTIFFS ranging from a low of \$692,120 to a high of \$1,977,843.80, amounts that are all well north of \$20,000.

In several instances, SIMON presented letters containing different amounts demanded from PLAINTIFFS in fees. In another, he presented a fee proposal. In yet another instance, he served attorneys liens, one without an amount for fees, another with \$1,977,843.80 affixed. In a final instance, SIMON served an improper Offer of Judgment on August 31, 2018, for

1 \$1,500,000, even though SIMON wasn't a party in the (A-16-738444-C) matter (and the only
2 matter) in which the attorney's liens were (or could have been) served. Yet, at the end of the
3 proverbial five days, SIMON was awarded \$484,982.50.

4 As also argued above, the lien adjudication proceedings were the creation of SIMON'S
5 desire for far more in fees than either the facts or the law allowed. He then refused and continues
6 to refuse to release PLAINTIFFS settlement proceeds to them, despite knowing that the best he
7 could hope to achieve in extra fees is the amount contained in his super bill = \$692,120. For
8 SIMON to assert or maintain that PLAINTIFFS were doing anything but following their rights in
9 these proceedings under these facts is, again, remarkable for shortsightedness, together with just
10 plain wrong.

11
12 PLAINTIFFS asked SIMON for a bill for his outstanding fees and costs on November 15,
13 2018, that they knew they owed. SIMON ignored that request and instead held firm at demanding
14 between \$1,500,000 (the defective Offer of Judgment) and \$1,977,843.80 (the Amended
15 Attorney's Lien) in extra fees. Receiving \$484,982.50, while a win in most circles, cannot be
16 deemed as such in the manner in which SIMON played this game and kept the score.

17
18 Again, PLAINTIFFS wanted none of this. They are the only victims here and they are the
19 ones who want all of this to end. Through the present date, SIMON has refused and continues to
20 refuse to do so. For these reasons, PLAINTIFFS request that SIMON'S Motion be denied.

21 **D. PLAINTIFFS' COMPLAINTS AGAINST SIMON WERE FILED AND**
22 **MAINTAINED IN GOOD FAITH.**

23
24 It's one thing for this Court to agree with SIMON'S iteration of the story that comprises
25 PLAINTIFFS' Amended Complaint and enter an order of dismissal on NRCP 12(b)(5) grounds.
26 (Of note, this Court previously denied SIMON'S Special Motion to Dismiss on Anti-SLAPP
27 grounds.) While PLAINTIFFS respectfully disagree that dismissal of their Amended Complaint
28 was justified on these facts and according to the governing law, considering that the law provides

1 a very steep hurdle to overcome to reach the harsh and final decision of dismissal without
2 discovery, etc., and that a jury could have just as easily agreed with PLAINTIFFS' version of the
3 facts as set forth in their Amended Complaint, as opposed to those of their attorney, PLAINTIFFS
4 are still willing to put an end to all of this and abide by the Court's Decision and Order on Motion
5 to Adjudicate Lien.

6 Yet, it's another thing entirely for SIMON to misrepresent the content of the Decision and
7 Order of Dismissal on NRCP 12(b)(5) grounds as one based on a frivolous, vexatious, or a
8 pleading that was not filed or maintained in good faith. Or that fees and costs are somehow
9 justified on based on NRS 18.010, NRS 7.085, or any other legal ground. PLAINTIFFS
10 strenuously object to any such characterization or representation, as it is unfounded in fact and
11 law. More importantly, there isn't any language in the Decisions and Orders of this Court
12 concerning the dismissal on 12(b)(5) or Anti-SLAPP grounds that supports any of SIMON'S
13 assertions in his Motion. Why would he continue to take positions that he knows are unsupported
14 and false?
15

16 For what they hope is the last time they have to state this in court filings, PLAINTIFFS
17 want this to end. They are ready, willing, and able to accept this Court's Decision and Order
18 Adjudicating Lien, pay \$484,982.50 to SIMON, and move on. Please continue to encourage
19 SIMON to do so as well by denying his baseless Motion for Fees and Costs.
20

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court deny SIMON'S Motion, as indicated in this Opposition.

DATED this 17 day of December, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that the following parties are to be served as follows:

Electronically:

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

Peter S. Christiansen, Esq.
CHRISTIENSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
Las Vegas, Nevada 89101

Traditional Manner:
None

DATED this 17 day of December, 2018.

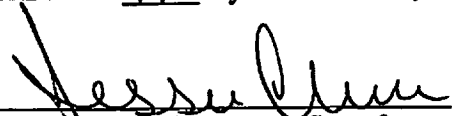
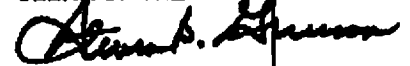

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1



1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 EDGEWORTH FAMILY TRUST,

6 Plaintiff,

7 vs.

8 LANGE PLUMBING, LLC,

9 Defendant.

CASE NO. A-16-738444-C

DEPT. X

10 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

11 TUESDAY, FEBRUARY 20, 2018

12 **RECORDER'S PARTIAL TRANSCRIPT OF HEARING**
13 **STATUS CHECK: SETTLEMENT DOCUMENTS**
14 **DEFENDANT DANIEL S. SIMON D/B/A SIMON LAW'S MOTION TO**
15 **ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE DANIEL**
16 **SIMON PC; ORDER SHORTENING TIME**

17 APPEARANCES:

18 For the Plaintiff:

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

19 For the Defendant:

THEODORE PARKER, ESQ.

20 For Daniel Simon:

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

21 For the Viking Entities:

JANET C. PANCOAST, ESQ.

22 Also Present:

DANIEL SIMON, ESQ.

23
24
25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 distinguishable facts. Be happy to brief it if you'd like. Simply wasn't
2 enough time this weekend to do that. But that's the thumbnail sketch.

3 THE COURT: Okay. Mr. Christensen, do you have any
4 response to that?

5 MR. CHRISTENSEN: Sure, Judge. We move for adjudication
6 under a statute. The statute is clear. The case law is clear. A couple of
7 times we've heard the right to jury trial, but they never established that
8 the statute is unconstitutional. They've never established that these are
9 exclusive remedies. And in fact, the statute implies that they are not
10 exclusive remedies. You can do both.

11 The citation of the *Hardy Jipson* case, is illustrated. If you look
12 through literally every single case in which there's a lien adjudication in
13 the state of Nevada, in which there is some sort of dispute, you -- the
14 Court can take evidence, via statements, affidavits, declarations under
15 Rule 43; or set an evidentiary hearing under Rule 43.

16 That's the method that you take to adjudicate any sort of a
17 disputed issue on an attorney lien. That's the route you take. The fact
18 that the *Hardy* case is a slightly different procedural setting doesn't
19 argue against or impact the effect of Rule 43. In fact, it reinforces it.
20 Just shows that's the route to take.

21 So, you know their -- they've taken this rather novel tact in
22 filing an independent action to try to thwart the adjudication of the lien
23 and try to impede the statute and they've supplied absolutely no
24 authority, no case law, no statute, no other law that says that that
25 actually works. They're just throwing it up on the wall and seeing if it'll

1 stick. And Judge, it won't stick. This is the way you resolve a fee
2 dispute under the lien.

3 Whatever happens next, if they want to continue on with the
4 suit, if they survive the Motion to Dismiss – the anti-SLAPP Motion to
5 Dismiss, we'll see. That's a question for another day. But the question
6 of the lien adjudication is ripe, this Court has jurisdiction, and they don't
7 have a legal argument to stop it. So, we should do that.

8 If the Court wants to set a date for an evidentiary hearing, we
9 would like it within 30 days. Let's get this done. And then they can sit
10 back and take a look and see what their options are and decide on what
11 they want to do. But, there's nothing to stop that lien adjudication at this
12 time.

13 THE COURT: Okay. Well, I mean, basically this is what I'm
14 going to do in this case. I mean, it was represented last time we were
15 here, that this is something that both parties eagerly want to get this
16 resolved -- they want to get this issue resolved. So I'm ordering you
17 guys to go to a mandatory settlement conference in regards to the issue
18 on the lien. Tim Williams has agreed to do a settlement conference for
19 you guys, as well as Jerry Wiese has also agreed to do a settlement
20 conference.

21 So if you guys can get in touch with either of those two and set
22 up the settlement conference and then you can proceed through that,
23 and if it's not settled then we'll be back here.

24 Mister --

25 MR. PARKER: Your Honor, my own selfish concern here, my

1 what the statutes says, hearing in five days. We're all happy. We'll all
2 go participate in a settlement conference, but this notion that there's
3 discovery and adjudication, unless somebody knows how to do
4 discovery in five days, which I don't, that's not contemplated. You have
5 a hearing you take evidence, whether it takes us a day or three days to
6 do the hearing, that's how it works.

7 THE COURT: Okay.

8 MR. VANNAH: Well, that's not how it works, because I have
9 done this before, and it was discovery ordered by another Judge saying
10 yeah, you're going to have discovery. Judge Israel ordered discovery.
11 But we're looking at two million dollars here.

12 THE COURT: And I understand that, Mr. Vannah.

13 MR. VANNAH: This is not some old fight over a fee of
14 \$15,000, which I agree would --

15 MR. CHRISTENSEN: Your Honor, I'm sorry, but I've been
16 doing lien work for a quarter century now --

17 MR. VANNAH: Me too.

18 MR. CHRISTENSEN: And --

19 MR. VANNAH: About 40 years.

20 MR. CHRISTENSEN: -- you don't get discovery to adjudicate
21 a lien. It's not contemplated in the statute. If you have a problem with
22 the statute, appear in front of the legislature and argue against it.

23 THE COURT: Okay --

24 MR. VANNAH: No, there's nothing --

25 THE COURT: -- well today, we're going to go to the

Exhibit 2

Exhibit 2



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST,
Plaintiff,
vs.
LANGE PLUMBING, LLC,,
Defendant.

CASE NO. A-16-738444-C

DEPT. NO. X

(CONSOLIDATED WITH:
CASE NO. A-18-767242-C)

And related matter/cases.

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, APRIL 3, 2018

**RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS**

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANT:

JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

2 [Case called at 9:38 A.M.]

3 THE COURT: -- in the consolidated case of Edgeworth
4 Family Trust versus Daniel S. Simon, doing business as Simon
5 Law. Good morning, counsel. If we could have everyone's
6 appearance.

7 MR. VANNAH: Yes. Robert Vannah and John Greene on
8 behalf of the Edgeworth parties.

9 THE COURT: Okay.

10 MR. CHRISTENSEN: Jim Christensen on behalf of the
11 Law Office.

12 THE COURT: Okay. So this is on for several things.
13 And what I did notice, counsel, is Mr. Simon had filed a
14 Motion to Adjudicate the Lien. And I believe when we were
15 here last time, I ordered you guys to a mandatory settlement
16 conference. So, it was my fault that we did not recalendar
17 the motion to adjudicate the lien, so it did not appear on the
18 calendar today.

19 However, I believe that the Motion to Adjudicate the
20 Lien is very, very important in making the decisions on the
21 other motions that are on calendar today. You guys have
22 already argued that motion, so I'm prepared to deal with all
23 of those issues today, if you guys are prepared to go forward
24 on that.

25 MR. VANNAH: We -- we are, Your Honor.

1 thing as giving it to us. You're okay.

2 So there's just -- there's no way to stop the anti-
3 SLAPP motion. They haven't cited any case law; we have. They
4 don't point to any section of the statute; we have. It
5 applies. Their -- their initial Complaint and their Amended
6 Complaint both have to be dismissed, because Mr. Simon was
7 sued because, and solely because he followed the lien statute.

8 THE COURT: Okay.

9 MR. CHRISTENSEN: Thank you, Your Honor.

10 THE COURT: Thank you, counsel.

11 I've read everything, and considering the arguments
12 today, it appears to me on the face of the regular Complaint
13 as well as on the face of the Amended Complaint that they were
14 not suing Mr. Simon for bringing the lien; they were suing him
15 for conversion, breach of contract, and the other causes of
16 action, which includes the last one that was added in the
17 Amended Complaint.

18 So the Special Motion to Dismiss is going to be
19 denied.

20 Moving on to -- there is a Motion to -- sorry, I'm
21 just on the wrong page -- a Motion to Dismiss Plaintiff's
22 Complaint pursuant to NRCP 12(b)(5), as well as the -- I want
23 to do the Motion to Adjudicate the Attorney Lien at the same
24 time. If you guys -- and I know you guys have made a lot of
25 arguments, and I do recall everything that was said the last

1 time we were here on the Motion to Adjudicate the Attorney
2 Lien.

3 But in regards to both of those motions, Mr.
4 Christensen, do you have anything to add to those two motions?

5 MR. CHRISTENSEN: Well, the initial Motion to
6 Dismiss only addressed the original first three causes of
7 action of the original Complaint.

8 THE COURT: Not the new one.

9 MR. CHRISTENSEN: So there's a fourth cause of
10 action floating around out there?

11 THE COURT: Yeah.

12 MR. CHRISTENSEN: As to the first three causes of
13 action, you can't sue for conversion when someone hasn't
14 converted money. In this case, Mr. Simon was sued for
15 conversion before anyone even had any money. He was sued
16 before the checks were even deposited, before the clients had
17 even signed the backs of the checks, they had sued him for
18 conversion.

19 So I would incorporate all of the arguments I made
20 on conversion with regard to anti-SLAPP.

21 THE COURT: Okay.

22 MR. CHRISTENSEN: They just don't have conversion.
23 There is not conversion if you haven't taken the money and put
24 it in your pocket. This is different from a case where a
25 lawyer has reached into their trust account and moved money

1 over to the business account, or put it in their pocket, or
2 they have a debit card off their trust account or whatever.
3 This is different.

4 Mr. Simon followed the rules. He can't be sued for
5 following the rules.

6 THE COURT: Okay. And, Mr. Vannah, you in the
7 Supplement to the Motion to Adjudicate that was filed by Mr.
8 Christensen, you did not file an Opposition. Is there
9 anything you want to add to that or anything you want to add
10 to the Motion to Dismiss?

11 MR. VANNAH: No. No, Your Honor.

12 THE COURT: Okay.

13 MR. VANNAH: It's -- it's -- I think we've -- we've
14 burned a lot of paper with the --

15 THE COURT: No, and I understand that. I just
16 wanted to give you --

17 MR. VANNAH: Right.

18 THE COURT: -- guys that opportunity because you
19 hadn't filed anything, if you wanted to.

20 Okay. So in regards to the Motion to Adjudicate the
21 Lien, we're going to set an evidentiary hearing to determine
22 what Mr. Simon's remaining fees are. Whether or not there is
23 a contract is a question of fact that this Court needs to
24 determine. This Court is going to determine if there is a
25 contract in implied, in fact, between Mr. Simon and between

1 the Edgeworths, because there were promises exchanged and
2 general obligations and there was services performed as well
3 as there was payment made on those services.

4 During the course of that evidentiary hearing, I
5 will also rule on the Motion to Dismiss at the end of the
6 close of evidence, because I think that evidence is
7 interrelated in the sense that it is my understanding from
8 everything that has happened, that after all of this arose the
9 end of November, the beginning of December of last year, then
10 there was the discussion between Mr. Simon and Mr. Vannah
11 where the money was placed into the account where Mr. Vannah
12 and Mr. Simon are the signors on the account, and then the
13 undisputed money, it's my understanding -- and correct me if
14 I'm wrong -- has already been disbursed to the plaintiffs and
15 only the disputed money remains in the account, is my
16 understanding.

17 MR. CHRISTENSEN: That's correct.

18 THE COURT: And so I think that is the subject that
19 needs to be addressed during the evidentiary hearing as to
20 what the fees are in regards to that disputed amount. So
21 after the close of evidence at the evidentiary hearing I will
22 be able to rule on the Motion to Dismiss.

23 Now, when do you guys want to have this hearing?

24 MR. VANNAH: Well --

25 THE COURT: How long do you guys think it's going to

Exhibit 3

Exhibit 3

EVENTS & ORDERS OF THE COURT

04/03/2018 All Pending Motions (9:30 AM) (Judicial Officer Jones, Tierra)

Minutes

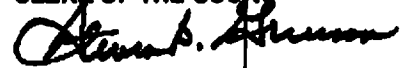
04/03/2018 9:30 AM

- APPEARANCES CONTINUED: Robert Vannah, and Robert Greene, present. Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp; Order Shortening Time....Status Check: Settlement Conference...Defendant Daniel S. Simon's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint (Consolidated Case No. A767242)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint Following arguments by counsel, COURT ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp, DENIED. COURT FURTHER ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Motion to Adjudicate Attorney Lien of the Law Office Daniel Simon PC, Set for Evidentiary Hearing on the dates as Follows: 05-29-18 11:00 a.m., 05-30-18, at 10:30 a.m., and 5-31-18 at 9:00 a.m. Court notes is will rule on the Motion to Dismiss at the conclusion of the hearing. COURT FURTHER ORDERED, Counsel to submit briefs by 5-18-18 and courtesy copy chambers. 05/28/18 11:00 A.M. EVIDENTIARY HEARING 05/30/18 10:30 A.M. CONTINUED EVIDENTIARY HEARING 05/31/18 9:00 A.M. CONTINUED EVIDENTIARY HEARING

Parties PresentReturn to Register of Actions

Exhibit B

Exhibit B



James R. Christensen Esq.
Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for SIMON

Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE
VIKING CORPORATION, a Michigan
corporation; SUPPLY NETWORK,
INC., dba VIKING SUPPLYNET, a
Michigan Corporation; and DOES 1
through 5 and ROE entities 6 through 10;

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON
LAW; DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**NOTICE OF ENTRY OF DECISION
AND ORDER GRANTING IN PART
AND DENYING IN PART, SIMON'S
MOTION FOR ATTORNEY'S FEES
AND COSTS**

Date of Hearing: N/A

Time of Hearing: N/A

Case No.: A-18-767242-C

Dept. No.: 26

Date of Hearing: N/A

Time of Hearing: N/A

1 PLEASE TAKE NOTICE, a Decision and Order Granting in Part and
2 Denying in Part, Simon's Motion for Attorney's Fees and Costs was entered on the
3 docket on the 8th day of February, 2019. A true and correct copy of the file-
4 stamped Decision and Order is attached hereto.
5

6 DATED this 8th day of February, 2019.

7 /s/ James R. Christensen

8 James R. Christensen Esq.
9 Nevada Bar No. 3861
10 JAMES R. CHRISTENSEN PC
11 601 S. 6th Street
12 Las Vegas NV 89101
13 (702) 272-0406
14 (702) 272-0415 fax
15 jim@jchristensenlaw.com
16 Attorney for SIMON
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

16 I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF
17 DECISION AND ORDER was made by electronic service (via Odyssey) this 8th
18 day of February, 2019, to all parties currently shown on the Court's E-Service List.
19

20 /s/ Dawn Christensen

21 an employee of
22 JAMES R. CHRISTENSEN, ESQ
23
24
25



1 **ORDR**

2 **JAMES CHRISTENSEN, ESQ.**

3 Nevada Bar No. 003861

4 601 S. 6th Street

5 Las Vegas, NV 89101

6 Phone: (702) 272-0406

7 Facsimile: (702) 272-0415

8 Email: jim@christensenlaw.com

9 *Attorney for Daniel S. Simon*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **EDGEWORTH FAMILY TRUST, and**
13 **AMERICAN GRATING, LLC**

14 **Plaintiffs,**

15 **vs.**

16 **LANGE PLUMBING, LLC; THE**
17 **VIKING CORPORATION, a Michigan**
18 **corporation; SUPPLY NETWORK,**
19 **INC., dba VIKING SUPPLYNET, a**
20 **Michigan Corporation; and DOES 1**
21 **through 5 and ROE entities 6 through 10;**

22 **Defendants.**

23 **EDGEWORTH FAMILY TRUST;**
24 **AMERICAN GRATING, LLC**

25 **Plaintiffs,**

26 **vs.**

27 **DANIEL S. SIMON d/b/a SIMON**
28 **LAW; DOES 1 through 10; and, ROE**
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

DECISION AND ORDER
GRANTING IN PART AND
DENYING IN PART, SIMON'S
MOTION FOR ATTORNEY'S FEES
AND COSTS

Date of Hearing: 1.15.19

Time of Hearing: 1:30 p.m.

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 This matter came on for hearing on January 15, 2019, in the Eighth Judicial
2 District Court, Clark County, Nevada, the Honorable Tierra Jones presiding.
3 Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a
4 Simon Law (jointly the "Defendants" or "Simon") having appeared by and through
5 their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.;
6 and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
7 "Edgeworths") having appeared through by and through their attorneys of record,
8 the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having
9 considered the evidence, arguments of counsel and being fully advised of the
10 matters herein, the **COURT FINDS** after review:
11
12
13
14

15 The Motion for Attorney s Fees is GRANTED in part, DENIED in part.

16 1. The Court finds that the claim for conversion was not maintained on
17 reasonable grounds, as the Court previously found that when the complaint was
18 filed on January 4, 2018, Mr. Simon was not in possession of the settlement
19 proceeds as the checks were not endorsed or deposited in the trust account.
20 (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such,
21 Mr. Simon could not have converted the Edgeworths' property. As such, the
22 Motion for Attorney s Fees is GRANTED under 18.010(2)(b) as to the Conversion
23
24
25
26
27
28

1 claim as it was not maintained upon reasonable grounds, since it was an
2 impossibility for Mr. Simon to have converted the Edgeworths' property, at the
3 time the lawsuit was filed.
4

5 2. Further, the Court finds that the purpose of the evidentiary hearing was
6 primarily for the Motion to Adjudicate Lien. The Motion for Attorney s Fees is
7 DENIED as it relates to the other claims. In considering the amount of attorney's
8 fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and
9 Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against
10 Mr. Simon, on January 4, 2018. However, they were also the attorneys in the
11 evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found
12 was primarily for the purpose of adjudicating the lien asserted by Mr. Simon.
13 The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the
14 purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr.
15 David Clark Esq. were solely for the purposes of defending the lawsuit filed
16 against Mr. Simon by the Edgeworths. As such, the Court has considered all of the
17
18
19
20
21
22
23
24
25
26
27
28


1 factors pertinent to attorney's fees and attorney's fees are GRANTED in the
2 amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

3 IT IS SO ORDERED.

4
5 Dated this 6 day of February, 2019.

6
7
8 
DISTRICT COURT JUDGE SW

9 Submitted by:

10 
11
12 JAMES CHRISTENSEN, ESQ.
13 Nevada Bar No. 003861
14 601 S. 6th Street
15 Las Vegas, NV 89101
16 Phone: (702) 272-0406
17 Facsimile: (702) 272-0415
18 Email: jim@jchristensenlaw.com
19 Attorney for Daniel S. Simon

20 Approved as to form and content:

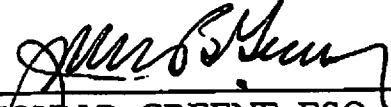
21 
22 JOHN B. GREENE, ESQ.
23 Nevada Bar No. 004279
24 VANNAH & VANNAH
25 400 South Seventh Street, 4th Floor
26 Las Vegas, Nevada 89101
27 Phone: (702) 369-4161
28 Facsimile: (702) 369-0104
jgreene@vannahlaw.com
Attorney for Plaintiffs

Exhibit A

Exhibit A



1 ACOM
2 ROBERT D. VANNAH, ESQ.
3 Nevada Bar. No. 002503
4 JOHN B. GREENE, ESQ.
5 Nevada Bar No. 004279
6 VANNAH & VANNAH
7 400 South Seventh Street, 4th Floor
8 Las Vegas, Nevada 89101
9 Telephone: (702) 369-4161
10 Facsimile: (702) 369-0104
11 igreene@vannahlaw.com

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

24 Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XIV

Consolidated with

CASE NO.: A-16-738444-C
DEPT. NO.: X

AMENDED COMPLAINT

25 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC
26 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.
27 GREENE, ESQ., of VANNAH & VANNAH, and for their causes of action against Defendants,
28 complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized
under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a
domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL
are referred to as PLAINTIFFS.

2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic professional corporation licensed and doing business in Clark County, Nevada. At times, Defendants shall be referred to as SIMON.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

1 [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person
2 shall suffer personal injury by wrongful act, neglect or default of another,
3 the person causing the injury is liable to the person injured for damages;
4 and where the person causing the injury is employed by another person or
corporation responsible for his conduct, that person or corporation so
responsible is liable to the person injured for damages.

5 6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and
6 is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for
7 services and the conversion of PLAINTIFFS personal property, as herein alleged.

8 7. ROE CORPORATIONS I through V are entities or other business entities that
9 participated in SIMON'S breach of the oral contract for services and the conversion of
10 PLAINTIFFS personal property, as herein alleged.

11 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

12 8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests
13 following a flood that occurred on April 10, 2016, in a home under construction that was owned by
14 PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case
15 Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in
16 favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the
17 trial date.

18 9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally
19 agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs
20 would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were
21 never reduced to writing.

22 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December
23 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs
24 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to
25 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of
26
27
28

1 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to
2 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever
3 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees
4 and costs to the mandated computation of damages.

5
6 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay
7 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by
8 PLAINTIFFS accrued interest.

9 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall
10 of 2017, and thereafter blossomed from one of mere property damage to one of significant and
11 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the
12 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the
13 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,
14 neither PLAINTIFFS nor SIMON agreed on any terms.

15
16 13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth
17 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he
18 wanted to be paid in light of a favorable settlement that was reached with the defendants in the
19 LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that PLAINTIFFS
20 had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented
21 to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set
22 forth in the computation of damages disclosed by SIMON in the LITIGATION.

23
24 14. A reason given by SIMON to modify the CONTRACT was that he purportedly
25 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go
26 through his invoices and create, or submit, additional billing entries. According to SIMON, he
27 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason
28 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that

1 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement
2 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

3 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
4 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
5 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following
6 the flooding event.
7

8 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP
9 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS
10 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS
11 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect
12 fees and costs other than those contained in his invoices that were presented to and paid by
13 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
14 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let
15 alone those in excess of \$1,000,000.00.
16

17 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
18 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
19 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
20 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
21 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
22 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
23 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
24 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
25 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
26 they've been updated as of last week."
27
28

18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

1 24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted
2 pursuant to the CONTRACT.

3 25. SIMON'S demand for additional compensation other than what was agreed to in the
4 CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for
5 PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.
6

7 26. SIMON'S refusal to agree to release all of the settlement proceeds from the
8 LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the
9 CONTRACT.

10 27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the
11 undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a
12 definite timeline as to when PLAINTIFFS can receive either the undisputed number or their
13 proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.
14

15 28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS
16 incurred compensatory and/or expectation damages, in an amount in excess of \$15,000.00.

17 29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS
18 incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.

19 30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have
20 been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are
21 entitled to recover attorneys' fees and costs.
22

23 **SECOND CLAIM FOR RELIEF**

24 **(Declaratory Relief)**

25 31. PLAINTIFFS repeat and reallege each allegation and statement set forth in
26 Paragraphs 1 through 30, as set forth herein.
27

28 32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, \$550.00
per hour for SIMON'S legal services performed in the LITIGATION.

1 33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour
2 for a total of \$486,453.09, for SIMON'S services in the LITIGATION.

3 34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or
4 amend any of the terms of the CONTRACT.
5

6 35. The only evidence that SIMON produced in the LITIGATION concerning his fees
7 are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which
8 PLAINTIFFS paid in full.
9

10 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in
11 the LITIGATION was produced in updated form on or before September 27, 2017. The full
12 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to
13 PLAINTIFFS and that PLAINTIFFS paid in full.
14

15 37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the
16 CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and
17 PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON
18 admitted that all of the bills for his services were produced in the LITIGATION; and, since the
19 CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to
20 declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the
21 CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the
22 CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.
23

24 **THIRD CLAIM FOR RELIEF**

25 (Conversion)

26 38. PLAINTIFFS repeat and reallege each allegation and statement set forth in
27 Paragraphs 1 through 37, as set forth herein.
28

1 39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his
2 services, nothing more.

3 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or
4 before September 27, 2017, had already been produced to the defendants.

5 41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable
6 sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

7 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his
8 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay
9 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd
10 produced all of his billings through September of 2017, SIMON has refused to agree to either
11 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed
12 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

13 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a
14 conscious disregard of, and contempt for, PLAINTIFFS' property rights.

15 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises
16 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to
17 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount
18 in excess of \$15,000.00.

19 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,
20 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,
21 PLAINTIFFS are entitled to recover attorneys' fees and costs.

22 ///

23 ///

FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling \$486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is \$692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be

1 determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,
2 SIMON breached the implied covenant of good faith and fair dealing.

3
4 53. When SIMON executed his secret plan and went back and added substantial time to
5 his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good
6 faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and
7 fair dealing.

8
9 54. When SIMON demanded a bonus based upon the amount of the settlement with the
10 Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,
11 SIMON breached the implied covenant of good faith and fair dealing.

12 55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an
13 amount that was far in excess of any amount of fees that he had billed from the date of the
14 previously paid invoice to the date of the service of the lien, that he could bill for the work
15 performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing
16 so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON
17 breached the implied covenant of good faith and fair dealing.

18
19 56. As a result of SIMON'S breach of the implied covenant of good faith and fair
20 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access
21 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,
22 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the
23 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.

24
25 57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a
26 conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or
27 malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are
28 therefore entitled to punitive damages, in an amount in excess of \$15,000.00.

1 50. PLAINTIFFS have been compelled to retain an attorney to represent their interests
2 in this matter. As a result, PLAINTIFFS are entitled to an award of reasonable attorneys fees and
3 costs.
4

5 **PRAYER FOR RELIEF**

6 Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

- 7 1. Compensatory and/or expectation damages in an amount in excess of \$15,000;
8 2. Consequential and/or incidental damages, including attorney fees, in an amount in
9 excess of \$15,000;
10 3. Punitive damages in an amount in excess of \$15,000;
11 4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;
12 5. Costs of suit; and,
13 6. For such other and further relief as the Court may deem appropriate.
14

15 DATED this 15 day of March, 2018.

16 VANNAH & VANNAH

17
18 
19 ROBERT D. VANNAH, ESQ. (4279)
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

EDGEWORTH FAMILY TRUST; AMERICA
N GRATING, LLC,
Appellants,
vs.
DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL CO
RPORATION;
Respon

No. 78176
Electronically Filed
Mar 25 2019 01:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2011

1. Judicial District Eighth Department 10
County Clark Judge Tierra Jones
District Ct. Case No. A-18-767242-C, consolidated with A-16-738444-C

2. Attorney filing this docketing statement:

Attorney John B. Greene, Esq. Telephone (702) 853-4338
Firm VANNAH & VANNAH
Address 400 S. 7th Street, 4th Floor
Las Vegas, NV 89101

Client(s) EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney James R. Christensen, Esq. Telephone (702) 272-0406
Firm James R. Christensen, P.C.
Address 601 S. Third Street
Las Vegas, NV 89101

Client(s) Daniel S. Simon; The Law Office of Daniel S. Simon, A Professional Corporation

Attorney Peter S. Christiansen, Esq. Telephone (702) 240-7979
Firm CHRISTIANSEN LAW OFFICES
Address 810 S. Casino Center Blvd., Ste. 104
Las Vegas, NV 89101

Client(s) Daniel S. Simon; The Law Office of Daniel S. Simon, A Professional Corporation

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Motion for Fees and</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

In Case No. A-16-738444-C, Plaintiffs/Appellants (Edgeworth) retained Defendants/Respondents (Simon) to represent them and agreed to pay Simon \$550 per hour (\$275 for associates). From May of 2016 through September of 2017, Simon billed \$550 per hour for his time and charged Edgeworth \$367,606.25 in attorneys fees via four invoices. Edgeworth paid these fees in full. Upon settlement, Simon demanded more in fees than the parties agreed to pay and receive; Edgeworth refused and Simon perfected a lien for \$1,977,843.80. After the hearing on Simon's Motion to Adjudicate Lien, Judge Jones awarded Simon an additional \$484,982.50 in fees. Simon won't release \$1,492,861.30 to Edgeworth.

In Case No. A-18-767242-C, Edgeworth sued Simon for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing. Judge Jones dismissed the Amended Complaint without discovery. Thereafter, Judge Jones awarded attorneys fees in the amount of \$50,000 and costs in the amount of \$5,000, finding that there wasn't a good faith basis to make or maintain a claim for conversion.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether it was inappropriate for the court to find that the claim for conversion in the Amended Complaint wasn't either brought or maintained in good faith?
2. Whether it was an abuse of discretion for the Court to award Simon \$50,000 in fees and \$5,000 in costs.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Case #77678; same parties; the issue of the dismissal of the Amended Complaint without discovery is similar and/or related to the Order Granting in Part and Denying in Part Simon's Motion for Fees and Costs allegedly incurred seeking the dismissal of the Amended Complaint, primarily the claim for conversion.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is arguably presumptively retained by the Supreme Court under NRAP 17(a) (11), being a matter of statewide public importance, as it involves an attorney who agreed to represent a client for an hourly fee of \$550, but failed to reduce the fee agreement to writing; then billed \$550 per hour for 18 months, collecting nearly \$400,000 in fees; then demanded more in fees; when the client refused to pay more than the agreed to fee of \$550 per hour, attorney liened the file for nearly 40% of proceeds; then used his failure to reduce the fee agreement to writing as a basis to get more money in a "charging lien"; when the lien was adjudicated, attorney refused to release proceeds in excess of his adjudicated lien, retaining \$1,492,861.30 of client funds.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? A hearing on a Motion for Fees and Costs

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 2/8/19

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 2/8/19

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed February 15, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Judge Jones entered a final Decision and Order Granting in Part and Denying in Part Simon's Motion for Fees and Costs.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; LANGE PLUMBING, LLC; THE VIKING CORPORATION; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET; DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

LANGE PLUMBING, LLC; THE VIKING CORPORATION; and, SUPPLY NETWORK, INC., dba VIKING SUPPLYNET were all formally dismissed following the settlement reached with Edgeworth.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Motion to Adjudicate Attorney's Lien: adjudicated by Judge Jones

Amended Complaint for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing: Dismissed by Judge Jones

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Edgeworth Family Trust, et.al.

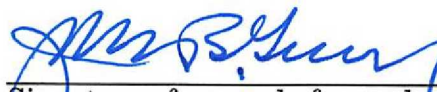
Name of appellant

John B. Greene, Esq.

Name of counsel of record

January 9, 2019

Date


Signature of counsel of record

Nevada, Clark

State and county where signed

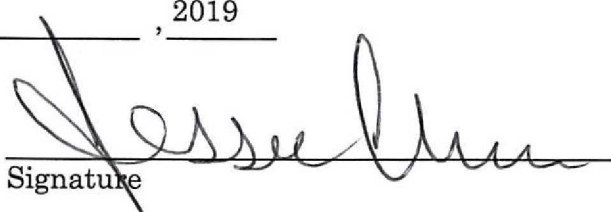
CERTIFICATE OF SERVICE

I certify that on the 25th day of March, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this 25th day of March, 2019


Signature