

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Appellants/Cross-Respondents,

vs.

DANIEL S. SIMON; and THE LAW
OFFICE OF DANIEL S. SIMON, a
Professional Corporation,

Respondents/Cross-Appellants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; and THE LAW
OFFICE OF DANIEL S. SIMON, a
Professional Corporation,

Respondents.

LAW OFFICE OF DANIEL S. SIMON;
DOES 1 through 10; and, ROE entities 1
through 10;

Petitioner,

vs.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 77678

District Court Case
No.: A-16-738444-C
Consolidated with:
A-18-767242-C

Consolidated with:
Supreme Court No. 78176

Consolidated with:
Supreme Court No. 79821

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
CLARK; THE HONORABLE TIERRA
JONES

Respondents,

and

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Real Parties in Interest.

MOTION FOR *EN BANC* REVIEW

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I. Introduction

Respondent/Cross Appellant/Petitioner, collectively referred to as Simon, requests *en banc* review of this consolidated appeal and writ petition because two issues are raised which have the potential for substantial precedential impact.

First, Appellant/Cross Respondent/Real Parties in Interest, collectively referred to as the Edgeworths, seek to maintain a conversion case against an attorney for asserting a statutory attorney lien when there is no evidence of, and no allegations of, taking money for personal use. A ruling in favor of the Edgeworths on the ability to bring a conversion claim when the disputed funds are safekept would have substantial precedential impact because it would be the first such holding in the United States.

Second, Simon seeks relief from the District Court decision which denied Simon's Anti-SLAPP motion to dismiss as moot. While courts in California have found that an attorney lien is a protected activity under the California Anti-SLAPP statute, Nevada has yet to rule on the issue. Accordingly, a ruling on this issue could set precedent for Nevada.

II. Argument

The Court may hear a matter *en banc* in the first instance if there is a substantial precedential issue.¹ Precedent is generally defined as a decision that provides an example or authority for similar cases which follow.² Simon believes there are two such issues presented.

¹ IOP at Rule 2(b)(2) & 13(a).

² See, e.g., Black's Law Dictionary, 5th ed. (1979), at 1059.

A. Suit for conversion when money is safekept.

The Edgeworths sued Simon for conversion because Simon used a lien to resolve a fee dispute. The Edgeworths agree that Simon is owed fees and costs, albeit there is a disagreement over the amount. The Edgeworths agree that the disputed funds are safekept. Lastly, the District Court found the attorney lien complied with NRS 18.015 and was enforceable.

After repeated searches on Westlaw and Lexis, Simon has not found any case authority in the United States in which a conversion claim against an attorney who used a lawful lien to resolve a fee dispute has been allowed when the disputed funds are safekept. Likewise, the Edgeworths did not provide the District Court with any case authority which supports their collateral conversion claim, nor did they provide any precedent in their opening brief.

Accordingly, a ruling in favor of the Edgeworths would be the first such holding in the United States and would thus serve as precedent for the nation. The potential for precedent which could negatively impact the administration of justice and the attorney client relationship is so distinct that the National Trial Lawyers Association filed an Amicus Brief in support of affirmance of the dismissal of the conversion claim.

B. An attorney lien is a protected activity under Anti-SLAPP law.

Simon moved to dismiss the Edgeworth conversion complaint under the Nevada Anti-SLAPP law because filing an attorney lien should be recognized as a protected activity under the law. The District Court did not so find, and instead denied the motion as moot. Simon seeks relief.

Nevada has looked to California on Anti-SLAPP issues in the recent past. In *Shapiro v. Welt*, 133 Nev. 35, 35, 389 P.3d 262, 265 (2017), the Court adopted “California law to determine if a statement is an issue of public interest”.

Simon respectfully requests the Court to look to California law on this issue as well. California case law holds that assertion of an attorney lien is a protected activity under the California Anti-SLAPP statute. See, e.g., *Jensen v. Josefsberg*, 2018 WL 5003554 (C.A. 2nd Dist. Div. 2, 2018)(unpublished)(a complaint challenging an attorney lien as unethical was subject to dismissal under the Anti-SLAPP statute); *Finato v. Fink*, 2018 WL 4719233 (C.A. 2nd Dist. 2018) *review denied* 2019 (unpublished)(*Finato* recognized filing an attorney lien was a protected activity under the Anti-SLAPP law and on appeal ordered dismissal of lien related claims for malpractice, breach of fiduciary duty and breach of contract); *Kattuah v. Linde Law Firm*, 2017 WL 3033763 (C.A. 2nd Dist.

Div. 1 Calif. 2017) (unpublished)(reversing denial of an Anti-SLAPP motion); *Roth v. Badener*, 2016 WL 6947006 (C.A. 2nd Dist. Div. 2 Calif 2016) (reversing a denial of an Anti-SLAPP motion)(unpublished); *Becerra v. Jones, Bell, Abbott, Fleming & Fitzgerald LLP*, 2015 WL 881588 (C.A. 2nd Dist. Div. 8 Calif 2015) (unpublished); *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist., C.A. 2009)(unpublished)(order granting Anti-SLAPP motion affirmed); *Transamerica Life Insurance Co., v. Rabaldi*, 2016 WL 2885858 (U.S.D.C.C.D. Calif. 2016)(unpublished)(an attorney lien is “protected petitioning activity”).

Recognition that use of an attorney lien is a protected activity would set Nevada precedent.

III. Conclusion

There appear to be two issues which could set precedent. Accordingly, Simon requests an *en banc* hearing.

Dated this 28th day of January 2020.

/s/ James R. Christensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of January 2020, I served a copy of the foregoing Motion for En Banc Hearing on the following parties by electronic service pursuant to Nevada Rules of Appellate Procedure:

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