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

APPELLANTS' PETITION FOR REHEARING

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I. STATEMENT OF FACTS RELEVANT TO THE PETITION FOR REHEARING:

In the Decision and Order on Motion to Adjudicate Lien, the Court found that Simon and the Edgeworths had an implied agreement—a contract—for attorney's fees, at the rate of $550 per hour for Simon and $275 per hour for his associates. *Appellants' Appendix, Vol. 2, 000360; 000365-000366;000374*. It is undisputed that on November 27, 2107, Simon sent a letter and a proposed Retainer Agreement to the Edgeworths. *AA, Vol. 2, 000275-000276*. Simon also attached a Proposed Retainer agreement to that letter. *AA, Vol. 2, 000270-000276.*

Simon told the Edgeworths that he wanted to be paid more than his hourly rate of $550.00 per hour. *Id; please also see Respondents' Appendix AA Vol.1, 00051-00055*. The Retainer Agreement provided for a fee to be paid by the Edgeworths to Simon in the amount of "$1,500,000 for services rendered to date.". *AA, Vol. 2, 000275*. Simon further stated in his letter that "I have thought about it a lot and this is the lowest amount I can accept." *AA*, *Vol. 2, 000274; please also see Respondents' Appendix AA Vol.1, 00055.*

Simon also stated "If you are going to hold me to an hourly arrangement then I will have to go review the entire file for my time spent from the beginning to include all time for me and my staff at my full hourly rate to avoid an unjust outcome." *AA*, *Vol. 2, 000273.* When the Edgeworths refused to sign the Retainer

Agreement, Simon then created and presented a "super bill" that totaled $692,120, an amount far short of his asserted lien of $1,977,843.80. *AA, Vols. 1 & 2 000159-111163; 000263-000265*.

Simon also reiterated the "many things on calendar that I need to address" and that "there is a substantial amount of work that still needs to be addressed." *AA, Vol. 2, 000273-000274; please also see Respondents' Appendix AA Vol.1, 00054-00055*. Simon then stated, "If you are agreeable to the attached agreement, please sign both…." *AA, Vol. 2, 000274; please also see Respondents' Appendix AA Vol.1, 00055.*

Simon then bluntly said, "If you are not agreeable, then I cannot continue to lose money to help you. I will need to consider all options available to me." *Id*. Simon's letter was sent two days **before** the date that the district court found that the Edgeworths had constructively discharged Simon. *AA, Vol. 2, 000273-000274; 000361:6-7; please also see Respondents' Appendix AA Vol.1, 00054-00055*; *AA, Vol. 2*. Simon, through the use of two attorney liens, wrongfully laid claim to over $1,977,843 of the Edgeworths' personal property. *AA*, *Vols. 1 &* 2 *000006; 000300*.

Litigation was filed and served to recover from Simon the damages the Edgeworths had sustained. *AA*, *Vols. 1 & 2 000014; 000358:10-12*. After Simon's lien was adjudicated in the amount of $484,982.50, Simon still wrongfully

retained, and retains, an interest in, and exercises dominion and control over, $1,977,843. *AA, Vol. 2 000415-000424*.

II. STANDARD OF REVIEW:

A. Applicable Rehearing Standard:

Nev. R. App. P. 40(c)(2) provides the following circumstances in which the Court may consider rehearings:

> (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case; or,
>
> (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

Under the Court's "long practice, rehearings are not granted to review matters that are of no practical consequence*." Bahena v. Goodyear Tire & Rubber Co*., 126 Nev. 606, 608-09, 245 P.3d 1182, 1184 (2010). "Rather, a petition for rehearing will be entertained only when the court has overlooked or misapprehended some material matter, or when otherwise necessary to promote substantial justice." *Id*. (quoting *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984)).

As set forth in this Petition, rehearing is appropriate and necessary to allow the Court to consider several factual and legal points the Court misapprehended or overlooked. Nev. R. App. P. 40(c)(2)(B). The most practical consequence is this Court's misapplication of its published and long-standing Nevada law of the

essential elements of conversion and the associated affirmance of the district court's dismissal of the Edgeworths' claim for conversion, and its finding that this claim wasn't brought in good faith.

III. SUMMARY OF ARGUMENTS:

First, the Court overlooked and misapprehended the facts and the law when choosing to affirm the district court's order dismissing the breach of contract claim in the Edgeworths' Amended Complaint, as the district court found that that an implied contract for attorney's fees existed between the parties (*Appellants' Appendix, Vol. 2, at, 000360; 000365-000366;000374),* and substantial evidence was presented at the evidentiary hearing that Simon, via his letter to the Edgeworths dated November 27, 2017, agreed that there was an agreement for fees, then breached the implied contract for fees by demanding $1,500,000, or else. *AA, Vol. 2, 000274; please also see Respondents' Appendix AA Vol.1, 00055.*

Second, this Court overlooked and misapprehended the facts and the law when choosing to affirm the district court's order finding a constructive discharge of Simon by the Edgeworths, when that same letter shows that Simon constructively discharge the Edgeworths two days before they allegedly constructively discharged Simon. *Id.*

Third, and of critical consequence, the Court overlooked and misapprehended the facts and the law when stating *for the first time* that the

general law governing the tort of conversion is set forth in the niche, intangible property (a contractor's license) case of *M.C. Multi-Family Development, L.L.C. v. Crestdale Assoc., Ltd.*, 124 Nev. 901, 911, 193 P.3d 536, 543 (Nev. 2008), as opposed to this Court's published and well-established law set forth in *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000); *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans*, 116 Nev. at 608.

If that was the intent of the Court, it retroactively proclaimed a new standard of "exclusive possession" to the law of conversion to the severe and substantial injustice of the Edgeworths. *Bahena*, 126 Nev. 608-09, 245 P.3d 1184 (2010) (quoting *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984)).

Last, and directly related to the preceding paragraph, the Court overlooked and misapprehended the facts and the law when stating that, "We perceive no abuse of discretion in this portion of the district court's decision," when that portion of the district court's decision improperly applied this Court's long-standing and published law of conversion. *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000); *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans*, 116 Nev. at 608.

IV. ARGUMENTS:

A. The Court Overlooked And Misapprehended The Facts And The Law When Choosing To Affirm The District Court's Order Dismissing The Edgeworths' Claims For Breach of Contract in their Amended Complaint, A Finding Appealed By The Edgeworths.

The Court overlooked and misapprehended the facts and the law when choosing to affirm the district court's order dismissing the Edgeworths' Amended Complaint. The district court found that that an implied contract for attorney's fees existed between the parties. *Appellants' Appendix, Vol. 2, at, 000360; 000365-000366;000374.* Substantial evidence was presented that Simon breached the implied contract for fees. *AA, Vol. 2, 000274; please also see Respondents' Appendix AA Vol.1, 00055.* The implied agreement for fees provided for Simon to be paid $550 per hour, and his associates to be paid $275 per hour, for their services. *AA, Vol. 2, at, 000360; 000365-000366;000374*.

Undisputed evidence was presented of the breach of the contract by Simon when he stated in a letter to the Edgeworths that unless he was paid $1,500,000 in fees, then "I (Simon) cannot continue to lose money to help you. I will need to consider all options available to me." *AA, Vol. 2, 000274; please also see Respondents' Appendix AA Vol.1, 00055.* Simon's letter, and attached Retainer Agreement, demanding a fee of $1,500,000 that was not based on the terms of the implied contract as found by the district court constitutes a material breach of the

implied contract for the payment of hourly fees at the rate of $550 per hour for Simon, and $275 per hour for his associates. *Id*.; *Pruchnicki v. Envision Health Care*, 439 F.Supp.3d 1226, 1231-32 (D. Nevada 2020).

Similarly, that same undisputed evidence introduced at the evidentiary hearing where Simon threatened to quit his representation of the Edgeworths if they do not sign a document that is contrary to the terms of the implied fee contract at an hourly rate, and instead demanding $1,500,000, constitutes a material breach of the implied contract for the payment of hourly fees at the rate of $550 per hour for Simon, and $275 per hour for his associates. *Id*.; *Pruchnicki v. Envision Health Care*, 439 F.Supp.3d 1226, 1231-32 (D. Nevada 2020).

Even now, it is undisputed that with Simon's lien adjudicated at $484,982.50, with a finding that an implied contract for fees at $550 per hour existed, and with a ruling that Simon is not entitled to a contingency fee, he still lays claim to the full measure of his lien of $1,977,843. That's a clear breach of the contract by Simon. That is precisely the nature of the Edgeworths' claim for breach of contract and the exact dismissal of which they appealed to this Court. *AA, Vol. 2, 000425-000427.*

Since there is substantial evidence in the record of the existence of a contract for fees to be paid at an exact hourly rate, and that of a material breach of the contract for fees by Simon, the district court erred in dismissing the Edgeworths'

Amended Complaint. *Id*. Furthermore, this Court overlooked, misapprehended, and/or failed to consider the facts and the law in affirming that finding. NRAP 40(c)(2); *Pruchnicki v. Envision Health Care*, 439 F.Supp.3d 1226, 1231-32 (D. Nevada 2020).

B. The Court Overlooked And Misapprehended The Facts And The Law When Choosing To Affirm The District Court's Order Finding A Constructive Discharge of Simon By The Edgeworths, As They Had Been Constructively Discharged By Simon Two Days Earlier.

The undisputed and admitted evidence presented showed that it was Simon who, in his letter of November 27, 2017: 1.) demanded that the Edgeworths change the terms of the (implied) fee agreement from $550 per hour to a random fee of $1,500,000; 2.) told the Edgeworths he couldn't afford to continue working on their case at $550 per hour; and, 3.) threatened to stop working on the Edgeworths' case despite " a lot of work left to be done" if they didn't sign the new Retainer Agreement. *AA, Vol 2, 000270-275; 000298:13-24; please also see Respondents' Appendix AA Vol.1, 00051-00055*.

The undisputed language in Simon's letter of November 27, 2017, as referenced above, constitutes substantial evidence that Simon, at the very least, constructively discharged the Edgeworths just two days before the date that the district court found that the Edgeworths had committed the same offense. *Id.; AA, Vol. 2, at, 000360; 000365-000366;000374.* In the order of the district court, a basis for finding that a constructive discharge exists was stated as, "Taking actions

that prevent(ing) effective representation…." AA, *Vol. 2, 000361, citing McNair v. Commonwealth*, 37 Va.App. 687, 697-98 (Va. 2002).

Threatening to quit as the attorneys for the Edgeworths on November 27, 2017, if they didn't sign a fee agreement that paid Simon $1,500,000 in mostly random fees that had nothing to do with work performed at $550 per hour, is an action taken that prevented the effective and continued representation of the Edgeworths, thus a constructive discharge. *Id*. It's also a material breach of the implied contract. *Pruchnicki v. Envision Health Care*, 439 F.Supp.3d 1226, 1231-32 (D. Nevada 2020). Plus, it's also beyond dispute that Simon's constructive discharge of the Edgeworths occurred two days before the date the district court found that the Edgeworths had constructively discharged Simon. *AA, Vol. 2, 000361:6-7*.

Since the record contains substantial evidence of a constructive discharge of the Edgeworths by Simon prior to the date that the district court erroneously found that the Edgeworths had constructively discharged Simon, this Court overlooked, misapprehended, and/or failed to consider the facts and the law in affirming that finding. NRAP 40(c)(2); *McNair v. Commonwealth*, 37 Va.App. 687, 697-98 (Va. 2002).

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C. The Court Overlooked And Misapprehended The Facts And The Law In Affirming The Dismissal Of the Claim For Conversion By Stating That The General Law Governing The Tort Of Conversion Is Set Forth In *M.C. Multi-Family Development, L.L.C. v. Crestdale Assoc., Ltd.*, 124 Nev. 901, 911, 193 P.3d 536, 543 (Nev. 2008).

In the Order Affirming In Part, Vacating In Part And Remanding at page 8, the Court recognized that, "The Edgeworths argued that the district court abused its discretion by awarding attorney fees to Simon in the context of dismissing their conversion claim because their claim was neither groundless nor brought in bad faith…." *Id*. All of this was based on an "exclusive control" test that has never been stated by this Court as an essential element in order to bring any claim for conversion. *See*, *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans*, 116 Nev. at 608.

In affirming this portion of the district court's order, this Court seemed to state that it was legally impossible for Simon to commit conversion because the Edgeworths were not in exclusive possession of the disputed fees. *Id*. In doing so, the Court cited the niche case of *M.C. Multi-Family Development, L.L.C. v. Crestdale Assoc., Ltd.*, 124 Nev. 901, 911, 193 P.3d 536, 543 (Nev. 2008), a case of first impression discussing whether the intangible property right of a contractor's license can and should be the subject of a conversion claim in Nevada.

Id. In so doing, this Court has overlooked its published and well-established law, misapplied a niche case, and failed to consider the explicit and controlling language of Nevada law governing conversion since 1958. Nev. R. App. P. 40(c)(2)(B).

In discussing the elements of the tort of conversion, the court in *M.C. Multi-Family Development* cited with approval *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000). *Id*. *Evans*, in turn, while laying out the elements of the tort of conversion in Nevada, cited with approval *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958), and *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans*, 116 Nev. at 608.

This Court in *M.C. Multi-Family Development* did not overrule any portion of the law governing conversion, including that of tangible property as set forth in *Evans, Wantz*, and *Bader. Id.* This Court also did not state or imply that the "exclusivity" element for an intangible property claim was to be expanded to include that of tangible property. *Id.* And there nothing in *Evans, Wantz*, or *Bader* that limits a claim for conversion to one with exclusive possession of property. *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000.); *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). In fact, the law in Nevada is to the contrary. (*Id*.)

Under Nevada law, conversion is "a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with, his title or rights therein or in derogation, exclusion, or defiance if such title or rights." *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans*, 116 Nev. at 608. Nevada law also holds that conversion is an act of general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge. *Id*.

More specifically, footnote 1 in *Bader* states as follows, "Conversion does not require a manual taking. Where one makes an unjustified claim of title to personal property, or asserts an unfounded lien to said property which causes actual interference with the owner's rights of possession, a conversion exists." (*Id*.)(Emphasis added.) That's what Simon has done here. To the extent that *Bader* was abrogated by *Evans*, the abrogation was limited "to the extent that *Bader* would allow admission of such evidence (restitution evidence) in "mitigation" of non-consequential damages, it is hereby expressly overruled." *Evans*, 116 Nev. 598, 5 P.3d 1043, 1050 (2000). In short, *Evans* abrogated a remedy, not the law, elements, and examples of conversion set forth in *Bader*. *Id*.

There is absolutely nothing in the language or holdings in the three foundational cases of *Evans, Wantz*, or *Bader* from this Court that states that claimants such as the Edgeworths must have exclusive control of these settlement proceeds to maintain a claim for conversion against one such as Simon. *Id*. Furthermore, there is nothing in any of these three cases that overrules, modifies, or does anything other than affirm the general principles of the law of conversion, as stated above. *Id*.

There also isn't any language in *M.C. Multi-Family Development* that expressly overrules, modifies, or clarifies the holdings of *Evans, Wantz*, or *Bader. Id.* Similarly, there isn't any language in any of these cases that holds or implies that money, such as specified settlement proceeds, or the like, is intangible property, like the contractor's license mentioned in *M.C. Multi-Family*. *Id*.

If this Court is now announcing for the first time since 1958 that, as a matter of law, the general principles of the law of conversion found in *Wantz, Bader, and/or Evans* are expressly overruled, and that a claimant now must have exclusive control of disputed property—tangible and intangible—to bring and maintain a claim for conversion, then a proclamation of that new position would be beneficial. It would give claimants and attorneys alike notice of what the law actually is and will be going forward. Thus, parties and their counsel would then be on notice that the general principles of *Wantz, Bader, and Evans* no longer

apply and that *M.C. Multi-Family Development, L.L.C. v. Crestdale Assoc., Ltd.*, 193 P.3d 536, 543 (Nev. 2008), and the element of exclusive possession, now rules the day for every type of conversion claim.

However, the retroactive application of *M.C. Multi-Family Development, L.L.C. v. Crestdale Assoc., Ltd.*, 193 P.3d 536, 543 (Nev. 2008), to the exclusion of the well-founded law and examples discussed in *Wantz, Bader, and Evans* is fundamentally unfair to litigants and counsel alike, and caused a severe and substantial injustice to the Edgeworths. *Bahena*, 126 Nev. 608-09, 245 P.3d 1184 (2010) (quoting *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984)). Certainly, that is not what this Court meant to do when it misapprehended the law of conversion by citing *M.C. Multi-Family Development, L.L.C. v. Crestdale Assoc., Ltd.*, 193 P.3d 536, 543 (Nev. 2008) in its Order of Affirmance to the exclusion of *Wantz, Bader, and Evans.*

Since the Edgeworths followed the existing law as set forth in *Evans, Wantz*, and *Bader* in bringing and maintaining claims for conversion against Simon, the Edgeworths clearly had and have a good faith basis to bring and maintain this claim. *Id*. Since the Edgeworths clearly had a good faith basis to bring and maintain the claim for conversion under published Nevada law, the basis for the district court's order dismissing that claim, and in awarding fees and costs, is legally and factually flawed. *Id*. Since the Order of Affirmance of this

Court is based on an oversight of, and/or a misapprehension of, the well-established law of conversion in Nevada, a rehearing on this issue is warranted to prevent a severe and substantial injustice of the Edgeworths. Nev. R. App. P. 40(c)(2); *Bahena*, 126 Nev. 608-09, 245 P.3d 1184 (2010) (quoting *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984)).

D. The Court Overlooked And Misapprehended The Facts And The Law When Stating That, "We Perceive No Abuse Of Discretion In This Portion Of The District Court's Decision," When That Portion Of The District Court's Decision Improperly Applied The Law Of Conversion And Likewise Improperly Found That The Edgeworth's Conversion Claim Was Not Maintained Upon Reasonable Grounds.

In accordance with the discussion above, the Edgeworths respectfully request that this Court now be willing to perceive the abuse of discretion of the district court in wrongfully ruling that the Edgeworths' claim for conversion was not brought in good faith. This Court in *M.C. Multi-Family Development, L.L.C. v. Crestdale Assoc., Ltd.*, 193 P.3d 536, 543 (Nev. 2008) did not hold that to prevail on any claim for conversion, as opposed to a niche claim of the alleged conversion of the intangible property right of the subject contractor's license, a plaintiff must have an exclusive right to possess the property. *Id*.

Rather, the Edgeworths' claim for conversion against Simon is on all fours with the holdings of *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000); *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958); and, especially with *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317

(1980)(asserting a lien in an unfounded amount). Nothing in *M.C. Multi-Family Development, L.L.C. v. Crestdale Assoc., Ltd.*, 193 P.3d 536, 543 (Nev. 2008) disturbs the holdings of, or the examples of, *Wantz, Bader, or E*vans. *Id*.

As indicated, the Edgeworths and their counsel relied on the law of *Wantz, Bader,* and *E*vans to bring and to maintain the claims for conversion against Simon, cases presently cited by this Court as containing the general law of conversion in Nevada. To apply a new general standard of "exclusive possession" to maintain any claim for conversion, including that of money is fundamentally unfair. It also causes a severe and substantial injustice to the Edgeworths. Nev. R. App. P. 40(c)(2); *Bahena*, 126 Nev. 608-09, 245 P.3d 1184 (2010) (quoting *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984)).

That reality is manifest in a complaint and amended complaint (A-19-807433-C) filed by Simon on December 23, 2019, and May 21, 2020, respectfully, against the Edgeworths and their attorneys, Robert D. Vannah and John B. Greene. The sole basis for that litigation is the finding that the claim for conversion wasn't brought in good faith. The denial of Special Motions to Dismiss: Anti-SLAPP are now on appeal in Case No. 82058. And all of this began with an erroneous assumption that a claim for conversion in Nevada required the Edgeworths to have exclusive possession of the settlement funds.

Again, the Edgeworths respectfully request that this Court now be willing to perceive the abuse of discretion of the district court in wrongfully ruling that the Edgeworths' claim for conversion was not brought in good faith, as that finding is contrary to well-established Nevada law since 1958. See, *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans*, 116 Nev. at 608.

At the end of the proverbial day, if this Court desires fundamental fairness and finality to the matters concerning these parties, it would be understandable, though not agreeable, if the dismissal of the claims for breach of contract were affirmed, and if the "exclusive control" test to maintain a claim for conversion is adopted as the new rule in Nevada, thus dismissing the Edgeworths' claim for conversion.

However, that same standard of fundamental fairness and finality requires this Court to remove the stain on this case that is the finding that the Edgeworths did not maintain their claim for conversion in good faith. Nev. R. App. P. 40(c)(2); *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984). The facts of this case, together with the clear and precise language of *Wantz, Bader, and Evans*, support more than a perception of an abuse of discretion by the district court in failing to follow the published law of conversion, especially that of *Bader*

v. Cerri, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), such as Simon asserting his lien in an unfounded amount that is striking similar to a 40% contingency fee, though without a contingency fee agreement. *Bader*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), fn 1.

V. CONCLUSION:

For the reasons set forth above, and in the content of their appellate Briefs, the Edgeworths respectfully request that the Court grant a rehearing and reverse and remand the District Court's dismissal of the Edgeworths' Amended Complaint, the finding that the Edgeworths constructively discharged Simon, that their claim for conversion was not brought in good faith, and reverse the associated award of fees and costs. Nev. R. App. P. 40(c)(2); *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984).

Respectfully submitted this 29th day of January, 2021.

VANNAH & VANNAH

/s/ Robert D. Vannah

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CERTIFICATE OF COMPLIANCE

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

This brief has been prepared in a proportionally spaced typeface using Word 2019, in 14-point Times New Roman font.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) and NRAP 40(b)(4) because:

This brief is proportionally spaced, has a typeface of 14 points or more, and contains 4,635 words, less than the 4,667 limitation.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the reporter's transcript or appendix, where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 29th day of January, 2021.

VANNAH & VANNAH

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CERTIFICATE OF SERVICE

Pursuant to the provisions of the NRAP, I certify that on the 29th day of January, 2021, I served **APPELLANTS' PETITION FOR REHEARING** on all parties to this action, electronically, as follows:

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