

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioner,

vs.

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.

**SUPREME COURT
CASE NO.**

DISTRICT COURT CASE

NO.: A-16-738444-C

Consolidated with:

DISTRICT COURT CASE

NO.: A-18-767242-C

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1 been nearly extinguished and the appearance of a large gain from a settlement offer had
2 suddenly been recognized. SIMON put on a full court press for PLAINTIFFS to agree to his
3 proposed modifications to the CONTRACT. In essence, PLAINTIFFS felt that they were being
4 blackmailed by SIMON, who was basically saying “agree to this or else.” (Id.)

5 On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional
6 fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted
7 to be paid in light of a favorable settlement that was reached with the defendants in the
8 LITIGATION. (Id.) At that time, these additional “fees” were not based upon invoices
9 submitted to PLAINTIFFS or detailed work performed by SIMON. The proposed fees and costs
10 were in addition to the \$486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to
11 the CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence
12 produced to defendants in the LITIGATION, and the amounts set forth in the computation of
13 damages disclosed by SIMON in the LITIGATION.
14

15 One reason given by SIMON to modify the CONTACT was he claimed he was losing
16 money on the LITIGATION. Another reason given by SIMON to modify the CONTRACT was
17 that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and
18 that he wanted to go through his invoices and create, or submit, additional billing entries. (Id.)
19 According to SIMON, he under billed in the LITIGATION in an amount in excess of
20 \$1,000,000.00.
21

22 We’ve now learned through SIMON’S latest invoices (attached to his Motion as Exhibit
23 19) that he actually allegedly under-billed by \$692,120. On the one hand, it’s odd for SIMON to
24 assert that he’s losing money then, on the other hand, have SIMON admit that he under-billed
25 PLAINTIFFS to the tune of hundreds of thousands to over a million dollars. But, that’s the
26 essence of the oddity to SIMON’S conduct with PLAINTIFFS since the settlement offers in the
27 LITIGATION began to roll in.
28

WA00501

1 Yet an additional reason given then by SIMON was that he felt his work now had greater
2 value than the \$550.00 per hour that was agreed to and paid for pursuant to the CONTRACT.
3 SIMON prepared a proposed settlement breakdown with his new numbers and presented it to
4 PLAINTIFFS for their signatures. They refused to bow to SIMON'S pressure or demands.
5 (Please see Exhibit 1.)

6 Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
7 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
8 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole
9 following the flooding event. In support of PLAINTIFFS' claims in the LITIGATION, and
10 pursuant to NRCP 16.1, SIMON was required to present prior to trial a computation of damages
11 that PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs
12 that PLAINTIFFS paid.

13
14 There is nothing in the computation of damages signed by and served by SIMON to
15 reflect fees and costs other than those contained in his invoices that were presented to and paid
16 in full by PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial
17 disclosures in the LITIGATION to support any additional attorneys' fees generated by or billed
18 by SIMON, let alone those in excess of \$692,120, or \$1,000,000.00, or the exorbitant figure set
19 forth in SIMON'S amended lien.
20

21 Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
22 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
23 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
24 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that
25 deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that
26 PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19,
27 SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further
28

1 stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have
2 been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted
3 concerning his fees and costs: "And they've been updated as of last week." (Excerpts of the
4 Deposition are attached as Exhibit 2.)

5 Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS
6 refused to alter or amend the terms of the CONTRACT. (Please see Exhibit 1.) When
7 PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused to agree
8 to release the full amount of the settlement proceeds to PLAINTIFFS. (Id.) Instead, he served
9 two attorneys liens and reformulated his billings to add entries and time that never saw the light
10 of day in the LITIGATION. (Id.)

12 When SIMON refused to release the full amount of the settlement proceeds to
13 PLAINTIFFS, litigation was filed and served. A copy of PLAINTIFFS' Complaint is attached as
14 Exhibit 17 to SIMON'S Motion to Adjudicate (the COMPLAINT). Thereafter, the parties agreed
15 to create a separate account, deposit the settlement proceeds, and release the undisputed
16 settlement funds to PLAINTIFFS. The claims of PLAINTIFFS against SIMON for Breach of
17 Contract, Declaratory Relief, and Conversion are pending before Judge Gloria Sturman.

19 SIMON makes light of the facts that PLAINTIFFS haven't fired him, or that they are
20 allowing him to continue working to wrap up the LITIGATION. Yet, to fire SIMON would be to
21 give some measure of validity to his need to claim a lien, where none presently exists. As stated
22 in NRS 18.015(2), and supporting case law, the charging lien that SIMON desires so badly here is
23 only applicable "in the absence of an agreement." See *Gordon v. Stewart*, 324 P.2d 234 (Nev.
24 1958)(Attorney withdrew, invalidating the agreement and triggering an analysis of the
25 reasonableness of the fee based on quantum meruit.)

27 SIMON'S Motions are without merit. The Motion to Adjudicate Attorney Lien must fail
28 pursuant to NRS 18.015(2), as the parties did agree upon a fee of \$550 per hour for SIMON'S

1 services, and PLAINTIFFS paid all of SIMON'S invoices in full that were presented to them.
2 (See Exhibit 1 to this Opposition and Exhibit 20 to SIMON'S Motion.) SIMON never presented
3 any of the additional invoices to PLAINTIFFS. (Id.) Rather, it was only on January 24, 2018,
4 with the filing of the Motion to Adjudicate, that SIMON'S "new" invoices made their public
5 debut. PLAINTIFFS were never given a chance to receive them, review them, and/or pay what
6 could be deemed reasonable before SIMON'S liens were served or his Motion was filed.
7 Therefore, for these and all of the other reasons listed above, SIMON'S attorneys' liens are
8 meaningless fugitive documents that have no basis in fact or law.
9

10 Additionally, the Motion to Consolidate should be denied pursuant to NRCP 42(a), as the
11 questions of law and fact in these two actions are not common, the parties are not common or
12 affiliated, and the underlying LITIGATION has reached the point weeks ago that all claims and
13 parties could be dismissed with prejudice. Furthermore, since SIMON'S liens are completely
14 improper under Nevada law, and since SIMON has refused to release the full amount of the
15 settlement proceeds to PLAINTIFFS, and is instead converted them to his own use through his
16 failure to agree to release them without the payment of a bonus to him, PLAINTIFFS claims
17 against SIMON need to proceed before a jury as a matter of right.
18

19 II.

20 ARGUMENTS

21 **A. THERE IS NO BASIS IN FACT OR LAW FOR SIMON'S FUGITIVE** 22 **ATTORNEYS' LIENS OR TO HIS MOTION TO ADJUDICATE ATTORNEYS LIEN.**

23 NRS 18.015(2) discusses the amount of a permissible attorney's lien. It states in part that:
24 "A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the
25 attorney and the client." The evidence is overwhelming that the terms of the CONTRACT
26 contain the agreement between PLAINTIFFS and SIMON on the amount of SIMON'S fee. First,
27
28

1 there's the affidavit of Brian Edgeworth, where he states that he and SIMON agreed that
2 SIMON'S fee would be \$550 per hour for his services.

3 That's a lot of money to most people and ranks higher on the pay scale than SIMON'S
4 depiction of merely agreeing, "to lend a hand." (See SIMON'S Motion at page 11, line 7.) That
5 alleged "helping hand" to "draft a few letters" cost PLAINTIFFS approximately \$7,000 in fees
6 from SIMON. (Id.) Additionally, the discussion was structured enough for the parties to agree
7 that SIMON would be retained as PLAINTIFFS attorney and be paid \$550 per hour for his
8 services, and reimbursed for his costs. That's the essence of a fee agreement. It's not a
9 complicated business relationship that requires anything more for the contracting parties to know
10 to clearly understand where they stand with the agreement.

12 Second, all of the invoices presented by SIMON and paid in full by PLAINTIFFS in the
13 LITIGATION are for an hourly rate of \$550 per hour for SIMON'S services. (See Exhibit 20 to
14 SIMON'S Motion.) There are hundreds of entries for hundreds of thousands of dollars, all billed
15 by SIMON at his agreed to hourly rate. (His associate is billed at a lesser rate of \$275 per hour.)
16 Even SIMON'S new invoices, which contain thousands of entries and many more hundreds of
17 thousands of dollars in billings, are billed by SIMON at \$550 per hour. (Please see Exhibit 19 to
18 SIMON'S Motion.)

20 Third, there are the admissions by SIMON in the deposition of Mr. Edgeworth. Again, at
21 page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of
22 attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017.
23 At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON
24 further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim
25 have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted
26 concerning his fees and costs: "And they've been updated as of last week." (See Exhibit 2.)
27 These are the same invoices that contain the agreed to hourly rate of \$550 per hour, which
28

1 all paid in full by PLAINTIFFS. The \$550 question is: how much more consistent performance
2 by the parties to the terms of an agreement does it take to convince even the most intransient
3 litigant that there is a CONTRACT that he has to abide by?

4 On that note, based on the totality of SIMON'S admissions and actions, how can he
5 reasonably assert that there was no CONTRACT and that instead he was "waiting until the end to
6 be paid in full?" No one agreed to that arrangement. If they had, SIMON was required by
7 Nevada law to reduce his contingency fee dream to writing. Rather, the evidence shows that
8 SIMON didn't present any such concept to PLAINTIFFS until the LITIGATION was nearly over
9 and substantial settlement offers were in. Then, and only then, did SIMON demand a bonus.
10 Plus, SIMON'S conduct clearly runs counter to that assertion. From the beginning to nearly the
11 end, SIMON billed, and was paid, nearly \$500,000. That's nearly the full amount of
12 PLAINTIFFS initial property damage claim! Is billing a client an amount that equals her total
13 loss be deemed a reasonable fee, let alone waiting to be paid more? Hardly can be or should be.

14
15 Fourth, there are the calculations of damages in the LITIGATION that SIMON was
16 obligated to submit and serve on PLAINTIFFS behalf and in accordance with NRCP 11(b) and
17 NRCP 16.1. The calculations of damages submitted by and signed by SIMON set forth damages,
18 including attorneys' fees, based on his hourly rate of \$550 and paid in full by PLAINTIFFS.
19 Thus we see that all of the conduct by SIMON in the LITIGATION refutes his newfound position
20 and instead supports a finding that the terms of the CONTRACT contain the agreement of the
21 parties on the amount of the fee between SIMON and PLAINTIFFS, which is as hourly rate of
22 \$550.
23
24

25 The only pathway for SIMON to prevail on his Motion is to convince a trier of fact that
26 the CONTRACT isn't a contract and that it didn't contain the agreement of the parties on the
27 amount of SIMON'S fee. The CONTRACT contains every element of a valid and enforceable
28 contract. PLAINTIFFS asked SIMON to represent them in the LITIGATION in exchange for an

1 hourly fee of \$550, plus the reimbursement of costs incurred (the offer). SIMON agreed to serve
2 as PLAINTIFFS attorney and to be paid the hourly rate of \$550 for his services (the acceptance).
3 PLAINTIFFS agreed to pay, and SIMON agreed to receive, \$550 per hour for SIMON'S time,
4 plus the reimbursement of costs (the consideration). Thereafter, SIMON billed PLAINTIFFS for
5 his time at a rate of \$550 per hour, plus incurred costs, and PLAINTIFFS paid each invoice
6 presented by SIMON in full (the performance). There isn't a question of capacity or intent.
7 Therefore, that's a contract, which is the CONTRACT.
8

9 SIMON now seems to want a contingency fee from PLAINTIFFS without a written
10 contingency fee agreement, ironically one that he never wanted or would have agreed to in the
11 first place. SIMON attempts this impossible task by taking a creative, though impermissible,
12 approach to the facts and the law.

13 First, despite his belated denials, all of SIMON'S conduct to date supports a finding that
14 he knows without any measure of doubt that he agreed from day one to accept \$550 per hour from
15 PLAINTIFFS in exchange for his services in the LITIGATION. It shows in his billings/invoices,
16 in his cashing of PLAINTIFFS checks to the tune of **\$486,453.09**, and in his representations to,
17 and filings with, the parties and this Court. Every reasonable sign points to SIMON'S clear
18 understanding and agreement that his fees were his fees (i.e.\$550 per hour). For SIMON to now
19 argue against the agreement that he has profited so handsomely and instead demand an additional
20 bonus of well over one million dollars of PLAINTIFFS property is belied by any measure of
21 common or factual sense.
22

23
24 Second, SIMON remarkably misstates Nevada law at page 8 of his Motion by asserting
25 that NRS 18.015(2) and *Gordon v. Stewart*, 324 P.2d 234 (Nev. 1958) stand for the proposition
26 that: "If there is no express contract, the charging lien is for a reasonable fee." (See SIMON'S
27 Motion at page 8, lines 3-6.) Of course, there is nothing in the Nevada Revised Statutes, in NRS
28 18.015(2), or in Nevada law in general, including those cited by SIMON, that says anything of the

1 sort. Perhaps it was merely an oversight by SIMON to assert something so misleading and
2 wrong. Rather, NRS 18.015(2) states that “in the absence of an agreement, the lien is for a
3 reasonable fee....” *Gordon* dealt with an attorney who had withdrawn, thus negating the contract
4 as a matter of law that had purportedly existed. Nonetheless, it doesn’t say what SIMON says and
5 hopes it says.

6 SIMON also relies on other case law to support his novel theory, and that case law
7 generally involves attorneys who’ve either withdrawn or been fired, of attorneys who’ve sought
8 liens when they’ve failed to recover anything of monetary value, or an unfortunate case where the
9 attorneys failed to perfect their lien before settlement proceeds were received and deposited. In
10 most of the cases, a fee agreement (contract) no longer existed because it was terminated as a
11 matter of right when the attorney-client relationship was severed. None of these cases has any
12 application to the cases at hand, as an agreement was reached—the CONTRACT—and SIMON
13 remains as counsel of record for PLAINTIFFS in the LITIGATION.

14 Not only is SIMON wrong to assert that there was no agreement—CONTRACT—for fees
15 despite the avalanche of evidence to the contrary, and wrong for him to suggest that the law
16 requires agreements for attorney’s fees to be in writing for the terms to be enforceable, his
17 singular view runs amuck with the direction from the State Bar of Nevada. Attached as Exhibit 3
18 is an Informational Brochure from the State Bar entitled “How Lawyers Charge.” While not
19 controlling per se, it always makes sense to look from time to time to the organization that
20 governs us lawyers. The first bullet point suggests that the client ask the lawyer in person and at
21 the outset about the fee. That’s exactly what Mr. Edgeworth did, and SIMON told him that his
22 fee would be \$550 per hour, and that’s what SIMON charged, time and time again.

23 The second bullet point tells the public how lawyers charge their fees. Three types are
24 discussed. There are hourly fees charged for cases, “particularly civil litigation” just like we had
25 in the LITIGATION. Contingency fees are mentioned, “where the lawyer is paid only if the

1 client wins the case.” (Emphasis added.) That didn’t happen here, as SIMON was paid nearly a
2 half million dollars by PLAINTIFFS at \$550 per hour from the beginning of the case through the
3 last invoice that SIMON submitted. Last, it mentions a flat fee, though no one is claiming it
4 applies.

5 Of additional importance is bullet point 6, where the question is asked: “Must the lawyer-
6 client fee agreement be in writing?” Much of the answer focuses on contingency fee agreements,
7 which clearly must be in writing. A portion of the last sentence states that: “Obtaining a written
8 fee agreement in advance is in the best interests of the client....” Even though SIMON owed a
9 fiduciary duty to act in the best interests of PLAINTIFFS (his clients), which included presenting
10 a written fee agreement to them as the clients, there is nothing in this Exhibit, or pursuant to
11 Nevada law, that states that fee agreements for an hourly rate must be in writing. Rather, the law
12 supports the existence of, and the terms of, the CONTRACT.

13
14 SIMON’S tenuous and new position also runs amuck with the Nevada Rules of
15 Professional Responsibility. Rule 1.5(b) speaks on fee agreements and states: “The scope of the
16 representation and the basis or rate of the fee and expenses for which the client will be responsible
17 shall be communicated to the client, preferably in writing, before or within a reasonable time after
18 commencing the representation....” (Emphasis Added.) That was SIMON’S responsibility to
19 present a written fee agreement to PLAINTIFFS. It is inherently wrong to allow him to now
20 profit from his failure to look after the best interests of his clients, PLAINTIFFS, as he is clearly
21 attempting to do with his lien and his Motion.

22
23 The law clearly demonstrates that the terms of an oral contract are enforceable, through
24 the testimony of the parties, together with their conduct. Here, Mr. Edgeworth’s affidavit sets
25 forth the terms of the fee agreement, or CONTRACT, of the parties. SIMON’S conduct does,
26 too. His multiple invoices for services bill at \$550 per hour, cashing the checks that mirror the
27 amounts of the invoices, and making numerous representations to lawyers and to this Court in the
28

LITIGATION that his fees are set forth in documents produced to date, both in pleadings and in discovery, paint a very clear picture of his agreement to the terms of the CONTRACT.

There is simply no factual or legal basis for SIMON'S attorneys' lien or his Motion. There are no practical reasons, either. To the contrary—to entertain SIMON'S Motion or the foundation for his liens sends a very troubling message to the community who looks to lawyers for help. For the purposes of this Opposition, SIMON'S conduct here will be referred to as The SIMON Rule. If The SIMON Rule is adopted, attorneys will be emboldened by the following in the handing of their client's interests: 1.) Agree to represent a client for an hourly fee of \$550, but fail to represent their best interests by reducing the fee agreement to writing; 2.) Bill the client \$550 per hour for an extended period of time and collect thousands or hundreds of thousands of dollars from the client, who pays on time when the invoices are presented; 3.) Express a desire to change the terms of the fee agreement when it becomes clear that a much higher fee, or bonus, can be had if the client will agree to do so; 4.) When the client won't agree to pay more than the agreed to fee of \$550 per hour, lien the file for the additional proceeds, or bonus, that you had your eyes on late in the game; and, 5.) Use your failure to reduce your fee agreement in writing as a basis to get more money on the back of a "charging lien."

How would The SIMON Rule sell if it were widely known that this is the way that we attorneys can operate? Not well. Thankfully, neither the facts, nor the law, nor practical or common sense supports The SIMON Rule. Instead, PLAINTIFFS respectfully request that this court deny SIMON'S Motion to Adjudicate Attorneys Lien and refuse to acknowledge the validity of SIMON'S liens. Instead, allow PLAINTIFFS claims against SIMON to proceed before a jury, as provided for in Nevada law. See *Cheung v. Eighth Judicial District Court*, 124 P.3d 550 (Nev. 2005); Nev. Const. art. 1, section 3.

PLAINTIFFS right to a jury trial and to present their claims against SIMON, as set forth in their COMPLAINT, is the fair and reasonable remedy here. PLAINTIFFS claims have ~~nothing~~

1 nothing to do with adjudicating an attorneys lien. To the contrary, they're suing SIMON for the
2 conversion of PLAINTIFFS property that SIMON has no factual or legal basis to make a claim
3 upon. The essential elements of conversion are present here, as PLAINTIFFS have exclusive
4 rights to the ownership and possession of the settlement proceeds, SIMON has converted
5 PLAINTIFFS property by wrongfully claiming a lien and refusing to release the full amount of
6 the settlement proceeds to PLAINTIFFS, and PLAINTIFFS have been damaged by nearly
7 \$2,000,000 by SIMON'S baseless lien. *Bader v. Cerri*, 609 P.2d 314 (Nev. 1980), overruled on
8 other grounds by *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043, 1050-51 (Nev. 2000);
9 *Gebhardt v. D.A. Davidson*, 661 P.2d 855 (Mont. 1983).

11 Furthermore, PLAINTIFFS COMPLAINT is far more than a mere summary adjudication
12 that can be resolved over a couple of hours of argument. We're dealing with well \$692,120 in
13 "new" billings that PLAINTIFFS saw for the first time with the filing of SIMON'S Motion and a
14 huge lien. Think of that for a moment: from May 27, 2016, through September 19, 2017,
15 SIMON produced thirty-one (31) pages of invoices and was paid **\$486,453.09** in fees and costs.
16 Then, on January 24, 2018, SIMON stuffed in one hundred and eighty-three (183) pages of "new"
17 invoices as Exhibit 19 to his Motion, totaling an additional **\$692,120** in additional fees and costs.

19 In addition to the obvious question of "why now?", multiple other questions surround
20 these documents and the motives behind them. Why weren't these new invoices prepared
21 contemporaneously with the work that was being done? SIMON certainly had pen and paper, if
22 not the billing software he mentioned in his Motion, to jot things down and they were done. Why
23 weren't these invoices produced to the defendants in the LITIGATION and set forth in
24 PLAINTIFFS computation of damages? Or presented to PLAINTIFFS months ago for review
25 and/or payment?

27 SIMON'S expert seems to embrace SIMON'S conduct, at least on paper. How will he
28 fare in a deposition on cross-examination with Mr. Vannah? What will his response be when

1 asked how SIMON possibly met his standard of care and abided by his fiduciary duty to
2 PLAINTIFFS when these 183 pages of documents and \$692,120 in damages were never produced
3 to the defendants or set forth in a computation of damages in the LITIGATION, let alone while
4 discovery was still open? Trial was scheduled for January 8, 2018, and these weren't produced
5 until after the trial date? Will he still hold true to his opinions? Whatever he says in response, a
6 wise justice of the Nevada Supreme Court once said: "Experts are like bananas—you can buy
7 them by the bunch."
8

9 What will SIMON and his associate testify to in deposition as to why they did what they
10 did, and how they came up with these new billings for old tasks? And the list goes on.
11 PLAINTIFFS didn't ask for any of this. They are the only victims here. They suffered the flood.
12 They suffered the property damage. They are the ones who the subcontractors and insurers
13 ignored and were left out to dry. They're the ones that have paid nearly \$500,000 in fees and
14 costs to SIMON pursuant to the CONTRACT. They are the ones who are being denied full
15 access to their property (the settlement proceeds) by SIMON.
16

17 PLAINTIFFS have a right to a jury trial (and all the usual tools) of their dispute to recover
18 their property from SIMON, just as "Nevada attorneys have all of the usual tools available to
19 creditors to recover the payment of their fees." *Leventhal v. Black & Lobello*, 305 P.3d 907, 909
20 (Nev. 2013). Is SIMON to suggest that attorneys are afforded more options, and entitled to better
21 treatment, than their clients?
22

23 In conclusion, a fair remedy in a jury trial before their peers is exactly what PLAINTIFFS
24 request. In order to prepare their case, PLAINTIFFS require discovery, including a complete
25 copy of SIMON'S file, which is also PLAINTIFFS file. PLAINTIFFS believe that when a jury
26 sees and hears the full effect of The SIMON Rule, justice for them will finally be found. As a
27 result, PLAINTIFFS respectfully request that this Court deny SIMON'S Motion to Adjudicate his
28 baseless lien.

WA00512

B. THERE IS NO COMMONALITY OF ISSUES, PARTIES, FACTS, LAW, OR INTERESTS BETWEEN THE LITIGATION BEFORE THIS COURT AND THE MATTER PENDING BEFORE JUDGE STURMAN.

NRCP 42(a) allows consolidation only when multiple actions involve “a common question of fact or law....” There is no such commonality here. The LITIGATION involved claims for different damages against different defendants following a flooding event at a home owned by PLAINTIFFS. All of the claims against the parties to the LITIGATION have been resolved and dismissal with prejudice is imminent.

The claims of PLAINTIFFS against SIMON stem from his unwillingness to honor the CONTRACT and his refusal to release the full amount of PLAINTIFFS property—the settlement proceeds—to PLAINTIFFS. As set forth above, despite agreeing to receive \$550 per hour for his services, and accepting nearly \$500,000 for his time and expenses, SIMON demands more. When PLAINTIFFS weren’t willing to agree to SIMON’S new, proposed terms, SIMON responded by making a claim to PLAINTIFFS property through baseless attorneys’ liens.

While PLAINTIFFS did agree to place the “disputed” funds in a common account, it wasn’t their desire to do so. Rather, they want their proceeds and are entitled to them, as they’ve honored every aspect of the CONTRACT. Yet, since SIMON made his baseless claim to the proceeds and wouldn’t agree to release them until his issue was resolved, PLAINTIFFS agreed to the common account. However, that’s not genuine “consent” or the kind of consent that anyone should be proud of.

Contrary to SIMON’S assertions in his Motion at page 5, PLAINTIFFS did not file case A-18-767242-C to adjudicate an attorneys lien. Or to merely forum shop. Far from it. As has been made clear throughout this Opposition, PLAINTIFFS dispute that SIMON’S lien has any basis in fact or law, as PLAINTIFFS have paid every dime of every invoice presented to them to date. Furthermore, the LITIGATION has resolved with only ministerial tasks to complete. It was

1 senseless to move this Court to appear in that action to address PLAINTIFFS claims against
2 SIMON for breach of contract, declaratory relief, and conversion.

3 PLAINTIFFS also expressed a willingness to pay the invoice that SIMON presented then
4 withdrew last fall. Since PLAINTIFFS dispute the validity of SIMON'S liens, and since SIMON
5 wouldn't release the full amount of PLAINTIFFS settlement proceeds, filing of a separate action
6 was the only reasonable route they could take to be made whole. Unlike in *Verner v. Nevada*
7 *Power Co.*, 706 P.2d 147 (Nev. 1985), since the issues of liability and damages in these two
8 separate actions are not inextricably linked, and since SIMON'S claimed attorneys' lien is
9 baseless in fact and in law, there is no need for this court to retain jurisdiction and consolidate
10 these cases.
11

12 **III.**

13 **CONCLUSION**

14 Based on the foregoing, PLAINTIFFS respectfully request the Court deny SIMON'S
15 Motions and instead allow PLAINTIFFS to present their claims for damages against SIMON
16 before a jury in case No. A-18-767242-C, as provided by Nevada Constitutional and case law.
17

18 DATED this 2 day of February, 2018.

19 **VANNAH & VANNAH**

20 
21
22 ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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

Traditional Manner:
None

DATED this 2 day of February, 2018.

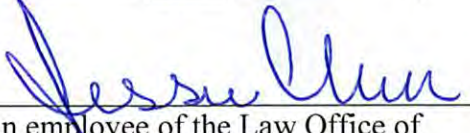

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1

AFFIDAVIT OF BRIAN EDGEWORTH IN SUPPORT OF PLAINTIFFS' OPPOSITIONS TO
DEFENDANT'S MOTIONS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions
of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date,
and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to
represent our interests following a flood that occurred on April 10, 2016, in a home under
construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of \$500,000 of property damage to
the home. It was initially hoped that SIMON drafting a few letters to the responsible parties
could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the
defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain.
However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems
to liken our transaction as an act of charity performed by him for a friend = me. Hardly.
Agreeing to pay and receive \$550 per hour is a business agreement, not an act of charity. Also,
those "few letters" mentioned above were not done for free by SIMON, either. I believe I paid
approximately \$7,000 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that
SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd

1 reimburse him for his costs. No other form or method of compensation such as a contingency fee
2 was ever brought up at that time, let alone agreed to.

3 7. The terms of our fee agreement were never reduced to writing. However, that
4 formality didn't matter to us, as we each recognized what the terms of the agreement were and
5 performed them accordingly. For example, SIMON billed us at an hourly rate of \$550, his
6 associate billed us at \$275 per hour, costs incurred were billed to us, and I paid SIMON all of the
7 invoices in full in less than one week from the date they were received.
8

9 8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,
10 August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in
11 those invoices totaled \$486,453.09. The hourly rate that SIMON billed us in all of his invoices
12 was at \$550 per hour. I paid the invoices in full to SIMON. He also submitted an invoice to us
13 on November 10, 2017 in the amount of approximately \$72,000. However, SIMON withdrew the
14 invoice and failed to resubmit the invoice to us, despite an email request from me to do so. I
15 don't know whether SIMON ever disclosed that "final" invoice to the defendants in the
16 LITIGATION or whether he added those fees and costs to the mandated computation of damages.
17

18 9. From the beginning of his representation of us, SIMON was aware that I was
19 required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also
20 aware that these loans accrued interest. It's not something for SIMON to gloat over or question
21 my business sense about, as I was doing what I had to do to with the options available to me. On
22 that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.
23

24 10. Plus, SIMON didn't express an interest in taking what amounted to a property
25 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
26 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
27 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted
28

1 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk
2 of loss in the LITIGATION was gone.

3 11. Please understand that I was incredibly involved in this litigation in every respect.
4 Regrettably, it was and has been my life for nearly 22 months. As discovery in the underlying
5 LITIGATION neared its conclusion in the late fall of 2017, after the value of the case blossomed
6 from one of property damage of approximately \$500,000 to one of significant and additional
7 value do to the conduct of one of the defendants, and after a significant sum of money was offered
8 to PLAINTIFFS from defendants, SIMON became determined to get more, so he started asking
9 me to modify our CONTRACT. Thereafter, I sent an email labeled "Contingency." The purpose
10 of that email was to make it clear to SIMON that we'd never had a structured conversion about
11 modifying the existing fee agreement from an hourly agreement to a contingency agreement.
12

13 12. SIMON scheduled an appointment for my wife and I to come to his office to
14 discuss the LITIGATION. Instead, his only agenda item was to pressure us into modifying the
15 terms of the CONTRACT. He told us that he wanted to be paid far more than \$550.00 per hour
16 and the \$486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of
17 SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it
18 came at the time when the risk of loss in the LITIGATION had been nearly extinguished and the
19 appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on
20 a full court press for PLAINTIFFS to agree to his proposed modifications to our fee agreement.
21 We really felt that we were being blackmailed by SIMON, who was basically saying "agree to
22 this or else."
23
24

25 13. Following that meeting, SIMON would not let the issue alone, and he was
26 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never
27 agreed on any terms to alter, modify, or amend our fee agreement. Knowing SIMON as I do, if
28

1 we had agreed to modify our fee agreement, SIMON would have attached that agreement in large
2 font to his Motion as Exhibit 1.

3 14. On November 27, 2017, SIMON sent a letter to us setting forth additional fees in
4 the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be
5 paid in light of a favorable settlement that was reached with the defendants in the LITIGATION.
6 We were stunned to receive this letter. At that time, these additional “fees” were not based upon
7 invoices submitted to us or detailed work performed. The proposed fees and costs were in
8 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the
9 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to
10 defendants in the LITIGATION, and the amounts set forth in the computation of damages that
11 SIMON was required to submit in the LITIGATION.
12

13 15. A reason given by SIMON to modify the fee agreement was that he purportedly
14 under billed us on the four invoices previously sent and paid, and that he wanted to go through his
15 invoices and create, or submit, additional billing entries. We were again stunned to learn of
16 SIMON’S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in
17 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work
18 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON
19 prepared a proposed settlement breakdown with his new numbers and presented it to us for their
20 signatures. This, too, came with a high-pressure approach by SIMON.
21

22 16. Another reason why we were so surprised by SIMON’S demands is because of the
23 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach
24 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the
25 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the
26 flooding event. Since SIMON hadn’t presented these “new” damages to defendants in the
27
28

1 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to
2 be presented at trial.

3 17. On September 27, 2017, I sat for a deposition on September 27, 2017.
4 Defendants' attorneys asked specific questions of me regarding the amount of damages that
5 PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid
6 to SIMON. Not only do I remember what transpired, I've since reviewed the transcript, as well.
7 At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of
8 attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017.
9 At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON
10 further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim
11 have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted
12 concerning his fees and costs: "And they've been updated as of last week." At that time, I felt I
13 had reason to believe SIMON that he'd done everything necessary to protect PLAINTIFFS claims
14 for damages in the LITIGATION.
15

16 18. Despite SIMON'S requests and demands on us for the payment of more in fees, we
17 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the
18 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement
19 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
20 time that he'd never previously produced to us and that never saw the light of day in the
21 LITIGATION.
22

23 19. When SIMON refused to release the full amount of the settlement proceeds to us,
24 we felt that the only reasonable alternative available to us was to file a complaint for damages
25 against SIMON. We did not do so to shop around for a new judge. It was nothing like that. In my
26 mind, by the time we filed our complaint, all of the claims from the LITIGATION were resolved
27 and only one release had to be signed, then the entire case could be dismissed.
28

WA00521

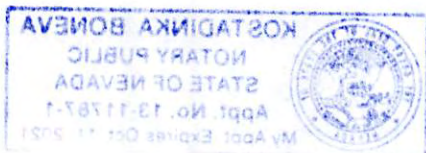


Exhibit 2

Exhibit 2

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC,

5

Plaintiffs,

6

vs.

Case No. A738444

7

LANGE PLUMBING, L.L.C.; THE
VIKING CORPORATION, a

8

Michigan corporation; SUPPLY
NETWORK, INC., dba VIKING

9

SUPPLYNET, a Michigan
corporation; and DOES I

10

through V and ROE CORPORATIONS
VI through X, inclusive,

11

Defendants.

12

13

AND ALL RELATED CLAIMS.

14

15

16

DEPOSITION OF BRIAN J. EDGEWORTH

17

INDIVIDUALLY AND AS NRCP 30(b)(6) DESIGNEE OF

18

EDGEWORTH FAMILY TRUST AND AMERICAN GRATING LLC

19

Taken on Friday, September 29, 2017

20

By a Certified Court Reporter

21

At 9:35 a.m.

22

At 1160 North Town Center Drive, Suite 130

23

Las Vegas, Nevada

24

Reported by: William C. LaBorde, CCR 673, RPR, CRR
Job No. 23999

25

1 A. At the end of the tax year when we
2 reconcile all -- all the different expenses, it
3 would be on there.

4 Q. Okay. And is it your testimony that you
5 haven't reconciled the 2016 taxes yet?

6 A. No.

7 Q. Okay. So -- and obviously you haven't
8 done the 2017 taxes yet?

9 A. No.

10 Q. Okay. So there's noplac that you could
11 look for that information and tell me a number of
12 attorneys' fees that American Grating LLC has
13 actually incurred prior to May of 2017?

14 A. Yes, I could.

15 Q. You could?

16 A. Yes.

17 Q. Okay.

18 MR. SIMON: They've all been disclosed to
19 you.

20 MS. DALACAS: The reconciliations?

21 MR. SIMON: No.

22 MS. DALACAS: The attorney --

23 MR. SIMON: The attorneys' fees and costs
24 for both of these plaintiffs as a result of this
25 claim have been disclosed to you long ago.

1 MS. DALACAS: I'm --

2 MR. SIMON: And they've been updated as
3 of last week.

4 MS. DALACAS: I understand that.

5 BY MS. DALACAS:

6 Q. I'm just wondering or trying to determine
7 whether or not -- since we've talked about these
8 different entities, Edgeworth Family Trust and
9 American Grating, is there a separation as between
10 the attorneys' fees between the two entities?

11 A. No. American Grating owes the attorneys'
12 fees.

13 Q. American Grating owes the attorneys'
14 fees?

15 A. Correct.

16 Q. Is that your testimony as to attorneys'
17 fees and costs incurred prior to May of 2017 when
18 they became a plaintiff in this case as well?

19 A. Yes, they would owe that.

20 Q. Okay. And why is that?

21 A. Because obviously it's their case.

22 Q. American Grating's case?

23 A. Yes.

24 Q. Okay. So why weren't they included as a
25 plaintiff from the filing of the original complaint

Exhibit 3

Exhibit 3

Informational Brochure



How LAWYERS CHARGE

HOW LAWYERS CHARGE

Many people who need legal help are reluctant to see a lawyer because they are afraid that legal services are expensive. Actually, in many cases, fees are moderate in comparison with the benefits gained or the losses avoided. It often turns out to be more expensive in the long run not to see a lawyer.

\$ How can I find out what it will cost for the legal services I need?

When you first contact a lawyer's office to make an appointment, ask what the lawyer charges for an initial consultation. When you consult the lawyer in person, ask at the outset about fees. It is in the best interests of both the lawyer and the client to have a clear understanding of the fee for the lawyer's services in advance so there will be no misunderstanding later.

\$ How do lawyers charge?

There are three basic types of fees for legal services. In some cases, particularly civil litigation and contested domestic matters, the lawyer will charge an hourly fee. The lawyer will keep accurate time sheets describing the time spent on your case.

In certain other cases, lawyers charge a contingency fee, in which an agreement is made with the client in advance that the lawyer will get, as a fee, a percentage of the amount recovered after certain expenses are deducted. In this case, the lawyer is paid only if the client wins the case. In most cases, the client will be responsible for the costs regardless of the court decision. This is most commonly seen in personal injury cases.

Finally, there is a flat fee in which the lawyer has a set fee for the service to be provided, regardless of the time involved. Flat fees are commonly used in defense of criminal charges, some civil cases and routine matters such as uncontested domestic matters, and preparation of simple wills, deeds and other similar documents.



\$ How does a lawyer set a fee?

No two situations are alike. A lawyer will consider many of the following factors in arriving at a fair fee:

- Time - A lawyer's main stock in trade is time and advice.
- Office overhead - When you hire a lawyer, you are hiring the lawyer's entire law office.
- Ability, skill and reputation - A lawyer often charges based upon his or her skill and reputation acquired in the professional community.
- The relationship between lawyer and client - In an on-going relationship, in which the client uses the lawyer's services regularly with a continual history of payment, the charge for a particular matter may be less than if the employment of the lawyer is on a one-time or casual basis.

Other issues may be considered in setting fees: novelty and difficulty of the problem; amount of responsibility assumed by the attorney; custom in the geographical area; or preclusion of other employment during a particular case.

\$ Does any court set rules on legal fees?

Yes. Nevada Rule of Professional Conduct 1.5 defines the factors to be considered in determining the reasonableness of a lawyer's fees:

1. the time and labor involved, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the dollar amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation and ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent.

Over for more ➔

HOW LAWYERS CHARGE - *(continued from other side)*

\$ Are there any restrictions on a contingency fee?

Yes. A lawyer may not charge a contingency fee in a criminal case where the fee depends upon the outcome. Likewise, a lawyer may not charge a contingency fee in a contested domestic relations matter. Public policy dictates that a lawyer's fee not be dependent upon securing a divorce, or the amount of alimony or child support or property settlement ultimately awarded.

\$ Must the lawyer-client fee agreement be in writing?

In Nevada, a contingent fee agreement must be in writing and signed by the client. Further, the contingent fee agreement must state the method by which the fee is to be determined, including the percentage of the recovery and whether expenses are to be deducted before or after the contingent fee is calculated, and whether the client is liable for expenses, regardless of the outcome. Ask your lawyer to explain what expenses will be charged and when the client costs are to be paid. Obtaining a written fee agreement in advance is in the best interests of the client, so that there will be a written record in the event that there is a dispute later about the lawyer/client relationship.

\$ What is a retainer?

A retainer is the initial fee paid by the client to begin representation on a particular matter. The lawyer and client should have a firm understanding of exactly what is contemplated and covered by that initial retainer. Your lawyer is required to place these retainers in a special account called a trust account, against which the fees for your legal matter will be billed until it is completed. If the retainer is insufficient, the attorney may ask for additional funds to be used in the same manner. Likewise, unused funds at the end of the legal matter remain the property of the client and should be reimbursed to the client after all expenses are paid.

\$ What are "costs?"

A lawyer must spend money to file papers with the court and to hire other persons such as court reporters or investigators. These expenses are known as "costs" and are normally paid by the client in addition to the lawyer's fees. Costs are in addition to the attorney's bill for his or her time and effort.

\$ What is the State Bar's role in how lawyers charge?

You should know that lawyers as a group are concerned that their clients are satisfied with their work, and with any fees charged for services rendered. Your attorney should discuss fees with you and respond to your reasonable questions on this subject during the course of your professional relationship.

\$ How do I find an attorney?

You can contact the State Bar of Nevada's **Lawyer Referral & Information Service** at **702-382-0504** (toll-free in Nevada at **1-800-789-5747**) or look in the yellow pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The State Bar's main office (see numbers listed below) can tell you whether or not an attorney is licensed in Nevada and in good standing.

Written and/or Edited by:

Office of Bar Counsel, State Bar of Nevada

State Bar of Nevada Las Vegas Office

600 E. Charleston Blvd., Las Vegas, NV 89104

Ph: 702-382-2200 or toll-free 1-800-254-2797

Fax: 702-385-2878 or toll-free 1-888-660-6767

Reno Office

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<http://www.nvbar.org>

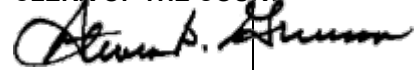


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RPLY

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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.: A738444

Dept. No.: 10

**REPLY IN SUPPORT OF MOTION
TO ADJUDICATE ATTORNEY
LIEN AND MOTION FOR
CONSOLIDATION**

Date of Hearing: 2.6.18

Time of Hearing: 9:30

Case No.: A-18-767242-C

Dept. No.: 26

Date of Hearing: N/A

Time of Hearing: N/A

1 **I. INTRODUCTION**

2 Plaintiffs' opposition misses the point, and misstates the meaning of a basic
3 contract law term. The fact that the client disputes the amount of the lien does not
4 divest this Court of jurisdiction. This Court has jurisdiction to hear the motion for
5 adjudication; and, the Opposition does not cite contrary authority.
6

7 As to the facts, the e-mails between Mr. Simon and Mr. Edgeworth contradict
8 the story told in the Opposition. On May 27, 2016, Mr. Simon agreed to "send a few
9 letters" in response to the stated desire of Mr. Edgeworth that he did "not want to
10 waste your time". Exhibit A. There are no writings that support the story of the
11 Opposition of contract formation in May of 2016; instead, the documents support the
12 conclusion that Mr. Simon took the case without a formal agreement.
13

14 Likewise, the story of the Opposition that an express contract was reached on
15 attorney fees is contradicted by Mr. Edgeworth's own words. On August 22, 2017,
16 Mr. Edgeworth wrote in response to continued fee discussions:
17

18 "We never really had a structured discussion about how this might be done"
19

20 . . .

21 . . .

22 . . .
23
24
25

1 And, in acknowledgment that the case was not handled on a strict hourly basis:

2 I could also swing hourly for the whole case (unless I am off what this is going
3 to cost). I would likely borrow another \$450k from Margaret in 250 and 200
4 increments and then either I could use one of the house sales for cash or if
things get really bad, I still have a couple million in bitcoin I could sell.”

5 Exhibit B. Obviously, if the case was on strict hourly, the above statements would
6 not have been made by Mr. Edgeworth, as he was already on the hook for the fee.

7 Instead, Mr. Edgeworth’s own words confirm that his friend was not fully billing the
8 case to ease the strain on Mr. Edgeworth, and because of an expectation of a fee
9 based on results and not time.
10

11 **II. ARGUMENT**

12
13 When there is no express contract, an attorney is due a reasonable fee under
14 the Nevada attorney lien statute, NRS 18.015(2).¹ The court has wide discretion on
15 the method of calculation of the attorney fee. *Albios v. Horizon Communities, Inc.*,
16 132 P.3d 1022, 1034 (Nev. 2006). Whatever method of calculation is used by the
17 court, the amount of the attorney fee must be reasonable under the *Brunzell* factors.
18
19 *Id.* The court should enter written findings of the reasonableness of the fee under the
20 *Brunzell* factors. *Argentana Consolidated Mining Co., v. Jolley, Urga, Wirth,*
21 *Woodbury & Standish*, 216 P.3d 779, at fn2 (Nev. 2009).
22

23
24 ¹ There are two types of attorney liens in Nevada. A “charging” lien, which
25 attaches to a fund of money obtained by the efforts of the attorney; and, a
“retaining” lien, which allows an attorney to withhold client documents until paid.
The law office asserted a charging lien.

1 The *Brunzell* factors are:

- 2 1. The qualities of the advocate;
- 3 2. The character of the work to be done;
- 4 3. The work actually performed; and,
- 5 4. The result obtained.
- 6

7 *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

8 The Declaration of William Kemp is attached at Exhibit C. Mr. Kemp is one

9 of the top product liability attorneys in the United States. Mr. Kemp is also very

10 experienced in the determination of the reasonable fee of an attorney in a product

11 liability case. In his Declaration, Mr. Kemp describes his experience in detail,

12 including his work on the determination of a reasonable attorney fee. Mr. Kemp then

13 reviews and applies the Brunzell factors to find a reasonable fee for The Law Office

14 of Daniel Simon P.C. for the amazing work performed on behalf of the Edgeworths.

15 Mr. Kemp reaches a reasonable attorney fee value of \$2,440,000.00.

16

17

18 ...

19 ...

20 ...

A. There was no express contract.

The Opposition misstates basic contract law. In *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009) the Supreme Court stated:

In the absence of a fee agreement, NRS 18.015(a) allows an attorney’s lien to be “for a reasonable fee.” **When an express fee agreement exists**, NRS 18.015 does not specify whether the district court must similarly examine an attorney fees award for reasonableness. (Emphasis added.)

An *express* contract can be oral or written; an *implied* contract is inferred by conduct. This is basic contract law. Black's Law Dictionary states:

Express and implied. An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing.

An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding. (*Italics in original.*)

Black's Law Dictionary, Fifth Edition, at 292-93.

The Opposition does not explain away the client's written admission that Mr. Simon and Mr. Edgeworth never had a structured discussion regarding payment. It does not matter that certain billings were paid in an express contract analysis. For any contract to exist, all details and terms must be agreed upon, as a matter of law. *Loma Linda University v. Eckenweiler*, 469 P.2d 54, 56 (1970).

B. This Court has jurisdiction to adjudicate the lien.

The clients did not support their challenge to the jurisdiction of this Court to adjudicate the lien. The clients submit rhetorical questions, but do not supply any legal authority for the proposition that this Court cannot adjudicate the attorney lien. On the other side of the issue, the law office provided extensive Nevada authority, statutory and case law, that this Court has jurisdiction to adjudicate the lien.

Contentions of law within motions and oppositions must be supported by authority. EDCR 2.20. If a legal contention is not supported by authority, then the court may find that the contention is not meritorious. EDCR 2.20. The motion to adjudicate lien set out in detail the applicable Nevada law that provides this Court has jurisdiction over the attorney lien. The client did not provide contrary authority. Simply calling a lien “fugitive” without explaining how or why, and with no supporting legal authority, is not sufficient. Accordingly, this Court has jurisdiction to adjudicate the lien.

To be clear, this Court has jurisdiction to adjudicate the charging lien regardless of the existence of the alleged contract. The court’s resolution of the contract issue may impact the method of calculation of fee, but it does not impact jurisdiction.

1 **C. A client does not divest a court of jurisdiction over a charging lien**
2 **by creating a fee dispute.**

3 The clients did not make a supported argument that this Court is divested of
4 jurisdiction to adjudicate the lien by the alleged contract dispute, nor did the clients
5 support the inferred argument that the lien adjudication and their contract action are
6 mutually exclusive remedies. (They are not. *See, e.g.,* NRS 18.015.)

7 This Court may address the impact on fees by the alleged contract through
8 motion practice and/or an evidentiary hearing. In, *Hallmark v. Christensen Law*
9 *Offices*, 381 P.3d 618 (Nev. 2012), the Nevada Supreme Court directed the district
10 court to hold an evidentiary hearing to answer the question of “what is the amount of
11 the lien to be determined by the Court?” In *Hallmark*, the Supreme Court directed
12 the district court to deal with allegations of billing fraud at an evidentiary hearing.

13 The Supreme Court in *Golightly*, 281 P.3d 1176 upheld a district court lien
14 adjudication when fees were disputed. In, *T.I.P. Holding Corporation v. Bowers*,
15 2013 WL 782543, the Supreme Court upheld an adjudication of a retaining lien that
16 involved claims of excessive billing. The amount of fees was impliedly disputed in
17 *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 373 P.3d 103 (Nev. 2016), although the
18 decision focused on the failure of the law firm to perfect its lien under NRS 18.015.

19 In *Ecomares Inc., v. Ovcharik*, 2007 WL 1933573 (D. Nev. 2007), Magistrate
20 Cooke recommended that a motion to adjudicate lien when fees are in dispute be
21 delayed until “resolution of this proceeding”, then the law firm could proceed with a
22
23
24
25

1 lien adjudication. That thinking was followed by Magistrate Leavitt in *Selimaj v.*
2 *Henderson Police Department*, 2010 WL 1688763 (D. Nev. 2010), when a dispute
3 over costs was resolved by lien adjudication after settlement of the proceeding.

4 The statute, NRS 18.015, does not have any exceptions (contract dispute or
5 otherwise) to jurisdiction over a charging lien. The only possible exception that
6 could be argued is when legal malpractice is alleged, based on dicta from *Argentina*
7 *Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d
8 779, 782 (Nev. 2009). The legal malpractice comment is dicta because it was not a
9 part of the holding of the case. The *Argentina* opinion recognized that dicta is not
10 controlling at HN 8 when the Court states:
11
12

13 “Dicta is not controlling. A statement in a case is dictum when it is
14 unnecessary to a determination of the questions involved...”

15 The *Argentina* case addressed whether a court could adjudicate a retaining
16 lien. The Court concluded that a district court could not adjudicate a retaining lien,
17 because a retaining lien was based on common law and was not mentioned in NRS
18 18.015. The case did not involve a charging lien and any ruling surrounding a
19 charging lien is merely dictum.
20
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1 The *Hallmark* opinion concurs. In *Hallmark*, the Supreme Court cited to
2 *Argentina* when it directed the district court to hold an evidentiary hearing to address
3 the allegations of billing fraud:

4 “...Accordingly, we reverse the district court’s judgment and remand this
5 matter for further proceedings consistent with *Brunzell* or *Argentina Consol.*
6 *Min. Co.* Upon remand, the district court is directed to conduct an evidentiary
7 hearing to determine the issue of quantum meruit and other allegations,
8 including the allegations of billing fraud. The district court is also instructed to
9 make detailed findings of fact to support its award or denial of attorney fees.”

10 In 2013, the Legislature added a retaining lien to NRS 18.015. Now a district
11 court has unfettered jurisdiction to adjudicate a retaining lien. *Fredianelli v. Fine*
12 *Carmen Price*, 402 P.3d 1254 (Nev. 2017). In *Fredianelli*, the Nevada Supreme
13 Court found that because the Legislature added a retaining lien to NRS 18.015, a
14 court in a paternity action could determine the amount of attorney fees owed and
15 reduce the retaining lien to a judgment.

16 **D. There was no conversion, and no duties were breached.**

17 There is agreement between the parties that labels (and bananas) are cheap.
18 What matters is the merit of a position.

19 The clients obliquely dismiss the opinion of Mr. Clark, without once
20 addressing the merits of his opinion. Mr. Clark’s opinion is well grounded in the
21 law. Mr. Clark confirms that a law firm is not just within its legal rights to pursue an
22 attorney’s lien, but encouraged to do so by the rules of ethics. The clients provide no
23 contrary authority.
24
25

1 Mr. Clark also confirms that placement of money into a trust account is not
2 conversion. The clients' case authority confirms the opinion. *Bader v. Cerri*, 609
3 P.2d 314 (Nev. 1980), addressed a refusal to release a cattle brand after a dispute
4 over a contract to sell land and the cattle. The refusal to release a cattle brand in
5 *Bader* was not allowed by statute (NRS 18.015). The decision in *Gebhardt v. D.A.*
6 *Davidson & Co.*, 661 P.2d 855 (Mont. 1983) was based on a procedural error by the
7 district court, and does not apply.

8
9
10 *1. Plaintiffs do not have a right to possession sufficient to allege
conversion.*

11 In *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 193
12 P.3d 536, 543 (2008), citing California law, the Nevada Supreme Court recognized
13 the need to establish the right to "exclusivity" of the chattel or property alleged to be
14 converted (*M.C. Multi-Family* addressed alleged conversion of intangible property).
15 Plaintiffs claim they are due money via a settlement agreement, a contract. Thus,
16 Plaintiffs have plead a right to payment based upon contract. However, an alleged
17 contract right to possession is not exclusive enough, without more, to support a
18 conversion claim:
19
20

21 "A mere contractual right of payment, without more, will not suffice" to bring
22 a conversion claim."

23 *Plummer v. Day/Eisenberg*, 184 Cal.App.4th 38, 45 (Cal. CA, 4th Dist. 2010). See,
24 Restatement (Second) of Torts §237 (1965), comment d.
25

1 Nevada law expressly allows an attorney to recover fees via a charging lien,
2 and expressly states such an effort is not a breach of duty. NRS 18.015(5). Thus, as
3 a matter of law, asserting a charging lien, or expressing a desire to be paid cannot
4 serve to change a lien claim into conversion.
5

6 A lien claim is not conversion. In *Morfeld v. Andrews*, 579 P.2d 426 (Wyo.
7 1978), the court granted summary judgment in favor of the defendant attorney when
8 a client alleged a lien claim was conversion. More recently in *Behesthi v. Bartley*,
9 2009 WL 5149862, (Calif. 2009), the court granted a motion to dismiss a similar
10 client claim, and granted the defendant attorney relief under the California Anti-
11 SLAPP statute - which is akin to Nevada's.
12

13 2. *A charging lien is allowed by statute.*
14

15 NRS 18.015 allows an attorney to file a charging lien. The Law Office of
16 Daniel S. Simon, A Professional Corporation acted in compliance with the statute.
17 Thus, as a matter of law, Plaintiffs cannot satisfy the wrongful dominion element.
18

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1 3. *The money was placed into a trust account, per agreement of the*
2 *parties.*

3 The Law Office of Daniel S. Simon, A Professional Corporation acted
4 properly pursuant to Nevada Rule of Professional Conduct 1.15 “Safekeeping
5 Property”. The Rule states in relevant part:
6

7 (e) When in the course of representation, a lawyer is in possession of funds or
8 other property in which two or more persons (one of whom may be the lawyer)
9 claim interests, the property shall be kept separate by the lawyer until the
10 dispute is resolved. The lawyer shall promptly distribute all portions of the
funds or other property as to which the interests are not in dispute.

11 The law office followed the exact course mandated by the Rules of
12 Professional Conduct. The money was placed into a trust account per agreement of
13 the parties. See Bank of Nevada letter establishing joint trust account for settlement
14 proceeds, attached as Exhibit D. The law office does not have control over the funds
15 and interest on the money inures 100% to Brian Edgeworth. Mr. Vannah is a signer
16 on the account, thus the law office did not convert any funds.
17

18 It is axiomatic that a person not in possession cannot convert. Restatement
19 (Second) of Torts §237 (1965), comment f.
20

21 Deposit of funds into a trust account is not an act of dominion contrary to any
22 stakeholder interest. In fact, it is the opposite. The Nevada Supreme Court has ruled
23 that holding disputed funds in an attorney trust account is the same as the Court
24
25

1 holding the funds in an interpleader action. *Golightly & Vannah, PLLC v. TJ Allen*
2 *LLC*, 373 P.3d 103 (Nev. 2016).

3 An attorney is allowed by statute and the rules of ethics to resolve a fee dispute
4 via a charging lien. Assertion of a lien right provided by statute is not conversion.
5 *See*, Restatement (Second) of Torts §240 (1965). Likewise, undisputed money was
6 provided to the client promptly upon funds becoming available. Thus, no
7 conversion.
8

9 *E. The contract argument is moot, because the clients*
10 *constructively discharged the law firm.*
11

12 The settlement funds were received when the funds cleared the bank on
13 January 18, 2018. The clients signed the checks on January 8, 2018. When the
14 Edgeworth's filed suit on January 4, 2018 they constructively discharged Mr.
15 Simon's firm allowing for adjudication of the lien pursuant to quantum meruit.
16

17 In a similar case the Ohio Appellate Court confirmed that the Edgeworths
18 constructively discharged their attorney and quantum meruit can be used as the
19 method to calculate a reasonable attorneys fee by the trial judge. The Court also
20 confirmed that the trial judge can make findings and conclusions through an
21 evidentiary hearing on the allegations of an alleged contract.
22
23
24
25

1 In *Rosenberg v. Calderon Automation, Inc.*, 1986 Ohio App. LEXIS 5460
2 (Jan. 31, 1986), a lawyer provided services to the client without a contract. As the
3 case was ready to be resolved the client did not want to pay the lawyer because there
4 was no contract. The client stopped all communication with the lawyer. The Ohio
5 Appellate Court determined that the reasonable value of the lawyer's services were
6 due under quantum meruit. See case attached hereto as Exhibit "E". The Court in
7 Rosenberg held an evidentiary hearing to determine the contract issues and the
8 amount of the services due to the lawyer. As here, the client alleged a contract for
9 past performance and raised other claims including breach of the lawyer's fiduciary
10 duty.
11

12
13 In Rosenberg, the court held an evidentiary hearing and found there was a
14 constructive termination of the lawyer's services when the client refused to speak to
15 the lawyer any longer. The Court also made findings that the lawyer did not breach
16 any of his fiduciary duties.
17

18 The Ohio Court of Appeals in *Rosenberg* analyzed the attorney-client
19 relationship, finding that:
20

21 "...As Calderon had no further communications with Rosenberg after he
22 suggested entering into settlement negotiations, the Rosenberg court
23 determined that these events constituted constructive termination: The general
24 rule provides that the "attorney-client relationship is consensual in nature and
25 that the actions of either party can affect its continuance."

1 *Brown v. Johnstone* (1982), 5 Ohio App. 3d 165, 167. As the Brown court
2 noted, the termination of this relationship occurs when it is evident that the
3 party's conduct dissolves the essential mutual confidence between the attorney
4 and the client. *Id.*, at 166; *Bucaro v. Keegan, Keegan, Hecker & Tully* (1984),
5 483 N.Y.S. 2d 564. The termination of the principal-agency relationship may
6 occur at the expiration of a reasonable time, Restatement of the Law, Agency
7 (2d Edition 1958) 275, Section 105, or when the agent has notice of a change
8 of circumstances from which he should reasonably infer that the principal does
9 not consent to the exercise of authority. Restatement of the Law, Agency (2d
10 Edition 1958) 283, Section 108.

11 *Id.* at *13-14 (emphasis added). Calderon's refusal to communicate with
12 Rosenberg, along with ignoring Rosenberg's letters requesting payment,
13 confirmed that the attorney-client relationship was terminated. *Id.* at *14-
14 15...."

15 The Rosenberg court noted that an attorney that is discharged without just
16 cause is entitled to compensation based upon a stated agreement or upon the theory
17 of quantum meruit. *Id.* at *15. Interestingly, the Rosenberg court cited an unreported
18 case in Ohio, *Wilcox v. Rich*, noting that:

19 "Where a contract for the performance of labor is wrongfully terminated by
20 one-party, after part performance by the other, the right of the party
21 performing, to recover the value of the labor performed, irrespective of the
22 contract price, depends on whether, having regard to the contract, the party
23 wrongfully terminating it, would thereby enrich himself at the expense of the
24 other." *Wilcox v. Rich* (Dec. 22, 1981), Franklin App. No. 81AP-269,
25 unreported.

Id. at *15-16 (emphasis added.)..."

26 Thus, the final consideration was how Rosenberg should be compensated –
27 either by a percentage of the contingency fee or by the basis of quantum meruit. The
28 client argued that there was a contract under the prior lawyer's contingency fee

1 agreement, yet there was no signed agreement between the client and Rosenberg.

2 The Rosenberg court indicated that termination of a contract after part performance
3 of the other entitles allowed the performing party to recover the value of the labor
4 performed irrespective of the contract price. The Rosenberg court did not outright
5 state that the contract or contingency agreement could be refuted but instead, the
6 court adopted Rosenberg's election to be compensated via quantum meruit:
7

8 "Consequently, the reasonable value of Rosenberg's services must be based
9 either on a percentage of the contingency fee or on the basis of quantum
10 meruit. Rosenberg has elected, by his testimony and by his letters to Calderon,
11 to be paid based upon the theory of quantum meruit." Id. at *19.

12 Notably, Rosenberg did not keep time records, but Rosenberg attempted to
13 estimate the total number of hours on the case. The Rosenberg court found that
14 Rosenberg's testimony on the work he performed was corroborated by Calderon and
15 Brenner and, therefore, upheld the lower court's award to Rosenberg:

16 "Upon a review of the record, we find that the trial court exercised its
17 discretion in arriving at a fair and equitable determination of fees for services
18 rendered by Rosenberg. The trial court's award, in our opinion, accomplishes
19 the same and we accordingly affirm." Id. at *20.

20 In this case, like Calderon, the Edgeworth's constructively terminated Mr.
21 Simon's firm without just cause after receiving a good result on the case but prior to
22 its conclusion. While the "just cause" determination is not necessarily considered in
23 Nevada for determining whether an attorney should be compensated, the facts in
24 Edgeworth support the obvious conclusion that the client constructively terminated
25

1 Mr. Simon's firm without just cause. Obtaining a 6.1 million dollar settlement in a
2 property damage case and then being sued before the settlement funds are received is
3 without just cause. Further, as discussed above – both the refusal to pay and the
4 filing of a lawsuit constitute constructive termination. Additionally, when the
5 Edgeworth's made the unfounded comments that Mr. Simon would steal the money,
6 it was evident that the Edgeworth's conduct dissolved the mutual confidence between
7 Edgeworth and Mr. Simon. Additionally, the Edgeworth's ignored Mr. Simons'
8 request for payment of fees and costs provided to them in November of 2017, prior to
9 the conclusion of the settlement. These acts constituted constructive termination.
10
11

12 The Edgeworths may contend that Mr. Simon still represents the Edgeworths
13 and there cannot be a termination. This is not true, as the only reason Mr. Simon
14 continues on the case is to fulfill his ethical obligations and heed the continued
15 threats by the Edgeworths. Mr. Vannah confirmed that the law office had not been
16 fired, despite being sued by the clients. Mr. Vannah stated if Mr. Simon withdrew,
17 the damages sought from him would go up.² It is well established that even when
18 there is a contract, contingency or otherwise, once the attorney is discharged, the
19 attorneys can recover for the reasonable value of his services. *Law Offices of*
20
21
22

23 ² On January 9, 2018, at 10:24 a.m., Mr. Greene from the Vannah office wrote,
24 "He settled the case, but we're just waiting on the release and the check." The
25 same day at 3:32 p.m., Mr. Vannah wrote, "I'm pretty sure that you see what
would happen if our client has to spend lots more money to bring someone else up
to speed."

1 *Lawrence J. Stockler, P.C. v. Semaan*, 355 N.W.2d 271 (1984). Here, the
2 Edgeworth's clearly discharged Mr. Simon's firm when they refused to speak with
3 him, hired new counsel, falsely alleged he would steal the settlement money and then
4 surreptitiously sued him. Since Mr. Simon's firm was discharged, he is entitled to
5 the reasonable value of his firm's services under quantum meruit. In doing so, the
6 Court merely looks at the Brunzell factors and adjudicates the lien accordingly.

8 Constructive termination has also been found by other courts. For example, in
9 *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002), the court stated that
10 evidence of constructive termination by a client is evidenced by placing "counsel in a
11 position that precluded effective representation and thereby constructively discharged
12 his counsel or (2) through his obstructionist behavior, dilatory conduct, or bad faith,
13 the defendant de facto waived counsel."
14

16 A client's failure to pay attorney's fees also is constructive termination. See
17 e.g., *Christian v. All Persons Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I.
18 1997) ("Further, the court considers Sewer's failure to pay attorneys' fees as a
19 constructive termination of the attorney-client relationship between Sewer and
20 D'Anna.").

22 Here, the Edgeworths refused to pay any attorney's fees, even though
23 requested in November, 2017, and have refused to pay the outstanding costs of more
24 than \$70,000.00, even though the detailed costs were provided to the clients in
25

1 November, 2017. Rather than making any attempts to pay, they sued Mr. Simon
2 suggesting no money is due. Therefore, the Edgeworths have constructively
3 terminated Mr. Simon in many ways, and have no basis to assert a contract when the
4 court determines attorney's fees.

5
6 Even more compelling is that multiple jurisdictions conclude that the attorney-
7 client relationship is a principal-agent relationship. More so, while it did not concern
8 an attorney and client directly, but an agent acting on behalf of a principal through a
9 power of attorney, the Superior Court of Connecticut held that a lawsuit is a
10 fundamental breach of the principal-agent relationship:
11

12 "Perhaps no more fundamental breach of such a relationship can be imagined
13 than that an agent use the power of attorney to sue the principal, who may
14 even lack the capacity to understand what is going on."

15 See *Tao v. Probate Court for the Northeast Dist.* #26, 2015 Conn. Super. LEXIS
16 3146, *13-14, (Dec. 14, 2015). See also *Maples v. Thomas*, 565 U.S. 266 (2012);
17 *Harris v. State*, 2017 Nev. LEXIS 111; and *Guerrero v. State*, 2017 Nev. Unpubl.
18 LEXIS 472.

19
20 Since Mr. Simon was constructively discharged by the filing of the complaint,
21 among other things, the Law Office of Daniel Simon is entitled to the reasonable
22 value of its services via quantum meruit, irrespective of the prior alleged agreement.
23
24
25

1 The reasonable value of the services by the Law Office of Daniel Simon is
2 analyzed by Mr. Kemp in his detailed declaration and he opines that the value of the
3 services is in the sum of \$2,440,000 for attorney's fees.

4 **F. The Motion to Consolidate is well grounded in law and fact.**

5 Nevada law recognizes that the trial court is best suited to analyze issues
6 relating to lien claims and attorney client fee disputes. *Leventhal v. Black & Lobello*,
7 305 P.3d 907, 909 (Nev. 2013); superseded by statute on other grounds as stated in,
8 *Fredianelli v. Pine Carman Price*, 402 P.3d 1254 (Nev. 2017); and, Restatement
9 (Third) Law Governing Lawyers §43(3).
10
11

12 Courts are provided with discretion to consolidate cases when there are similar
13 issues which arise from the same set of facts. This is such a case. Further,
14 consolidation will prevent an obvious case of forum shopping by the clients.
15

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1 **III. CONCLUSION**

2 This Court has clear, and admitted, jurisdiction to hear the lien dispute. The
3 Court is respectfully requested to set an evidentiary hearing to determine the amount
4 of fees and costs due the law firm.

5 DATED this 5th day of February, 2018.

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
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for SIMON

13 **CERTIFICATE OF SERVICE**

14 I CERTIFY SERVICE of the foregoing REPLY IN SUPPORT OF
15 MOTION TO ADJUDICATE ATTORNEY'S LIEN AND MOTION TO
16 CONSOLIDATE was made by electronic service (via Odyssey) this 5th day of
17 February, 2018, to all parties currently shown on the Court's E-Service List.

19 /s/ Dawn Christensen

20 an employee of
21 JAMES R. CHRISTENSEN, ESQ.

EXHIBIT A

WA00552

Daniel Simon

From: Brian Edgeworth <brian@pediped.com>
Sent: Friday, May 27, 2016 3:30 PM
To: Daniel Simon
Subject: RE: Insurance Claim

Dude, when/how can it get this to you? Even typing up the summary is taking me all day organizing the papers. There is at least 600-1000 pages of crap.

-----Original Message-----

From: Daniel Simon [mailto:dan@simonlawlv.com]
Sent: Friday, May 27, 2016 12:58 PM
To: Brian Edgeworth <brian@pediped.com>
Subject: Re: Insurance Claim

I know Craig. Let me review file and send a few letters to set them up. Maybe a few letters will encourage a smart decision from them. If not, I can introduce you to Craig if you want to use him. Btw He lives in your neighborhood. Not sure if that is good or bad?

> On May 27, 2016, at 9:30 AM, Brian Edgeworth <brian@pediped.com> wrote:

>

> Hey Danny;

>

> I do not want to waste your time with this hassle (other than to force

> you

to listen me bitch about it constantly) and the insurance broker says I should hire Craig Marquiz and start moving the process forward.

> Should I just do that and not bother you with this?

> My only concern is that some goes nuclear (with billing and time) when

just a bullet to the head was all that was needed to end this nightmare (and I do not know this person from Adam).

>

> --

>

>

> Brian Edgeworth

> pediped Footwear

> 1191 Center Point Drive

> Henderson, NV

> 89074

>

> 702 352-2580

EXHIBIT B

WA00554

FW: Contingency

Daniel Simon <dan@simonlawlv.com>

Fri 12/1/2017 10:22 AM

To: James R. Christensen <jim@jchristensenlaw.com>;

From: Brian Edgeworth [mailto:brian@pediped.com]

Sent: Tuesday, August 22, 2017 5:44 PM

To: Daniel Simon <dan@simonlawlv.com>

Subject: Contingency

We never really had a structured discussion about how this might be done.

I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.

Obviously that could not have been done earlier snce who would have thought this case would meet the hurdle of punitives at the start.

I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another \$450k from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.

I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first \$750,000 or so back to colin and Margaret and why would Kinsale settle for \$1MM when their exposure is only \$1MM?

EXHIBIT C

WA00556

1 JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
2 601 S. 6th Street
Las Vegas, Nevada 89101
3 (702) 272-0406
(702) 272-0415 fax
4 jim@christensenlaw.com
Attorney for Simon

5
6 **EIGHTH JUDICIAL DISTRICT COURT**
7
8 **DISTRICT OF NEVADA**

8 EDGEWORTH FAMILY TRUST and
AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC; THE VIKING
CORPORATION; a Michigan corporation;
12 SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan Corporation; and
13 DOES I through 5 and ROE entities 6 through
14 10;

15 Defendants.

CASE NO.: A738444

DEPT NO.: X

DECLARATION OF WILL KEMP, ESQ.

16 1. I have been a licensed attorney in the State of Nevada since September, 1978. I
17 have litigated high profile products liability cases in Nevada and around the country. I have presented
18 arguments before all the courts in the state of Nevada, as well as the First, Third and Ninth Circuit
19 Court of Appeals and the United States Supreme Court. I have been an AV Preeminent Lawyer by
20 Martindale Hubbell since the 1980's, which is the highest AV rating for competency and ethics. I have
21 also been named as a Super Lawyer, named in the Mountain States Top 10, selected in the Legal Elite
22 of Nevada Business Magazine and selected as Nevada Trial Lawyer of the year in 2012.

23 I have served on multiple steering committees, including but not limited to Plaintiffs' Legal
24 Committee, MGM Multi-District Fire Litigation, 1980-1987, (the seminal mass tort case in Nevada)
25 Plaintiffs' Steering Committee and Plaintiffs' Trial Counsel, San Juan Dupont Plaza Multi-District Fire
26 Litigation, 1987-98, Plaintiffs' Steering Committee, Peachtree 25th Fire Litigation, 1991-94, Plaintiffs'
27 Steering Committee and Executive Committee in Castano Tobacco Litigation, 1993-2010, Orthopedic
28 Bone Screw Products Liability Litigation, 1994-1998, Plaintiff's Management Committee, Fen/Phen

1 Diet Drug Litigation, 1998-2003 (the largest pharmaceutical settlement in history--\$25 Billion plus),
2 Plaintiffs' Steering Committee, Baycol Products Liability Litigation, 2002-07, Minnesota Syngenta
3 Litigation State Court Committee (2016-____) (\$1.3 Billion settlement pending). I was the Liaison
4 Counsel for Plaintiffs and lead attorney on the product liability committee of Plaintiffs' Legal
5 Committee in the MGM Fire Litigation. I have tried numerous complex product liability cases,
6 including the San Juan Dupont Plaza Multi-District Fire Litigation (15 ½ month product liability case
7 against 200 Defendants resulting in plaintiffs' verdict). I was also lead counsel on the largest product
8 liability verdict in the history of Nevada: \$505 Million verdict in Chanin v. Teva in 2010 (defective
9 propofol packaging theory).

10 2. In connection with many of the foregoing cases, I have presented the work effort
11 of our firm to multiple state and federal courts in fee presentations. In addition, I was on the Fee
12 Committee in the Castano Tobacco Litigation and decided on the allocation of a \$1.3 Billion fee among
13 57 law firms based upon their relative efforts in that landmark litigation.

14 3. In my practice, I have represented both plaintiffs and defendants in all types of litigation,
15 including negligence cases and product liability. I am personally familiar with the efforts required to
16 both prosecute and defend serious cases in general, including hotly contested product liability litigation
17 against a worldwide manufacturer.

18 4. I have been retained by the Law Office of Daniel Simon (hereinafter LODS) to review
19 the case of Edgeworth Family Trust and American Grating v. Lange Plumbing and the Viking entities,
20 hereinafter "The Edgeworth Matter." In preparing my opinion, I have reviewed the register of actions;
21 the e-service filings, pleadings, motions, the relevant court orders; voluminous e-mails, the list of
22 depositions taken, notices of depositions, extensions of discovery in other LODS cases and expert
23 reports. I have a qualified understanding of the work performed on this case and the results achieved.

24 5. I am also aware of the billing statements produced to the client in this case and the
25 payments that were made for these billing statements.

26 6. Before the mediation that occurred on November 10, 2017, LODS filed numerous
27 motions that effectively forced the Viking entities to settle this matter prior to any rulings on the
28 pending motions. At the time of mediation, the Trial Judge, the Honorable Tierra Jones had already set

1 an evidentiary hearing to occur in December 2017 in order to determine whether Viking's answer
2 should be stricken for discovery abuses or other sanctions. Notably, the motion for to Strike Answer
3 was filed on September 29, 2017, after Mr. Edgeworth commented in the August 22, 2017 email set
4 forth below that no one expected "this case would meet the hurdle of punitives" and proposed a hybrid
5 "that incents" LODS to vigorously pursue punitives. The Trial was set for February 5, 2018. The
6 Motion to Strike Answer was obviously one of the key threats that coerced the settlement.

7 7. At the same time, LODS also had pending motions for summary judgment against Lange
8 Plumbing. Lange Plumbing had cross-claims against the Viking entities.

9 8. The case was worked up with many experts consisting of several engineering experts, an
10 appraiser to establish damages, litigation loan experts to justify non-recourse interest on loans and a
11 fraud expert. The defense hired many experts that needed to be rebutted.

12 9. The document production was voluminous and consisted of more that 100,000 pages,
13 there was substantial motion work and the emails with the client show continuous communication to an
14 extent that is relatively unusual. This close communication with the client on a daily (if not more) basis
15 obviously took much attention from LODS but appears to have been productive in multiple ways.

16 10. I have reviewed the email dated November 21, 2017, that Mr. Edgeworth sent to
17 Mr. Simon setting forth damage elements. The amounts discussed in that email that I would consider to
18 be "hard" damages were \$512,636 paid for repairs to the damaged house, \$24,117 (repairs owed) and
19 \$194,489 (still to repair). This totals \$731,242 of "hard" damages. The other damages items such as
20 "stigma" for \$1,520,000 and the interest of \$285,104 are what I would consider "soft" damages. In
21 evaluating the value of a case, many attorneys give more credence to "hard" damages.

22 11. I have also reviewed the email dated August 22, 2017 from Mr. Edgeworth to Mr
23 Simon wherein Mr. Edgeworth states as follows:

24 **We never really had a structured discussion about how this might be done. I am**
25 **more that happy to keep paying hourly but if we are going for punitive we should**
26 **probably explore a hybrid of hourly on the claim and then some other structure that**
incents both of us to win an[d] go after the appeal that these scumbags will file etc.

27 **Obviously that could not have been done earlier since who would have thought this**
case would meet the hurdle of punitives at the start.

28 I could also swing hourly for the whole case (unless I am off what this is going to cost).

1 I would likely borrow another \$450k from Margaret in 250 and 200 increments and then
2 either I could use one of the house sales for cash or if things get really bad, I still have a
couple million in bitcoin I could sell.

3 I doubt we will get Kinsale [the insurer for Lange Plumbing] to settle for enough to
4 really finance this since I would have to pay the first \$750,000 or so back to Colin and
Margaret and why would Kinsale settle for \$1MM when their exposure is only \$1MM?

5 (Bold added) The August 22, 2017 email is significant for several reasons. First, as discussed in more
6 detail, the settlement had to have included at least \$3.3 Million of punitive damages and more likely \$4
7 or \$5 Million of punitive damages because the \$6.1 Million settlement is \$5,368,580 above the "hard"
8 damages of \$731,420.00 and \$2,272,855 above the total damages of \$3,827,147 (as set forth in the
9 November 21, 2017 email). It should be noted that the \$3,827,147 figure includes \$1,520,000 for
10 "stigma" to the house damages (of which there is not strong legal support). Under any view, the
11 settlement included millions of dollars of punitive damages. It is unprecedented to get that much in
12 punitive damages in a case of this nature where only property damage is involved. Indeed, some courts
13 would hold that a 5 to 1 ratio (\$5 Million punitive to \$1M compensatory) is unconstitutionally
14 excessive.

15 12. The second reason that the August 22, 2017 email is significant is that, Mr.
16 Edgeworth acknowledges that he does not believe that the parties have a fee agreement ("We never
17 really had a structured discussion about how this might be done.") and then proposed "a hybrid" fee
18 arrangement "if we are going for punitive." Not only did Mr. Edgeworth and LODS "go for punitive"
19 after August 22, 2017, they got millions of dollars in punitives. Mr. Edgeworth also explains why a fee
20 agreement to pursue the punitives could not be made earlier ("Obviously that could not have been done
21 earlier since who would have thought this case would meet the hurdle of punitives at the start.") Given
22 the volume of the emails between Mr. Edgeworth and LODS between this August 22, 2017 and the
23 mediation, it appears that a herculean (and successful) effort was made to "go for punitive."

24 13. The third reason that the August 22, 2017 email is significant is that Mr.
25 Edgeworth expresses the firm opinion therein that the only way to obtain satisfactory resolution of his
26 claim is to succeed at trial and then succeed on appeal: "some other structure that incents both of us to
27 win [at trial] and go after the appeal that these scumbag [Defendants] will file..." Mr. Edgeworth is
28 obviously a very sophisticated client (based on a review of his emails to LODS) and his general

1 expectation that the usual course to an adequate recovery would be years of litigation and success at
2 trial and appeal is consistent with what could typically occur. This will be referred to later as
3 "Edgeworth's expected result."

4 14. I have been informed and believe that, at the mediation on November 10th, 2017, the
5 parties could not reach a settlement. Viking offered \$2.5 Million. The Mediator, Floyd Hale, requested
6 to send a mediator proposal for \$5 million. LODS only agreed to a mediator proposal of \$6 million.
7 Subsequently, on November 15, 2017, Viking accepted the \$6 million proposal, subject to a
8 determination of a good faith settlement extinguishing the claims Lange Plumbing has against Viking
9 and a confidentiality provision. Later, LODS was able to negotiate better terms, including a mutual
10 release and omitting the confidentiality provision.

11 15. I am familiar with NRPC 1.5, and the Brunzell Factors that control Nevada law. See
12 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 455 P.2d 31, 33 (Nev. 1969) ("From a study
13 of the authorities it would appear such factors may be classified under four general headings (1) the
14 qualities of the advocate: his ability, his training, education, experience, professional standing and skill;
15 (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill
16 required, the responsibility imposed and the prominence and character of the parties where they affect
17 the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and
18 attention given to the work; (4) the result: whether the attorney was successful and what benefits were
19 derived.") I am also familiar with the detailed analysis of the Lodestar approach for determining a
20 reasonable attorney fee in the absence of a contract with the client. I have also argued fee dispute issues
21 at the First Circuit Court of Appeals. See In re Thirteen Appeals Arising Out of the San Juan Dupont
22 Hotel Fire Litigation, 56 F.3d 295, 307 (1st Cir. 1995) (approving the percentage of fund method for
23 mass tort cases instead of the lodestar technique); In re Nineteen Appeals Arising Out of The San Juan
24 Dupont Plaza Hotel Fire Litigation (1st Cir. 1992).

25 16. An attorney who does not have a signed contract with a client is entitled to receive a
26 reasonable attorneys fee for the value of his/her services. There are many factors to consider in
27 determining the value of an attorneys services. To determine reasonableness, Nevada state courts rely
28 heavily on the "Brunzell factors." The state court decisions applying the Brunzell factors suggest that

1 the analysis focuses primarily on the quantity, quality of work and advocacy rather than the hourly rate.
2 NRCP 1.5 lists eight non-exclusive factors to consider. One of the primary factors is the fees
3 "customarily charged in the locality for similar legal services."

4 17. The Edgeworth matter involved one house that was heavily damaged by flooding
5 due to a defective sprinkler. This type of case, i.e., one client with property damage, is not attractive to
6 most experienced product liability litigators for several reasons. First, the amount of energy involved in
7 litigating a complex product case usually requires multiple clients (or at a minimum serious personal
8 injury) to justify the time expended to obtain an award. Second, product liability is a legal concept that
9 is not familiar to many jurors (and even some judges). This creates an element of uncertainty in
10 predicting liability outcomes that is greater than most garden variety negligence cases. Third, property
11 damage typically does not invoke sympathy with jurors needed to drive a punitive award. Fourth, no
12 experienced litigator will take a case wherein punitive damages are the primary damages element
13 because punitive damages are rarely awarded and paid even less often.

14 18. For these reasons, despite expertise in both product liability and construction
15 defect litigation, our office probably would have not have taken this case for the reasons outlined above.
16 If we had taken the case, the minimum contingent fee would have been 40% and more likely 45%. A
17 settlement of \$6.1 Million in a complex product liability case with no personal injury or death and only
18 \$731,242 in "hard costs" is truly remarkable.

19 19. When reviewing the Edgeworth matter to determine a reasonable fee, the analysis must
20 start with the fourth Brunzell factor; the result achieved. As set forth in Paragraph 13 above, Mr.
21 Edgeworth, a sophisticated client, expressed the opinion on August 2, 2017, that it would take a trial
22 and appeal to get "Edgeworth's expected result." Given how involved Mr. Edgeworth was with the
23 case (including minute details) and that he is a very sophisticated client, his belief in this regard would
24 normally be correct. Indeed, most lawyers would agree that it would take years to even get the "hard
25 costs." But instead of getting "Edgeworth's expected result" after years of litigation, LODS got a truly
26 extraordinary result in less than 3 months after the date of the August 2, 2017 email. LODS secured a
27 six million, one hundred thousand dollar (\$6,100,000) settlement for a complex products liability case
28 where the "hard" damages were only \$791,242.00. The total claimed past "hard" and "soft" damages

1 involved, excluding attorney's fees, experts fees and costs were approximately \$1.5 million dollars.
2 Getting millions of dollars of punitives in a settlement in a case of this nature is remarkable. For these
3 reasons, the fourth Brunzell factor (result) overwhelmingly favors a large fee.

4 20. The quality and quantity of the work (the third Brunzell factors) were exceptional for a
5 products liability case against a worldwide manufacturer that is very experienced in litigating cases.
6 LODS had to advocate against several highly experienced law firms for Viking, including local and out
7 of state counsel. In this regard, the Motion to Strike Answer filed on September 29, 2017 is of utmost
8 significance.

9 21. LODS retained multiple experts to secure the necessary opinions to prove the case. It
10 also creatively advocated to pursue unique damages claims (e.g., the "stigma" damages) and to
11 prosecute a fraud claim and file many motions that most lawyers would not have done. LODS also
12 secured rulings that most firms handling this case would not have achieved. The continued aggressive
13 representation prosecuting the case was a substantial factor in achieving the exceptional results. This
14 (especially the Motion to Strike Answer and impending evidentiary hearing) is the second Brunzell
15 factor.

16 22. I am familiar with the size of the LODS firm and the amount of work performed would
17 have significantly impaired LODS from simultaneously working on other cases. Our firm has over a
18 dozen litigators and a long track record of successful litigation and we often find it difficult to support a
19 "hot" products case (i.e., one requiring the full time attention of several lawyers). It is very impressive
20 that a small firm made the sacrifice to do so.

21 23. LODS does not represent clients on an hourly basis and the fee customarily charged in
22 the locality for similar legal services should be substantial in light of the work actually performed, the
23 LODS lost opportunities to work on other cases and the ultimate amazing result achieved. Absent a
24 contract, LODS is entitled to a reasonable fee customarily charged in the community based on the
25 services performed.

26 24. When evaluating the novelty and difficulty of the questions presented; the adversarial
27 nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on
28 other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved

1 given the total amount of the settlement compared to the "hard" damages involved, the reasonable value
2 of the services performed in the Edgeworth matter by LODS, in my opinion, would be in the sum of
3 \$2,440,000. This evaluation is reasonable under the Brunzell factors.

4 25. I make this Declaration under penalty of perjury.

5 Dated this 31st day of January, 2018.

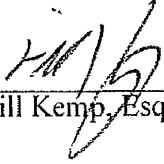
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EXHIBIT D

WA00565

Daniel Simon

From: Sarah Guindy <SGuindy@BankofNevada.com>
Sent: Thursday, January 04, 2018 2:29 PM
To: Robert Vannah; John Greene (jgreene@vannahlaw.com); Daniel Simon; James R. Christensen
Subject: New Account

Good Afternoon all

Mr. Simon came by my office to sign the signature card and the address to forward statements was incorrect. The address should be Mr. Simon firm address. We will revise the signature card and everyone will need to resign our documents. Also in order to open the account the bank will need to receive the requested signed statement from Mr. Vannah and Mr. Simon. Mr. Edgeworth will also be required to sign the W-9 form and endorse the checks. We were advised Mr. Edgeworth is out of town and unavailable until next week.

Thank you

Sarah Guindy

EXECUTIVE VICE PRESIDENT, CORPORATE BANKING MANAGER
BANK OF NEVADA, A DIVISION OF WESTERN ALLIANCE BANK. MEMBER FDIC.
T (702) 252-6452 | C (702) 523-2699 | SGUINDY@BANKOFNEVADA.COM
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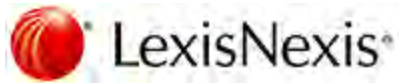
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WA00566

EXHIBIT E

WA00567



User Name: Benjamin Miller

Date and Time: Monday, January 22, 2018 3:07:00 PM PST

Job Number: 59932242

Document (1)

1. [Rosenberg v. Calderon Automation, Inc., 1986 Ohio App. LEXIS 5460](#)

Client/Matter: -None-

Search Terms: attorney /s "constructive termination"

Search Type: Terms and Connectors

Narrowed by:

Content Type
Cases

Narrowed by
-None-



Rosenberg v. Calderon Automation, Inc.

Court of Appeals, Sixth Appellate District of Ohio, Lucas County, Ohio

January 31, 1986

C.A. No. L-84-290

Reporter

1986 Ohio App. LEXIS 5460 *; 1986 WL 1290

Samuel L. Rosenberg, APPELLEE -VS- Calderon Automation, Inc., Albert Calderon, APPELLANTS

Prior History: [*1] APPEAL FROM LUCAS COUNTY COMMON PLEAS COURT, NO. CV 82-1194.

Disposition: On consideration whereof, this court finds that substantial justice has been done the parties complaining, and judgment of the Lucas County Court of Common Pleas is affirmed. This cause is remanded to said court for execution of judgment and assessment of costs. Costs assessed against appellants.

Core Terms

termination, patent, hired, discharged, attorney-client, partnership, patent case, just cause, settlement, trial court, contingency, settle, federal district court, trial court's judgment, special interrogatory, attorney's fees, assigned error, preparation, indicates, services rendered, joint venture, negotiations, unfavorable, couldn't, services, parties, jury's

Case Summary

Procedural Posture

Appellant clients sought review of the judgment of the Lucas County Common Pleas Court (Ohio), which awarded appellee attorney compensation for his services that he rendered for the clients in their patent infringement litigation before the clients terminated the attorney-client relationship.

Overview

The clients hired a lawyer, who involved the appellee attorney in the patent infringement case. When the attorney and the clients refused to negotiate a settlement, the clients had no further contact with the attorney, who believed that he had been discharged from the case. The attorney filed an action to seek

compensation for his services. On appeal the court affirmed the trial court's award of compensation. The clients authorized the lawyer to consult the attorney, and the relationship between the two attorneys plus the clients' act of working with the attorney established the attorney-client relationship, which terminated after the conclusion of the jury's favorable answers to the special interrogatories but before the clients received an unfavorable judgment. The attorney's discussion with the opposing party was not an attempt to settle the case and did not constitute a breach of his fiduciary duties. At the time of termination, the clients had not suffered any damage or lost their case. Accordingly, the termination of the attorney's employment was without just cause.

Outcome

The court affirmed the judgment that awarded the attorney compensation for the services he rendered on behalf of the clients in their patent infringement litigation.

LexisNexis® Headnotes

Business & Corporate Law > ... > Actual
Authority > Implied Authority > Conduct of Parties

Legal Ethics > Client
Relations > Representation > Acceptance

Business & Corporate Law > Agency
Relationships > Agents Distinguished > Special
Agents

Business & Corporate Law > ... > Authority to
Act > Actual Authority > General Overview

Business & Corporate Law > ... > Actual
Authority > Implied Authority > General Overview

WA00569

Business & Corporate
Law > ... > Establishment > Elements > General
Overview

[HN1](#) **Implied Authority, Conduct of Parties**

The relationship between an attorney and a client is considered to be one of limited agency with respect to the particular suit for which the attorney is hired. The attorney has no implied power to do more than relates to the proper conduct of the suit, and cannot, without specific authority, bind the client by contract. The client will only be liable for the acts of the attorney performed within scope of his authority, but not for illegal acts, unless it can be shown that the client participated therein or had knowledge thereof.

Business & Corporate Law > ... > Authority to
Act > Contracts & Conveyances > Formation &
Negotiation

Business & Corporate Law > Agency
Relationships > General Overview

Business & Corporate Law > Agency
Relationships > Authority to Act > General Overview

Business & Corporate Law > ... > Authority to
Act > Actual Authority > Inherent Authority

Business & Corporate Law > ... > Authority to
Act > Business Transactions > Management

Business & Corporate Law > ... > Authority to
Act > Contracts & Conveyances > General
Overview

[HN2](#) **Contracts & Conveyances, Formation & Negotiation**

An agent's authority to make a contract is inferred from the authority to conduct a transaction, if the making of such a contract is incidental to the transaction or is reasonably necessary to accomplish it. An agent's authority to appoint an agent is inferred when the parties agree to the appointment, the authority is customary within the normal business operations, the authority exercised is within the proper conduct of the principal business and/or the authority is derived out of unforeseen circumstances.

Business & Corporate Law > Agency
Relationships > Fiduciaries > Fiduciary Duties

Business & Corporate Law > Agency
Relationships > General Overview

Business & Corporate Law > Agency
Relationships > Agents Distinguished > General
Overview

Business & Corporate Law > Agency
Relationships > Fiduciaries > General Overview

Business & Corporate Law > Agency
Relationships > Authority to Act > General Overview

Business & Corporate Law > ... > Authority to
Act > Apparent Authority > General Overview

Business & Corporate Law > ... > Authority to
Act > Contracts & Conveyances > Formation &
Negotiation

Business & Corporate Law > Agency
Relationships > Duties & Liabilities > General
Overview

Business & Corporate Law > Agency
Relationships > Ratification > General Overview

Governments > Fiduciaries

[HN3](#) **Fiduciaries, Fiduciary Duties**

The relation of principal and agent is always regarded by the court as a fiduciary one, implying trust and confidence. All acts and contracts of an agent done or made within the discharge of his duties, and within the scope of his authority, whether that authority is express, implied, or apparent, are obligatory upon the principal, and no ratification or assent on the latter's part is necessary to give them validity.

Legal Ethics > Client Relations > Duties to
Client > Effective Representation

[HN4](#) **Duties to Client, Effective Representation**

Where the case involves litigation outside the attorney's field of expertise, the attorney, in order to retain the case, may consult a second attorney.

Legal Ethics > Client Relations > Attorney Fees > General Overview

[HN5](#) **Client Relations, Attorney Fees**

An attorney is not entitled to compensation where he is discharged for just cause, but if the attorney is discharged without just cause, he is entitled to a fee based on the reasonable value of his services rendered.

Legal Ethics > Client Relations > General Overview

[HN6](#) **Legal Ethics, Client Relations**

The attorney-client relationship is consensual in nature and that the actions of either party can affect its continuance. The termination of this relationship occurs when it is evident that the party's conduct dissolves the essential mutual confidence between the attorney and the client.

Business & Corporate Law > Agency Relationships > Termination > Consent

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Duties & Liabilities > General Overview

Business & Corporate Law > Agency Relationships > Termination > General Overview

Business & Corporate Law > Agency Relationships > Termination > Expiration of Time

[HN7](#) **Termination, Consent**

The termination of the principal-agency relationship may occur at the expiration of a reasonable time or when the agent has notice of a change of circumstances from which he should reasonably infer that the principal does not consent to the exercise of authority.

Business & Corporate Compliance > ... > Contracts Law > Standards of Performance > Discharge & Termination

Labor & Employment Law > Wrongful Termination > Remedies > General Overview

[HN8](#) **Standards of Performance, Discharge & Termination**

Where a contract for the performance of labor is wrongfully terminated by one-party, after part performance by the other, the right of the party performing, to recover the value of the labor performed, irrespective of the contract price, depends on whether, having regard to the contract, the party wrongfully terminating it, would thereby enrich himself at the expense of the other.

Business & Corporate Law > Agency Relationships > Authority to Act > General Overview

Legal Ethics > Client Relations > Duties to Client > Effective Representation

[HN9](#) **Agency Relationships, Authority to Act**

Unless an attorney has been expressly authorized to do so, he has no implied or apparent authority, solely because he was retained to represent the client, to negotiate or settle the client's case.

Counsel: Michael Briley, Richard Scheich, 1000 National Bank Building, Toledo, OH 43604 for Appellee.

Daniel T. Spitler, Spitler, Vogtsberger & Huffman, 131 E. Court Street, Bowling Green, OH 43402-2495 for Appellant.

Judges: Frank W. Wiley, and Bruce C. Huffman, JJ., JUDGE CONCUR. Judges Frank W. Wiley and Bruce C. Huffman, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

Opinion by: WILKOWSKI

Opinion

DECISION AND JOURNAL ENTRY

WILKOWSKI, P.J.

This cause came on to be heard upon the record in the trial court. Each assignment of error was reviewed by the court and upon review the following disposition-

WA00571

made:

This case comes before the court from a judgment of the Lucas County Court of Common Pleas, wherein judgment was rendered for plaintiff-appellee, Samuel Rosenberg, for attorney fees in the sum [*2] of \$ 27,000.

This action originates out of a patent infringement case filed in the Federal District Court by defendant-appellants, Albert Calderon and Calderon Automation, Inc. Appellants hired Lawrence Brenner to handle the patent infringement case. Mr. Brenner was to be paid on a simple contingency fee basis. Subsequently, a second attorney, appellee Rosenberg, became involved with the case. Rosenberg's participation in the case began in February 1979. At that time, Rosenberg began reviewing the case files and the relevant patent laws. From February 1979 through the trial in June 1979, Rosenberg's sole duties related to the preparation of the patent case. Mr. Brenner and Mr. Calderon also were responsible for the preparation of the material for the trial. At trial, Rosenberg's responsibilities were limited to the direct examination of Calderon and a portion of the closing arguments directly related to the special interrogatories presented to the jury.

After the jury returned favorable findings on the special interrogatories, Rosenberg suggested that settlement negotiations with the adversary, General Motors, Inc., be initiated. Calderon vehemently opposed any attempt to negotiate [*3] a settlement with General Motors. Due to Rosenberg's and Calderon's difference of opinion as to the appropriateness of settlement negotiations, Calderon had no further contact with Rosenberg. Rosenberg, believing that he had been discharged from the case, sent letters to Calderon requesting fees for his services.

Subsequently, after the alleged constructive discharge of Rosenberg from the case, the (Federal District Court) judge reversed the jury's findings and entered a judgment unfavorable to the establishment of Calderon's patent rights.

Calderon obtained new representation for the appeal and he eventually obtained a settlement with General Motors restoring a portion of his patent rights; however, no monetary award was obtained.

Rosenberg, claiming that he had been discharged from the case prior to the judge's refusal of the jury findings, sought recompense for his services rendered from February through July. The trial court, after hearing

testimony of Rosenberg, Calderon and Brenner, plus reviewing over twenty exhibits, rendered judgment for Rosenberg in the sum of \$ 27,000.

In the judgment entry, the trial court made several findings of fact. Upon review of the record, including [*4] 386 pages of transcript and over twenty exhibits, we find that the findings of fact were supported by competent, credible evidence and therefore, we incorporate them herein:

"1. In June, 1973, attorney Lawrence Brenner entered into an attorney-client relationship with Albert Calderon and Calderon Automation, Inc. for representation in patent litigation.

"2. Claderon [*sic*] subsequently authorized Brenner to employ additional counsel to represent him in connection with the patent litigation.

"3. Pursuant to this authorization, and for the dominant if not sole purpose of providing additional counsel for the representation, Lawrence Brenner entered into a joint venture or partnership with attorney Samuel L. Rosenberg with the full consent and agreement of Calderon. Rosenberg was thereby employed by Calderon as additional counsel for the patent litigation.

"4. The *General Motors* case was tried before Judge Kennedy of the Eastern District of Michigan, Southern Division, from May 21, 1979 through July 5, 1979.

"5. With respect to the formation and conduct of the joint venture

both Brenner and Calderon failed to disclose to Rosenberg [*5] the existence of a certain written fee agreement dated May 23, 1977, to which Brenner and Calderon were mutually parties.

"6. Rosenberg entered into the joint venture or partnership with Brenner for the principal purpose of acting as attorney in the patent litigation. In doing so he relied upon the representations of Brenner

WA00572

and Calderon to the effect that the litigation had a potential recovery or value of \$ 16,000,000.00 and that the attorneys were representing Calderon on a simple, unqualified one-third contingent fee arrangement.

"7. Subsequent to the trial and the performance of the substantial legal services, Calderon discharged Rosenberg as counsel in the patent litigation by Calderon's refusal to cooperate or communicate with Rosenberg, his employment of additional counsel without Rosenberg's consent, and the contemporaneous termination of the joint venture or partnership by Brenner.

"8. Calderon additionally failed to cooperate with Rosenberg as one of his attorneys, by refusing to consider any settlement no matter what its terms, and by refusing to permit his attorney to discuss even the

subject of settlement with opposing counsel. [*6]

"9. All of said acts by which Rosenberg was discharged as counsel occurred prior to the entry of the court's unfavorable judgment in the patent litigation.

"10. Rosenberg performed services having a value on a *quantum meruit* theory of \$ 27,000.00.

"11. Brenner has assigned to Rosenberg any interest he might claim in Rosenberg's fee."

Appellants appealed setting forth seven assignments of error. ¹ [*21] The assignments of error were not

¹ The seven assignments of error are as follows:

"1. The trial court erred in overruling Calderon's Motion for an Involuntary Dismissal at the close of Plaintiff's case because Rosenberg failed to prove a direct contractual relationship with either Defendant that would provide a basis for recovery.

"2. The trial court's judgment for Rosenberg was erroneous because Rosenberg failed to prove that Brenner acted as an agent for Calderon and intended, as that agent, to create a new contract between Calderon and Rosenberg.

"3. The trial court's judgment for Rosenberg was erroneous

individually briefed, but instead were segregated into several issues concerning Rosenberg's right to compensation. Since all the issues contest Rosenberg's right to receive compensation, the issues will be addressed together.

Appellants contest the trial court's award of attorney fees based on the following: (1) Calderon, neither personally nor through his attorney, authorized the hiring of Rosenberg and, therefore, Calderon was not responsible for the payment of services rendered by Rosenberg; (2) assuming Rosenberg was hired by Calderon, Rosenberg was never discharged as an attorney and, consequently, his fees must be based on the contingency fee arrangement between Calderon and Brenner; (3) if Rosenberg was ostensibly hired as [*7] Calderon's attorney and the court determines that he was discharged from the attorney-client relationship, his discharge was based on just cause and, therefore, Rosenberg was not entitled to compensation for his services rendered.

The record indicates that Calderon had hired Brenner to handle his patent infringement case. The question which arises from that relationship is whether Brenner had the

because Rosenberg failed to prove that Brenner, Calderon's attorney, had actual authority from Calderon to create a new contract between Calderon and Rosenberg or any other attorney.

"4. The trial court's judgment for Rosenberg was erroneous because Rosenberg failed to prove that Calderon had actual knowledge that Rosenberg had been hired by Brenner in his capacity as agent for Calderon, if that was the case, as opposed to having been hired by Brenner as associate counsel.

"5. The trial court's judgment for Rosenberg was erroneous because, as a matter of agency law, an attorney has no implied or inherent authority to bind his client directly to another attorney absent actual or express authority granted by the client to do so.

"6. The trial court's judgment for Rosenberg was erroneous because, as a matter of agency law, Calderon could not have ratified any direct contract between himself and Rosenberg without actual knowledge that Rosenberg had been hired by Brenner acting solely as an agent for Calderon, and without actual knowledge of the terms of the contract allegedly created thereby.

"7. The trial court's judgment for Rosenberg was erroneous because Rosenberg, by violating a direct instruction from Calderon, first breached any agreement that may have existed between himself and Calderon, and thereby excused Calderon from further performance."

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authority to facilitate the preparation of the patent case.

[HN1](#)^[↑] The relationship between an attorney and a client is considered to be one of limited agency with respect to the particular suit for which the attorney is hired. The attorney has no implied power to do more than relates to the proper conduct of the suit, and cannot, without specific authority, bind the client by contract. [Harrison v. Kickbride \(1905\), 16 Ohio Dec. 389](#). The client will only be liable for the acts of the attorney performed within scope of his authority, but not for illegal acts, unless it can be shown that the client participated therein or had knowledge thereof. [Stewart v. Elias \(App. 1935\), 21 Ohio Law Abs. 199](#), error dismissed, [130 Ohio St. 589](#); [Prate v. Freedham \(C.A. 4, 1978\), 583 F. 2d \[*8\] 42](#); [Lloyd v. Carnation Co. \(D.C.N.C. 1984\), 101 F.R.D. 346](#).

As this court has previously noted, the relationship between the attorney and client is, in a broad sense, that of an agent and principal. [Gaines Reporting Service v. Mack \(1982\), 4 Ohio App. 3d 234](#); [Blanton v. Womancare Clinic Inc. \(Cal. 1985\), 696 P. 2d 645](#).

With respect to the principal agency relationship, unless otherwise agreed, [HN2](#)^[↑] an agent's authority to make a contract is inferred from the authority to conduct a transaction, if the making of such a contract is incidental to the transaction or is reasonably necessary to accomplish it. Restatement of the Law, Agency (2d Edition, 1958), 151-153, Sections 50, 51. An agent's authority to appoint an agent is inferred when the parties agree to the appointment, the authority is customary within the normal business operations, the authority exercised is within the proper conduct of the principal business and/or the authority is derived out of unforeseen circumstances.

As this court said in [Foust v. Valley Brook Realty Co. \(1981\), 4 Ohio App. 3d 164](#), at paragraph three of the syllabus:

[HN3](#)^[↑] "The relation of principal and agent is always regarded [*9] by the court as a fiduciary one, implying trust and confidence. All acts and

contracts of an agent done or made within the discharge of his duties,

and within the scope of his authority, whether that authority is

express, implied, or apparent, are obligatory upon the principal, and

no ratification or assent on the latter's part is necessary to give

them validity."

In this case, Calderon was aware that Brenner was a recent law school graduate and a new member of the state bar. Having recently entered the practice of law, Brenner, pursuant to Canon Six and Seven of the Code of Professional Responsibility and the relevant ethical considerations, had an obligation to Calderon to act competently in handling the legal matter in question.

[HN4](#)^[↑] Where the case involves litigation outside the attorney's field of expertise, the attorney, in order to retain the case, may consult a second attorney. Calderon was aware of Brenner's lack of experience and in fact was aware that Brenner had obtained advice from another attorney on this particular case. Although Calderon did not want to associate himself personally with the second attorney, he, in fact, conferred upon Brenner the authority [*10] to consult with a second attorney.

Mr. Calderon testified as follows:

"Q. Did you discuss at that time the possibility that Mr. Rosenberg

might become involved in presenting your case?

"A. I had some problems before with another lawyer, a patent lawyer that Mr. Brenner appointed or he wanted to bring into the case, and the idea was that -- and I had this problem having an agreement with

more than one lawyer, so I just -- we had an agreement, and Larry

Brenner had the right to appoint anybody he wanted to help him on the

case, and the reason I had a problem with another lawyer is because he wanted to -- you had pre-conditions, irrespective of this agreement.

"In other words, he wanted Calderon Automation to give him other business, and if I don't give him other business he's not interested.

In other words, he put some conditions which were outside the

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agreement." (Emphasis added.)

Based on the foregoing admission and the remaining testimony of Calderon and Brenner, it is evident that Brenner had the authority to hire a second attorney to aid in the preparation of the patent case. The only restriction on the second attorney was that his [*11] fee was to be based upon a share of Brenner's contingency fee. In lieu of Brenner's partnership with Rosenberg on this case, an attorney-client relationship was established between Calderon and Rosenberg. This conclusion is buttressed by the parties' testimony which clearly indicates that Calderon had spent a substantial amount of time and energy with Rosenberg during pretrial preparation. Calderon's conduct is indicia of his ratification of the role of Rosenberg as attorney on the patent case.

Important to the outcome of this case, however, is the relationship between Brenner and Rosenberg. An exhibit admitted into evidence, signed July, 1979, several days after the jury verdict, indicates that Brenner and Rosenberg had formed a partnership. The document was entitled a partnership agreement. The testimony of Brenner and Rosenberg, however, indicates that the partnership was limited only to the Calderon case. Both attorneys framed their relationship as a "one-case partnership." Although there is some evidence to the contrary, the trial court found, and we too conclude, that Brenner and Rosenberg were engaged in a joint venture with its sole objective being the favorable outcome of [*12] the Calderon patent case. This conclusion is supported by the fact that the partnership apparently dissolved at the conclusion of the jury's favorable answers to the special interrogatories, and did not continue in any respect past that point in time. Further, Rosenberg had only minimal contact with other cases during their association.

Having determined that Brenner had the authority to hire a second attorney and that Rosenberg was hired to assist in Calderon's patent case, we must determine whether Rosenberg's attorney-client relationship with Calderon was terminated. If the relationship was not terminated, then Rosenberg was entitled to a fee based upon a percentage of the contingency fee agreed upon between Calderon and Brenner. If the relationship was terminated, our inquiry necessitates a determination of whether the termination was with just cause or without just cause. The latter inquiry is based upon the general rule that [HN5](#) [↑] an attorney is not entitled to compensation where he is discharged for just cause, but if the attorney is discharged without just cause, he is

entitled to a fee based on the reasonable value of his services rendered.

At the conclusion of the jury's answers [*13] of the special interrogatories, Rosenberg approached Calderon with the suggestion that General Motors might be willing to settle the case for a total of \$ 3,000,000 in damages. Calderon refused and informed Rosenberg that no negotiations were to be permitted. After this point in time, which was after the special interrogatories, but prior to the subsequent ruling of the Federal District Court reversing the jury's findings, Calderon and Rosenberg had no further contact. Rosenberg argued, and the trial court adopted, the position that the ensuing sequence of events between the two individuals constituted a **constructive termination** of the **attorney-client** relationship.

The general rule provides that [HN6](#) [↑] the "**attorney-client** relationship is consensual in nature and that the actions of either party can affect its continuance." [Brown v. Johnstone \(1982\), 5 Ohio App. 3d 165, 167](#). As the *Brown* court noted, the termination of this relationship occurs when it is evident that the party's conduct dissolves the essential mutual confidence between the attorney and the client. [Id., at 166; Bucaro v. Keegan, Keegan, Hecker & Tully \(1984\), 483 N.Y.S. 2d 564](#).

[HN7](#) [↑] The termination of [*14] the principal-agency relationship may occur at the expiration of a reasonable time, Restatement of the Law, Agency (2d Edition 1958) 275, Section 105, or when the agent has notice of a change of circumstances from which he should reasonably infer that the principal does not consent to the exercise of authority. Restatement of the Law, Agency (2d Edition 1958) 283, Section 108.

Rosenberg testified that after he approached Calderon concerning his suggestion to attempt to settle the case, Calderon would no longer communicate with Rosenberg. Rosenberg attempted to communicate with Calderon by mail, but received no response. Contemporaneously, the Rosenberg-Brenner partnership dissolved. During the period of time from the jury's answers to the special interrogatories until the district court judge's judgment, Rosenberg was not asked to participate in the preparation of any post-trial briefs. Rosenberg further testified that he was not informed about the decision of the federal district court judge until nearly six weeks after the judgment had been rendered.

In rebuttal, Calderon testified that he did not consider Rosenberg his attorney at any point in time. [FWA00575](#)

that while he did [*15] receive and read Rosenberg's letters, he threw them into the waste basket. These letters apparently requested payment of fees for services rendered. Having already determined that Rosenberg and Calderon did have an attorney-client relationship, we find that there is sufficient evidence to indicate that any trust which had developed between the two parties had dissolved and, therefore, the attorney-client relationship had terminated.

In view of the foregoing conclusion that the attorney-client relationship had terminated, we must address the cause of the termination of the relationship.

The general rule provides that where an attorney is discharged with cause he is not entitled to compensation; where the attorney is discharged without cause the attorney is entitled to compensation based either on the stated agreement or upon the theory of quantum meruit. See Law Offices Of Lawrence J. Stoekler v. Semaan (Mich. App. 1984), 355 N.W. 2d 271, 273-274; Teichner by Teichner v. W. & J. Holsteins Inc. (1985), 489 N.Y.S. 2d 36.

With respect to attorney fees, the Franklin County Court of Appeals stated the proposition in the following manner:

HN8 [↑]

"Where a contract for the performance [*16] of labor is *wrongfully*

terminated by one-party, after part performance by the other, the right of the party performing, to recover the value of the labor performed, irrespective of the contract price, depends on whether, having regard to the contract, the party wrongfully terminating it, would thereby enrich himself at the expense of the other." [Citation

omitted.] *Wilcox v. Rich* (Dec. 22, 1981), Franklin App. No. 81AP-269, unreported. (Emphasis added.)

Appellants contend that Rosenberg was discharged with just cause. Appellants' sole argument is that Rosenberg acted in direct contradiction of appellant's orders concerning the prohibition to settle the patent case. Appellants argue that Rosenberg breached his contractual obligations when he purportedly contacted

General Motors in order to attempt to settle the case, despite Calderon's express orders prohibiting such contact.

This court's decision in *Ottawa County Commissioners v. Mitchell* (Oct. 12, 1984), Ottawa App. No. OT-84-9, unreported, reiterates the position of the Ohio Supreme Court in *Moor v. Crouch* (1969), 19 Ohio St. 2d 24, which provides that: **HN9** [↑] "Unless an attorney has [*17] been expressly authorized to do so, he has no implied or apparent authority, solely because he [*sic*] retained to represent the client, to negotiate or settle the client's case." See also, *Paxton v. Dietz* (May 28, 1985), Franklin App No. 84AP-972, unreported.

In this case, Calderon, while testifying, speculates that Rosenberg attempted to settle the case with General Motors. Rosenberg, however, while admitting that he telephoned General Motors, described the telephone discussion in the following manner:

"Q. Now, how did -- what had to be done, Mr. Rosenberg, that lack of communication prevented?

"What did you have to do that you couldn't do because Mr. Calderon wouldn't talk to you?

"A. I couldn't do anything. I couldn't go over the briefs with Larry

and Mr. Calderon when he would come in, because he wouldn't talk to

me. I couldn't talk to the other side, because he forbid me to talk to

them about settlement, *but I did call up the other side and speak to*

the attorney for General Motors just to discuss with him at the end of

the trial what his views were and so forth of the case, just to see

if I could feel out where they were [*18] *the kind of assess what the*

situation was, but never discussed settlement with them. I couldn't do a thing on the case."

Absent evidence to the contrary, we cannot conclude that Rosenberg's discussion with General Motors was an attempt to settle the case and, therefore, Rosenberg's conduct, while inadvisable, did not constitute a breach of his fiduciary duties. Accordingly,

WA00576

the termination of Rosenberg's employment was without just cause.

In summary of the early portions of this opinion, we have found that Mr. Rosenberg was hired and did establish an attorney-client relationship with Calderon; that Mr. Rosenberg was discharged from the relationship, and that Mr. Rosenberg's discharge/termination was without just cause. We must now determine the appropriate measure of damages.

It is axiomatic that had Mr. Rosenberg continued to represent Mr. Calderon in the patent case, he would have been entitled to his share of the contingency fee arrangement between Calderon and Rosenberg. However, as previously noted, Calderon terminated the relationship without just cause prior to the Federal Court's ruling. Due to this factual setting, the issue remains concerning the method or [*19] the measure of damages that Rosenberg has incurred.

Calderon argues that Rosenberg's measure of attorney fees should be based upon the result of the patent case. Calderon further argues that since the federal district court judge entered a finding unfavorable to his patent rights, and since upon settlement of the case, Mr. Calderon did not receive any substantial gain in patent rights or in monetary gain, Rosenberg is not entitled to fees. We disagree.

Mr. Rosenberg's award of attorney fees cannot be based upon the unfavorable outcome of the case. Mr. Rosenberg was constructively terminated from his position as an attorney for Mr. Calderon after the favorable findings of the jury, but prior to the unfavorable findings of the federal district court. At the time of his termination, Mr. Calderon had not suffered any damage or lost his case. Consequently, the reasonable value of Rosenberg's services must be based either on a percentage of the contingency fee or on the basis of quantum meruit. Rosenberg has elected, by his testimony and by his letters to Calderon, to be paid based upon the theory of quantum meruit. Cf. [Gross v. Lamb \(1980\)](#), 1 Ohio App. 3d 1; *G. Douglass v. [*20] Downend* (1908), 20 O.C.D. 649.

The record indicates that no time records were kept by Mr. Rosenberg. Mr. Rosenberg did, however, attempt to estimate the total number of hours spent on this case. His testimony was corroborated, at least in part, by the testimony of Calderon and Brenner. Based upon this testimony, the trial court awarded Rosenberg damages [for attorney fees] in the sum of \$ 27,000.

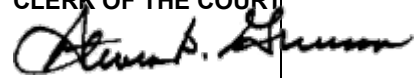
Upon a review of the record, we find that the trial court exercised its discretion in arriving at a fair and equitable determination of fees for services rendered by Rosenberg. The trial court's award, in our opinion, accomplishes the same and we accordingly affirm.

In view of the foregoing, we find appellants' seven assignments of error to be not well-taken.²

A certified copy of this entry shall constitute the mandate pursuant to [Rule 27 of the Rules of Appellate Procedure](#). See also Supp. R. 4, amended 1/1/80.

End of Document

²The record indicates that appellee filed a cross appeal; however, no briefs or assignments of error were filed. Therefore, appellee's cross-appeal is, hereby, dismissed. VVA00577



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST,

Plaintiff,

vs.

LANGE PLUMBING, LLC,

Defendant.

CASE NO. A-116-738444-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

**RECORDER'S PARTIAL TRANSCRIPT OF HEARING
MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS**

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

THEODORE PARKER, ESQ.
(Via telephone)

For Daniel Simon:

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

For the Viking Entities:

JANET C. PANCOAST, ESQ.

Also Present:

DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

WA00578

1 Las Vegas, Nevada, Tuesday, February 06, 2018

2
3 [Case called at 9:47 a.m.]

4 THE COURT: We're going to go on the record in Edgeworth
5 Family Trust versus Lange Plumbing, LLC.

6 We have Mr. Parker present here on behalf of Lange
7 plumbing. He's present on court call.

8 **[THEODORE PARKER, APPEARING TELEPHONICALLY]**

9 THE COURT: If we could have the other parties' appearances
10 for the record.

11 MR. VANNAH: Robert Vannah and John Greene on behalf of
12 the Edgeworth Family.

13 MR. CHRISTENSEN: Jim Christensen on behalf of the law
14 firm.

15 MR. CHRISTIANSEN: Pete Christiansen on behalf of the law
16 firm.

17 MS. PANCOAST: Janet Pancoast on behalf of the Viking
18 entities.

19 THE COURT: Okay. Ms. Pancoast, we're going to do the
20 stuff that involves you and Mr. Parker first and then -- since -- so we can
21 get Mr. Parker off the court call. So Mr. Parker has a Motion on for a
22 Determination of a Good Faith Settlement. There has been no
23 Opposition to this Motion. I'm assuming there's no Opposition since the
24 checks have already been issued and this case has already been
25 settled.

1 So, based upon that the Motion for Good Faith Settlement is
2 going to be granted under the *MGM Fire* factors have been met, as well
3 as NRS 16.245.

4 And in regards to the settlement documents, I believe we have
5 those because I believe the checks have been issued, is that correct?

6 MS. PANCOAST: Your Honor, the checks were issued long
7 ago from the Viking entities and frankly, I've got a stipulation that I've
8 brought today hoping to get Mr. Simon's signature and Mr. Parker is the
9 final signature as to -- so to get Viking out.

10 I mean, Mr. Simon did sign a dismissal to get Viking out, but
11 we're trying to sort of wrap up the entire case and now we've had, as
12 you are aware, a bit of a snafu. And so I'm not sure how we deal with
13 that. But I mean, I'd like to get this stip filed, so at least --

14 MR. CHRISTENSEN: I can do it.

15 MS. PANCOAST: -- you know, Mr. Parker and I and our
16 clients are sort of harm's way.

17 MR. SIMON: We don't have the checks yet.

18 THE COURT: And --

19 MR. CHRISTENSEN: Your Honor, just to let the Court know,
20 the closing documents for Lange took a little bit of time. They have
21 finally been -- they were signed by the client where needed yesterday
22 and then been provided to Mr. Simon who's got to get some signatures
23 and get them on over back to Mr. Parker.

24 THE COURT: Okay. So that's where you are. Counsel, what
25 is --

1 MR. CHRISTENSEN: It's in the works.

2 THE COURT: -- you and Mr. Simon's position in regards to
3 this stip?

4 MR. CHRISTENSEN: I think it's appropriate.

5 MR. SIMON: Yeah, there's -- unless Mr. Vannah has an issue
6 with it.

7 MR. VANNAH: No.

8 THE COURT: Okay.

9 MR. VANNAH: No, we're -- my understanding of the whole
10 case is -- the underlying case is -- we signed everything yesterday we --
11 and we want Mr. Simon to finish it off and it's almost done.

12 THE COURT: Okay.

13 MR. VANNAH: The whole case is just about to be dismissed,
14 it's just a matter of a few days, I imagine.

15 THE COURT: Okay. So Mr. Panco -- Ms. Pancoast, you can
16 get Mr. Simon to sign that. Mr. Parker is not here today, you'll have to
17 get him as soon as he's back in the jurisdiction.

18 MR. PARKER: And I'll be back -- Your Honor, this is Mr.
19 Parker. I'll be back in jurisdiction tonight and --

20 THE COURT: Okay.

21 MR. PARKER: -- certainly I can find time to go by Ms.
22 Pancoast's office if necessary to sign the stipulation tomorrow. Or if she
23 had it delivered to my office, I will sign it tomorrow morning.

24 I wanted to make sure that it was clear on the record that the
25 Good Faith Settlement determination, as well as the stipulation that

1 we've -- we will be signing involves and determines that not only were
2 the settlements in good faith, you know, reached at arm's length
3 negotiations, but they include the resolution of all claims between the
4 Defendant and cross-claims and any additional shared obligations the
5 Defendants may have had amongst each other, as well the, of course,
6 the Plaintiff's claims.

7 THE COURT: Well did --

8 MR. PARKER: I think that's all but agreed, but since I'm not
9 there I figured I'd say it one more time so it's on the record clearly.

10 THE COURT: Okay. And does anyone have an objection to
11 that?

12 MS. PANCOAST: No, that's agreed. That's correct.

13 THE COURT: Okay. There being no objections to that that'll
14 be part of the record. And then in the regard to the settlement
15 documents, as soon as those things are signed, we'll get those. Do you
16 guys think we need another status check to get those done or do you
17 guys --

18 MR. SIMON: You might as well set it. We still don't have the
19 settlement checks from Mr. Parker, but --

20 MR. PARKER: Yeah.

21 THE COURT: Okay.

22 MR. PARKER: I'm sorry, I couldn't hear --

23 MR. SIMON: So I mean, there's a --

24 MR. PARKER: -- what someone just --

25 MR. SIMON: -- little bit left to do.

1 MR. PARKER: -- said, but let me just put on the record, Your
2 Honor, this is again Teddy Parker on behalf of Lange. We do have our
3 settlement check. It has arrived. So tomorrow I'm more than happy to
4 have it sent over to Mr. Simon's office in exchange for the settlement
5 documents.

6 THE COURT: Okay. So what we will do then is we'll set a
7 status check on that issue in two weeks just to make sure all of that stuff
8 has been resolved.

9 MS. PANCOAST: Yes, Your Honor, that would be great. And
10 what I am doing is I'm giving the stipulation to Mr. Simon because he
11 doesn't have the check yet and I can understand he doesn't want to sign
12 it before the check, so he's got it then he will get it to Teddy or exchange
13 it when they exchange the check, so --

14 THE COURT: Okay.

15 MS. PANCOAST: -- Mr. Simon's facilitating wrapping this up.

16 THE COURT: Okay. Mr. Parker, could you hear that? Based
17 on when you and Mr. Simon exchange the check, then the stipulation
18 can be signed after that.

19 MR. PARKER: Sounds great.

20 THE COURT: Okay. So we'll set a status check on the
21 settlement documents in two weeks. That date is?

22 THE CLERK: February 20th at 9:30.

23 THE COURT: Okay.

24 And so then in regards to the other motion, I mean, Mr.
25 Parker, you're not involved in the other motions, would you like to stay

1 on the court call or would you like to -- it's up to you.

2 MR. PARKER: Your Honor, I am -- I'm -- I think tangentially
3 I'm involved --

4 THE COURT: Okay.

5 MR. PARKER: -- and the only reason I say that is because I
6 think we all as a party to this case would like to have this whole thing
7 wrapped up at once so that there's nothing hanging over any of our
8 hands any further -- any longer.

9 THE COURT: Okay.

10 MR. PARKER: So I'd like to stay on in the event my
11 comments may prove beneficial to the Court's consideration of the
12 motion.

13 THE COURT: Okay. And I appreciate that, Mr. Parker, I just
14 didn't know if you had something else to do or --

15 Okay. So, we're going to start with Danny Simon's Motion to
16 Consolidate that was done on an Order Shortening Time. I have read
17 the motion, I've also read the Opposition, and I did read the Reply that
18 did come in yesterday.

19 Mr. Vannah, have you had an opportunity to review the Reply?

20 MR. VANNAH: I have, Your Honor.

21 THE COURT: Okay. So based upon that, Mr. Christensen.

22 MR. CHRISTENSEN: Yes, Your Honor.

23 So Rule 42 addresses consolidation; essentially if there is a
24 common issue of fact or of law the cases can be consolidated under the
25 discretion of the Court.

1 In this situation we have common issues of fact. The common
2 issues of fact are the litigation of the case against Viking and Lange and
3 the facts of that underlying litigation, the house flood, et cetera.

4 Common issues of fact are the work of the law office. Common issues
5 of fact are the reasonable fees due the law office.

6 Common issues of law are the relationship between the law
7 office and Plaintiffs, whether there's an express contract or not, and
8 those types of related issues to the existence of the contract; whether
9 there was a constructive discharge of the contract, things of that type.

10 I don't want to go through all the facts of the consolidation,
11 Your Honor, is quite familiar with the underlying case.

12 THE COURT: And I've read it, but I will tell you one of the
13 concerns that I have is the issue with this contract because as you know
14 from where you guys are standing your position is there was some
15 discussions, but there was never anything put in writing, but from
16 where -- and Mr. Vannah's Opposition basically what Mr. Vannah is
17 saying is everything indicates that there was a contract that this would
18 be done on an hourly basis. And I do have a couple questions for Mr.
19 Vannah in regards to that. So I do want to hear your position about that.

20 MR. CHRISTENSEN: Okay. Jumping the gun a little bit on
21 the Motion to Adjudicate, but that's --

22 THE COURT: Sorry.

23 MR. CHRISTENSEN: -- fair enough. It's all right.

24 So, first of all, in the big picture the existence of the contract
25 does not affect the jurisdiction of the Court over the Motion to Adjudicate

1 and only affects the manner of calculation of the fee due.

2 THE COURT: Right.

3 MR. CHRISTENSEN: On the issue of the existence of the
4 contract, we're talking about whether there's an express contract or not.
5 There seems to be a little bit of confusion, so let me see if I can clear it
6 up. An express contract can be writing or oral, there just has to be a
7 meeting of the minds. So, whether I have a piece of paper that says I'll
8 cut your lawn for \$20 and it's signed or whether I say I will cut your lawn
9 for \$20 and the homeowner agrees and I cut the lawn and I then get
10 \$20, that's an express contract.

11 You can also have contract implied by the facts or conduct.
12 That's an implied contract and that's not an express contract. So, it may
13 be a little nuanced here, this distinction and as a practical matter when
14 we get into the weeds on that, it may cut different ways, but as we go to
15 the existence of the contract, the allegations of the underlying Complaint
16 filed in the other case argue that an express contract was formed in May
17 of 2000 -- in May of 2016. And that doesn't jive with the e-mail that was
18 sent May 27th. It seems like -- you know, if you read that e-mail and take
19 reasonable inferences from it, you say hey, I got this problem --

20 THE COURT: This is the e-mail between Mr. Edgeworth that
21 was sent to Danny Simon.

22 MR. CHRISTENSEN: Correct.

23 THE COURT: Yes.

24 MR. CHRISTENSEN: It's attached as Exhibit A to the Reply --

25 THE COURT: No, I've read it. I just want to make sure--

1 MR. CHRISTENSEN: -- and it's also --

2 THE COURT: -- we were talking about the same one.

3 MR. CHRISTENSEN: Right.

4 THE COURT: Yes.

5 MR. CHRISTENSEN: Exactly.

6 And so that raises this reasonable inference that they didn't
7 have an express oral contract at that time.

8 So, the case moves forward and suddenly becomes more
9 than just a simple claims process claim. There's a lot more involved.
10 And the first billing isn't sent up by Mr. Simon's office until something like
11 seven months later in December.

12 THE COURT: Was there an understanding between Mr.
13 Edgeworth and Mr. Simon as regards to when the billing would actually
14 occur?

15 MR. CHRISTENSEN: I don't believe that was -- well, on the
16 part of the law office, no --

17 THE COURT: Okay.

18 MR. CHRISTENSEN: -- and I don't believe that that was
19 asserted on the part of Mr. Edgeworth.

20 THE COURT: Okay. And I mean, he didn't assert that, that's
21 a question that I have --

22 MR. CHRISTENSEN: Right.

23 THE COURT: -- because as we talk about like how long it
24 took for the billings to begin and stuff like that, that was just a question
25 that I had.

1 MR. CHRISTENSEN: Well -- and it's a good question, Your
2 Honor, because when you do hourly work that's typically a material term.
3 I mean, usually when doing hourly work you're getting billed within 30 to
4 60 days --

5 THE COURT: Right.

6 MR. CHRISTENSEN: -- if events are occurring and you know,
7 then there's language in there about how quickly it's going to get paid, et
8 cetera, et cetera.

9 In the alleged oral contract that the Edgeworths say existed,
10 the only term they talk about is \$550 an hour. I cited the *Loma Linda*
11 case, that's been law in Nevada for a long, long time. Even if you're
12 asserting an oral contract and you've got one term that seemingly
13 there's an agreement upon, if there's not agreement upon all the other
14 terms, there's no contract. It's all or nothing. So, that's the position of
15 the law firm that there was no contract.

16 As you move forward in time to August of 2017, when the
17 case was obviously getting very hot and heavy in this courtroom --

18 THE COURT: Uh-huh.

19 MR. CHRISTENSEN: -- you can see that Mr. Simon, again,
20 raised that issue because there was a lot more money being spent on
21 the case, there was a lot more time being devoted to the case. He
22 wanted to tie up that lose issue because, you know, he agreed to take
23 the case and send some letters, you know, for a long family friend and
24 didn't think it was going to be that big of a deal and now suddenly it is.

25 And it's dominating time at the law office, he's not working on

1 other files, it's become an issue. So he tries to address it. There's not
2 that much documentation of his attempts to --

3 THE COURT: Well, that's --

4 MR. CHRISTENSEN: -- address it.

5 THE COURT: -- was going to be my next question because I
6 have --

7 MR. CHRISTENSEN: There are --

8 THE COURT: -- the e-mail here from Brian Edgeworth, but
9 did Danny Simon respond to this e-mail or what did he do to address this
10 issue?

11 MR. CHRISTENSEN: My understanding of that e-mail is that
12 it's a standalone e-mail. In other words, it wasn't pulled out of a string of
13 e-mails --

14 THE COURT: Okay.

15 MR. CHRISTENSEN: -- back and forth. I can't answer the
16 question concerning whether there were other e-mails that addressed
17 that. The e-mails literally are a stack -- how high? This high?

18 MR. SIMON: Higher.

19 MR. CHRISTENSEN: Higher. I did not go through them. At
20 least not yet. Hopefully I won't have to.

21 But this one e-mail that we pulled out appears to address that
22 issue on the head and that's why we attached it. It's Exhibit B to the
23 Reply.

24 THE COURT: Yes.

25 MR. CHRISTENSEN: It's in the other -- attached to the other

1 documents.

2 And a reasonable inference that you can draw from that e-mail
3 is that there really wasn't a firm agreement. It's stated right out that we
4 never had a structured discussion and that seems to match the conduct
5 of the parties. So, even if we're going to go down the road to an implied
6 contract, that matches the conduct of the parties. Not all things were
7 getting billed, there were costs being fronted.

8 That's very rare for an hourly lawyer to do. And there were
9 large amounts of costs being fronted. As a matter of fact, there are still
10 some \$71,000 in costs outstanding. That's not typical behavior of an
11 hourly lawyer and that's because Mr. Simon does not take hourly cases
12 as a rule. You know, he takes cases where there -- where you address
13 the fee at the end of the case and that's what we have here.

14 So and all of those facts -- to kind of segway back to the
15 Motion to Consolidate, all of those issues are at play on the Motion for
16 Adjudication. So there are common issues of fact and law that relate to
17 that contract.

18 And there's another issue here that I wanted to bring up and
19 that is the basic legal premise and the public policy against multiplicity of
20 suits. It's enshrined in Rule 13, it's expressed in other ways through the
21 law, and it's actually dug into by Leventhal where Leventhal cited the
22 Gee case out of Colorado. And it talked about the problem of creating
23 multiple suits when there is a lien adjudication.

24 And it addresses it from the standpoint of judicial economy
25 and it says -- the Gee case quotation that was cited by Leventhal, our

1 Supreme Court case says: To restrict the means of enforcement of an
2 attorney's liens solely to independent civil actions would be a waste of
3 judicial time, as well as contrary to the legislative intent reflected by the
4 statutory language.

5 And it goes on to say: The trial judge heard the proceedings --
6 Your Honor -- which gave rise to the lien is in a position to determine
7 whether the amount asserted as a lien is proper and can determine the
8 means for the enforcement of the lien.

9 And that dovetails exactly with our statutory language. The
10 statute says the Court -- the statute says that the Court shall adjudicate
11 the lien. There's no discretion in the word shall. Certainly there's
12 discretion in the question of consolidation, that's a maybe question. But
13 the question of adjudication I shall. So, this Court is going to have to
14 address those issues.

15 Under the *Verner* case, which was cited by the Edgeworths,
16 it's very interesting that was kind of an opposite fact scenario where a
17 case was split up and the Supreme Court said no, you shouldn't have
18 done that. And one of the reasons why is they said that there must be a
19 demonstration that a bifurcated trial is clearly necessary to lessen costs
20 and expedite litigation. That's not going to happen.

21 That's why all of this should be consolidated in one court
22 because the case law is clear that Your Honor is the most
23 knowledgeable that will promote judicial economy and we shouldn't lose
24 on that. If we have two cases running on parallel tracks, there's going to
25 be a lot of duplicity of effort, we're going to lose judicial economy.

1 Now, the most natural reply for the Edgeworths is to say well,
2 wait a second, under the Constitution we have a right to jury trial and
3 that's true. There's nothing in consolidation that would prevent the
4 proceeding of their action. That would have to be done by something
5 else; by say a Motion to Dismiss. And there is nothing in the statute that
6 prevents the proceeding of their contract claim, if they decide to do so
7 after adjudication of the lien.

8 In fact, the statute, subsection 7, although it's looking at it from
9 the attorney's point of view says this is not an exclusive remedy, you can
10 file an independent action. There's nothing in the law that says that a
11 lien cannot be adjudicated and then there can't be an independent
12 action that addresses those same facts and law.

13 As a practical matter, obviously it may have an impact on the
14 damages in the breach of contract case, depending upon how far we go
15 in determination of facts and law in the adjudication process that could
16 have fact or issue preclusion in the contract case, depending how it all
17 works out; how the findings come out.

18 But that doesn't mean that both of these things can't operate
19 at the same time. That doesn't create mutual exclusivity. Both of these
20 remedies are available at the same time. By consolidating it, we can
21 save a lot of time and effort. We don't have to go over tilled ground
22 again. So, that's the argument on consolidation.

23 I -- if you'd like me to I can address some of the other factors
24 that maybe lead to why we should either adjudicate today or set it for an
25 evidentiary hearing to adjudicate in the near future.

1 THE COURT: Yeah. And if you could do that because when
2 Mr. Vannah responded he responded to both, so I'm going to give him
3 an opportunity to respond to both, based on the Opposition that he filed.

4 MR. CHRISTENSEN: Okay. Very good, Your Honor.

5 So, I'm going to dip back into the well-known facts, just
6 because I think it's necessary for a brief review so that we have a
7 common ground of understanding.

8 So, Plaintiffs were building a house as an investment. Lange,
9 the plumber installed Viking fire sprinklers, it was within the contracted
10 work of the plumber and one of those sprinklers experienced a
11 malfunction, flooded the house, damaged the house. All -- there is a
12 contract between Lange and American Grating. Some of the terms of
13 the contract same things like Lange has to assert warranty rights if there
14 is a malfunction in an item installed in the home, things of that type and
15 there's also an attorney fee provision and that becomes important as the
16 case progresses.

17 At the early stage Lange said we're not going to do anything,
18 it's Viking's fault. Mr. Edgeworth had not purchased any course of
19 construction coverage or anything else that would have covered an
20 incident like this. So, because of that decision he was obligated to go
21 through this claims process against Viking and/or Lange. He was
22 bumping his head up against the wall, started reaching out for legal
23 assistance. Reached out to his friend. We saw the e-mail from Blake
24 May.

25 The case obviously grew into a major litigation, contentious,

1 even. Lots of motion practice, lots of things going on. Around the
2 middle of 2017, Mr. Simon approached Mr. Edgeworth and tried to get a
3 resolution on this fee issue. He had a lot of costs fronted, he was eating
4 up a lot of time at the office. They are not hourly billers, they do not
5 have the standard hourly billing programs. It was a problem.

6 Mr. Edgeworth is a principal of two companies with an
7 international footprint. He has another revenue stream from investment
8 homes. He apparently has another revenue stream from various
9 investments. He's experienced hiring and paying lawyers. I know that
10 they done work in the IP, the intellectual property area, with copyrights
11 for some of those companies, et cetera. He's not a typical lay person.
12 He has dealt with lots of attorneys in the past.

13 And his response of August of 2017 has to be looked at in that
14 light. This is not some guy who's getting bullied into something, here's a
15 guy who's looking at it from a business perspective and sending out
16 options. Well, we could do this. I could take out a loan and pay hourly
17 on the whole case, which implies that he was not or else he wouldn't
18 have brought it up. Discusses a hybrid, discusses a contingency, makes
19 it clear that there's an open question on fees.

20 As the case moved on in November, after more motion
21 practice, Mr. Simon has positioned the case well for success at trial.
22 Mr. Simon has a meeting with Mr. Edgeworth prior to the mediation and
23 shows him the amount of costs outstanding, which at the time were in
24 the neighborhood of 76,000. I believe Mr. Edgeworth receive a copy of
25 that, although that is portrayed by the Plaintiffs in their Opposition.

1 Discussion was also raised about the fees, it was impressed
2 that that's -- that issue, there was this mediation to take care of. After,
3 as a result of the mediation a settlement is reached with Viking, for six
4 million dollars. The total cost of the build was 3.3, including land
5 acquisition, HOA fees and taxes. So that is an amazing recovery on a
6 case where the property damage loss, depending upon how you look at
7 it, between the hard and soft damages as Mr. Kemp went through that
8 analysis in his declaration, you know, range from three quarters of a
9 million to a million and a half or thereabouts, in that range. That's an
10 amazing result.

11 As a result of that amazing result, Mr. Simon again returned to
12 that fee discussion and at that time client communication started to
13 break down.

14 THE COURT: This is November of 2017, right?

15 MR. CHRISTENSEN: Correct, Your Honor.

16 The culminated in -- at the end of November there was a fax
17 sent from Mr. Vannah's office signed by Mr. Edgeworth saying -- in
18 essence, talk to Mr. Vannah, he's now in power to do whatever on the
19 case. The following day in response to that letter the law firm filed its
20 first attorney's lien and soon perfected it under the statute.

21 We then come to an issue that's been raised because of a
22 factual argument made by the Plaintiffs and it has to deal with the
23 attorney fee claim that existed under contract against Lange. By its very
24 nature that claim was not set until the Viking resolution was made
25 because arguably under that contract, if Lange is supposed to pursue

1 remedy against Viking for the Edgeworths and Lange says we're not
2 going to do that, Mr. Homeowner, you have to do that and the
3 homeowner expends fees and costs to do that job, then under that
4 contract he -- the homeowner is due those fees and costs because
5 Lange said I know we have this contract term, we're not going to abide
6 by it.

7 So, it doesn't really matter if a December billing is incomplete
8 because the story is -- isn't ended, the story's still ongoing. There was
9 an argument that because Mr. Simon didn't do complete billings as the
10 case went along that somehow he had damaged the case -- the value of
11 the case. Hard to imagine with the result, but that argument is made.
12 And that's simply not true because of that underlying contract.

13 There was a potential for a claim against Lange to recover
14 every penny spent. Now, Lange would have argued, well, some of that
15 is not reasonable or it's due to a different claim or whatever, but there
16 was a potential for a great case against Lange under that contract and
17 that was not ripe and that number was not certain until the settlement
18 with Viking occurred.

19 So as a result those -- if those attorney's fees had been
20 settled in a timely manner, as requested by Mr. Simon, then they would
21 have had that number as a sum certain to pursue against Lange.

22 To understand that little bit further you have to go back into
23 this whole thing about how you get attorney's fees, so, you know, we got
24 the English rule that loser pays. Well, we don't follow that, we follow the
25 American rule that everybody bears their own fees and costs. That's

1 changed by certain things. For example, if you have an offer of
2 judgment and you're able to go through all the *Batey* factors and all that
3 stuff, that's a tough road to go for fees. It's rarely granted.

4 The other one is if you have a right for fees under a contract
5 and in a claim against Lange, because those would be damages under
6 the contract, you've got a direct claim. That's not something that's, you
7 know, handled by the Court at the end of the case under a fee-shifting
8 statute, like you might have a consumer protection statute or a civil
9 rights statute or something of that type. That's a direct claim and it's not
10 ripe until the case against Viking is settled.

11 So as a practical matter what would have happened in the
12 case in this court is there would have been the resolution with Viking and
13 then if they decided to pursue that contract claim there would have had
14 to been disclosure of the sum certain that would have had to been
15 added to damages. Undoubtedly that would have been bumped the trial
16 date because Lange would have said wait a second, we need to
17 respond to this, we want to explore these damages and then that case
18 would have progressed.

19 That's important because, one, either because of a
20 misunderstanding or a misstatement that takes away this whole
21 Edgeworth argument that Mr. Simon somehow prejudiced the client. But
22 secondly, that was all explained via new Counsel, Mr. Vannah, to the
23 clients. And on December 7th, there's a writing from the clients directing
24 Mr. Simon to settle the case against Lange for 100,000 minus an offset.

25 So, they made the decision to knowingly abandon that

1 contract claim that would have encompassed those fees against Lange.
2 Having made that based upon the advice of Counsel, Mr. Vannah, they
3 can't now bring it up as a shield to either adjudication or to the existence
4 of contract.

5 What started then was kind of a cat and mouse game by the
6 Edgeworths. For example, on December 18th, when the Viking checks
7 were available, that same day the law office picked up the checks, Mr.
8 Simon got on the phone, sent an e-mail, checks are ready, come on
9 over, endorse them. Sent that to Mr. Greene of Mr. Vannah's office.

10 Mr. Greene called him back promptly and what the
11 conversation was, was Mr. Simon said come on over and sign them
12 because Friday, we're heading out of town for the holidays and we won't
13 be back until after the New Year. Mr. Greene said well, the Edgeworths
14 are out of town and won't be back until after the New Year. Okay.
15 Everybody leaves town.

16 The day after Mr. Simon left town for Christmas a new e-mail
17 comes in Saturday of the Christmas weekend and says, you know, we're
18 not putting up with any more delay, get these checks signed. Well, they
19 already knew he was out of town and he gave them an opportunity.
20 Then we go into the back and forth and they accuse Mr. Simon that he's
21 going to steal the money, put it in his pocket, and run off somewhere.

22 Seemingly we work through that, an agreement is made to
23 open up an interest-bearing trust account at the bank with the interest
24 inuring to benefit of the clients. On January 2nd, 2018, an amended
25 attorney lien was filed. On January 4, the contract claim was filed

1 against Mr. Simon. On January 8th, the checks were endorsed and
2 deposited. The following day the law firm was signed -- served. And on
3 January 18th, which is soon as the funds cleared, the clients received
4 their undisputed amount, which is the total amount in the Trust account,
5 minus the amount of the lien of January 2nd.

6 So, at the current time there's money sitting in a Trust account
7 that can't go anywhere unless they are co-signed by Mr. Simon and Mr.
8 Vannah and the client is getting the benefit of the interest on that
9 account. At the current time the costs outstanding are \$71,794.93. A
10 Memorandum of Costs was filed and that number is reflected in the two
11 liens. It's actually slightly lower than the number in the two liens
12 because subsequently a rebate was obtained from one --

13 THE COURT: Right.

14 MR. CHRISTENSEN: -- of the experts.

15 The total fee claim outstanding is under the market approach
16 to calculation of fees, which is allowed under quantum meruit, which you
17 can do clearly in absence of contract. The claim is for \$1,977,843.80.

18 The Declaration of Mr. Kemp is attached. Mr. Kemp is
19 obviously one of the top attorneys in the country. One of the top product
20 defect attorneys in the country. He went through the *Brunzell* factors in
21 the case and found the value -- the market value of the fee to be
22 \$2,444,000 before offset for money already paid, which is a little bit
23 higher than the second lien amount.

24 We then get into lien law. So, the issue presented under the
25 Motion to Adjudicate Lien, it's just that. And the statute says the Court

1 shall adjudicate the lien. The statute does not have any exception to
2 jurisdiction of this Court or the obligation of this Court to adjudicate that
3 lien, it says shall. The case law lays out and we laid it out in the motion,
4 all the cases that say the Court has adjudicated -- has jurisdiction over this fee
5 dispute.

6 And by the way, that jurisdiction continues even if the
7 Defendants are dismissed. There's absolutely no case law anywhere
8 that indicates that somehow that would magically end the jurisdiction of
9 the Court. And in fact, that would cut against the public policy behind
10 that statute because then you'd be playing a game of keeping
11 Defendants who have walked their peace in a case while you're trying to
12 adjudicate a lien.

13 So that would go against the public policy of settlement and
14 allowing these folks out and would allow just another whole level forum
15 shopping and game playing on the part of client, who may be wanting to
16 avoid paying an attorney their just fees. There's also no case law
17 anywhere that says that and it's certainly not stated in the statute.

18 So we have a lien that's been served, it's been perfected,
19 there's no argument that it hasn't. Money has been paid, it's sitting in
20 trusts, so adjudication is ripe. There are some cases that say well, wait,
21 we're not going to adjudicate a lien before money has been paid, that's
22 been -- that's happened. It's sitting in Trust. If that is the proper
23 procedure to be followed under the rules of ethics, that's the proper
24 procedure to be followed under the statute, the statute has been
25 followed each and every point, exactly.

1 There's some claim that adjudication of the lien at this point
2 would be improper[sic]. I think that addressed that through the
3 Declaration of David Clark, who is State Bar Counsel in the state for
4 many years. His opinion addresses two things, one, does an attorney
5 break and ethical rule by asserting an attorney lien? And the answer is
6 no. In fact, that's what you're supposed to do.

7 And the second thing is does an attorney commit conversion
8 when settlement money is placed in a trust account, interest inuring to
9 the benefit of the client and there's then a Motion to Adjudicate over the
10 disputed amount in that Trust account. And again, the answer is no.

11 We address some of the other conversion law in the motion
12 practice. They can't establish exclusive dominion and a right to possess
13 that money in the Trust account because that claim is based on contract.
14 We cited a California case directly on point. And the Restatement 237,
15 that addresses that. The contract isn't enough. A lien would be enough,
16 but a contract is not a sufficient basis in which to bring a conversion
17 claim.

18 Even if it was, we cited Restatement Section 240 and the
19 other cases. It has to be wrongful dominions in order to serve as a basis
20 for our contract. So they fail on two parts. One, it's not wrongful, in fact,
21 it's encouraged under the law. And two, it's not dominion because it's in
22 a Trust account, Mr. Vannah has signing authority on that account.

23 It's not like they took a cow and put the wrong brand on it and
24 wouldn't release it, it's different. It's in a Trust account with the interest
25 inuring to the benefit of the clients. The reason I raise that is because

1 it's seemingly brought forth by the clients that because they have this
2 claim in another case or another case until the Court addresses the
3 Motion to Consolidate that that divests the Court of jurisdiction.

4 Now, they don't put it in those terms, but that's the gist of it
5 and that's incorrect. There's nothing in the statute provides an exception
6 to jurisdiction. This Court shall adjudicate that lien. The only possible
7 exception is mentioned in dicta, in an Argentina case, which they don't
8 even address. They don't even raise that in their Opposition. They raise
9 some rhetorical questions, they raise cases that don't apply, but they
10 don't address that core question of whether it's appropriate for this Court
11 to adjudicate the lien. Clearly, it is.

12 When we get into adjudication, then we're going to get into the
13 impact of the contract, whether it's best to go under the market rule, an
14 hourly basis, a hybrid, somewhere in the middle, that's up to the
15 discretion of the Court, the method of calculation. The only requirement
16 is that whatever fee is arrived at is fair and reasonable under the
17 *Brunzell* factors and of course there have to be findings applying
18 *Brunzell* to the fee awarded.

19 That's how the case should proceed. That's an orderly
20 presentation and that's the process of the case that's called for under
21 the statute and cases. And frankly, the Edgeworths haven't provided
22 anything that says different. Certainly they're going to come up and
23 argue and they're going to make an equity argument and that's fine, but
24 that has to fail in the face of the statute and case law. The Court doesn't
25 have discretion to go beyond the confines of that statute. Thank you,

1 Your Honor.

2 THE COURT: Okay. Thank you.

3 MR. CHRISTENSEN: Unless you have any questions, I'll --

4 THE COURT: No, I do not.

5 Mr. Vannah?

6 MR. VANNAH: Thank you, Your Honor.

7 The procedural history is fairly accurate so -- but here's
8 what -- here's how we perceive what actually happened. They were
9 friends, the client and Mr. Simon and naturally went to him and said hey,
10 I've got this situation going on, I have a flooded house, I'd like you to
11 represent me. Whatever reason, Mr. Simon never does what a good
12 lawyer should do is prepare a written fee agreement.

13 So for a year and a half they have an oral under -- not an oral
14 understanding, they actually have an oral agreement. Mr. Simon says I
15 will work for you and I will bill you \$550 per hour and my associate will
16 bill at a lower rate, I think it was \$275 an hour.

17 THE COURT: And I do have a question about that because --

18 MR. VANNAH: Yes.

19 THE COURT: -- you put that in your Opposition, but in your
20 Opposition you keep referring to -- you referred to Mr. Simon's Exhibit 19
21 and Exhibit 20 that's attached to their motion. And every -- and unless I
22 had -- the copies that I have and that's why I hold them in here and I
23 brought them just to make sure I wasn't wrong, but -- well, Exhibit 19
24 and Exhibit 20 in the motion -- the original motion that was filed says it's
25 \$275 an hour.

1 MR. VANNAH: For his associate.

2 THE COURT: Okay. So these are for the associate.

3 MR. VANNAH: Right. And he --

4 THE COURT: Okay.

5 MR. VANNAH: And Mr. Simon billed 550 an hour.

6 THE COURT: Okay, but where is that because in your --
7 when you motion you keep referring to Exhibit 19 and Exhibit 20 at the
8 550 an hour. Where is that --

9 MR. VANNAH: It's in the --

10 THE COURT: -- because they both say 275.

11 MR. GREENE: Your Honor, it's been undisputed Mr. Simon
12 billed 550 per hour. We just put it as simple math and it was up to Mr.
13 Simon to put the amounts in the invoices and bill them to the clients.
14 That's what they paid Mr. Simon, no one's contested that --

15 MR. VANNAH: So for --

16 MR. GREENE: -- at 550 an hour.

17 MR. VANNAH: Yeah, for a year and a half we put all -- for
18 one and half years --

19 THE COURT: Right. And I was just wondering how you did
20 math because you know we're all lawyers and --

21 MR. VANNAH: That's what Mr. Simon --

22 THE COURT: -- none of our math is as good as we would like
23 it to be. But I was just wondering because you were referring to Exhibit
24 19 and Exhibit 20 in those amounts you estimate at being at 550 an hour
25 and that's how we come to those amounts and I just saw it as 275 and

1 when I did the math it was 275, so I didn't understand where the 550
2 came from.

3 MR. VANNAH: It's 275 for her.

4 THE COURT: Right. And that's just what's in 19 and 20 and
5 that is what you referenced in your motion as to how they got to the 550
6 figure.

7 MR. GREENE: It's our understanding in the first portion of the
8 exhibits show Mr. Simon's billings at 550 an hour and then as we dive
9 deeper it's 275. Maybe the copies weren't made in the order that they
10 should have been, but Mr. Simon's time was billed at 550 per hour.

11 MR. CHRISTENSEN: Your Honor, If I can clear this up. I
12 apologize, Mr. Vannah, but --

13 MR. VANNAH: Sure.

14 MR. CHRISTENSEN: So that you can move forward.

15 MR. VANNAH: Sure.

16 MR. CHRISTENSEN: Mr. Simon's billing appears first in
17 Exhibit 19.

18 THE COURT: 19, okay.

19 MR. CHRISTENSEN: And if you look at the bottom it's
20 paginated.

21 THE COURT: Uh-huh.

22 MR. CHRISTENSEN: If you go to page 79 --

23 THE COURT: Okay.

24 MR. CHRISTENSEN: -- that has the total and his fees.
25 Perhaps we should have broken it up into 19A and 19B.

1 THE COURT: I'm sorry. I just thought it was tabulated at the
2 end.

3 MR. CHRISTENSEN: Yeah. If you go to the --

4 THE COURT: Okay. Okay, I see it.

5 MR. CHRISTENSEN: Okay.

6 THE COURT: I see it. Okay, thank you, Counsel.

7 MR. CHRISTENSEN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. VANNAH: But -- no, thanks, Counsel, I appreciate it.

10 THE COURT: And I'm sorry, I just thought it was all tabulated
11 at the end when I read it so I was looking at the 275 and I just wanted to
12 make sure my math was right.

13 MR. VANNAH: No, no, that's fine. And I don't think anybody
14 disagrees.

15 THE COURT: Okay.

16 MR. VANNAH: So for a year and a half, Mr. Simon billed his
17 time in detail at \$550 an hour for his time and then 275 for his associate
18 for one and a half years. And on each and every billing -- and also
19 included all the costs and my client paid each and every invoice within
20 five to seven days, including the costs.

21 So, when they're talking about Mr. Simon advanced all these
22 costs, you may have paid the costs just like you would if you're working
23 for an insurance company, which I used to do you'd pay the costs out of
24 your general account, you'd send the insurance company a bill and say
25 this is what I spent for court reporters and this is how much my time's

1 worth and they send you a check.

2 And for a year and a half he paid my -- the Edgeworths paid
3 almost \$500,000, almost half a million dollars for a year and a half. So
4 what happened was in May about two -- nobody's saying anything about
5 any contingency fee. Now, what they want to get is a contingency fee,
6 that's what they really want, that's what Mister -- Mr. Kemp is excellent
7 and I love him to death, he's a good friend of mine.

8 Mr. Kemp said well, if our firm had done it on a contingency
9 fee we would have charged 40 percent. Certainly they could have done
10 that, but the rule -- Supreme Court Rule 1.5 makes it abundantly clear
11 that you can't have a contingency fee unless you have it in writing and a
12 client signs it and it also has to have various paragraphs in it that are
13 required by the State Bar in order to even have a contingency fee.

14 There is no contingency fee in this case, nobody disagrees
15 with that. The agreement was to pay 550 an hour and 275 for the
16 associate. The bills came over and over and over again, including the
17 costs and my client paid each and every bill as they came, no
18 discussion.

19 Then in May of last year or so, in a bar -- they were sitting in a
20 bar, I think it's down in San Diego and they started talking about how this
21 case is getting a little larger, the -- you know, a little bigger. You know --
22 and the thoughts -- the discussion came about maybe a hybrid, maybe
23 finishing off the case in some sort of a hybrid and maybe that might be
24 something they would consider a contingency fee, which would still
25 require a written contingency fee. You can't have a contingency fee

1 oral -- orally.

2 After that conversation, Your Honor -- and in that e-mail what
3 my client said is I would be -- I would like at something like that if you
4 propose it, but you know what, bottom line is, I can certainly go ahead
5 and keep paying you hourly, I'll have to borrow the money, sell some
6 Bitcoin, do whatever I have to do. After that, another bill came, this was
7 after this conversation --

8 THE COURT: The e-mail from August?

9 MR. VANNAH: Right. This e-mail I'm looking at is -- yes,
10 August 22nd --

11 THE COURT: Okay.

12 MR. VANNAH: -- 2017.

13 THE COURT: Okay.

14 MR. VANNAH: After that e-mail, another bill came in
15 September, hourly, a substantial bill and my client paid that bill and that
16 was the end of the discussion until when the case obviously was settling,
17 Mr. Simon said hey, I want you to come into my office, we need to talk
18 about the case.

19 My client goes into the office, brings his wife, and when he
20 goes in there there's -- Mr. Simon's visibly -- and uses the F word a little
21 bit saying why did you bring her? Why did you effing bring her? Why
22 are you bringing her making this complicated? And he's saying well, my
23 wife's part of this whole thing.

24 And then Mr. Simon says well, you know what, I deserve a
25 bonus. I deserve a bonus in this case, I did a great job, don't you want

1 to -- I don't really work at 550 an hour, I'm much greater than that. \$550
2 an hour to me is dog food. It's dog crap. It's nothing. So why don't you
3 give me a big bonus. You ought to pay me a percentage of what I've
4 done in the case because I did a great job.

5 Now, nobody's going to quarrel that it wasn't a great result.
6 There's certainly some quall as to why the result was done, my client
7 was very, very involved in this case, but I don't want to get into all of that
8 and I'm certainly not criticizing Mr. Simon for anything he did, other than
9 on the billing situation.

10 At that time Mr. Simon said well, I don't know if I can even
11 continue in this case and wrap this case up unless we reach an
12 agreement that you're going to pay me some sort of percentage, you
13 know, I want a contingency fee and I want you guys to agree to sign
14 that. My client said no, we're not doing that. You didn't take the risk.
15 I've paid you hourly, I've paid you over a half a million dollars. I'm willing
16 to continue finishing up paying you hourly.

17 So, Mr. Simon said well, that's not going to work, I want a
18 contingency fee. They came to us, we got involved, we had a
19 conversation with all of us, and at that point in time everybody agreed,
20 he cannot have a contingency fee in this case because there's nothing in
21 writing. You don't even have an oral agreement, much less in writing.

22 So what happened is -- and this is an amazing part, Judge --
23 and not at the time that Mr. Simon goes to one of the depositions, we
24 quoted that, the other side said to him how much are fees in this case,
25 have they actually been paid. And Mr. -- and that's the point of that. Mr.

1 Simon then pipes up and says listen, I've given that to you over and over
2 and over again, you guys know what our fees are.

3 I have supplied that to you over and over and over again and
4 you know what the fees are and those were the fees that he gave them
5 were the amount that my clients had paid over the year and a half. And
6 he said these are the fees that have been generated and paid. So he's
7 admitting right there that, you know, this is the fee, you guys have got it.

8 As the case got better and better and better, Mr. Simon had
9 buyer's remorse, you know, I probably could have taken this on a
10 contingency fee. Gee, that would have been great because 40 percent
11 of six million dollars is 2.4 million and I only got half a million dollars by
12 billing at \$550 an hour and I'm worth more than that; I'm a better lawyer
13 than that. That's what he's saying.

14 So he said to -- so you guys need to pay me a contingency fee
15 until that didn't work out so he then said well, you know, I didn't really bill
16 all my time. All that time I billed that you paid -- by the way that's an
17 accord and satisfaction, I sent you a bill, you pay the bill. And this
18 happened like five or six invoices. Here's the bill, bill's paid. Here's the
19 bill, bill's paid. Detailed time.

20 So Mr. Simon has actually gone back all that time and he has
21 actually now added time. Added other tasks that he did and increased
22 the amount of the time to the tune of what, almost a half a million dollars
23 or so. An additional over hourly over that period of time. And then he
24 went and he got Mr. Kemp, who is a great lawyer, who said well, you
25 know what, a reasonable fee in this case, if there is no contract would be

1 40 percent, that's 2.4 million dollars, it doesn't take a genius to make
2 that calculation.

3 So really, under this market value what should happen is Mr.
4 Simon should get 2.4 million dollars, a contingency fee, even though he
5 didn't have one and even though that would violate the State Bar rules,
6 he actually should in essence get a contingency fee and give my client
7 credit for the half million dollars he's already paid. That's what this is
8 about.

9 When we realized that this wasn't going to resolve, I mean,
10 we're not doing that -- we're not agreeably going to do that because
11 there's an agreement already in place, we filed a simple lawsuit in
12 saying that we want a declaratory relief action; somebody to hear the
13 facts, let us do discovery, have a jury, and have a determination made
14 as to what was the agreement. That's number one.

15 And number two, it's our position that by and is fact intensive,
16 we believe that the jury is going to see and Trier of Fact would see that
17 Mr. Simon used this opportunity to tie up the money to try to put
18 pressure on the clients to agree to something that he hadn't agreed to
19 and there never had been an agreement to.

20 So based on that we argue that that's a conversion and we
21 think that's a factually intensive issue. None -- we don't expect -- it's not
22 a summary judgment motion on that today, just that's the thinking that
23 we use when we came up with that theory and we think it's a good
24 theory.

25 So what I don't -- and, Your Honor, I have no problem with you

1 being the judge and I have no problem with the other judge being the
2 judge, that's never been an issue in the case. What we do have a
3 problem with is -- and I don't understand and maybe Mr. Christensen
4 can clear that up. He's saying well, we can go ahead and have you take
5 this case and make a ruling without a jury; that you can go through here
6 and have a hearing and make a decision on what the fee should be.
7 And then we can have the jury make a decision as to what the fee
8 should be, but the problem is if you make a decision on what the fee
9 should be that's issue preclusion on the whole thing and it ends up with
10 being a preclusion.

11 So, we want this heard by a jury and no disrespect to the
12 judge, but we'd like a jury to hear the facts, we'd like to hear the jury
13 hear Mr. Simon get up and say to him \$550 an hour is dog meat, you
14 know, he can't make a living on that and I would never bill at such a
15 cheap rate and he's much greater than that. And I'd like to hear the jury
16 hear that, people making \$12 an hour hear that kind of a conversation
17 that Mr. Simon is apparently going to testify to.

18 So there -- so bottom line, we get right down -- I -- so what
19 we're asking, it's -- what we'd like you to do -- this case over. The
20 underlying case with the sprinkler system and the flooding of the house,
21 it's over. In re has nothing to do with determining what the fee should
22 be. The fee -- whole issue is based on what was the agreement. I don't
23 know much about the underlying case and I'm not having a problem
24 understanding the fee dispute. This is a fee dispute.

25 We're just -- and if you want to hear it -- I don't think there's

1 anything to preclude you, but I don't think that there's commonality of all
2 this -- all this commonality that they're talking about. The underlying
3 case about a broken sprinkler head, flooding, what's the value of the
4 house, all those disputes they had going on. That's got nothing to do
5 with the fee dispute. And --

6 THE COURT: But you would agree, Mr. Vannah, that's it's the
7 underlying case with the sprinkler flooding the house, who's responsible,
8 the defective parts, that's how you get to the settlement that leads us to
9 the fee dispute.

10 MR. VANNAH: You did that, but the settlement's over.

11 THE COURT: Right, but it --

12 MR. VANNAH: It's a done deal.

13 THE COURT: But the fee dispute --

14 MR. VANNAH: I mean, we're not --

15 THE COURT: -- is about the settlement.

16 MR. VANNAH: That's going to be a ten-minute discussion
17 with the jury. Hey, this is what happened; it was a settlement.

18 So the question is, is what -- were the fee reasonable -- I
19 mean, there was an agreement on the fee. I don't think -- it boggles my
20 mind that we've even gotten -- we're even discussing this because when
21 a lawyer sends for a year and a half a detailed billings at a detailed rate
22 and the client pays it for a year and a half and suddenly say well, we
23 never had a fee agreement, that's really difficult at best. That's almost
24 summary judgment for us.

25 I mean, here's the bill, here's the check, and there's no

1 discussion and he even gets up and tells the other side, I've been paid
2 for all my fees. So what I don't want to happen is I don't want -- I want
3 my client to just have the right to have this case heard by a jury, that's
4 all.

5 THE COURT: And you believe that there would be an issue --
6 preclusion issue if that -- the new case was consolidated into this case
7 when you go to jury trial on the new case?

8 MR. VANNAH: No. Here's where I think the issue preclusion
9 is -- and -- no, if you want to keep the case and, you know -- if it was me,
10 I was judge, I would say I already did one case, I don't need to do
11 another one. I don't have a problem if you want to keep the case, all I'm
12 asking if you keep the case is that you don't -- the money's tied up.

13 THE COURT: The money's in a Trust account, right?

14 MR. VANNAH: Nobody's taking the money, nobody's -- and I
15 don't -- I've never accused Mr. Simon of going to steal -- my client's
16 got -- my client's more concerned because they thought it was dishonest
17 what he did and I said my client's don't want the money in your Trust
18 account, you don't want it in my Trust account, I -- no problem --

19 THE COURT: Right, but the e-mail --

20 MR. VANNAH: -- let's set up a --

21 THE COURT: -- said they didn't want it in Mr. Simon's Trust
22 account. Isn't that what the e-mail said?

23 MR. VANNAH: Right. So we set up a Trust account
24 elsewhere and Mr. Simon and I have -- so the money is tied up, neither
25 one of us are going to try to take the money. The money's going to sit

1 there. Mr. Simon's lien, whatever it's worth, is totally protected.

2 What I don't want you to do is have you do an adjudication on
3 some kind of a summary proceeding where we don't get to do discovery
4 and everything else and we -- you hear the case without a jury and make
5 a determination because I do think that that is the issue preclusion. That
6 precludes -- and so if you want the case, I mean, we'd love have you.
7 We don't have a problem with that.

8 All I ask, if you're going to have the case is, let's have the
9 case, let's have a jury trial on this matter, let's discovery done on a
10 normal course. The money's tied up, it's there and then at the end of the
11 trial let the jury decide and we get a judgment. If you want to keep it.

12 On the other hand, I mean, if you don't want to keep it, you
13 simply say I don't want to consolidate it and the other judge does it. So
14 either one's fine, I mean, we don't have any -- we do want a jury trial
15 though. We don't want it to be heard without a jury.

16 THE COURT: Right.

17 MR. VANNAH: It's two million dollars.

18 THE COURT: Right. But what you're saying -- so just so I'm
19 clear as to what you're saying is if the case consol -- because I don't
20 think it's a matter of do I want it, do I not want it, I think I got to follow
21 Rule 42.

22 MR. VANNAH: Then --

23 THE COURT: I think I got to go along with what Rule 42 says.
24 It doesn't -- nobody cares what I want Mister -- sir, nobody cares. I
25 mean, I think I have to follow Rule 42, but what -- just so I'm clear on

1 what you're saying, what you're saying is if the case were to stay here
2 you would want the lien not to be adjudicated until after the jury trial is
3 heard on the second portion.

4 MR. VANNAH: Exactly right. So that the jury --

5 THE COURT: Okay.

6 MR. VANNAH: -- makes the findings of facts of whether there
7 was a contract; if so, how much was it and what's due.

8 THE COURT: Okay.

9 MR. VANNAH: And they can have -- and we can all do
10 discovery because they've got two excellent experts. I mean, so we
11 need to get experts. It means we need to sit down and I need to take
12 Mr. Simon's deposition, I need to take his associate's --

13 THE COURT: Let me ask you this, Mr. Vannah, because
14 you've been doing this for a long time, you have a lot of experience.
15 Hypothetically, if there were to happen, I haven't ruled on anything, but if
16 that were to happen, how long do you think it would take for your jury
17 trial to go forward on the second portion?

18 MR. VANNAH: Oh, we're -- we would -- we could expedite the
19 discovery and get that done. I mean, that's not a problem if for some
20 reason you want to expedite it. On the other hand, it can go forward on
21 the normal course, you know, a year from now or so, have a jury.

22 THE COURT: Okay. Okay. And I just wanted to make sure I
23 was clear on what your point was so that if I had any questions, I could
24 ask you while you were standing here and not later on, oh, I should have
25 asked him this, you know?

1 MR. VANNAH: Well, you know, you asked some good
2 questions of which I didn't -- there's nobody disputing the 550 and the
3 275 --

4 THE COURT: Right.

5 MR. VANNAH: -- an hour and nobody's disputing that the bills
6 were sent and nobody is disputing the bills were paid.

7 And by the way we do owe -- we just got the bill last week, we
8 definitely clearly owe a cost bill that came in and that can be paid out of
9 the Trust account and we're ready to release that funds and both Mr.
10 Simon and I can sign the check and pay that expert. That's never been
11 an issue.

12 THE COURT: So the money's going to an expert?

13 MR. VANNAH: That's the -- there's some money -- there's --
14 we just got a bill, we --

15 THE COURT: But it's for an expert?

16 MR. VANNAH: Yeah, there's an expert that needs to be paid.

17 THE COURT: Oh, okay.

18 MR. VANNAH: I don't have problems paying -- and I don't
19 have problems paying Mr. Simon any costs that he's incurred either, but
20 at this point -- what would have normally happened, we would have
21 gotten the last bill and we would have paid it. Nobody's ever questioned
22 a single bill that came in and that's what would have normally -- if he'd
23 sent the last bill saying here you go.

24 So they had a mediation or something and Mr. Simon had
25 some kind of a bill there, but he took it with him out of the mediation for

1 whatever reason. I don't -- nothing nefarious, it just didn't -- my client
2 didn't have bill and has requested it several times. It came last week.

3 THE COURT: Okay.

4 MR. VANNAH: No question we owed a cost and we're willing
5 to pay. We've always paid the costs. So one thing when Mr.
6 Christensen said all this time Mr. Simon's been paying all the costs, that
7 is -- I don't know what he means by that. He might have advanced the
8 costs, but my client has reimbursed him for every dime of costs, other
9 than this last bill. And certainly that's not going to be an issue, we're
10 ready to do that.

11 THE COURT: Okay. Thank you, Mr. Vannah.

12 Mr. Christensen, your response.

13 MR. CHRISTENSEN: Your Honor, I warned the Court that Mr.
14 Vannah was going to come up and make an equity argument against the
15 legal enforcement of the statute and the word shall and he did that, but
16 he didn't state any basis for it. The statute says you shall do it and
17 you're supposed to do it within five days.

18 Now, there is some apparent discretion that the Supreme
19 Court provides, for example, in the *Hallmark* case that we cited. The
20 case went up and was sent back down and the Supreme Court said hey,
21 there's an issue of alleged billing fraud, you need to address that at the
22 adjudication hearing.

23 I cited to all of the other cases from Nevada State Court in the
24 recent time period and from Federal Court where the Court has
25 addressed the issues of billing fraud, disputed costs, disputed fees all at

1 an adjudication hearing pursuant to the law. That's the obligation of this
2 Court is to enforce the law.

3 When Mr. Vannah comes up with his equity position, it's
4 certainly enticing on a certain level, but it's not legally permissible. It'd
5 be a violation of the statute. And it was interesting in his equity position
6 how the facts kind of changed. It was he paid less than a half a million
7 in fees and by the end of it he was above a half million dollars.

8 You saw the deposition transcript, Mr. Simon never said that
9 all the bills were paid, he said this is what's been paid. You know, the
10 bills that come in and Mr. Edgeworth pays them, that's kind of a two-
11 edged sword. Mr. Edgeworth knows that there are items that haven't
12 paid, he knows that he's been calling Mr. Simon and sending e-mails
13 and getting responses, they know the work's being done.

14 He's so heavily involved in the case he can't not know. He
15 knows because he was on the other end of the phone, he knows
16 because he was on the other end of the e-mail. He knows that there are
17 items that aren't being paid. And by the way, there's nothing in the law
18 that says that someone can't correct the bill. It's not an accord and
19 satisfaction if you pay a bill, that's completely different.

20 An accord and satisfaction is a separate agreement that's
21 reached when it is over a dispute and typically accord and satisfactions
22 are written. So tomorrow if they reach a deal, maybe that's an accord
23 and satisfaction, but it's not accord and satisfaction when you pay a bill,
24 especially when you know it's not a complete bill and it's not an accurate
25 bill.

1 So, at the current time adjudication is proper because that's
2 what the statute is, that's what the law says. We know that there's still
3 71,000 in costs outstanding and the Edgeworths have been aware of
4 that since November and that number was contained in the two liens.
5 One was filed in December, one was filed in January, and now we're in
6 February and that has not been paid.

7 We know that there are, at a minimum, applying the contract
8 rate of 550 an hour, assuming that's the way the Court decides to go at
9 the adjudication hearing. There's fees outstanding on that. So even
10 taking their best case scenario, there are fees and costs outstanding that
11 need to be reached by the Court in an adjudication.

12 To address this whole market value issue, that's getting into
13 the manner of calculation of a fee that the Court makes at the
14 adjudication hearing. That's an accepted manner of a calculation of a
15 fee. It's endorsed by the restatement of the law governing lawyers,
16 which our Nevada Supreme Court cites to repeatedly. In fact, they just
17 did it back in December on a fee issue. That's an accepted manner of
18 determining a fee.

19 Now, the Court doesn't have to accept that. There's the
20 *Marquis Aurbach Tompkins* line of cases, which I don't know if that was
21 cited --

22 THE COURT: It was not.

23 MR. CHRISTENSEN: -- but in that case Marquis Aurbach did
24 some good work for a client, the client passed away, and then there was
25 an estate. Marquis Aurbach had a written contingency fee agreement.

1 The estate and the law firm agreed to put the matter before a fee dispute
2 committee, even though the amount was in excess of the agreed
3 amount, but they stip'd around it.

4 And without going through the whole tortuous procedural
5 history because it went up to Judge Denton a couple of times, it went to
6 the Supreme Court, et cetera, at various times the fee was found to be
7 either the hourly, which was some \$28,000, the contingency of 200,000
8 or a hybrid, the quantum meruit, which was in the middle at about 75.
9 That's just kind of an illustration of the options that are available to the
10 Court.

11 In *Tompkins*, the Supreme Court eventually said that's a
12 contingency fee in a domestic case, you can't do that so you get
13 quantum meruit and sent it back down for them to determine whether
14 quantum meruit was the 75 number or the 28 number and that's where
15 the case law ends. We don't know the ultimate resolution. But that's an
16 example of what the Court does.

17 So under the law, and the Edgeworths have not cited an
18 authority contrary, this Court adjudicates the lien, states a basis in its
19 findings, puts the numbers in there, and then after that point, if the
20 Edgeworths or maybe Mr. Simon wants to, there's some sort of a
21 counterclaim or whatever, then they can fight over the remains. But Mr.
22 Vannah was correct that this is a fee dispute.

23 We have a statute specifically designed with a public policy of
24 resolving fee disputes quickly, with judicial economy. This Court has
25 jurisdiction to do it, this Court has a mandate, the law telling the Court to

1 do it. Let's do it, let's hold an evidentiary hearing, let's flush this out, let's
2 get a number, and then these folks can decide if they want to continue
3 banging their heads against that wall.

4 Thank you.

5 THE COURT: Thank you, Mr. Christensen. And thank you
6 guys very much for the argument on this and I know this I not what you
7 guys want to hear, but I'm going to continue this to Thursday and make
8 a decision on this in chambers. If I choose to consolidate this case, then
9 we can address anything after that at the hearing that's going to be held
10 in two weeks in regards to the status check on the settlement
11 documents.

12 If I do not consolidate this case, then we will still address
13 everything involving this particular case at that hearing and then the
14 other case would be addressed in front of Judge Sturman.

15 MR. CHRISTENSEN: Yes, Your Honor.

16 THE COURT: So I'll have a written decision for you guys
17 Thursday from chambers.

18 THE CLERK: February 8th at no appearance.

19 THE COURT: Thank you.

20 MR. VANNAH: Thank you, Your Honor.

21 MR. CHRISTENSEN: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MS. PANCOAST: Your Honor, is there any reason I need to
24 come to that Thursday hearing?

25 THE COURT: No, it's not a hearing, I'm going to of it from

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chambers.

MS. PANCOAST: Okay, great.

THE COURT: Yeah, I'll do it from chambers.

And thank you, Mr. Parker.

MR. CHRISTENSEN: Teddy's gone.

THE COURT: Teddy's been gone.

[Hearing concluded at 10:55 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Brittany Mangelson
Independent Transcriber

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date, and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to represent our interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of \$500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive \$550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over \$7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee was ever brought up at that time, let alone ever agreed to.

1 7. SIMON never reduced the terms of our fee agreement to writing. However, that
2 formality didn't matter to us, as we each recognized what the terms of the agreement were and
3 performed them accordingly. For example, SIMON billed us at an hourly rate of \$550, his
4 associate billed us at \$275 per hour, costs incurred were billed to us, and I paid SIMON all of the
5 invoices in full in less than one week from the date they were received.

6 8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,
7 August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in
8 those invoices totaled \$486,453.09. There were hundreds of entries in these invoices. The hourly
9 rate that SIMON billed us in all of his invoices was at \$550 per hour. I paid the invoices in full to
10 SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of
11 approximately \$72,000. However, SIMON withdrew the invoice and failed to resubmit the
12 invoice to us, despite an email request from me to do so. I don't know whether SIMON ever
13 disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those
14 fees and costs to the mandated computation of damages. I do know, however, that when SIMON
15 produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018,
16 for an additional \$692,120 in fees, his hourly rate for all of his work was billed out at our agreed
17 to rate of \$550.
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19 9. From the beginning of his representation of us, SIMON was aware that I was
20 required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also
21 aware that these loans accrued interest. It's not something for SIMON to gloat over or question
22 my business sense about, as I was doing what I had to do to with the options available to me. On
23 that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.
24

25 10. Plus, SIMON didn't express an interest in taking what amounted to a property
26 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
27 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
28

WA00625

1 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted
2 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk
3 of loss in the LITIGATION was gone.

4 11. Please understand that I was incredibly involved in this litigation in every respect.
5 Regrettably, it was and has been my life for nearly two years. While I don't discount some of the
6 good work SIMON performed, I was the one who dug through the thousands of documents and
7 found the trail that led to the discovery that Viking had a bad history with these sprinklers, and
8 that there was evidence of a cover up. I was the one who located the prior case involving Viking
9 and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's
10 insurer), and from fire marshals, etc. I was also the one who did the research and made the calls
11 to the scores of people who'd had hundreds of problems with these sprinklers and who had
12 knowledge that Viking had tried to cover this up for years. This was the work product that caused
13 this case to grow into the one that it did.
14

15 12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an
16 expert. This was around the time that the value of the case had blossomed from one of property
17 damage of approximately \$500,000 to one of significant and additional value due to the conduct
18 of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for
19 the first time broached the topic of modifying our fee agreement from a straight hourly contract to
20 a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him
21 that I'd be open to discussing this further, but that our interests and risks needed to be aligned.
22 Weeks then passed without SIMON mentioning the subject again.
23

24 13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email
25 was to make it clear to SIMON that we'd never had a structured conversation about modifying the
26 existing fee agreement from an hourly agreement to a contingency agreement. I also told him that
27
28

1 if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to
2 borrow money to pay his hourly fees and the costs.

3 14. SIMON scheduled an appointment for my wife and I to come to his office to
4 discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to
5 a \$6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was
6 to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid
7 far more than \$550.00 per hour and the \$486,453.09 he'd received from us for the preceding
8 eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was
9 deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had
10 been completely extinguished and the appearance of a large gain from a settlement offer had
11 suddenly been recognized. SIMON put on a full court press for us to agree to his proposed
12 modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable.
13 We really felt that we were being blackmailed by SIMON, who was basically saying "agree to
14 this or else."
15
16

17 15. Following that meeting, SIMON would not let the issue alone, and he was
18 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never
19 agreed on any terms to alter, modify, or amend our fee agreement.

20 16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the
21 amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be paid in
22 light of a favorable settlement that was reached with the defendants in the LITIGATION. We
23 were stunned to receive this letter. At that time, these additional "fees" were not based upon
24 invoices submitted to us or detailed work performed. The proposed fees and costs were in
25 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the
26 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to
27 defendants in the LITIGATION, and the amounts set forth in the computation of damages that
28

1 SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON
2 for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep
3 and review, or the reasons.

4 17. A reason given by SIMON to modify the fee agreement was that he claims he
5 under billed us on the four invoices previously sent and paid, and that he wanted to go through his
6 invoices and create, or submit, additional billing entries. We were again stunned to learn of
7 SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in
8 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work
9 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON
10 prepared a proposed settlement breakdown with his new numbers and presented it to us for our
11 signatures. This, too, came with a high-pressure approach by SIMON. This new approach also
12 came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly
13 \$500,000 from us. He said that "any judge" and "the bar" would give him the contingency
14 agreement that he now wanted, that he was now demanding he get, and the fee that he said he was
15 now entitled to receive.
16

17 18. Another reason why we were so surprised by SIMON'S demands is because of the
18 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach
19 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the
20 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the
21 flooding event. Since SIMON hadn't presented these "new" damages to defendants in the
22 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to
23 be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe
24 until the claims against defendant Viking were resolved. How can that be? All of our claims
25 against Viking and Lange were set to go to trial in February of this year.
26
27
28

1 19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific
2 questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the
3 amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what
4 transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question
5 was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the
6 LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been
7 disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both
8 of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page
9 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been
10 updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be
11 billing more hours that he hadn't yet written down, or that additional invoices for fees or costs
12 would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS
13 before he could determine the amount of his fee. At that time, I felt I had reason to believe
14 SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the
15 LITIGATION.
16

17
18 20. Despite SIMON'S requests and demands on us for the payment of more in fees, we
19 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the
20 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement
21 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
22 time that he'd never previously produced to us and that never saw the light of day in the
23 LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was
24 nothing short of stealing what was ours.
25

26 21. When SIMON refused to release the full amount of the settlement proceeds to us
27 without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable
28 alternative available to us was to file a complaint for damages against SIMON.

1 22. Thereafter, the parties agreed to create a separate account, deposit the settlement
2 proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to
3 have the settlement funds deposited like they were, as SIMON flatly refused to give us what was
4 ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

5 23. In Motions filed in another matter, SIMON makes light of the facts that we haven't
6 fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're
7 not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've
8 already had to pay to get someone else up to speed. Plus, we've already paid nearly \$500,000 to
9 SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION
10 were, for all intents and purposes, resolved. Since we've already paid him for this work to
11 resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

12 24. Please understand that we've paid SIMON in full every penny of every invoice
13 that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall.
14 I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one
15 ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused
16 to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the
17 LITIGATION.
18
19

20 25. I also feel that it's remarkable and so wrong that an attorney can agree to receive
21 an hourly rate of \$550 an hour, get paid \$550 an hour to the tune of nearly \$500,000 for a period
22 of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless
23 we agree to pay him a bonus that ranges between \$692,000 to \$1.9 million dollars.
24

25 26. SIMON in his motion, and in open court, made claims that he was effectively fired
26 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with
27 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to
28 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false

WA00630

1 accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club
2 Director at a non-profit for children we founded and funded. In an email string, SIMON chooses
3 his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if
4 it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is
5 responsible for making contact about absences (that had already been outlined at the mandatory
6 start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls,
7 SIMON sent the follow-up email, again carefully worded, with the clear accusation that
8 SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths.
9 His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable
10 position of confronting me about it. I read the email, and was forced to have a phone
11 conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell
12 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars
13 from me. I emphasized that SIMON'S accusation was without substance and there was nothing
14 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the
15 paperwork for another background check by USA Volleyball even though I have no coaching or
16 any contact with any of the athletes for the club. My involvement is limited to sitting on the
17 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two
18 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.
19 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit
20 from the charity are minors, an accusation of this severity, from someone he assumed I was
21 friends with and further from my own attorney could not be ignored. While I was embarrassed
22 and furious that someone who was actively retained as my attorney and was billing me would
23 attempt to damage my reputation at a charity my wife and I founded and have poured millions of
24 dollars into, I politely sent SIMON an email on December 5, 2017, telling him that I had not
25 received his voicemail he referenced in an email and directed SIMON to call John Greene if he
26
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WA00631

1 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a
2 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied
3 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told
4 him to not send anything like that again. Simon claimed he did not intend the meaning
5 interpreted. I think it speaks volumes to Simon's character that after being caught trying to
6 damage our reputation and trying to smear our names with accusations that are impossible to
7 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera
8 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon
9 further attempts to bill us hundreds of thousands of dollars for “representing” us during this
10 period. In short, we never fired SIMON, though we asked him to communicate to us through an
11 intermediary. Rather, we wanted and want him to finish the work that he started and billed us
12 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the
13 LITIGATION.
14

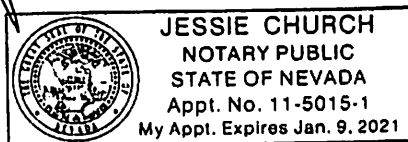
15 27. I ask this Court to deny SIMON'S Motion and give us the right to present our
16 claims against SIMON before a jury.
17

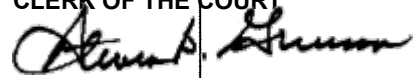
18 FURTHER AFFIANT SAYETH NAUGHT.

19 
20 BRIAN EDGEWORTH

21 Subscribed and Sworn to before me
22 this 12 day of February 2018.

23 
24 Notary Public in and for said County and State





SUPP

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Nevada Bar No. 3861
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-and-

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pete@christiansenlaw.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.

Case No.: A738444

Dept. No.: 10

**SUPPLEMENT TO MOTION TO
ADJUDICATE ATTORNEY LIEN
OF THE LAW OFFICE DANIEL
SIMON PC**

The LAW OFFICE OF DANIEL S. SIMON, P.C. hereby supplements the

///

1 motion for an Order adjudicating its attorney lien.

2 DATED this 16th day of February 2018.

3
4 /s/ James R. Christensen

5 James R. Christensen Esq.
6 Nevada Bar No. 3861
7 James R. Christensen PC
8 601 S. Sixth Street
9 Las Vegas NV 89101
10 (702) 272-0406
11 (702) 272-0415 fax
12 jim@jchristensenlaw.com
13 Attorney for LAW OFFICE OF
14 DANIEL S. SIMON, P.C.
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POINTS AND AUTHORITIES

Adjudication of the lien is ripe. Adjudication means that the trial judge determines the amount of the lien pursuant to NRS 18.015. A jury does not decide the amount of the lien pursuant to the statute, only the trial judge.

The public policy confirmed by the Nevada Supreme Court many times is that the trial judge is charged with the duty to resolve the lien as expeditiously as possible. The reason is that the trial judge is the one that knows the case best, it promotes judicial economy and resolves the matter expeditiously. NRS 18.015 has been the law in the state of Nevada for a long time and the statute requires prompt adjudication.

If a factual dispute surrounding the lien exists, then the proper procedure is to conduct an evidentiary hearing so that the trial judge can make findings of fact, conclusions of law and determine the amount of the lien. *Hallmark v. Christensen Law Office LLC.*, 381 P.3d 618 (Nev. 2012) (unpublished)(on remand the Supreme Court directed the district court to hold an evidentiary hearing for an attorney lien adjudication to resolve an issue of alleged billing fraud and the amount of the lien). There is nothing in the statute or other law that holds that a factual dispute overrules the statute.

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1 **A. Attorney fees are properly decided by the court, not a jury.**

2 The Nevada Supreme Court has consistently approved taking evidence
3 pursuant to NRCP 43(c) to resolve a factual issue surrounding the determination of
4 attorney fees. See, e.g., *James Hardie Gypsum (Nevada) Inc., v. Inquipco*, 929
5 P.2d 903 (Nev. 1996); disapproved of on other grounds by, *Sandy Valley*
6 *Associates v. Sky Ranch Estates owners Ass'n*, 35 P.3d 964 (Nev. 2001). In *James*
7 *Hardie Gypsum*, Hardie argued:

8 “under the due process clause[s] of the United States and Nevada
9 Constitution[s], due process requires that Hardie be entitled to confront
10 witnesses and cross examine them on the issue of damages.”

11 *Id.*, at 908-909. Hardie lost the argument. The Supreme Court held that due
12 process was served by submission of evidence via affidavit or an evidentiary
13 hearing pursuant to NRCP 43(c).

14 In this case, Mr. Vannah forthrightly admitted:

15 “This is a fee dispute.”

16 (Ex. A; Transcript of 2.6.18 hearing at page 35, line 24.) Mr. Vannah also made
17 clear that he wanted the fee to be determined by a jury:

18 “So, we want this heard by a jury and no disrespect to the judge, but we’d
19 like a jury to hear the facts...”

20 (Ex. A; page 35 at lines 11-12.)

1 Mr. Vannah confirmed there are no malpractice claims or other complaints
2 about Mr. Simon, "other than on the billing situation". (Ex. A; page 32 at lines 5-
3 9.) Thus, Mr. Simon was sued solely as a legal tactic to try to stop adjudication of
4 the lien by this Court. Filing a lawsuit solely as a litigation tactic is more than
5 questionable. Regardless, the tactic must fail, because this Court cannot re-write
6 the statute to suit the clients' litigation strategy.
7

8 The law in Nevada is clear, when a charging lien is perfected and
9 adjudication is ripe, the court "shall" adjudicate the lien. NRS 18.015(6). There
10 is no discretion allowed the court under the statute, adjudication must be done.
11 This Court is allowed discretion regarding the taking of evidence under NRC
12 43(c) and the case law. This Court may rule based upon affidavits and other
13 submissions, or the Court may take additional evidence via an evidentiary hearing.
14
15

16 This honorable Court is not the Legislature. The statute mandates this Court
17 "shall" adjudicate the lien.
18

19 **B. Consolidation does not prevent prompt lien adjudication.**

20 NRS 18.015 requires prompt adjudication of the lien. It is of no consequence
21 that a separate action was filed. The separate action does not stop adjudication, the
22 statute says "shall" and there are no exceptions. If the separate action was not
23 filed, the court would proceed with adjudication. If the separate action is
24 dismissed, the court proceeds with adjudication.
25

1 This Court should address each matter before it separately as required by the
2 law. There are pending motions to dismiss the complaint. If the Court dismisses the
3 complaint, then the unsupported argument that the complaint stops adjudication
4 fails. If the motions to dismiss are denied in part, the court still “shall” adjudicate
5 the lien. The court should consider each motion and/or claim separately on the
6 merits of the law.
7

8 **C. NRS 18.015 does not allow discovery.**

9 NRS 18.015 does not permit discovery. Quite the opposite, the statute
10 provides for adjudication on five days’ notice.
11

12 NRCP 43(c) and case law allow this Court discretion to hold an evidentiary
13 hearing to take evidence; but, there is no statute, code or case that permits lengthy
14 and expensive discovery. NRCP 43 satisfies any legitimate due process concern.
15

16 In this case, the conduct of the Edgeworth’s cuts against the legitimacy of a
17 due process argument. The clients were first unavailable to endorse checks until
18 after the New Year. The day after Mr. Simon left on Christmas break, the clients
19 became available and complained of continued delay and costs. Now, as it serves
20 them, the clients want delay and increased costs from discovery. However, the
21 changing positions do not change the statute. Pursuant to the statute, this Court
22 shall adjudicate the lien.
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Dated this 16th day of February, 2018.

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Attorney for LAW OFFICE OF
DANIEL S. SIMON, P.C.

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an employee of
CHRISTIANSSEN LAW OFFICES

Exhibit A

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST,
Plaintiff,

vs.

LANGE PLUMBING, LLC,
Defendant.

CASE NO. A-116-738444-C
DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

**RECORDER'S PARTIAL TRANSCRIPT OF HEARING
MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS**

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ. (Via telephone)
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1 to -- I don't really work at 550 an hour, I'm much greater than that. \$550
2 an hour to me is dog food. It's dog crap. It's nothing. So why don't you
3 give me a big bonus. You ought to pay me a percentage of what I've
4 done in the case because I did a great job.

5 Now, nobody's going to quarrel that it wasn't a great result.
6 There's certainly some quall as to why the result was done, my client
7 was very, very involved in this case, but I don't want to get into all of that
8 and I'm certainly not criticizing Mr. Simon for anything he did, other than
9 on the billing situation.

10 At that time Mr. Simon said well, I don't know if I can even
11 continue in this case and wrap this case up unless we reach an
12 agreement that you're going to pay me some sort of percentage, you
13 know, I want a contingency fee and I want you guys to agree to sign
14 that. My client said no, we're not doing that. You didn't take the risk.
15 I've paid you hourly, I've paid you over a half a million dollars. I'm willing
16 to continue finishing up paying you hourly.

17 So, Mr. Simon said well, that's not going to work, I want a
18 contingency fee. They came to us, we got involved, we had a
19 conversation with all of us, and at that point in time everybody agreed,
20 he cannot have a contingency fee in this case because there's nothing in
21 writing. You don't even have an oral agreement, much less in writing.

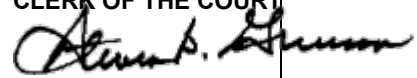
22 So what happened is -- and this is an amazing part, Judge --
23 and not at the time that Mr. Simon goes to one of the depositions, we
24 quoted that, the other side said to him how much are fees in this case,
25 have they actually been paid. And Mr. -- and that's the point of that. Mr.

1 being the judge and I have no problem with the other judge being the
2 judge, that's never been an issue in the case. What we do have a
3 problem with is -- and I don't understand and maybe Mr. Christensen
4 can clear that up. He's saying well, we can go ahead and have you take
5 this case and make a ruling without a jury; that you can go through here
6 and have a hearing and make a decision on what the fee should be.
7 And then we can have the jury make a decision as to what the fee
8 should be, but the problem is if you make a decision on what the fee
9 should be that's issue preclusion on the whole thing and it ends up with
10 being a preclusion.

11 So, we want this heard by a jury and no disrespect to the
12 judge, but we'd like a jury to hear the facts, we'd like to hear the jury
13 hear Mr. Simon get up and say to him \$550 an hour is dog meat, you
14 know, he can't make a living on that and I would never bill at such a
15 cheap rate and he's much greater than that. And I'd like to hear the jury
16 hear that, people making \$12 an hour hear that kind of a conversation
17 that Mr. Simon is apparently going to testify to.

18 So there -- so bottom line, we get right down -- I -- so what
19 we're asking, it's -- what we'd like you to do -- this case over. The
20 underlying case with the sprinkler system and the flooding of the house,
21 it's over. In re has nothing to do with determining what the fee should
22 be. The fee -- whole issue is based on what was the agreement. I don't
23 know much about the underlying case and I'm not having a problem
24 understanding the fee dispute. This is a fee dispute.

25 We're just -- and if you want to hear it -- I don't think there's



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST,

Plaintiff,

vs.

LANGE PLUMBING, LLC,

Defendant.

CASE NO. A-16-738444-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

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

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

THEODORE PARKER, ESQ.

For Daniel Simon:

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

For the Viking Entities:

JANET C. PANCOAST, ESQ.

Also Present:

DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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Las Vegas, Nevada, Tuesday, February 20, 2018

[Case called at 9:28 a.m.]

THE COURT: Okay, let me just call the case. Let me get to my notes. A7384444, Edgeworth Family Trust versus Lange Plumbing, LLC.

MR. CHRISTENSEN: Good morning, Your Honor. Jim Christensen on behalf of the Daniel Simon Law firm.

THE COURT: Okay.

MR. CHRISTIANSEN: Pete Christiansen on behalf of the same, Your Honor.

MS. PANCOAST: Janet Pancoast in behalf of the Viking Entities.

THE COURT: Okay.

MR. PARKER: Good morning. Theodore Parker on behalf of Lange Plumbing.

THE COURT: Okay.

MR. GREENE: And John Greene and Bob Vannah for the Edgeworth Entities.

THE COURT: Okay. So, the first thing up is the status check on the settlement documents. Have we done all the necessary dismissals, settlement agreements?

MR. SIMON: I have two --

THE COURT: Mr. Simon?

MR. SIMON: Yes and no, Your Honor.

1 THE COURT: Okay.

2 MR. SIMON: I have two issues. The Edgeworth's have
3 signed the releases.

4 THE COURT: Okay.

5 MR. SIMON: Mr. Vannah and Mr. Greene did not, even
6 though -- there wasn't -- their name wasn't as to the form of content.

7 THE COURT: Okay.

8 MR. SIMON: But I didn't sign it because I didn't go over the
9 release with them, so I think they need to sign as to form of content.
10 That's what they did, I think with the Viking release. So if they want to
11 sign in that spot, I think that release will be complete. Mr. Parker's client
12 still has not signed the release, it's a mutual release. So, depending on
13 whether you guys have any issues waiting on that, on Mr. Parker's
14 word --

15 THE COURT: Mr. Vannah?

16 MR. SIMON: -- that they'll sign that.

17 MR. VANNAH: Why do we have to have anything on form
18 and content? That is not required, it's for the lawyers to sign.

19 MR. SIMON: Then if --

20 MR. VANNAH: -- I'm asking that question.

21 MR. SIMON: -- he's ok with that, then I'm fine with that.

22 MR. VANNAH: If you take out the form and content, I don't
23 know anything about the case, and I want -- I don't know anything about
24 the case -- I mean, we're not involved in a case. You understand that,
25 Teddy?

1 MR. PARKER: I do.

2 MR. VANNAH: We -- we're not involved a case in any way,
3 shape, or form.

4 MR. PARKER: This is my concern, Bob, the -- when we sent
5 over the settlement agreement that we prepared -- our office prepared
6 the -- prepared it, we worked back and forth trying to get everything right
7 and getting the numbers right. Once we did that, I learned that Mr.
8 Vannah's office was involved in the advising and counseling the
9 Plaintiffs.

10 THE COURT: Right.

11 MR. PARKER: So then, I was informed by Mr. Simon that Mr.
12 Vannah was going to talk to the Plaintiff directly, and then once that's
13 done, we'd eventually get the release back, if everything was fine. I got
14 notice that it was signed, but I did not see approved as the form of
15 content, and so Mr. Simon explained to me that because the discussion
16 went between the Plaintiffs and Mr. Vannah, that he thought it was
17 appropriate for Mr. Vannah to sign as form and content. Which I don't
18 disagree since he would have counseled the client on the
19 appropriateness of the documents.

20 THE COURT: Well I don't necessarily disagree with that
21 either because based on everything that's happened up to this point, it's
22 my understanding that, basically anything that's being resolved between
23 Mr. Simon and the Edgeworths is running through Mr. Vannah.

24 MR. PARKER: Exactly. And --

25 THE COURT: And that was my understanding from the last

1 hearing that we had, so I don't --

2 MR. VANNAH: I don't have a big deal with it.

3 THE COURT: Okay.

4 MR. VANNAH: It's not -- I just don't understand why, but I
5 don't care, I'll sign it.

6 THE COURT: Well now, Mr. Vannah, I'm just saying, based
7 on everything that's happened up to this point, and now that --

8 MR. VANNAH: It's trivial --

9 THE COURT: Yes.

10 MR. VANNAH: -- I don't care. It's not worth --

11 THE COURT: Okay.

12 MR. VANNAH: -- debating over it, so I'll just sign it.

13 MR. PARKER: Your Honor, while Mr. Vannah is signing both
14 those documents, there's two releases, and I'm sure he's aware of them.
15 I actually brought the check for \$100,000 and I wanted to do it in open
16 court provided to Mr. Simon, Mr. Vannah, Mr. Greene, whoever wants it.
17 Whoever wants the \$100,000, I'm here to provide it.

18 THE COURT: Well, Mr. Parker --

19 MR. PARKER: I'll just put it on --

20 THE COURT: -- if you just giving --

21 MR. PARKER: -- the --

22 THE COURT: -- out a \$100,000, I want it.

23 MR. PARKER: -- I'll put it on the podium. It seems to be the
24 Swiss neutral area. Whoever wants it can pick it up, but I am providing it
25 in open court.

1 THE COURT: Okay. And so is everyone acknowledging --

2 MR. PARKER: And here's the --

3 THE COURT: -- that Mr. Parker is --

4 MR. PARKER: -- receipt of check.

5 THE COURT: -- providing the check?

6 MR. VANNAH: The only problem I have with it Teddy, is it

7 says, Simon Law, I don't think --

8 MR. PARKER: You can --

9 MR. VANNAH: -- I should --

10 MR. PARKER: -- scratch that out.

11 MR. VANNAH: Okay.

12 MR. PARKER: And this -- certainly I know you very well --

13 MR. VANNAH: You do, you do.

14 MR. PARKER: -- and your firm very well.

15 MR. VANNAH: No problem.

16 MR. PARKER: I got the acknowledgement of the receipt of
17 check. You guys can just sign one for you and one for me.

18 MR. VANNAH: No problem, I can do that.

19 MR. PARKER: The other thing, Your Honor, is as soon as we
20 get this back, I'll get it signed by Lange Plumbing and then provided full
21 copies to everyone. And then, I think we have the stipulation order for
22 dismissal that we have to do.

23 THE COURT: And there was a sign -- an order that was sent
24 by Ms. Pancoast to chambers, but Mr. Parker it was not signed by you.

25 MR. PARKER: No, it was not. I was out of town, I --

1 THE COURT: Okay.

2 MR. PARKER: -- believe.

3 THE COURT: Okay. And I believed that you needed to sign.

4 MR. PARKER: And I have no problems signing it. But I think I

5 spoke with Ms. Pancoast and --

6 THE COURT: Okay.

7 MR. PARKER: -- said I was fine with it.

8 MS. PANCOAST: Yes.

9 MR. PARKER: So, she may of sent it because if that.

10 THE COURT: Okay. And I think it was sent while Mr. Parker

11 was out of town--

12 MS. PANCOAST: Yes --

13 MR. PARKER: That's correct.

14 THE COURT: -- and I believe my law clerk --

15 MS. PANCOAST: -- and it was delayed --

16 THE COURT: -- contacted you.

17 MS. PANCOAST: -- it was on route so I just --

18 MR. PARKER: Is that the same one Janet? Same one I just

19 signed?

20 MS. PANCOAST: No, this is the stipulation for dismissal.

21 MR. PARKER: Is it the order for good faith settlement? Is

22 that --

23 THE COURT: Yes.

24 MR. PARKER: -- the one you are speaking of?

25 MS. PANCOAST: Yes, that's the one.

1 THE COURT: Yes.

2 MR. PARKER: Yes. I think I told Ms. Pancoast that is was
3 fine with me. I -- especially since we were able to discuss it on the
4 record, thanks.

5 THE COURT: Okay. Okay. So, Ms. Pancoast have you -- so
6 Mr. Parker, do you think you need to sign or are you comfortable with
7 the record that was made in open court?

8 MR. PARKER: I think that's it for me, Your Honor.

9 THE COURT: Okay. Okay, so Ms. Pancoast if you could
10 submit that order, did you get it back or do we still have it?

11 MS. PANCOAST: I haven't been in my office for three days. I
12 will check --

13 THE COURT: Okay.

14 MS. PANCOAST: -- Your Honor.

15 THE COURT: Okay.

16 MS. PANCOAST: And just call your chambers --

17 THE COURT: Okay.

18 MS. PANCOAST: -- and say hey, either we have --

19 THE COURT: Can you just follow up with my law clerk
20 because I think she is the one that reached out to you about that.

21 MS. PANCOAST: Yes. Sorry about that, I just -- we now
22 have a dismissal that's signed for dismissals prejudice of all claims of
23 the entire action. I would like to get Your Honor's signature on that if I
24 can.

25 MR. SIMON: I just want to --

1 MS. PANCOAST: Does anybody have objection to that?
2 MR. SIMON: I just want to make sure that Mr. Vannah does
3 not have an objection to --
4 MS. PANCOAST: Okay.
5 MR. SIMON: -- the stip. --
6 THE COURT: Okay.
7 MR. SIMON: -- and it's ok.
8 THE COURT: Mr. Vannah are you comfortable reviewing that
9 right now or do you need more time?
10 MR. VANNAH: No. That's fine. It's just a straight dismissal
11 right, Janet?
12 MS. PANCOAST: Yes. It's just dismissal, but there's all sorts
13 of cross claims and it's got all the cross claims and everything --
14 MR. VANNAH: Everything's fine?
15 MS. PANCOAST: -- it just --
16 MR. VANNAH: Fine, I'm fine with it.
17 MR. SIMON: The entire action now --
18 MR. VANNAH: Yes. I'm happy with it --
19 MR. SIMON: -- is what this is.
20 THE COURT: Okay.
21 MR. VANNAH: -- that's great.
22 THE COURT: Okay, so you're ok with that Mr. Vannah?
23 MR. VANNAH: Sure. Sure.
24 THE COURT: Okay, so --
25 MR. PARKER: May I approach?

1 THE COURT: -- Ms. Pancoast if you could approach, then I
2 will sign that.

3 So, Mr. Parker do you want a status check for the Lange
4 Plumbing to sign off on the --

5 MR. PARKER: No, no I'm --

6 THE COURT: Okay.

7 MR. PARKER: -- more than happy with this being the last
8 time, hopefully that we have to get together regarding the settlement
9 documents. I will --

10 THE COURT: Okay.

11 MR. PARKER: -- certainly have Mr. Lange of Lange Plumbing
12 sign them and I will get them copies to Mr. Simon as well as to Mr.
13 Vannah's office.

14 THE COURT: Okay, so is everybody comfortable that we
15 have all the necessary dismissals and settlement of documents signed,
16 except Langu Plumbing signing off on the last document, which Mr.
17 Parker will get and distribute to everyone?

18 MR. VANNAH: Yes.

19 THE COURT: Okay.

20 MS. PANCOAST: Your Honor, one clarification, since Mr.
21 Parker said in open court he has no objection to that Order on the
22 Motion for a Good Faith Settlement, do I need to track down his
23 signature? Or is this --

24 THE COURT: No, if Mister --

25 MR. PARKER: If you --

1 THE COURT: -- Parker's --
2 MR. PARKER: -- have it -- if you have it with you, I will sign it
3 right now. If the Court has it, I will sign it right now.
4 THE COURT: And let me see if I can -- can you email Sarah
5 and ask her? We'll get --
6 MR. PARKER: I'll sign it right here.
7 THE COURT: -- my law clerk to bring that in here, --
8 MR. PARKER: No problem.
9 THE COURT: -- and then we'll get you to sign it while you are
10 here --
11 MR. PARKER: Sounds great --
12 THE COURT: -- Mr. Parker.
13 MR. PARKER: -- Your Honor.
14 THE COURT: Okay. The next thing is Mister -- Defendant
15 Daniel -- as Simon doing business as Simon Law's Motion to Adjudicate
16 the Attorney Lien of the Law Office of Daniel Simon PC on the Order
17 Shorting Time. I did receive a supplement, Mr. Christensen that you
18 filed. Mr. Vannah, have you had an opportunity to review that? Mine is
19 not file stamped, I believe this was my courtesy copy, but I read it.
20 MR. VANNAH: Mr. Greene reviewed it, and can --
21 THE COURT: Okay, so you guys have had an opportunity to
22 review that?
23 MR. GREENE: Correct, Judge.
24 MR. CHRISTENSEN: It was electronically filed February 16th,
25 11:51 in the a.m. --

1 THE COURT: Okay.

2 MR. CHRISTENSEN: -- and served via the --

3 THE COURT: Okay. And I think it because --

4 MR. CHRISTENSEN: -- it was served.

5 THE COURT: -- it was Friday. I appreciate the courtesy copy

6 just to make sure that I got it because sometimes there's a little bit of a

7 delay in Odyssey. So, I appreciate it and I have read it.

8 MR. VANNAH: Did you want us to respond to it at all?

9 THE COURT: Well, I mean, this is -- that's up to you Mr.

10 Vannah did you want to respond to the supplement?

11 MR. VANNAH: We could as quickly, orally.

12 THE COURT: Okay.

13 MR. VANNAH: Mr. Greene would -- because he --

14 THE COURT: Okay, Mr. Greene.

15 MR. VANNAH: -- right? Explain why it's --

16 MR. GREENE: We just believe it's -- of course it's a rehash,

17 it's a -- it's just repainting the same car, Your Honor. We believe the

18 arguments have been adequately set forth. But even with the case law

19 seminar, it's different. This is a motion to seek attorney's fees for a

20 prevailing party, following litigation in which the parties decided to have a

21 bench trial.

22 Ours is different. Ours is a independent case seeking

23 damages from Mr. Simon and his law firm, for the breech of contract for

24 conversion, and it's based upon a Constitutional right to a trial by jury.

25 Article I, Section 3. Different apples and oranges, distinguishable case,

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 client's -- my client believed that we were buying peace and
2 completeness of this whole situation, this case. The thought of having to
3 go through discovery in an unrelated or related matter is not appealing.
4 And in fact, I thought under Rule 18.015 that there is no additional
5 discovery that's actually undertaken.

6 I mean, I just got finished with a case that we tried, and we
7 had a very large attorney's fees, not as big as this one, but a large
8 attorney's fees award and the Court made a decision based upon what
9 was in front of the Court, not additional discovery and not additional
10 hearings, other than a hearing on the motion itself for attorney's fees.

11 The prospect of my client being subjected to discovery to
12 determine the reasonableness of a fees, when typically that's within the
13 providence of the Court, it does not -- is certainly not appealing to my
14 client and I don't see where it's required under the statute.

15 Perha -- I haven't read all of the briefing, so maybe there's
16 some case that Mr. Vannah and Mr. Greene is -- are aware of, but I've
17 never seen it done, other than the Court -- especially the Court having
18 being -- been familiar with the underlining -- on the underpinnings of the
19 case making that final decision without the benefit of additional
20 discovery. So hopefully the NSC works out for them, but I think that the
21 rule is fairly clear. I've not seen it done a different way.

22 THE COURT: Okay.

23 MR. PARKER: I don't know if that's beneficial to the Court or
24 not.

25 MS. PANCOAST: And --

1 MR. VANNAH: I'm not sure I understand the argument
2 because they're not involved in this fee dispute.

3 MS. PANCOAST: I certainly hope so. I'm -- It's been a --

4 MR. VANNAH: They're out of the case.

5 MS. PANCOAST: -- pleasure folks, but --

6 THE COURT: Yes. No, I mean, they're not --

7 MS. PANCOAST: -- I'm done.

8 THE COURT: -- involved in the fee dispute, but if it's my
9 understanding -- Mr. Parker correct me -- my understanding is what Mr.
10 Parker is saying is, if this fee dispute were to go to trial, which is what
11 you are requesting is a jury trial on that issue, that there's going -- and
12 you want to do discovery, you want to do all the trial stuff that comes
13 along with going to trial that is going to somehow going to somehow
14 involve his client, as his client was involved in the underlying litigation
15 that is the source of the fee dispute. Now Mr. Parker, correct me if that
16 wasn't what --

17 MR. PARKER: That's exactly

18 THE COURT: -- you were saying.

19 MR. PARKER: -- exactly right.

20 THE COURT: And that's what he was saying is that's not
21 appealing to him. And Mr. Parker is not saying he's a party to the fee
22 dispute, what he's saying is that would involve his client, so he's putting
23 that on the record while he is still in the case in regards to his client.

24 MR. PARKER: And my thought is an adjudication on the
25 merits of the fee dispute, by necessity may involve the work of Mr.

1 Simon in terms of my client's contribution to this overall settlement;
2 whether or not the value of that case was what it was or what -- if it
3 wasn't. That would involve my client to potentially taking the stand and
4 looking at the contract and the work that was performed. I don't want to
5 subject my client to that.

6 I was trying to buy my peace and I was hoping this would
7 resolve everything all at one time, including the adjudication of the lien in
8 front of Your Honor without the obligations of going through anymore
9 discovery. Because I don't want my client looking over his shoulder at --
10 potentially coming in for a deposition on that issue or taking the stand.
11 It's just not what I believe is appropriate under the rule, Your Honor.

12 MR. VANNAH: Let me -- regardless of whether or not this is
13 going to be adjudicated as a lien, we're -- who clearly going to be
14 entitled -- it's a two million dollar argument. I assume we're not going to
15 have a two-hour hearing and nobody's going to do any discovery in this
16 case. I mean for example, there's one billing -- I'm looking at one billing
17 where somebody wrote down 130 hours, block billing, worked on file
18 basically. Were not going to have discovery on that? I mean, what does
19 all that mean? That's --

20 THE COURT: Well --

21 MR. VANNAH: -- an additional billing? I mean --

22 THE COURT: Well, I think at this point we have the cart
23 before the horse. Okay? We're going to go to the mandatory settlement
24 conference. If that doesn't work, then we're going to have to readdress
25 all these issues.

1 MR. VANNAH: Agreed.

2 THE COURT: But for today, I want -- I'm going to order you
3 guys to a mandatory settlement conference. I want you to get in touch
4 with those two judges. One of them will accommodate you, they have
5 already agreed to do that. And if that doesn't happen then we're going
6 to have to come back here and readdress the adjudication of the lien,
7 whether or not we're going to go to trial or what we're going to do. But
8 for today, we're going to go to the mandatory settlement conference.

9 MR. VANNAH: That's fine.

10 THE COURT: Okay.

11 MR. CHRISTENSEN: Your Honor, I --

12 THE COURT: Thank you.

13 MR. CHRISTIANSEN: -- a couple of practical questions.
14 Number one, do you have an understanding of the time frame that
15 Judge Williams or Judge Wiese or -- looking at this end. Because we'd
16 like to get this done --

17 THE COURT: No, I understand. And it's my --

18 MR. CHRISTENSEN: -- as quickly as possible.

19 THE COURT: -- understanding that Judge Williams is trial this
20 week --

21 MR. CHRISTENSEN: Okay.

22 THE COURT: -- but after that he should be available.

23 MR. CHRISTENSEN: Okay.

24 THE COURT: And Judge Wiese will accommodate anything.

25 MR. CHRISTENSEN: Well --

1 THE COURT: That man -- I mean, he is very accommodating.
2 Judge Wiese has had to overcome several obstacles recently, and that
3 man has not missed a day of work. So, he's very accommodating.

4 MR. CHRISTENSEN: Often things move a lot quicker where
5 there are time limits.

6 THE COURT: Right.

7 MR. CHRISTENSEN: Could we at least have a status check
8 in 45 days to check on the status of the --

9 THE COURT: Sure.

10 MR. CHRISTENSEN: -- NSC?

11 THE COURT: Yes. And so we'll have a status check in 45
12 days to check on the status of the settlement conference. That date is
13 on a Tuesday.

14 THE CLERK: April 3rd at 9:30. And Counsel, I have a
15 handout on -- regarding settlement conferences.

16 THE COURT: And Ms. Pancoast, if you could approach -- Mr.
17 Parker, this is the order for your signature.

18 MR. PARKER: Yes.

19 THE COURT: And the lines crossed out, but you can just sign
20 on one of these pages.

21 MR. CHRISTIANSEN: Your Honor, just to add my two cents
22 in the --

23 THE COURT: Yes, Mr. Christiansen.

24 MR. CHRISTIANSEN: The statute doesn't say you can have
25 a hearing within five days if it contemplates discovery. So I mean, that's

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

1 settlement conference, we will hash out all of these issues if that case
2 does not settle and if this case -- this portion does not settle at the
3 settlement conference.

4 MR. VANNAH: I understand.

5 THE COURT: Okay?

6 MR. CHRISTENSEN: Thank you, Your Honor.

7 MR. PARKER: Thank you, Your Honor.

8 THE COURT: Ms. Pancoast?

9 MR. CHRISTIANSEN: Thank you, Your Honor.

10 MR. PARKER: Yes, I signed it. I think --

11 THE COURT: Yes, Mr. Parker signed it --

12 MR. PARKER: -- just the Court has to sign it.

13 THE COURT: -- as well as so did I. I believe we had
14 everybody else --

15 MR. PARKER: Oh --

16 THE COURT: -- we were just waiting for Mr. Parker.

17 MR. PARKER: -- okay, perfect.

18 THE COURT: So do you want to take this down and file it
19 or --

20 MS. PANCOAST: No, you guys can do it.

21 THE COURT: Okay, so we'll do it, just so -- because we keep
22 a log of what comes in and what goes out. So we'll file it in the order.

23 MS. PANCOAST: Just for the record, Your Honor, I -- for the
24 same -- I want -- Viking wants to echo what Mr. Parker said --

25 THE COURT: Okay.

1 MS. PANCOAST: -- because this is attorney client
2 communications, what was said in Court is, you know -- we're out of it.
3 THE COURT: No, and I understand, and so we will have the
4 same objections from Mr. Parker logged in on behalf of your client.
5 MS. PANCOAST: Thank you, Your Honor.
6 THE COURT: You're welcome.
7 Okay.
8 MR. SIMON: Hold on a second.
9 THE COURT: Uh-oh.
10 MR. SIMON: Your Honor, just while --
11 THE COURT: Yes, Mr. Simon.
12 MR. SIMON: While we're still on the record, I'm giving Mr.
13 Vannah the settlement check from Mr. Parker. He's going to have his
14 clients endorse it and then return it to my office, where I can endorse it
15 and put it in the Trust account.
16 THE COURT: In the --
17 MR. VANNAH: Yes.
18 THE COURT: -- Trust account that's already been
19 established.
20 MR. SIMON: Yes.
21 MR. VANNAH: That will be just fine, sure. --
22 THE COURT: Okay. That --
23 MR. VANNAH: -- that will work.
24 THE COURT: -- record will be made, thank you.
25 MR. SIMON: Thank you, Thank you Your Honor.

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MR. PARKER: Thank you, Your Honor.

MR. VANNAH: Thank you.

THE COURT: Thank you.

[Hearing concluded at 9:47 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Brittany Mangelson
Independent Transcriber

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date, and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to represent our interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of \$500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive \$550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over \$7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee

1 was ever brought up at that time, let alone ever agreed to.

2 7. SIMON never reduced the terms of our fee agreement to writing. However, that
3 formality didn't matter to us, as we each recognized what the terms of the agreement were and
4 performed them accordingly. For example, SIMON billed us at an hourly rate of \$550, his
5 associate billed us at \$275 per hour, costs incurred were billed to us, and I paid SIMON all of the
6 invoices in full in less than one week from the date they were received.

7 8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,
8 August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in
9 those invoices totaled \$486,453.09. There were hundreds of entries in these invoices. The hourly
10 rate that SIMON billed us in all of his invoices was at \$550 per hour. I paid the invoices in full to
11 SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of
12 approximately \$72,000. However, SIMON withdrew the invoice and failed to resubmit the
13 invoice to us, despite an email request from me to do so. I don't know whether SIMON ever
14 disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those
15 fees and costs to the mandated computation of damages. I do know, however, that when SIMON
16 produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018,
17 for an additional \$692,120 in fees, his hourly rate for all of his work was billed out at our agreed
18 to rate of \$550.

19 9. From the beginning of his representation of us, SIMON was aware that I was
20 required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also
21 aware that these loans accrued interest. It's not something for SIMON to gloat over or question
22 my business sense about, as I was doing what I had to do to with the options available to me. On
23 that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.

24 10. Plus, SIMON didn't express an interest in taking what amounted to a property
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1 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
2 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
3 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted
4 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk
5 of loss in the LITIGATION was gone.

6 11. Please understand that I was incredibly involved in this litigation in every respect.
7 Regrettably, it was and has been my life for nearly two years. While I don't discount some of the
8 good work SIMON performed, I was the one who dug through the thousands of documents and
9 found the trail that led to the discovery that Viking had a bad history with these sprinklers, and
10 that there was evidence of a cover up. I was the one who located the prior case involving Viking
11 and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's
12 insurer), and from fire marshals, etc. I was also the one who did the research and made the calls
13 to the scores of people who'd had hundreds of problems with these sprinklers and who had
14 knowledge that Viking had tried to cover this up for years. This was the work product that caused
15 this case to grow into the one that it did.
16

17 12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an
18 expert. This was around the time that the value of the case had blossomed from one of property
19 damage of approximately \$500,000 to one of significant and additional value due to the conduct
20 of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for
21 the first time broached the topic of modifying our fee agreement from a straight hourly contract to
22 a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him
23 that I'd be open to discussing this further, but that our interests and risks needed to be aligned.
24 Weeks then passed without SIMON mentioning the subject again.
25

26 13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email
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1 was to make it clear to SIMON that we'd never had a structured conversation about modifying the
2 existing fee agreement from an hourly agreement to a contingency agreement. I also told him that
3 if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to
4 borrow money to pay his hourly fees and the costs.

5 14. SIMON scheduled an appointment for my wife and I to come to his office to
6 discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to
7 a \$6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was
8 to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid
9 far more than \$550.00 per hour and the \$486,453.09 he'd received from us for the preceding
10 eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was
11 deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had
12 been completely extinguished and the appearance of a large gain from a settlement offer had
13 suddenly been recognized. SIMON put on a full court press for us to agree to his proposed
14 modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable.
15 We really felt that we were being blackmailed by SIMON, who was basically saying "agree to
16 this or else."
17

18 15. Following that meeting, SIMON would not let the issue alone, and he was
19 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never
20 agreed on any terms to alter, modify, or amend our fee agreement.
21

22 16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the
23 amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be paid in
24 light of a favorable settlement that was reached with the defendants in the LITIGATION. We
25 were stunned to receive this letter. At that time, these additional "fees" were not based upon
26 invoices submitted to us or detailed work performed. The proposed fees and costs were in
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1 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the
2 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to
3 defendants in the LITIGATION, and the amounts set forth in the computation of damages that
4 SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON
5 for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep
6 and review, or the reasons.

7
8 17. A reason given by SIMON to modify the fee agreement was that he claims he
9 under billed us on the four invoices previously sent and paid, and that he wanted to go through his
10 invoices and create, or submit, additional billing entries. We were again stunned to learn of
11 SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in
12 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work
13 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON
14 prepared a proposed settlement breakdown with his new numbers and presented it to us for our
15 signatures. This, too, came with a high-pressure approach by SIMON. This new approach also
16 came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly
17 \$500,000 from us. He said that "any judge" and "the bar" would give him the contingency
18 agreement that he now wanted, that he was now demanding he get, and the fee that he said he was
19 now entitled to receive.
20

21 18. Another reason why we were so surprised by SIMON'S demands is because of the
22 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach
23 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the
24 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the
25 flooding event. Since SIMON hadn't presented these "new" damages to defendants in the
26 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to
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1 be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe
2 until the claims against defendant Viking were resolved. How can that be? All of our claims
3 against Viking and Lange were set to go to trial in February of this year.

4 19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific
5 questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the
6 amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what
7 transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question
8 was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the
9 LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been
10 disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both
11 of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page
12 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been
13 updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be
14 billing more hours that he hadn't yet written down, or that additional invoices for fees or costs
15 would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS
16 before he could determine the amount of his fee. At that time, I felt I had reason to believe
17 SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the
18 LITIGATION.
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21 20. Despite SIMON'S requests and demands on us for the payment of more in fees, we
22 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the
23 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement
24 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
25 time that he'd never previously produced to us and that never saw the light of day in the
26 LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was
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1 nothing short of stealing what was ours.

2 21. When SIMON refused to release the full amount of the settlement proceeds to us
3 without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable
4 alterative available to us was to file a complaint for damages against SIMON.

5 22. Thereafter, the parties agreed to create a separate account, deposit the settlement
6 proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to
7 have the settlement funds deposited like they were, as SIMON flatly refused to give us what was
8 ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

9 23. In Motions filed in another matter, SIMON makes light of the facts that we haven't
10 fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're
11 not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've
12 already had to pay to get someone else up to speed. Plus, we've already paid nearly \$500,000 to
13 SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION
14 were, for all intents and purposes, resolved. Since we've already paid him for this work to
15 resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

16 24. Please understand that we've paid SIMON in full every penny of every invoice
17 that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall.
18 I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one
19 ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused
20 to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the
21 LITIGATION.

22 25. I also feel that it's remarkable and so wrong that an attorney can agree to receive
23 an hourly rate of \$550 an hour, get paid \$550 an hour to the tune of nearly \$500,000 for a period
24 of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless
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1 we agree to pay him a bonus that ranges between \$692,000 to \$1.9 million dollars.

2 26. SIMON in his motion, and in open court, made claims that he was effectively fired
3 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with
4 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to
5 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false
6 accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club
7 Director at a non-profit for children we founded and funded. In an email string, SIMON chooses
8 his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if
9 it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is
10 responsible for making contact about absences (that had already been outlined at the mandatory
11 start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls.
12 SIMON sent the follow-up email, again carefully worded, with the clear accusation that
13 SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths.
14 His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable
15 position of confronting me about it. I read the email, and was forced to have a phone
16 conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell
17 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars
18 from me. I emphasized that SIMON'S accusation was without substance and there was nothing
19 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the
20 paperwork for another background check by USA Volleyball even though I have no coaching or
21 any contact with any of the athletes for the club. My involvement is limited to sitting on the
22 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two
23 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.
24 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit
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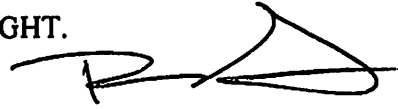
1 from the charity are minors, an accusation of this severity. from someone he assumed I was
2 friends with and further from my own attorney could not be ignored. While I was embarrassed
3 and furious that someone who was actively retained as my attorney and was billing me would
4 attempt to damage my reputation at a charity my wife and I founded and have poured millions of
5 dollars into. I politely sent SIMON an email on December 5, 2017, telling him that I had not
6 received his voicemail he referenced in an email and directed SIMON to call John Greene if he
7 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a
8 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied
9 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told
10 him to not send anything like that again. Simon claimed he did not intend the meaning
11 interpreted. I think it speaks volumes to Simon's character that after being caught trying to
12 damage our reputation and trying to smear our names with accusations that are impossible to
13 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera
14 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon
15 further attempts to bill us hundreds of thousands of dollars for “representing” us during this
16 period. In short, we never fired SIMON, though we asked him to communicate to us through an
17 intermediary. Rather, we wanted and want him to finish the work that he started and billed us
18 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the
19 LITIGATION.
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22 27. We did not cause the Complaint or the Amended Complaint to be filed against
23 SIMON or his business entities to prevent him from participating in any public forum. We also
24 didn't bring a lawsuit to prevent SIMON from being paid what we agreed that he should be paid
25 under the CONTRACT.
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27 28. I ask this Court to deny SIMON'S anti-SLAPP Motion and give us the right to
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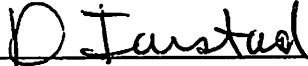
1 present our claims against SIMON before a jury.

2 FURTHER AFFIANT SAYETH NAUGHT.

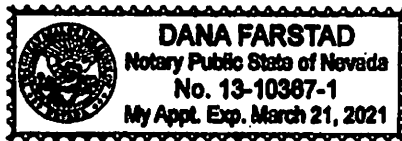
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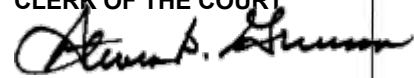
4 BRIAN EDGEWORTH

5 Subscribed and Sworn to before me
6 this 15 day of March 2018_x by BRIAN EDGEWORTH.

7 

8 Notary Public in and for said County and State





1 **ACOM**
2 ROBERT D. VANNAH, ESQ.
3 Nevada Bar. No. 002503
4 JOHN B. GREENE, ESQ.
5 Nevada Bar No. 004279
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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.

WA00677

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:

[e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; 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.

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

WA00679

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

WA00680

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."
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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.

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

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

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

27. SIMON'S refusal 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 is a breach of his fiduciary duty and a material breach of the CONTRACT.

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

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

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

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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.

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Conversion)

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

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

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

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

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

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

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

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

///

///

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

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

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.

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


PRAYER FOR RELIEF

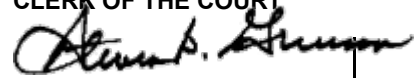
Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

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

DATED this 15 day of March, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ. /sn (4279)



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST,)	
)	
Plaintiff,)	CASE NO. A-16-738444-C
)	
vs.)	DEPT. NO. X
)	
LANGE PLUMBING, LLC,)	(CONSOLIDATED WITH:
)	CASE NO. A-18-767242-C)
Defendant.)	
)	
<u>And related matter/cases.</u>		

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 THE COURT: Okay. I just wanted to let you guys
2 know, it did not make the calendar, but I think that was a
3 calendaring error on my part. I just sent you guys for a
4 Settlement Conference and then the other motions were filed
5 afterwards, so they made the calendar, and then today is the
6 Status Check on the Settlement Conference.

7 MR. VANNAH: Right, Your Honor. The one thing we
8 might address if we -- real -- I don't know if -- if -- if it
9 gets to your calendar, but we filed an Amended Complaint
10 already and served it.

11 THE COURT: Yes.

12 MR. VANNAH: We -- we didn't need leave, it turns
13 out. There was no responsive pleading, so.

14 THE COURT: Okay.

15 MR. VANNAH: We had -- we had on calendar a Motion
16 for Leave to --

17 THE COURT: Right.

18 MR. VANNAH: -- to Amend the Complaint, but we went
19 ahead and just did it.

20 THE COURT: Yeah. And I did see that was filed.

21 MR. VANNAH: Okay.

22 THE COURT: It was March 5th, I believe. March
23 15th, sorry.

24 MR. VANNAH: And has been served, so.

25 THE COURT: Yes. Okay. Thank you, Mr. Vannah.

1 MR. VANNAH: Sure.

2 THE COURT: And in regard to the Status Check on the
3 Settlement Conference, I was notified that this case did not
4 settle, and we're all here, so I assume that that is correct,
5 this did not settle at the Settlement Conference.

6 MR. VANNAH: Correct.

7 THE COURT: Okay. So we will go forward.

8 In regards to -- we'll start with Mr. Simon's Motion
9 to Dismiss Anti-SLAPP that was filed on an Order Shortening
10 Time. I read the motion, I read the Opposition, I read the
11 Reply. Mr. Christensen, do you have anything to add?

12 MR. CHRISTENSEN: Well, only insofar as the law is
13 crystal clear that assertion of a attorney lien under the
14 statute is a protected communication under the law. That's a
15 legislative scheme handed down to resolve fee disputes.

16 Mr. Simon followed that statute to a T. He can't be
17 sued for following the law. That's basically what an anti-
18 SLAPP is all about. Nevada -- the Welt case, Nevada looks to
19 California for anti-SLAPP law, and we cited about five
20 different cases where similar actions against attorneys for
21 asserting liens have been dismissed by courts in California
22 under their anti-SLAPP.

23 We look to California to follow that law. It seems
24 pretty clear, the remedy here is for adjudication of the lien.
25 That's it. They brought in all these other claims and

1 allegations in a Complaint in an effort to muddy the water and
2 stop adjudication of the lien and that's not law. That's not
3 the statutory law and that's not the case law.

4 It's interesting that there is not one case cited by
5 the plaintiff that stands for the proposition that a claim
6 against a lawyer for assertion of a lien can survive in the
7 face of an anti-SLAPP motion. Every single case comes down
8 and says, nope, down the row.

9 It's interesting, the one case that they did talk
10 about from California, actually holds the exact opposite of
11 their position. They trumpet the Drell v. Cohen case, which
12 is a California appellate case out of 2014. To set the stage,
13 California has a slightly different way of handling attorney
14 liens. They don't have a statute passed by a legislature,
15 signed for a government -- by the --

16 THE COURT: Which is --

17 MR. CHRISTENSEN: -- Governor.

18 THE COURT: -- very rare that we have something that
19 they didn't have in California.

20 MR. CHRISTENSEN: Well, yeah, we -- we finally have
21 a statute they don't have. Imagine that.

22 As a result of that, California does not have a fast
23 speedy, efficient method to adjudicate a lien. In California,
24 the practical method that attorneys file is if they can't work
25 it out they file a motion for DEC relief to allow the Court

1 to, in effect, adjudicate the lien.

2 That's what the attorney did in Drell. There was a
3 lien dispute, a fee dispute, and one of the lawyers filed a
4 DEC relief action, and the other lawyer moved to dismiss it
5 under anti-SLAPP. And the Court said, well, wait a second,
6 you're not being sued for asserting a lien. The suit is
7 simply DEC relief to adjudicate the lien, and that's the way
8 we do it here in California, so your motion is -- is denied.
9 Your anti-SLAPP motion is denied.

10 That's the exact opposite of what we have here.
11 Their Amended Complaint even mentions the filing of the lien
12 as basis for their claim for relief for their duty of breach
13 of the covenant of good faith and fair dealing in paragraph
14 55. It says it right out. And it's implied under a host of
15 other position -- paragraphs in their Amended Complaint.

16 They filed that Complaint because Mr. Simon followed
17 the law and asserted a lien.

18 So it's pretty clear that anti-SLAPP applies. It's
19 a protected communication. As a result of that, the burden
20 shifts to the plaintiff. They have to show by clear and
21 convincing evidence that they can prevail.

22 I know they argued over the clear and convincing
23 evidence issue. I think I -- I cited the cases that lay that
24 out pretty clearly, including Welt, and including Judge Mahan
25 and the Prince case.

1 So it's their obligation to do that and they didn't
2 even try to do that, instead, they attacked that standard of
3 proof. But even more importantly, they can't, because going
4 to court and filing something is protected by the First
5 Amendment. It's protected by the litigation privilege.

6 The one exception that the plaintiff points out is
7 under -- I forget the name of the case -- but where they found
8 -- and that was a very complicated fact pattern. They found
9 an exception when there was a claim for legal malpractice,
10 which there is not in this case. So they're relying upon an
11 exception which doesn't apply on its plain facts.

12 It's very interesting; we had a similar case where
13 Dennis Prince was sued because he went to court representing a
14 client, followed the law. That was recently heard over in
15 Federal Court by Judge Mahan. And Judge Mahan granted the
16 anti-SLAPP motion.

17 You have a real chilling effect when you start suing
18 lawyers for following the law. I mean, there's no question
19 that what Mr. Simon did here was appropriate under NRS 18.015.
20 He filed the lien.

21 Undisputed money was promptly paid out to the
22 client. Disputed money has been segregated into a separate
23 account that checks can only be issued if Mr. Simon and Mr.
24 Vannah co-sign. And the interest on all the money in that
25 account goes to the benefit of the client.

1 There is -- there is -- by -- as a matter of law,
2 there's no conversion, which they sued Mr. Simon for. There
3 is no breach of the duty of good faith and fair dealing,
4 because that would require an element that is against the
5 spirit of the contract. That's one of the prima facie
6 elements. They can't establish that as a matter of law,
7 because Mr. Simon followed the law. The money is segregated.

8 He did exactly what he's supposed to do. As a
9 matter of fact, the Edgeworths, from time to time, incorrectly
10 cite the Nevada Rule of Professional Conduct. They cite the
11 wrong sections and they cite it for the wrong premise.

12 The real one that applies here is 1.15(e), "When in
13 the course of representation a lawyer is in possession of
14 funds or other property in which two or more persons, one of
15 whom may be the lawyer, claims interest, the property shall be
16 kept separate by the lawyer until the dispute is resolved."

17 That's what was done. So Mr. Simon followed the law
18 and he can't be sued for following the law. And Nevada
19 provides a remedy for that, and that's the anti-SLAPP statute.

20 We filed our motion. We -- it's -- it's -- it's
21 definitely well-merited in this case. There is a little bit
22 of a unusual twist here, because they did file an Amended
23 Complaint after we filed the special motion to dismiss unto
24 the anti-SLAPP statute.

25 Our Reply addresses the Amended Complaint because we

1 don't think the filing of the Amended Complaint moots our
2 special Motion to Dismiss. It really just makes it worse for
3 their position, because in the new cause of action they
4 specifically cite the lien as a basis for their new claim of
5 breach of the covenant of good faith and fair dealing.

6 So we would ask that not only the initial Complaint
7 be dismissed, but also the Amended Complaint.

8 THE COURT: Thank you, counsel. Mr. Vannah?

9 MR. VANNAH: You know, we pretty much laid
10 everything out. I -- we're just rehashing, it seems like.
11 But I was involved in the Dennis Prince case. I was consulted
12 on that. The Dennis Prince case was where an insurance
13 company sued Mr. Prince saying that he conspired with other
14 lawyers to do something in the case. And Allstate, some other
15 people sued. And it has nothing to do with a lien or anything
16 else.

17 And the anti-SLAPP statute, as we point out in the
18 Drell case is -- was set up so that lawyers, when they're
19 advocating for their clients, so if a lawyer advocates for the
20 client vigorously, they can't be sued by the other party
21 saying, well, you shouldn't have advocated for -- for the
22 client that much and you're advocacy is somehow some kind of
23 an unprotected privilege.

24 There is no privilege in a case like this. And as
25 the Drell case pointed out, you know, there's no reason to

1 take a dispute over an attorney fee up to the level of some
2 sort of Constitutional requirement and the case said you can't
3 do that.

4 So the anti-SLAPP statutes, the ones they're talking
5 about, is when the lawyer puts something in a pleading for the
6 benefit of the client, and he's arguing something; the other
7 side can't come in and say, well, you shouldn't have said
8 that. That's some kind of, you know, that's what that case is
9 all about.

10 Our Complaint is based on when -- when we talk about
11 conversion; if you take somebody's money and you tie it up in
12 a way they can't get to it, they can't use it. It wasn't like
13 the client's got -- it wasn't like Mr. Edgeworth said, hey you
14 know what, I would like you to take my \$2 million and put it
15 in a bank account, tie it up, and make it so that you have to
16 sign the checks where I can use it. That's -- that's -- he
17 took that money and he moved it over to that account.

18 And to make the argument that we are not likely to
19 prevail is absurd. The course of conduct between Mr. Simon
20 and Mr. Edgeworth and the Edgeworth entity, all along was, Mr.
21 Simon would send them a bill. They -- and they would turn
22 around and pay the bill within 15 days; bill/pay, bill/pay,
23 bill/pay.

24 And when it became clear to Mr. Simon that he was
25 about to have a windfall of \$6 million, way beyond what he

1 thought would happen, suddenly he said, I don't want to do
2 this billing anymore. I want you to pay me what I'm really
3 worth, because I was just being your buddy at \$550 an hour.
4 And now I want to get paid a big chunk of money, a million
5 dollar bonus, million-two bonus.

6 Then when he generated the bills that he's generated
7 by adding like for example in a past bill that had already
8 been paid and already been discussed with the defendants, he
9 put a one-day -- 135 hours in one day, of new billing,
10 reviewing the file.

11 That is something that a jury would have a right to
12 look at and say, is that good faith and fair dealing? Is that
13 dealing in the contract with good faith and fair dealing? Is
14 that conversion of the clients funds when even your own bill,
15 which -- even the bill which is exorbitant, still is less than
16 what he asserts a lien for.

17 He asserts a lien for a million-two; his new billing
18 is much less than that. That's something that the jury could
19 look at, and they should be able to consider. And just because
20 he's a lawyer doesn't put him beyond the pale of the law in
21 the area of good faith and fair dealing. When you have a
22 contract with someone you have to operate with good faith and
23 fair dealing. It's an implied obligation in every contract.

24 And those are obligations that the jury can look at
25 and consider. This case shouldn't be dismissed just because

1 he's a lawyer. That's the bottom line. That's what they're
2 asking, just because he gets some sort of special treatment.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Vannah. Mr. Christensen?

5 MR. CHRISTENSEN: Mr. Simon didn't raise this case
6 to a Constitutional level; Mr. Vannah and Mr. Edgeworth did.
7 Mr. Simon filed a lien, which he's allowed to do under the
8 law, and moved to adjudicate it. That would allow the Court
9 to examine the one block entry which, by the way, is for the
10 entire case and encompasses review of over 679 e-mails, and
11 allow the Court to make a decision.

12 It was Mr. Vannah who tried to stop adjudication of
13 the lien by this Court by filing a conversion claim and an
14 unfair dealing claim that has raised this to a higher level;
15 not Mr. Simon.

16 Anti-SLAPP motions are not filed by plaintiffs, they
17 are filed by defendants when they get sued. So Edgeworth
18 created the problem that we now face.

19 Going to the anti-SLAPP, you know, this exact
20 situation was addressed in the Transamerica case out of
21 California in 2016. That was a Federal Judge, Judge Lew, who
22 applied California law, and granted an anti-SLAPP motion when
23 an attorney was sued for filing a lien.

24 The only distinction that Mr. Vannah and Edgeworth
25 have tried is to say, well, the Federal Judge didn't know what

1 he was doing. We cited Beheshti which the exact same
2 situation happened, and their Reply, as well, you can't cite
3 that. That was an unpublished case.

4 I'm not subject to the California Rules of Civil
5 Procedure, and I was just following in the footsteps of Judge
6 Lew who cited the exact same case in Transamerica.

7 Other cases are Kattuah v. Linde Law Firm, Becerra
8 v. Jones, Bell, Abbott, Fleming & Fitzgerald, Roth v. Badener;
9 all of these cases find that when you go to court and use
10 legal process by asserting a lien, that's a protected
11 communication.

12 The statute is clear. Our Nevada statute is clear,
13 and the California statute is clear, and all the case law is
14 clear. It's not good enough just to come in and say, well,
15 that doesn't apply. Well, why doesn't it apply? Why isn't
16 use of a lien that's allowed under statutory law, permitted by
17 the legislature, encouraged by the Bar, why is that not use of
18 protected process?

19 Just coming in and saying, I wish it wasn't so,
20 isn't enough in the face of the law.

21 They talk about conversion. A person who is not in
22 possession can't convert. That's the Restatement Second of
23 Torts, Section 237. That's the primary Restatement section
24 that addresses conversion. You can't convert it if you're not
25 in possession of it.

1 Mr. Simon is not in possession of it. It's in a
2 separate bank account. According to the Rules of Professional
3 Conduct, 1.15.

4 To kind of flip the script here, what Mr. Vannah is
5 saying is that anytime a lawyer asserts a lien, he's
6 committing conversion. We can see from the cases, the
7 published cases that Mr. Vannah has been on, that that's not
8 so.

9 In the Golightly that we've cited, in fact, the
10 Nevada Supreme Court said, retention of funds in a trust
11 account by the lawyer is the same thing as interpleading the
12 funds with the Court. So holding the funds separate is the
13 same thing as giving the funds to a court.

14 Certainly, he wouldn't come in here and argue that
15 if we had interpled the funds, that the Court converted the
16 money, or that Mr. Simon converted the funds by handing it to
17 the Court. How can he now argue that by placing it into a
18 separate account that he has signing authority over, that Mr.
19 Simon converted them? It's ludicrous.

20 There are other cases that we've cited, and other
21 sections of the Restatement. Section 240, when funds are in
22 dispute, it's not conversion.

23 The Golightly case is 373 P.3d 103, that's where Mr.
24 Golightly and Mr. Vannah asserted a lien. They kept the money
25 in a trust account and the Court found, well, that's the same

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

1 take?

2 MR. VANNAH: I think it's going to take all day, but
3 let me -- let me ask this, too. We would like to be able to
4 do at least a deposition of -- of Mr. Simon and a deposition
5 of the principle person in his office that -- the other
6 associate that worked on the case and ask them about the fees
7 and how -- what -- what they did and how -- how they went back
8 and added all these fees two years later; how they did that.
9 Did they use a -- and I don't want you to show up and -- it'd
10 be -- it would -- we -- we think we need a two-day deposition
11 of Mr. Simon, one day of his associate, to be able to depose
12 him and ask him some questions and get -- and -- and then
13 we'll have a deposition and have a better idea.

14 Although -- what --

15 THE COURT: Well, I don't understand why we can't do
16 that at the evidentiary hearing, because Mr. Simon -- I'm
17 assuming there's no way this hearing is going forward without
18 Mr. Simon testifying. So if Mr. Simon's going to testify at
19 this hearing he's going to be under oath, and the whole
20 subject of this hearing is what did he do, what money is he
21 owed.

22 So all of that stuff will be testified to at the
23 evidentiary hearing, so I'm not certain as to why we would
24 need a deposition prior to that.

25 MR. CHRISTENSEN: Your Honor, we agree. Plus, the

1 statute doesn't provide for that. In fact, the statute says
2 you're supposed to adjudicate this on five days notice.
3 Understandably, there's been a lot of, you know, resistance to
4 that. But the statute certainly does not allow discovery.
5 Impliedly, it does not allow any discovery. It doesn't
6 distinctly allow it.

7 And also, as we've cited the cases, indicated that
8 the Court can take evidence through NRCP 43© which includes an
9 evidentiary hearing or declarations. And as you pointed out,
10 Mr. Simon will be here at the hearing.

11 I think it would take a full day, so -- from
12 scheduling. We can work from that --

13 MR. VANNAH: Well, if we're --

14 MR. CHRISTENSEN: -- perspective.

15 MR. VANNAH: -- if we're not going to have -- if we
16 had discovery it would -- it would limit it rightly because we
17 would get answers to the questions. I mean, for example, a
18 good question is, what happened after -- after all this
19 happened, you went back two years and picked a day and put 135
20 hours in. Where did that come from? Did you have that
21 contemporaneously? Was that in your computer? Did you keep
22 these -- I don't -- I don't know the answer to all these
23 questions.

24 So we're going to have to ask it at -- at court.
25 And that's fine. But if we're going to do that it's going to

1 take two days to -- I mean, this is a -- we're talking about a
2 \$1.2 million that Mr. Simon --

3 THE COURT: Right.

4 MR. VANNAH: -- wants to take as a bonus from my
5 client.

6 THE COURT: Well, and I don't --

7 MR. VANNAH: One point --

8 THE COURT: -- I don't know the answers to those
9 questions either, Mr. Vannah, but those are questions that are
10 certainly going to be needed answered for me, to determine
11 exactly what is owed to Mr. Simon, what's already been paid,
12 and what's outstanding, and what are we going to do with this
13 money in this trust.

14 So, I don't see a reason to duplicate that
15 information, because in order for me to make a decision and
16 whether or not this money has been converted, which conversion
17 is one of the claims that you have, I need to know all that
18 stuff.

19 MR. VANNAH: You do.

20 THE COURT: So, all of that has to be testified to
21 at the evidentiary hearing.

22 MR. VANNAH: You do. But I'm only -- and it looks
23 like you've made up your mind, and that's okay. I only say
24 that we do -- that's the same thing in a civil trial in front
25 of a jury; when we do that, we take depositions --

1 THE COURT: Right.

2 MR. VANNAH: -- so that we can hone down the issues.
3 I mean, maybe he's got a good explanation for that. I'd like
4 to know. I'd like to be able to know how he came up with 135
5 hours on May 10th, 2014, two years later, and said, here, you
6 owe me \$100,000 for that day. I'd like to have the answers to
7 those questions, but it would be nice if I ask him at a
8 deposition and say, hey, can you explain that to us, Mr.
9 Simon? What'd you do?

10 You're right, we could -- it's no different than a
11 jury trial. You could -- I guess you could have cases where
12 there's no discovery, like criminal cases, I guess there's
13 never any discovery.

14 But in civil cases, generally when you're dealing
15 with \$1.2 million, you'd have a right to at least go to the
16 person who's trying to take your money and ask them, well,
17 what did you do? What -- how did you come up with these
18 numbers? I mean, how did you keep the time records? Did you
19 keep them in Time Matters, one of those programs, or is it
20 just something you just came up with, you know, in a prayer
21 session sitting around your table holding hands one night?

22 Where did all this \$1.2 million largess come from;
23 out of the blue? It's just like raining money. I'd like to
24 be able to ask those questions. I'd love to ask those
25 questions at a deposition to shorten the time here, and try to

1 get some of the answers, and know what he's going to -- you
2 know, and be able to cross-examine him effectively. That's --
3 that's -- and I -- whatever Your Honor wishes.

4 But if we're going to -- I mean, it's going to take
5 a couple of days to go through these line items. I mean -- I
6 mean, we're talking \$1.2 million worth of line items where he
7 just comes up with something out of the blue. And literally,
8 out of the blue, that he never billed before, that he now
9 suddenly remembers two years later, well, gee, I forgot to
10 bill for this.

11 THE COURT: Well, and I mean, Mr. Vannah, we're
12 going to find out this information at the same time, because
13 we're going to do it in the evidentiary hearing. Because --

14 MR. VANNAH: Okay.

15 THE COURT: -- I'm not going to make a decision as
16 to what's going to happen with this \$1.2 million without me
17 having all those facts either. And a two-day deposition, plus
18 a one-day evidentiary hearing adds up to three days in my
19 book. If we do it all in front of me, it's two days.

20 MR. VANNAH: Two days. That's fine.

21 THE COURT: So we're going to do it here.

22 When are you guys available to --

23 MR. VANNAH: Sometime in June for -- I'm going to be
24 in Europe most of May.

25 THE COURT: Okay. I just didn't know if you wanted

1 this done sooner rather than later, Mr. Christensen?

2 MR. CHRISTENSEN: We have a couple of dates in April
3 that fit for our team; April 19 and 20.

4 THE COURT: I'm not here. I'm at the District
5 Judges Conference. And I'm actually presenting on the 20th,
6 so I actually am forced to show up that day.

7 MR. CHRISTENSEN: We -- well -- well, right.
8 Understood. Understood.

9 THE COURT: So, I will be there that day. I mean, I
10 could miss the 19th, but I have to be there on the 20th.

11 MR. CHRISTENSEN: Right. We have a couple of dates
12 at the beginning of May which is the 1st and --

13 MR. VANNAH: Judge, remember --

14 MR. CHRISTENSEN: -- the 2nd.

15 MR. VANNAH: -- I'm going to be in Europe, so that's
16 hard for me to do.

17 MR. CHRISTENSEN: When -- when do you go?

18 THE COURT: You're out the whole month of May?

19 MR. VANNAH: I go on the 2nd. I leave May 2nd.

20 THE COURT: Oh, okay.

21 MR. CHRISTENSEN: Well, what time? Is it a --

22 MR. VANNAH: Pardon me?

23 MR. CHRISTENSEN: You fly in during the day or is it
24 a nighttime flight?

25 MR. VANNAH: Yeah, I fly -- no, I fly on May 2nd.

1 It's at 5:00 p.m. or something.

2 THE COURT: Okay. So when do you return, Mr.

3 Vannah?

4 MR. VANNAH: I get back at the end of May, so --

5 THE COURT: Man, you should be taking me with you,

6 to be gone for the whole month.

7 MR. VANNAH: Yeah, no, it's a -- it's -- it's a --

8 it's a long trip. It's one of those rare times I take -- I

9 actually don't take many vacations, but this is one I actually

10 -- I'm going to Paris and Scotland and England and other

11 places. It's a -- it's a fun trip.

12 THE COURT: Okay. So you'll be back around Memorial

13 Day?

14 MR. VANNAH: Yes, I am.

15 THE COURT: So that -- the week of the 29th?

16 MR. VANNAH: I am back. That's when I'm back.

17 THE COURT: What do you guys think about that week?

18 Let me see. It looks like I'm here that whole week.

19 MR. VANNAH: Or the 1st of June would be good, too,

20 whatever you -- whatever's your pleasure.

21 THE COURT: Well, the problem is, the -- well, we

22 have to be dark the whole week of the 4th. They're redoing

23 the JAVS, and that requires us to be dark for a whole week.

24 And then I'm not here the 11th.

25 MR. VANNAH: Judge, the week -- the week of June

1 28th totally works for me if --
2 MR. CHRISTENSEN: May 28th?
3 THE COURT: May 28th?
4 MR. VANNAH: I meant May.
5 THE COURT: Because the 28th is a holiday. So it
6 would be the --
7 MR. VANNAH: I'm looking at my calendar but it said
8 June at the top, yeah.
9 THE COURT: -- 29th? Does that work for you, Mr.
10 Christensen?
11 MR. CHRISTENSEN: I can make the very end of May
12 work. We have a issue in that Mr. Christiansen -- no relation
13 -- although I do sometimes get his mail -- is also on the
14 team, and he may be -- is it a debt case in May?
15 UNIDENTIFIED MALE SPEAKER: No, he's -- it's just a
16 trial, med mal trial.
17 MR. CHRISTENSEN: Okay. He's in a med mal trial
18 currently in May. I'm not sure when it ends. There are some
19 writs pending --
20 THE COURT: Okay.
21 MR. CHRISTENSEN: -- so the whole case may get
22 kicked, but the Supreme Court hasn't given word back on the
23 writs.
24 THE COURT: Okay.
25 MR. CHRISTENSEN: So we're in a -- I guess we could

1 tentatively --

2 THE COURT: So do you want to just set this so that

3 we have a date in place, and then we can get together and

4 change the date --

5 MR. VANNAH: Sure.

6 THE COURT: -- if something changes?

7 MR. CHRISTENSEN: Let's do that.

8 MR. VANNAH: That's a good plan, because --

9 THE COURT: Okay. Because that week I can -- I

10 mean, I have calendars, but I mean like Tuesday we could start

11 at 11:00.

12 MR. VANNAH: Okay.

13 THE COURT: Tuesday, the 29th?

14 MR. CHRISTENSEN: Okay.

15 MR. VANNAH: That sounds fine.

16 THE COURT: Okay. And then Wednesday the 30th, we

17 could start at 10:30. And would you guys go -- let's just set

18 Thursday to start at 9:00, just in case we need to go into

19 Thursday.

20 MR. VANNAH: Right, because we may lose a little

21 time there, sure.

22 THE COURT: Okay.

23 MR. VANNAH: So --

24 THE COURT: So Thursday, I don't have a calendar, so

25 we can start at 9:00 o'clock.

1 MR. VANNAH: That sounds great, Judge. That would
2 work --

3 THE COURT: Okay.

4 MR. VANNAH: -- out perfectly.

5 MR. CHRISTENSEN: Your Honor, do you want prehearing
6 briefs or --

7 THE COURT: I would, actually, yes, like to have the
8 -- your prehearing briefs on this issue.

9 MR. VANNAH: Well, it's hard for me to develop one
10 when I don't know what he's going --

11 THE COURT: Without doing the deposition?

12 MR. VANNAH: -- to say. I have no idea what he did.
13 He just out of the blue, I'm telling you, it's --

14 THE COURT: Well, I mean, the issue is, Mr. Vannah,
15 I mean, you dispute that he's owed the money anyway, so you
16 could just write your brief based on what you think he's owed.

17 MR. VANNAH: Well, I -- I --

18 MR. CHRISTENSEN: Why don't you --

19 MR. VANNAH: -- I think he's owed some money because
20 I just don't --

21 THE COURT: Right. There is an unpaid --

22 MR. VANNAH: -- know how much.

23 THE COURT: -- bill, and you reference that in your
24 motion that there's an unpaid bill.

25 MR. VANNAH: Exactly.

1 THE COURT: Right.

2 MR. VANNAH: That last bill. And we haven't gotten
3 it yet.

4 THE COURT: Right. But you --

5 MR. VANNAH: Well, I guess we have it now.

6 THE COURT: So your brief would just basically say
7 he's entitled to what's unpaid in that one last bill.

8 MR. VANNAH: Agreed.

9 THE COURT: And that's it.

10 MR. VANNAH: That makes some sense.

11 THE COURT: Yes. And, I mean, you know, there's --
12 that's always open for change, but that's a starting point
13 where we're going to start. That's always open for change if
14 the testimony comes out to be something else.

15 MR. VANNAH: You know, I mean, the big mystery is,
16 and I guess that's what I wanted to ask about is, what
17 happened after the case settled? Why would like hundreds of
18 thousands of dollars in bills after the case is settled, what
19 happened there?

20 THE COURT: Right. Well, we're going to find all
21 that out at the evidentiary hearing.

22 MR. VANNAH: Okay. Well, that's going to be a good
23 question.

24 MR. CHRISTENSEN: You should really take a look at
25 the Declaration that's attached to the motion. Maybe it would

1 probably answer his questions instead of --

2 MR. VANNAH: Well, I don't believe everything people

3 say.

4 MR. CHRISTENSEN: -- pleading ignorance.

5 MR. VANNAH: I like to do cross-examination

6 because --

7 MR. CHRISTENSEN: If we could --

8 THE COURT: Well, we'll have three days that we'll

9 set aside, so that we'll be able to get this done.

10 MR. CHRISTENSEN: Can we have a date on the briefs?

11 That's what we were looking at before the soliloquy stuff.

12 THE COURT: Okay.

13 MR. VANNAH: Do you want to exchange briefs or just

14 have blind briefs?

15 MR. CHRISTENSEN: Same time. Let's -- well, no,

16 they exchange, but at the same time --

17 THE COURT: Same time. Just --

18 MR. CHRISTENSEN: -- simultaneous.

19 MR. VANNAH: Sure.

20 THE COURT: -- if you guys could have them to me by

21 May 18th, that Friday, at 5:00.

22 MR. VANNAH: Absolutely, Your Honor.

23 THE COURT: Okay?

24 MR. CHRISTENSEN: I'm --

25 THE COURT: And then if you could just bring a

1 courtesy copy to chambers just in case there's some --

2 MR. CHRISTENSEN: Oh, May 18th.

3 THE COURT: -- mixup with Odyssey.

4 MR. CHRISTENSEN: Got it. Okay. Very good.

5 THE COURT: Okay? Thank you, counsel.

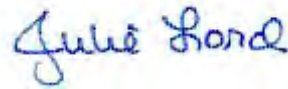
6 MR. CHRISTENSEN: Thank you, Your Honor.

7 MR. VANNAH: Thank you, Your Honor.

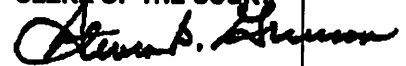
8 [Hearing concluded at 10:11 A.M.]

9 * * * * *

ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/visual proceedings in the above-entitled
case to the best of my ability.



JULIE LORD, INDEPENDENT TRANSCRIBER
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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

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

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

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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1 Las Vegas, Nevada, Monday, August 27, 2018

2
3 [Case called at 10:44 a.m.]

4 THE COURT: -- Family Trust, American Grating, LLC v. Daniel
5 Simon Law, Daniel Simon, d/b/a Simon Law. Okay.

6 So, this is the date and time set for an evidentiary hearing.
7 Can we have everyone's appearances for the record?

8 MR. VANNAH: Yes. Robert Vannah and John Greene on
9 behalf of the Edgeworth Trust and the Edgeworth family.

10 Mr. CHRISTENSEN: Jim Christensen on behalf of Mr. Simon
11 and his law firm.

12 MR. CHRISTIANSEN: Peter Christiansen as well, Your Honor.

13 THE COURT: Okay. So, this is the date and time set for the
14 evidentiary hearing in regards to the lien that was filed in this case, but I
15 also have Mr. Simon's Law Office filed a trial brief regarding the
16 admissibility of a fee agreement. Did you guys get that?

17 MR. VANNAH: Yes, Your Honor.

18 THE COURT: Okay. Are you guys prepared to respond to
19 that or --

20 MR. VANNAH: We are, Your Honor.

21 THE COURT: Okay. And I have had an opportunity to review
22 it while we were waiting.

23 Mr. Christensen, do you have anything you want to add?

24 Mr. CHRISTENSEN: Just a couple of thoughts, Your Honor.
25 Last week, we requested that Mr. Vannah voluntarily produce the fee

1 agreement. He declined to do so. So, late last week a subpoena was
2 served duces tecum. The trial brief lays out the reasons why that fee
3 agreement is relevant and also lays out the law on why, in this situation,
4 it's not privileged, and it can be introduced.

5 To the extent that there were any particular attorney-client
6 communications made to Mr. Vannah, which were memorialized in some
7 fashion in the fee agreement, like he wrote in the margins or something,
8 those could, of course, be redacted. So, I don't think there's any true
9 defense to the subpoena. Constructive discharge is an issue, and part of
10 the evidence of construction discharge is the fact the clients went to a
11 new lawyer while the underlying litigation was still pending.

12 THE COURT: And correct me if I'm wrong, but I remember --
13 and correct me because this was a few hearings ago. I remember there
14 was a discussion in regards to -- at some point, was there a discussion
15 between Mr. Vannah and Mr. Simon that Mr. Vannah told Mr. Simon that
16 he was still counsel of record?

17 MR. VANNAH: Correct.

18 Mr. CHRISTENSEN: There was several --

19 THE COURT: Okay. I vaguely remember that, so can
20 somebody just enlighten me as to the status of that, because I remember
21 that about two to three hearings ago --

22 Mr. CHRISTENSEN: There were --

23 THE COURT: -- there being a discussion about that.

24 Mr. CHRISTENSEN: There were several evolving
25 discussions, and it's important to keep the timeline in your mind. At

1 approximately November 30th or so, there was a communication from
2 the clients to Mr. Simon saying Mr. Vannah is now my lawyer -- or it
3 might have come from Mr. Vannah's office, saying Mr. Vannah is now
4 my lawyer, do not communicate directly.

5 THE COURT: Okay.

6 Mr. CHRISTENSEN: That led to the following day. That was
7 -- the first lien was filed to protect Mr. Simon's and his law office's
8 interest.

9 Subsequent to that, there were email communications
10 mainly between Mr. Vannah and myself, some letter communications, in
11 which, for example, I raised the issue of constructive discharge and the
12 fact that Mr. Simon is no longer able to talk to his clients, and we had the
13 important issue, the pending contract claim for recovery of attorney's
14 fees expended against Lange Plumbing.

15 THE COURT: Right.

16 Mr. CHRISTENSEN: That led to a conference call between
17 the parties, and then we had a consent to settle provided to Mr. Simon
18 that was signed by both clients and said, upon the advice of Mr. Vannah,
19 you know, blah, blah, blah, we're not going to pursue this claim.

20 At one point, I sent an email on over there and I said, look,
21 you know, we got to make a decision whether Mr. Simon is still going to
22 be counsel of record here. He can't talk to the clients. They're not
23 following his advice. He's not able to explain to them the importance
24 and the significance of that contract claim against Lange Plumbing that's
25 not subject to offset or any other reduction because of monies recovered

1 by -- from Viking. And that fell on deaf ears, and I said, well, we're going
2 to have to think about this next step.

3 And then there was a back and forth on an email or two that
4 said something to the extent of, if you withdraw, that's going to increase
5 our damages. So, in other words, there was a constructive discharge of
6 Mr. Simon, and then there was either a direct or indirect threat,
7 depending on how you want to read it, that if he actually withdrew,
8 because of the constructive discharge, that would increase the claims
9 against him. So, that put Mr. Simon in kind of, you know, darned if you
10 do, darned if you don't situation, where he couldn't talk to the clients, but
11 he was being threatened that if he withdrew, bad things would happen
12 to him.

13 Then, of course, they sued him for conversion before he had
14 any funds to convert and now we're here today.

15 At the current day, there has not been a motion to withdraw.
16 It would have been filed before Your Honor.

17 THE COURT: Right.

18 Mr. CHRISTENSEN: However, the underlying case has been
19 wrapped up based upon the advice from Mr. Vannah to settle that lien
20 claim for 100,000. So, to a certain extent, that -- there's no longer an
21 underlying case for Mr. Simon to represent them in; however, for our
22 purpose here today, the issue of constructive discharge is important.

23 We have a difference of opinion on whether there was an
24 expressed contract and whether there was a meeting of minds on the
25 payment term.

1 THE COURT: Right.

2 Mr. CHRISTENSEN: We also -- secondarily, we also have a
3 difference of opinion on whether the conduct of the parties could
4 establish an implied agreement on payment terms. We say it's clear, it's
5 not. And we think as you hear the evidence, you're going to understand
6 why we're saying that.

7 But even if a payment term is determined expressly or
8 impliedly, it doesn't matter if there is constructive discharge, because if
9 there's constructive discharge, then there's no contract. And under the
10 law in the State of Nevada, Mr. Simon gets a quantum meruit recovery
11 or a reasonable fee.

12 So, in fact, you could almost reverse the analysis and just
13 take a look at whether there was constructive discharge first because if
14 there is, it really doesn't matter if there is a meeting of the minds or not
15 on a payment term because the contract has been blown up. So, then
16 you go to QM, quantum meruit.

17 So, that's kind of why the fee agreement is important,
18 because it shows that, while Mr. Simon was involved in active litigation
19 in the underlying case, and although, there's a seven-figure claim against
20 Lange pending, and when there's still details to be worked out on the \$6
21 million Viking settlement, the clients have gone to another lawyer, hired
22 another lawyer, taken advice from that other lawyer, and told Mr. Simon
23 not to talk to them.

24 So, we think the fee agreement is going to be another piece
25 of substantial evidence that would lead this Court to find a constructive

1 discharge. So, we'd like to see it and see what it says.

2 THE COURT: Okay. Mr. Vannah, Mr. Greene.

3 MR. VANNAH: Thank you, Your Honor. Sort of a revision of
4 his history. Here's what happened. The case had settled. The big case
5 has settled for 600,000, everybody agreed on that. Mr. Simon had a
6 meeting in mid-November and told the clients he wanted a larger fee
7 than what they were going to pay. He then said to the clients, you need
8 to go out and get independent counsel to look at this for you, which is
9 what he had to do anyway. He just wants them -- he had a new fee
10 agreement for them to sign or a fee agreement, and then told them you
11 need to get independent counsel to look at it and told them that. He said
12 that's -- that was the --

13 THE COURT: To look at the fee agreement?

14 MR. VANNAH: Yeah, to look at the whole thing.

15 THE COURT: Okay.

16 MR. VANNAH: I mean, he comes up with the fee agreement
17 and -- after the case settled and has a fee agreement prepared for them,
18 gives it to them, said here's the fee agreement, I want you to sign in mid-
19 November 2017, after the \$600,000 settlement took place.

20 And the fee agreement he wanted them to sign said,
21 basically --

22 THE COURT: And this is the \$6 million settlement that you're
23 talking about?

24 MR. VANNAH: Yes, that had already happened.

25 THE COURT: Right, but you keep saying 600,000, so I'm just

1 making sure --

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

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

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

7 THE COURT: Okay.

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

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

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

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

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

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

6 THE COURT: -- Viking?

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

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

10 MR. VANNAH: It hadn't settled.

11 THE COURT: Okay.

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

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

1 and sign whatever you have to do to get the Lange settlement done.
2 Just accept it. Accept it and whatever you have to do, that's it. Do what
3 you have to do with the Judge, and you do that.

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

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

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

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

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

19 MR. VANNAH: I got it right now.

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

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

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

24 MR. CHRISTENSEN: Have his people do it.

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

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

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

4 THE COURT: Okay.

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

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

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

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

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

13 THE COURT: Okay.

14 MR. VANNAH: Simple as that.

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

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

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

21 [Pause]

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

24 THE COURT: Okay.

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

1 THE COURT: Okay.

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

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

4 MR. VANNAH: I don't care.

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

7 MR. CHRISTENSEN: Right.

8 THE COURT: I wasn't sure.

9 MR. CHRISTENSEN: Okay. Okay.

10 DEFENDANT'S OPENING STATEMENT

11 BY MR. CHRISTENSEN:

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

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

17 THE COURT: Counsel?

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

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

23 Mr. Christensen?

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Mr. Christensen?

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

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

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

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

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

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

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

1 the facts submitted. And this is an extension of that and that's what
2 we're doing here.

3 I understand Mr. Vannah's objections. I understand what
4 goes on in jury trials, when you're presenting things to the jury and
5 when the Judge is going to present the law to them at the end of the
6 case through the jury instructions. That ain't what we got here. This is
7 different.

8 So, you know, I can get on through this, and we can move on
9 or, you know, Mr. Vannah can --

10 THE COURT: Well, I mean --

11 MR. CHRISTENSEN: -- continue to object.

12 THE COURT: -- Mr. Christensen --

13 MR. CHRISTENSEN: This law -- you're going to get this law
14 sooner or later anyway, so let's --

15 THE COURT: Right. And, I mean, that's what I'm saying. I
16 don't --

17 MR. CHRISTENSEN: -- get it done now so that you
18 understand what's going on.

19 THE COURT: Right, and I mean, I -- and I hate to sound frank
20 about this, but I've been presiding over this case almost the entire time
21 I've been on the bench, so there's not a lot of things about the law of this
22 case that I think I'm confused about. I mean, I would hope I could at
23 least earn that much credit, as well as I was up late last night reading all
24 the briefs that you guys submitted in this case, and I have five binders
25 worth of stuff.

1 So, if we could just get to the facts of this case and get to the
2 evidentiary part, and I will let you argue this case until there's no
3 tomorrow at the end, but I've already read like all the stuff because this
4 is absolutely in the trial brief that was submitted, and I have read that.

5 MR. CHRISTENSEN: Okay. Well, I guess I'll abandon the
6 PowerPoint and finish up pretty --

7 THE COURT: Okay. And, I mean, I --

8 MR. CHRISTENSEN: -- quickly.

9 THE COURT: -- just the legal portion of it. I mean, because I
10 think this -- and this is a fact-finding hearing. I'm going to have to make
11 legal determinations at the end, but I have to give everyone the credit
12 that they're due, that you guys have spent massive amounts of times
13 thoroughly briefing this case.

14 MR. CHRISTENSEN: That's true, Your Honor. So, what
15 you're going to find, as the evidence is presented, is that the claim made
16 in the complaint, that there was an expressed agreement in 2016,
17 doesn't hold up. What you're going to find is that there was never a firm
18 agreement on the payment term. That issue was always in flux. There
19 was debate that came up at various times, including in August of 2017,
20 which you've seen the email concerning what are the payment terms for
21 this.

22 And you're -- it's also important to pay attention to the
23 timeline of the evolution of the case, of when it moves from a friends
24 and family matter to there being litigation, and then when the thing
25 really blows up and things are really flying, and that's when there's more

1 effort to reach a term and that fails. So, at the end of the day, there's no
2 expressed term on the payment and there's no implied term.

3 Now, of course, they're going to point to the bills. Bills were
4 sent and paid, that's not the end of the story. That's more the beginning
5 of the story on the bills. What you're going to hear is evidence
6 concerning the reason why the bills were sent. That the bills were sent
7 to bolster the contract claim against Lange and also to put Lange on
8 notice of the existence of that significant claim that was later waived.

9 You'll hear testimony concerning how the \$550 number was
10 reached, and it certainly, from our position, wasn't reached as a result of
11 the meeting of the minds. And then you're also going to see evidence
12 concerning the actual content of the bills, the knowledge of Mr.
13 Edgeworth, and then how no reasonable person in his position could --
14 should not be able to argue that these bills were both the beginning and
15 the end of the story.

16 What you're going to hear is that there was a tremendous
17 amount of work that was done in this file that was not billed for. That's
18 part of the reason why we had these bills that were submitted as part of
19 the adjudication process. That was done for several reasons. One of the
20 reasons is that it's well-known, if you go on over the case law, my
21 apologies to Mr. Vannah, that sometimes the courts like to see an overall
22 listing of time because that's evidence of work. Whether or not they get
23 paid on an hourly or on quantum meruit.

24 So, we provided it for that reason. We also provided it so
25 that you have a good look of what's going on and in case the worst case

1 scenario, from our point, comes true.

2 What's important to understand about those bills is that Mr.
3 Simon's firm is not an hourly firm. They don't have regular timekeepers.
4 They don't have regular billing or timekeeping software. They don't
5 even have the old books that we used to use. They don't have any of
6 that stuff. So not only were there bills that were sent during the
7 underlying litigation incomplete, sometimes grossly so, but when they
8 went through and tried to do a listing of the time spent for the
9 adjudication hearing, they made some errors. And when they'd go on in,
10 what they do is, they would look at a landmark date. So, for example,
11 the date that something was filed and that's what they would key the
12 billing off of.

13 Now, not necessarily all the hours were done that day, but in
14 going back, they wanted to make sure that they got the dates right. As a
15 result of this process, they know that there is a document with a date for
16 every single billing entry. That also means that they didn't capture a lot
17 of their work in those bills because if they couldn't find a piece of paper
18 with a date on it, they didn't bill for it.

19 And before I turn this over to Mr. Vannah, if he cares to make
20 a statement, I do just want to impress on the Court the evidence that
21 you're going to see about the amount of work that was done on this file,
22 that was not reflected on those initial billings and try to give Your Honor
23 an idea of the scale of this litigation and the fact that it dominated the
24 time of this law firm. And what we've done is, there was an awful lot of
25 email correspondence between Mr. Simon, his staff, and Mr. Edgeworth.

1 Mr. Edgeworth really dominated their time, which is fair to do if you pay
2 for it.

3 What we did was, we printed out the emails between these
4 folks during the time the underlying litigation was going, just so that you
5 understand the scale of it. I think a standard banker's box has -- if you
6 don't have any binders in it, it has 5,000 sheets of paper in it. This is
7 obviously a little bit more than that -- or a little bit less than that because
8 we've got binders in here. Just a couple more.

9 THE COURT: These are just the emails?

10 MR. CHRISTENSEN: These are just the emails, Your Honor.
11 Normally, I would carry two at a time, but while I'm not seeking
12 sympathy, I did kind of tweak a muscle in my back a couple days ago.

13 THE COURT: Tell them downstairs, we prefer safety in
14 Department 10.

15 MR. CHRISTENSEN: Yeah, safety first.

16 [Pause]

17 MR. CHRISTENSEN: Now, in full disclosure, Your Honor,
18 there are two of these binders of about this size that are attachments that
19 were, you know, hooked to whatever it linked to the email, but of course,
20 those were -- oh, and there's more. Those were done over and
21 discussed in the context of many of the emails, so we included them as
22 well. So that just gives you a little bit of scale. Later on, we're going to
23 be demonstrating to you the size of the actually underlying file. We're,
24 of course, not going to copy it and bring it all in because it's dozens and
25 dozens of banker's boxes, and we wanted to save a few trees.

1 But at the end of the day, we think that the Court should find
2 -- should reach a fee for Mr. -- a reasonable fee for Mr. Simon and his
3 law firm pursuant to quantum meruit. Thank you.

4 THE COURT: Okay. Thank you. Mr. Vannah, would you
5 wish to make an opening?

6 MR. VANNAH: Yes, Your Honor. Thank you.

7 THE COURT: Okay.

8 PLAINTIFFS' OPENING STATEMENT

9 BY MR. VANNAH:

10 A lot of things here we agree on. So, there was a bad flood,
11 and it was a sprinkler system that was in the house. And so, in May of
12 2016 -- Mr. Edgeworth's wife is good friends with Mrs. Simon and said,
13 you know, why don't you talk to Danny and see what he can do for you?
14 So, Mr. Edgeworth met with Danny. They had a meeting and Danny
15 said, I'll send him some letters and see what we can do. So, he sends
16 him the letters. Didn't do any good, which is not surprising to either one
17 of them, I'm sure.

18 So, what happened is Danny then says to him, look, I'll
19 represent you. I can do your case. I'm going to bill you \$550 an hour.
20 Tells him that point blank. That's what we charge \$550, and then my
21 associate will charge \$275 an hour. And they have an understanding on
22 that. You're going to learn that Mr. Edgeworth was a little concerned
23 about the fee, because that's about twice what he ended up paying his
24 firm that he uses out in California.

25 We brought some of those bills to prove that. But he had a

1 large firm that he used out of California that has done some patent work
2 for them, at a much lesser fee. But he actually ended up having a
3 conversation with his wife and says, I'm thinking about using somebody
4 else. Danny had written the letters and the wife said that might be a
5 problem. Why don't you just use Danny and pay him the higher fee?
6 And against his better judgment, he agreed to do that, but he told Dany
7 all right, fine. I'll hire you, and I'll pay you. Send me the bills.

8 So, Danny does the work, does a fine job. We're not
9 complaining about the work. He files the complaint. He goes forward,
10 and he sends -- he starts sending bills. Now, this is the interesting part.
11 His bills just through September 22nd, which is where the last bill ended
12 that was paid, the bills that were sent were four invoices. They added up
13 to almost \$400,000 in attorney fees. Now this is over a case that
14 everybody suspected had a maximum value between 500 and \$750,000.

15 So, Mr. Kemp -- I like what Mr. Kemp said. Mr. Kemp said, I
16 would have never, under any circumstances, taken this case under a
17 contingency fee. I just wouldn't have done it. It doesn't pencil out. So, I
18 mean, you know, frankly, to be honest with you, I'm looking at my client
19 thinking you know, here's a guy with a Harvard MBA, but he's paid out --
20 and I'm not talking about costs. There's another \$111,000 in costs.

21 By September the 22nd, he had paid out -- just paid out up to
22 that date over \$500,000 in attorney fees and costs on a case that
23 probably did have a value between 500 and \$750,000, so that doesn't
24 make a lot of sense, to be honest with you, from a standpoint of just
25 economic law.

1 And it's not surprising why Mr. Simon -- he apparently
2 agrees with Mr. Kemp that this would be a bad case to take on a
3 contingency, because if you did it at 40 percent, I mean, your -- 40
4 percent of \$750,000 is I think 300,000, and he's already billed \$387,000.
5 So, what happened was -- is -- up through this meeting that took place in
6 San Diego -- so what happened is they went to San Diego, because they
7 weren't happy with the expert. The expert had done a really lousy job,
8 billed a lot of money, and so they both agreed let's just go to San Diego,
9 meet with the experts, talk to them and say what are you doing here? I
10 mean, this isn't a very good job you're doing.

11 So, they go down. That was the purpose of their meeting.
12 So, at this point in time -- and this is really important. This is in August
13 of -- I wrote down the date. August 8, 2017, I believe is the date that they
14 had the meeting in San Diego. That's the critical -- up to that point,
15 everything is pretty clear. I mean, there's been an express
16 understanding that the billing's going to be 550 an hour and 275 with the
17 associate. Two bills had come in at this point in time, and they're paid.

18 So, on August 8th, they go to a bar. They're waiting for the
19 plane back to Las Vegas, and they go have a couple drinks together in a
20 bar, and they get into a discussion about you know what -- you know,
21 this is really expensive. The client saying, well, I'm paying a lot of
22 money out. I wonder if there's some kind of a hybrid kind of thing we
23 could come up with maybe that I wouldn't -- I -- because this is becoming
24 very expensive.

25 So, what happened -- Mr. Edgeworth was borrowing money

1 to pay the legal fees. Generally, I wouldn't recommend that. That's
2 probably not a really great idea to go out and borrow money to pay legal
3 fees, but that's what he had done. He'd gone and borrowed money from
4 his mother-in-law, high interest loans and was paying legal fees with
5 borrowed money. Mr. Simon understood that and realized that.

6 So, on August 8th, they had a discussion in the bar and the
7 discussion was -- I mean, is there a possibility that my future billings
8 would be a little less or maybe even give some of the money back that
9 I've billed and do this case on a contingency, because the case -- Mr.
10 Edgeworth thought the case had more value than Mr. Simon did at that
11 time, but they had that discussion.

12 So, it ended up with Mr. Edgeworth saying to Mr. Simon --
13 now, keep in mind, nobody had ever reduced anything to writing. I'll get
14 back to you about that, and I'll tell you what I'm willing to do. So, Mr.
15 Edgeworth said all right. You make me a proposal, if you want to. Well,
16 that's not what happened. So, what happened, Mr. Simon goes back to
17 his office. A couple weeks go by, some time goes by, doesn't hear
18 anything -- Mr. Edgeworth doesn't hear anything about any proposal.

19 What does Mr. Simon do? He prepares another hourly bill
20 and sends another hourly bill out. My client finally writes an email --
21 that's the one that you read -- saying, look, I mean, if you want, I can pay
22 you hourly, if that's what you want me to do. I'm just going to have to
23 go out and borrow money. I might have to sell some of my Bitcoin. He
24 was investing in Bitcoin. He thought it was a good investment. I can
25 borrow more money. You know, whatever it's going to cost. I'll do

1 whatever it takes. And that email says that if you want to do it hourly, I'll
2 just continue paying you hourly.

3 Mr. Simon's response to all that was to send an hourly bill,
4 send another bill. Mr. Edgeworth borrowed the money, paid the bill in
5 full. After that, Mr. Simon sends another hourly bill. That takes it right
6 up to September 26th, is another hourly bill. Mr. Edgeworth goes out
7 and borrows money. No further discussion. The way he sees it, I guess,
8 Mr. Simon is talking with the bill, do you want to do something different?
9 Mr. Simon just continues sending two more bills.

10 Those bills add up to -- those four invoices that were paid, all
11 of them paid, added up to \$387,000 in attorney fees, almost \$400,000 in
12 attorney fees and over \$100,000 in costs that Mr. Simon -- Mr. Edgeworth
13 paid, all four of those invoices. You're going to also learn in this case
14 that when Mr. Simon -- and I don't want to denigrate Mr. Simon's efforts.
15 I mean, it was a good result, but I want to tell you something.

16 Mr. Edgeworth, as you'll learn from the testimony, is a bright
17 guy. Harvard MBA. Intelligent. He's very involved in the case. He's the
18 one that went out -- and so essentially what had happened is Viking had
19 been dishonest with the Court and with them about how many of these
20 sprinkler systems had malfunctioned in the past. What you're going to
21 learn is that my client -- he's a very -- he micromanages things, and he
22 went on his own and started going on the internet, looking up Viking,
23 finding out that other people had these problems.

24 He went and contacted originally other lawyers in California
25 that had -- were handling these cases, other litigants, had conversations

1 with them, and then learned from them that they're -- a lot more about
2 Viking and about these failures than Viking had admitted. In other
3 words, they had just not been candid about that. And I'm sure Your
4 Honor remembers all that stuff. So that's -- my client goes and does all
5 that and provides all that stuff to Danny's office. Now, you know, I'm not
6 denigrating Danny's efforts or Mr. Simon's efforts. I mean, he's a good
7 lawyer, but my client went out a dug all that stuff up.

8 So, then they had this mediation. And the first mediation,
9 didn't do it, but at the second mediation, they reached a settlement for
10 \$6 million. Right after that happened, there's a meeting -- Danny calls a
11 meeting -- Mr. Simon calls a meeting in the office and that's November
12 17th, 2017, another big day. Mr. and Mrs. Edgeworth go to the meeting,
13 and they're like wow, what's this all about? They're thinking maybe this
14 is some really great meeting.

15 Well, what it's all about is Mr. Simon has now prepared this
16 letter, prepared this fee agreement and tells them, you know what, I want
17 you guys to do the right thing. I understand we had an hourly
18 agreement. I understand you paid all your bills one after another after
19 another, but, you know, nobody expected this case to do as well as it's
20 doing. I'm losing money at \$550 an hour, because my time's worth a lot
21 more than \$550 an hour and, you know, I'm losing money. I'm losing
22 money. Now, let's do the case for 25 percent.

23 So, then he presents this agreement to him saying I want you
24 to pay me 25 percent of the \$6 million. I want 25 percent of that as a fee,
25 and I will give you back credit for the money you've already paid in, the

1 \$400,000 you've already paid in. So -- and on the Lange case, that's
2 going to be separate. We'll work out something different on that, but I
3 want 25 percent of that \$6 million settlement we got. That's \$1.5 million.
4 I'll give you -- but I'll give you credit for what you've already paid in.
5 That's what happened here. So, they're stunned. They're actually
6 stunned. And the words -- conversation wasn't particular friendly.

7 So, Mr. Simon said you need independent counsel. You
8 ought to do that, is what he's supposed to be doing anyway. The rules
9 are very clear that when you start entering into an agreement with your
10 client halfway through the litigation, you want to change the terms, you
11 need to advise them to get an independent counsel. That's what they
12 did. They came to my office. Came to my office and laid out the thing
13 and that's where we are now. That's basically where we are. There was
14 no constructive discharge. There wasn't a discharge at all.

15 So, you know, I -- we had a communication. It was a nice
16 communication with Mr. Simon and Mr. Christensen. We talked on the
17 phone. I made it clear that look, we want you to finish the case off, wrap
18 up the -- all you gotta do is do the release. That's the only thing that was
19 left to do on the \$6 million is sign the release and get the terms down,
20 you know, confidentiality, some things you've got to deal with. Wrap it
21 up. Do that. But, by the way, you guys have reached a point here where
22 the words in the last meeting were pretty bad. If you want, I'll stay in
23 between.

24 You know, I'll -- tell me what you want me to tell them, and I
25 will tell them and vice versa, or we can all have a meeting together.

1 What do you want to do? But I think it ought to be civil. I just didn't
2 want it to become uncivil and -- you know, a screaming match and all
3 that. I don't like all that kind of stuff. I didn't want that to happen, so I
4 said you're not being fired. I'm not coming in on this case. No way I'm
5 going to associate on the case. I'm not going to substitute in on the
6 case. I don't want anything to do with the case. This is all about the fee.
7 The case is over.

8 And he said what about the Lange case? What do you want
9 to do about that? Well, why don't you just give me the proposal? I
10 looked at the proposal. I looked at Mr. Simon's idea, and I ran it by the
11 client, and they said what do you think? I said you know what, you
12 already got \$6 million. You got another 100 on the table. Take it. Just
13 take the money and call it a day. Just wrap it up. Accept the offer as is,
14 and they did. And that was -- that's it. So, I made it clear to Mr. Simon,
15 you know -- I talked to Mr. Christensen, you know. I don't -- nobody
16 needs to do anything.

17 Just wrap this thing up, and we'll deal with the fee issue later
18 with the Judge. We'll deal with that, but right now, let's get the case
19 wrapped up. I mean, you can't hold the clients up on a case, because
20 you're -- it becomes extortion. Then here comes the money. And so, the
21 bottom line was like what are we going to do with this money and look, I
22 made it clear. I said I know Mr. Simon's not going to steal the money.
23 I'm not worried about that. I know he would honor everything. The
24 clients are concerned.

25 So why don't we just go open a trust account? Eventually,