

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC

Appellants/Cross-Respondents,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,

Respondents/Cross-Appellants.

NO. 77678

Electronically Filed
Mar 28 2020 05:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION

Respondents.

NO. 78176

THE LAW OFFICE OF DANIEL
S. SIMON,

Petitioner

vs.

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

Respondents,
and

NO. 79821

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Real Parties in Interest.

**INDEX TO RESPONDENTS/ PETITIONERS COMBINED REPLY BRIEF
ON CROSS-APPEAL AND REPLY IN SUPPORT OF
PETITION APPENDIX**

VOLUME I OF I

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**INDEX TO RESPONDENTS/ PETITIONERS COMBINED REPLY BRIEF
ON CROSS-APPEAL AND REPLY IN SUPPORT OF
PETITION APPENDIX**

Document	Page No.
Volume I:	
Portion of Deposition of Brian Edgeworth, dated September 29, 2017.....	RA000001- RA000014
Plaintiff's Motion for Release of Funds with Exhibits, dated December 28, 2018	RA000015- RA000058
Opposition to Plaintiffs' Motion for Release of Funds with Exhibits, dated January 11, 2019	RA000059- RA000077
Plaintiffs' Reply to Opposition to Plaintiffs' Motion for Release of Funds with Exhibits, dated January 28, 2019	RA000078- RA000111
Minute Order regarding hearing for Motion for an Order Directing Simon to Release Plaintiffs' Funds, dated February 5, 2019	RA000112- RA000113

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 EDGEWORTH FAMILY TRUST, and)
5 AMERICAN GRATING, LLC,)
6 Plaintiffs,)
7 vs.) Case No. A738444
8 LANGE PLUMBING, L.L.C.; THE)
9 VIKING CORPORATION, a)
10 Michigan corporation; SUPPLY)
11 NETWORK, INC., dba VIKING)
12 SUPPLYNET, a Michigan)
13 corporation; and DOES I)
14 through V and ROE CORPORATIONS)
15 VI through X, inclusive,)
16 Defendants.)
17
18 AND ALL RELATED CLAIMS.)
19
20
21
22
23
24
25

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
25 Job No. 23999

1 A. Yeah. I would think 5, maybe 15 at the
2 very peak. But average on a day, it's probably 5 or
3 less.

4 Q. Okay.

5 A. Depends how you're calculating.

6 Q. During the summer of 2015, did you hear
7 any complaints from any of the workers within the
8 residence that it was too hot to work?

9 A. Definitely not.

10 MR. NUÑEZ: Okay. Thank you, sir.
11 That's all the questions I have.

12 MR. SIMON: I have a few questions for
13 you.

14 EXAMINATION

15 BY MR. SIMON:

16 Q. As your house sits there today, do you
17 have a mold certificate?

18 A. No.

19 Q. So as your house sits there today, we
20 don't know if there's any mold in your house?

21 A. No.

22 Q. As far as the white matter that's coming
23 through your walls, do you know if that's water
24 moisture at all?

25 A. I don't know. I'm really concerned about

1 that.

2 Q. You talked about Lange when they allege
3 that they were assembling the sprinkler heads in the
4 basement, and you didn't believe that testimony.

5 A. Yes.

6 Q. All right. Part of the reason, there's
7 no lights down there?

8 A. You can't see anything in the basement.

9 Q. And to your knowledge, they didn't bring
10 any of their own lights?

11 A. I know they didn't.

12 Q. Okay. But you were asked whether you
13 were critical of anything they did, and you said,
14 "Well, I can't be critical of that because I don't
15 believe they did it."

16 Is it fair to say you don't know what
17 Lange did at all as it relates to those sprinklers
18 from the time they picked it up at Viking SupplyNet
19 until they put it in the ceiling in your house?

20 A. I have no idea.

21 Q. So we don't know what, if anything, they
22 did to those sprinklers; right?

23 A. No.

24 Q. Does it matter?

25 A. It might. I don't know. I doubt it.

1 Q. Well, they had a contract with you;
2 right?

3 A. Correct.

4 Q. And part of that contract, they had to
5 install products that were free of defect?

6 A. Correct.

7 Q. Right? And you don't care whether the
8 defect came from the manufacturing plant or some
9 damage happened in their truck or as they were
10 assembling in the basement. That's not your
11 concern; right?

12 A. No. That's Lange's problem.

13 Q. That's Lange's problem.

14 And Lange, when you say are you critical
15 of anything that they did in the installation, are
16 you critical that they put a defective sprinkler in
17 your house that destroyed your entire house?

18 A. Yes.

19 Q. Okay. And that's part of their
20 installation that they put that faulty product in;
21 right?

22 A. Yes.

23 Q. And to your understanding, is that a
24 breach of contract?

25 A. It is.

1 MS. DALACAS: Calls for a legal
2 conclusion.

3 A. Most definitely.

4 BY MR. SIMON:

5 Q. Okay. Did Bernie Lange or anyone from
6 Lange Plumbing ever offer to help you with any of
7 the repairs that were necessary because of the flood
8 that damaged your house?

9 A. No, and I personally asked him several
10 times.

11 Q. Did Bernie Lange or anyone at Lange
12 Plumbing ever make any effort to enforce the
13 warranty of the defective product from Viking that
14 they installed in your house?

15 MS. DALACAS: Calls for speculation.

16 A. Not that I know of. And I asked him to
17 do that exact thing after his insurance company
18 refused to pay him.

19 BY MR. SIMON:

20 Q. So when the insurance company refused to
21 pay, you had to hire a lawyer?

22 A. Correct.

23 Q. Right? And when we say "you," we're
24 talking about the owner of the property, Edgeworth
25 Family Trust; right?

1 A. Correct.

2 Q. As well as American Grating?

3 A. Correct.

4 Q. And whether you're named on an initial
5 complaint or an amended complaint, American Grating
6 is still incurring attorneys' fees to try and get
7 recovery for the damages caused by the breach of
8 contract by Lange?

9 A. Correct.

10 Q. Now, American Grating and Giberti --
11 American Grating, the developer; Giberti, the
12 general contractor -- were building the house at
13 645; is that accurate?

14 A. That's correct.

15 Q. All right. Any cost associated with the
16 repairs is a cost that's incurred by American
17 Grating?

18 A. Yes.

19 Q. Any attorneys' fees and costs incurred as
20 a result of being compensated for the damage caused
21 is incurred by American Grating?

22 A. That's correct.

23 Q. And ultimately has to be reimbursed to
24 the owners of the project?

25 A. That's correct.

1 Q. Which is the Edgeworth Family Trust?

2 A. That is correct.

3 Q. We were talking about fines claimed, and
4 there was a period for fines because of the repair
5 period. Do you remember that?

6 A. Correct.

7 Q. All right. And whether or not those
8 fines are going to be ultimately paid by the
9 Edgeworth Family Trust at the close of some escrow
10 hopefully in the near future, that's still damages
11 that were incurred by American Grating because it
12 was part of the construction?

13 A. That's correct. American Grating will
14 owe them that money.

15 Q. As well as all of the repairs, American
16 Grating had to deliver a completed house to the
17 Edgeworth Family Trust?

18 A. Correct.

19 Q. Right? And so if there's damage caused
20 during the course of construction, American Grating
21 has to incur the costs of repair; correct?

22 A. That's correct.

23 Q. And regardless of who pays it, out of
24 what account, what credit card, what loan, American
25 Grating incurred those expenses; correct?

1 A. That's correct. American Grating wasn't
2 in a working capital position to pay them.

3 Q. Has Lange Plumbing ever offered to pay
4 any part of your attorneys' fees and costs?

5 A. No.

6 Q. Pursuant to the contract, they're
7 responsible for your attorneys' fees and costs; is
8 that your understanding?

9 A. That is.

10 MS. DALACAS: Objection, form, calls for
11 a legal conclusion.

12 A. That's correct. It's pretty clear in the
13 contract.

14 BY MR. SIMON:

15 Q. Okay. In fact, I think paragraph 18 lays
16 that out pretty clearly, but they still haven't
17 offered to assist you in any way in prosecuting
18 these claims against Viking, have they?

19 A. No, and I've asked Bernie Lange.

20 Q. Pursuant to the contract, is it your
21 understanding -- let's see.

22 Turning to Exhibit 11, pursuant to the
23 contract, it says contractor being Lange Plumbing
24 and American Grating being the owner, and that's
25 basically just a definition so that when you read

1 this contract you know the obligations of each of
2 the parties within the contract?

3 MS. DALACAS: Objection, calls for a
4 legal conclusion.

5 BY MR. SIMON:

6 Q. Calls for common sense when you read the
7 contract too.

8 A. Yeah. It's a short form. Obviously the
9 general contractor is Giberti, not Lange Plumbing.
10 Lange Plumbing was a subcontractor. These aren't
11 legal terms. They're just terms.

12 Q. Right. So this helps when we read
13 through this contract and we know the rights and
14 obligations of the parties, when it refers to
15 "owner," we know that "owner" within the contract
16 means American Grating because it says it right at
17 the beginning?

18 A. Correct. It could have said "AB-" --

19 MS. DALACAS: Objection, calls for a
20 legal conclusion.

21 A. Correct. It could have said "ABC."

22 BY MR. SIMON:

23 Q. Right. Okay. So as part of that, the
24 indemnities, under "'Indemnities,'" 1.7, it says,
25 "shall mean Owner," and owner under the contract is

1 American Grating?

2 A. Correct.

3 Q. Right? Is that your understanding?

4 Then it also says, "its subsidiaries,
5 affiliates." Is Giberti an affiliate under this
6 contract?

7 MS. DALACAS: Objection, calls for a
8 legal conclusion.

9 A. I think so.

10 MR. SIMON: Did you get that?

11 THE REPORTER: "I think so."

12 MR. SIMON: Yes.

13 BY MR. SIMON:

14 Q. And "Owners." Edgeworth Family Trust is
15 an owner of American Grating?

16 A. That is correct.

17 MS. DALACAS: Objection, calls for a
18 legal conclusion.

19 BY MR. SIMON:

20 Q. So "owners" is also defined here within
21 indemnities under 1.7?

22 A. That is correct.

23 MS. DALACAS: Same objection.

24 BY MR. SIMON:

25 Q. Right? "Directors, officers, agents and

1 employees."

2 A. Yeah. Mark would be an employee.

3 Q. Right.

4 A. Directors, officers --

5 MS. DALACAS: And can I just --

6 A. -- and agents would be me and Angela.

7 MS. DALACAS: I don't mean to interrupt
8 you, Mr. Edgeworth.

9 Can I have a running objection as it
10 relates to every question that he's asking specific
11 to the contract? Calls for a legal opinion and
12 object to form.

13 BY MR. SIMON:

14 Q. Okay. And then the owners and directors
15 or officers would also apply to you and Angela
16 Edgeworth; right?

17 A. That's correct.

18 Q. Right. And under 7.1, it also says that
19 Lange Plumbing warrants that they're not going to
20 put any materials or equipment in there that has a
21 defect. See where it says that?

22 A. Yes.

23 Q. And they violated that provision when
24 they put in the defective Viking product in your
25 house; right?

1 A. They most certainly did.

2 Q. And a result, a direct result of that
3 defective material destroyed your house?

4 A. That is correct.

5 Q. Do you think that Bernie Lange or anyone
6 from Lange Plumbing has acted in good faith in
7 complying with the terms of their agreement that
8 they entered into by this contract in Exhibit 11?

9 MS. DALACAS: Same objection.

10 A. No.

11 MS. DALACAS: Calls for a legal
12 conclusion.

13 A. No. They haven't at all. You know, I
14 asked Bernie and I asked him to get a separate
15 attorney and get legal advice because he wasn't
16 abiding by his contractual duties.

17 BY MR. SIMON:

18 Q. And as a result of his breach of contract
19 and his conduct in failing to act in good faith and
20 deal fairly with you, you have incurred over
21 \$500,000 in attorneys' fees, costs in this case,
22 haven't you?

23 MS. DALACAS: Objection, calls for a
24 legal conclusion, form.

25 A. That's correct. In the contract, he was

1 supposed to enforce the warranty against Viking if
2 he believed it was a defect. He never did.

3 BY MR. SIMON:

4 Q. Okay. And that doesn't even cover the
5 cost of repairs that you had to come out of pocket
6 for; right?

7 A. He was obligated under the contract to
8 immediately repair the house also.

9 Q. Okay.

10 A. He never did.

11 Q. So he didn't do that part, and then he
12 didn't enforce the warranty, causing you to spend
13 another half a million dollars plus?

14 A. That is correct.

15 MS. DALACAS: Same objection.

16 BY MR. SIMON:

17 Q. And those damages are still accruing
18 every day?

19 A. Correct.

20 Q. Do you know whether Mr. Lange or Shelli
21 Lange or anybody at Lange Plumbing tried to take a
22 home equity loan out on their property?

23 A. No, they --

24 MS. DALACAS: Objection, calls for
25 speculation, form.

1 BY MR. SIMON:

2 Q. Do you know if they ever tried to get a
3 loan on any of their assets that they have?

4 A. No.

5 Q. Do you know if they tried to use any of
6 their working capital at their business to try and
7 pay for any of the damages that you've been caused?

8 MS. DALACAS: Same objection.

9 A. They most certainly did not.

10 MR. SIMON: I don't have anything else.

11 Thank you.

12 MS. PANCOAST: Good enough.

13 MR. SIMON: Finished or you got --

14 MS. DALACAS: Sorry, I just have one
15 follow-up.

16 I thought you had more, Janet.

17 MS. PANCOAST: No.

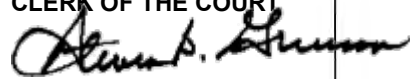
18 MS. DALACAS: Just one question for you,
19 Mr. Edgeworth.

20 EXAMINATION

21 BY MS. DALACAS:

22 Q. Do you have any information at all about
23 what Lange Plumbing may have done to try to enforce
24 the warranty with Viking?

25 A. Only my discussions with him.



1 JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
2 ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
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Attorneys for Plaintiffs

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

--000--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27
28

CASE NO.: A-16-738444-C

DEPT. NO.: X

**NOTICE OF HEARING ON
PLAINTIFFS' MOTION FOR
RELEASE OF FUNDS**

CASE NO.: A-18-767242-C

DEPT. NO.: XXIX

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

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the Motion for Release of Funds for hearing before the above-entitled Court on the _____ day of February 5, 2019, at the hour of 9:30 am, or as soon thereafter as counsel may be heard.

DATED this 28 day of December, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

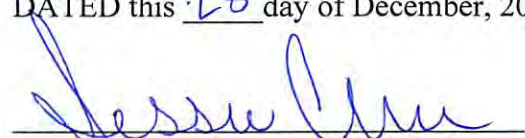
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Traditional Manner:
None

DATED this 28th day of December, 2018.


An employee of the Law Office of
Vannah & Vannah

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DISTRICT COURT
CLARK COUNTY, NEVADA
--o0o--

EDGEWORTH FAMILY TRUST; 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 I through V and ROE CORPORATIONS
VI through X, inclusive,

Defendants.

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

**PLAINTIFFS' MOTION FOR AN
ORDER DIRECTING SIMON TO
RELEASE PLAINTIFFS' FUNDS**

EDGEWORTH FAMILY TRUST; AMERICAN
GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC
2 (Plaintiffs), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN
3 B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Motion for an
4 Order Directing Defendants DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S.
5 SIMON, A PROFESSIONAL CORPORATION (SIMON) Release Plaintiffs Funds (the Motion).

6 This Motion is based upon the attached Memorandum of Points and Authorities; the
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and,
8 any oral argument this Court may wish to entertain.
9

10 DATED this 13th day of December, 2018.

11 VANNAH & VANNAH

12
13 *Signature*
14 For

15
16 ROBERT D. VANNAH, ESQ.

Bar No: 19530

17 I.

18 SUMMARY

19 The facts of this matter are well known to this Court. The path to this intricate knowledge
20 was gained by, but not limited to, having listened to five days of comprehensive testimony; by
21 having reviewed the totality of the evidence presented; by having read hundreds of pages of pre
22 and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual
23 findings and orders. As this Court knows, on November 30, 2017, SIMON filed a Notice of
24 Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an
25 amended attorneys lien with a net lien in the sum of \$1,977,843.80. On January 24, 2018, SIMON
26 filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing.

27 This honorable Court issued her Decision and Order on Motion to Adjudicate Attorney
28 Lien on November 19, 2018. In her Order, the Court found there was an implied agreement for a

1 fee of \$550 per hour between SIMON and the Edgeworths, and once SIMON started billing the
2 Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths
3 constructively discharged SIMON as their attorney on November 29, 2017, when they ceased
4 following his advice and refused to communicate with him. The Court then found SIMON was
5 compensated at the implied agreement rate of \$550 per hour for his services, and \$275 per hour
6 for his associates, up and until the last billing of September 19, 2017.

7
8 For the period between September 19, 2017 and November 29, 2017, the Court held
9 SIMON was entitled to his implied agreement fee of \$550 an hour, and \$275 an hour for his
10 associates, for a total amount of \$284,982.50. Further, the Court decided that for the period after
11 November 29, 2017, SIMON properly perfected his lien and is entitled to a reasonable fee for the
12 services his office rendered in quantum meruit: an amount the Court determined to be \$200,000.
13 Accordingly, SIMON is owed a total amount of \$484,982.50 in fees—taken from the net lien in
14 the sum of \$1,977,843.80—pursuant to this Court’s Order adjudicating the attorneys lien.

15
16 The Edgeworths have expressed a willingness, in writing, to accept the Court’s rulings on
17 all issues, and sign mutual global releases, but SIMON refuses to release the funds held in the
18 trust account. The same cannot be said for SIMON: even after this Court’s Order was issued,
19 SIMON has refused to release the balance of the funds held in trust: a sum of \$1,492,861.30. The
20 Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to their
21 \$1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their
22 money—money to which they are legally entitled. Simon’s unreasonable, inappropriate
23 withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment,
24 which is untoward—not to mention unconstitutional.

25
26 PLAINTIFFS respectfully request that this Court issue an Order requiring SIMON to
27 release to Plaintiff the remainder of the funds SIMON is withholding in trust.

ARGUMENTS

A. SIMON'S WITHOLDING OF PLAINTIFF'S MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT.

The importance of procedural fairness is engrained into the fabric of our country's Constitution. The 14th Amendment is clear: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. §1. Due process rules are designed to protect persons from the unjustified deprivation of life, liberty, or property. *Carey v. Phipus*, 435 US 247, 259 (1978). Due process requires notice: interested parties must be apprised of any action aimed at depriving them of property and must be afforded the opportunity to present their objections. *Mullane v. Central Hanover Bank & Treust Co.*, 339 U.S. 306, 314 (1950). Additionally, due process requires individuals be given an adequate hearing before they are deprived of their property interests; this requirement is designed to prevent arbitrary encroachment on an individual's property interests. *Carey v. Phipus*, 435 U.S. 247, 259 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

The United States Supreme Court has held that garnishment procedures marred by procedural unfairness violate the 14th Amendment due process clause: they are unconstitutional. *See Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969). In *Sniadach*, the Supreme Court reviewed the constitutionality of a Wisconsin garnishment statute which allowed for a creditor's lawyer to initiate garnishment procedures—freeze wages and deprive the garnishee of money—simply by serving the garnishee. *Id.* at 339. Under that regime, only if the trial on the suit occurs and the garnishee wins, the wages may be unfrozen; however, *during the interim*, the wage earner is deprived of his/her money. *Id.* The Supreme Court held that **this prejudgment garnishment** violates the fundamental principles of due process because the individual is deprived of his/her money without any opportunity to be heard and without the opportunity to tender any defense. *Id.*

1 Further, Nevada law mandates certain procedures must be followed before a garnishment
2 takes place. See generally Nev. Rev. Stat. § 31. To comply with the Due Process Clause of the
3 14th Amendment and Supreme Court precedent, Nevada law includes multiple due process
4 protections in favor of garnishees in its statutory scheme. See NRS 31.240; NRS 31.249; NRS
5 31.260; See also *Frank Settelmeier & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57
6 (2008). As a threshold matter, to garnish someone's money and/or property, the garnishor must
7 obtain a writ of garnishment from the court—which may only issue at the same time or after the
8 order directing a writ of attachment is issued. NRS 31.240. Next, the writ of garnishment must be
9 served in the same manner as a summons in a civil action. *Frank Settelmeier & Sons, Inc.*, 197
10 P.3d at 1056; NRS 31.270; NRS 31.340. Then, once served, the garnishee has twenty days to
11 answer statutorily specified interrogatories. *Id.*; NRS 31.290. The law then requires that the
12 garnishee be given a fair hearing: “if the garnishment is contested, the matter must be tried and
13 judgment rendered, in a manner similar to civil cases.” *Id.* at 1056. Providing further protection
14 still, even after the garnishment action is adjudicated, the garnishee may appeal under NRAP
15 3A(a) and (b)(1). *Id.*

17 Here, SIMON is holding in trust a huge sum of money: \$1,977,843.80 despite this Court's
18 Order stating that he is entitled *only* to \$484,982.50. He has effectively seized, garnished,
19 Plaintiff's money—the remainder of the funds held in trust— by refusing to release the funds to
20 Plaintiff's counsel. SIMON has withheld these funds for over two weeks now in contravention of
21 Nevada's strict garnishment statutes. He did not secure a writ of attachment per NRS 31.240. He
22 did not serve Plaintiffs in same manner as a summons in a civil action per NRS 31.270. He did
23 not allow Plaintiffs to have twenty days to answer statutorily specified interrogatories per NRS
24 31.290. In fact, SIMON has made no effort to comply with the procedures and mandates of NRS
25 Chapter 31 whatsoever.
26
27
28

1 Most importantly, before SIMON decided to withhold Plaintiffs' money, Plaintiffs did not
2 get a fair hearing and did not get a trial per NRS 31.340. There was no judgment mandating that
3 the money be withheld. Au contraire, after listening to five days of comprehensive testimony,
4 reviewing the evidence, and reading pre and post hearing briefing, this Court decided *Plaintiff* is
5 entitled to the \$1,492,861.30 held in trust—not Simon. (See pg. 22 of Court's November 19, 2018
6 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). Despite this
7 Court's Order, SIMON has taken matters into his own hands and has illegally—deliberately—
8 withheld Plaintiffs' money and still continues to do so.
9

10 SIMON'S behavior is particularly troubling—even sad—in light of the fact Plaintiffs
11 anticipated SIMON might pull a stunt like this. As this Court acknowledged in her Order, as far
12 back as December 26, 2017, Plaintiffs were fearful SIMON would misappropriate funds. (See pg.
13 11, lines 7-9 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien
14 attached hereto as "Exhibit 1")(See also, Email dated December 26, 2018, 12:18 p.m., attached
15 hereto as "Exhibit 2"). Plaintiffs' Counsel Robert Vannah explained in an email "[Plaintiffs] have
16 lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into
17 his trust account. Quite frankly, they are fearful that he will steal the money." Mr. Vannah's
18 words were not only just a description of client's feelings at the time, but a foreshadowing of S
19 SIMON'S behavior to come. SIMON has been holding Plaintiffs' money hostage for over two
20 weeks now.
21

22 Not only does SIMON'S withholding of funds violate Nevada statutes, his behavior is
23 wholly unconstitutional under United States Supreme Court precedent. His actions are
24 tantamount to an unconstitutional prejudgment garnishment as contemplated by the *Sniadach*
25 court. The Supreme Court was clear in *Sniadach*: the Wisconsin garnishment statutory regime—
26 which allowed for attorney-instituted garnishment procedures and permitted confiscation of funds
27
28

1 without any opportunity to be heard and without the opportunity to tender any defense—is an
2 unconstitutional violation of Due Process.

3 SIMON’S behavior in this case is similar to—but more abusive than—the procedures
4 permitted by the now-unconstitutional Wisconsin statute. Like the *Sniadach* statute, Simon’s
5 purported garnishment efforts are wholly attorney-initiated. He did not seek leave from this Court
6 to retain the funds, yet he has flatly refused to release Plaintiffs’ money. And in terms of its overt
7 deprivation of due process rights, SIMON’S behavior goes much, much further than the statute in
8 *Sniadach*. The *Sniadach* statute at the very least required the garnishor to serve the garnishee
9 before garnishment procedures were to be initiated.
10

11 Here, SIMON has shown nothing but disdain for Plaintiffs’ due process rights: SIMON
12 did not follow any of Nevada’s garnishment requirements or comply with Nevada statutory
13 garnishment procedures. Simon did not first obtain a court order issuing a writ of attachment.
14 Plaintiff has not been formally served with a writ of garnishment, has not had a chance to object
15 to the withholding of money, and has not been given a hearing to address his objections to
16 SIMON’S behavior. His outright refusal to release the remaining funds held in trust is wholly
17 inappropriate. Even worse still, as discussed above, this Court decided this very issue *in Plaintiffs*
18 *favor*: Plaintiffs are entitled to the vast majority of the money at issue: the balance held in trust
19 minus the amount awarded to SIMON if fees—not SIMON. Essentially, SIMON thinks he
20 answers to no one. But he does need to answer to this Court—and as such, it is the aim of this
21 Motion to move this Court for an Order requiring Simon to release the funds to which Plaintiff is
22 legally entitled.
23
24

25 ///

26 ///

27 ///

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**B. THIS COURT HAS JURISDICTION TO ADJUDICATE THIS
ATTORNEYS LIEN; SIMON'S LIEN RIGHTS HAVE BEEN
EXHAUSTED, AND SIMON CANNOT HOLD ONTO PLAINTIFF'S
MONEY PENDING APPEAL**

A Nevada court that presided over a client's underlying action has jurisdiction to adjudicate an attorney-client fee dispute if either: *an enforceable charging lien exists*; if a retaining lien has been asserted by the attorney and the client asks the court to determine the value of the attorney's services in order to post adequate or substitute security in order to recover the file; or if the client otherwise consents. See *Argentina Consol. Min. Co. v. Jolley Urga*, 216 P. 3d 779 (2009).

Here, an enforceable charging lien exists, so this Court had jurisdiction to adjudicate SIMON'S attorney lien. (See pg. 6 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). This Court did so. In her November 19, 2018 Order, this Court adjudicated SIMON'S attorneys lien and issued her judgment, which clearly laid out findings with respect to the entitlements of all parties. SIMON'S lien rights have been exhausted in light of this Court's Order. SIMON got his fair hearing and chance to be heard: his lien adjudication rights are *finished*.

For his part, SIMON may argue that he wishes to hold onto the subject funds in trust while he appeals this Court's Order. Plaintiffs do acknowledge SIMON may intend to appeal this Court's November 19, 2018 Decision Adjudicating the Attorney Lien. However, SIMON should not be allowed to withhold Plaintiffs' funds while he appeals. As discussed above, if this Court allows SIMON to hold onto Plaintiffs' funds held in trust, it would be tantamount to an unconstitutional pre-judgment garnishment as contemplated by the *Sniadach* court. Just as the *Sniadach* Court struck down a statute for allowing a garnishee to be deprived of money *during the interim*—between service of the action and a trial on the suit—this Court should strike down SIMON'S attempt to deprive Plaintiffs of their money *during the interim*—between the issuance

1 of the Court's November 19, 2018 Order and the final resolution of this matter on appeal.
2 Plaintiffs should not be deprived of his money for months and months—perhaps even years—
3 especially where SIMON'S withholding of these funds is inapposite in light of the Court's
4 substantive ruling with regard to these entitlements. This Court should put an end to SIMON'S
5 ill-advised attempt to circumvent the Court's judgment. Accordingly, Plaintiffs respectfully
6 request this Court issue an Order requiring the release of the funds SIMON is withholding in trust.
7

8 **C. SIMON MUST COMPLY WITH THIS COURT'S NOVEMBER 19, 2018**
9 **ORDER, WHICH IS CLEAR AND UNABMBIGUOUS.**

10 The Court's Order is clear as day: "the reasonable fee due to the Law Office of Daniel Simon
11 is \$484,982.50." (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate
12 Attorneys Lien attached hereto as "Exhibit 1"). SIMON has been—and currently is—retaining the
13 full \$1,977,843.80 in trust. SIMON'S withholding of \$1,492,861.30 from Plaintiffs is in direct
14 contravention this Court's Order. Given that SIMON'S behavior directly violates this Court's
15 Order, the Court must take remedial action and issue an Order for the release of the remainder of
16 the funds to Plaintiffs that SIMON is withholding in trust.

17 It is worth noting that Plaintiffs have tried on multiple occasions to resolve this lien issue
18 without wasting judicial time and resources but have repeatedly been ignored by SIMON. (See
19 Plaintiffs' Letters to James Christensen dated October 31, 2018 and November 19, 2018 attached
20 hereto as "Exhibit 3" and "Exhibit 4" respectively). Despite Plaintiffs' efforts to resolve the
21 matter, Simon continues to drag his heels on this issue. Now that this Court has adjudicated his
22 attorneys lien, SIMON has *zero grounds* to withhold Plaintiffs' money. As such, Plaintiffs
23 respectfully request that this Court issue an Order for the release of Plaintiffs' funds.
24

25 ///

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III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs' Motion for Release of Funds, as indicated in this Motion.

DATED this 13th day of December, 2018.

VANNAH & VANNAH


Bar No: 19530
signing for → ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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

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

Traditional Manner:
None

DATED this 13 day of December, 2018.



An employee of the Law Office of
Vannah & Vannah

Exhibit 1

1 **ORD**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**
5

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

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

14 Defendants.

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON; THE LAW OFFICE OF
20 DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

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

Consolidated with

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

**DECISION AND ORDER ON MOTION
TO ADJUDICATE LIEN**

22
23 **DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

24 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
25 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
26 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
27 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in
28

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the COURT FINDS:

7 8 FINDINGS OF FACT

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
11 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
12 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

15 2. The case involved a complex products liability issue.

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
17 suffered a flood. The house was still under construction and the flood caused a delay. The
18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
19 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
20 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
22 Viking, et al., also denied any wrongdoing.

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
26 resolve. Since the matter was not resolved, a lawsuit had to be filed.

27 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
28

1 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
2 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
3 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
4 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

5 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
6 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
7 had some discussion about payments and financials. No express fee agreement was reached during
8 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
9 It reads as follows:

10
11 We never really had a structured discussion about how this might be done.
12 I am more that happy to keep paying hourly but if we are going for punitive
13 we should probably explore a hybrid of hourly on the claim and then some
14 other structure that incents both of us to win an go after the appeal that these
15 scumbags will file etc.
16 Obviously that could not have been doen earlier snce who would have thought
17 this case would meet the hurdle of punitives at the start.
18 I could also swing hourly for the whole case (unless I am off what this is
19 going to cost). I would likely borrow another \$450K from Margaret in 250
20 and 200 increments and then either I could use one of the house sales for cash
21 or if things get really bad, I still have a couple million in bitcoin I could sell.
22 I doubt we will get Kinsale to settle for enough to really finance this since I
23 would have to pay the first \$750,000 or so back to Colin and Margaret and
24 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

25 (Def. Exhibit 27).

26 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
27 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
28 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per

1 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

4 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
5 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
6 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
7 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
8 paid by the Edgeworths on August 16, 2017.

9 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
10 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
11 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
12 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
13 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
14 25, 2017.

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work
20 done in the litigation of this case. There were several motions and oppositions filed, several
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.

1 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
2 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
3 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

4 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to
5 come to his office to discuss the litigation.

6 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,
7 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
8 Exhibit 4).

9 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
10 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
11 communications with Mr. Simon.

12 18. On the morning of November 30, 2017, Simon received a letter advising him that the
13 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
14 et.al. The letter read as follows:

15 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
16 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
17 with the Viking entities, et.al. I'm instructing you to cooperate with them in
18 every regard concerning the litigation and any settlement. I'm also instructing
19 you to give them complete access to the file and allow them to review
20 whatever documents they request to review. Finally, I direct you to allow
them to participate without limitation in any proceeding concerning our case,
whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
28

1 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

2 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
3 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
4 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
5 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
6 due to the Law Office of Danny Simon.

7 22. The parties agree that an express written contract was never formed.

8 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against
9 Lange Plumbing LLC for \$100,000.

10 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
11 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
12 Simon, a Professional Corporation, case number A-18-767242-C.

13 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
14 Lien with an attached invoice for legal services rendered. The amount of the invoice was
15 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

16 17 **CONCLUSION OF LAW**

18 **The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The** 19 **Court**

20 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
21 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
22 738444-C under NRS 18.015.

23 NRS 18.015(1)(a) states:

24 1. An attorney at law shall have a lien:

25 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
26 damages, which has been placed in the attorney's hands by a client for suit or
collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

1 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
2 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
3 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
4 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
5 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
6 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
7 is enforceable in form.

8 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
9 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
10 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
11 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
12 under NRS 18.015, thus the Court must adjudicate the lien.

13 14 *Fee Agreement*

15 It is undisputed that no express written fee agreement was formed. The Court finds that there
16 was no express oral fee agreement formed between the parties. An express oral agreement is
17 formed when all important terms are agreed upon. *See, Loma Linda University v. Eckenweiler*, 469
18 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*
19 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the
20 payment terms are essential to the formation of an express oral contract to provide legal services on
21 an hourly basis.

22 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
23 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
24 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
25 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
26 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
27 22, 2017 email, titled "Contingency," he writes:

1 “We never really had a structured discussion about how this might be done. I
2 am more than happy to keep paying hourly but if we are going for punitive we
3 should probably explore a hybrid of hourly on the claim and then some other
4 structure that incents both of us to win and go after the appeal that these
5 scumbags will file etc. Obviously that could not have been done earlier since
6 who would have thought this case would meet the hurdle of punitives at the
7 start. I could also swing hourly for the whole case (unless I am off what this
8 is going to cost). I would likely borrow another \$450K from Margaret in 250
9 and 200 increments and then either I could use one of the house sales for cash
10 or if things get really bad, I still have a couple million in bitcoin I could sell. I
11 doubt we will get Kinsale to settle for enough to really finance this since I
12 would have to pay the first \$750,000 or so back to Colin and Margaret and
13 why would Kinsale settle for \$1MM when their exposure is only \$1MM?”

14 (Def. Exhibit 27).

15 It is undisputed that when the flood issue arose, all parties were under the impression that Simon
16 would be helping out the Edgeworths, as a favor.

17 The Court finds that an implied fee agreement was formed between the parties on December
18 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
19 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
20 created with a fee of \$275 per hour for Simon’s associates. Simon testified that he never told the
21 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to “trigger
22 coverage”. When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
23 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
24 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
25 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

26 *Constructive Discharge*

27 Constructive discharge of an attorney may occur under several circumstances, such as:

- 28 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v. Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- Refusal to pay an attorney creates constructive discharge. *See e.g., Christian v. All Persons Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).

- Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also Maples v. Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State, 2017 Nev. Unpubl. LEXIS 472.
- Taking actions that preventing effective representation creates constructive discharge. McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated, has not withdrawn, and is still technically their attorney of record; there cannot be a termination. The Court disagrees.

On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and signed a retainer agreement. The retainer agreement was for representation on the Viking settlement agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all things without a compromise. Id. The retainer agreement specifically states:

Client retains Attorneys to represent him as his Attorneys regarding Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING ENTITIES and all damages including, but not limited to, all claims in this matter and empowers them to do all things to effect a compromise in said matter, or to institute such legal action as may be advisable in their judgment, and agrees to pay them for their services, on the following conditions:

- a) ...
- b) ...
- c) Client agrees that his attorneys will work to consummate a settlement of \$6,000,000 from the Viking entities and any settlement amount agreed to be paid by the Lange entity. Client also agrees that attorneys will work to reach an agreement amongst the parties to resolve all claims in the Lange and Viking litigation.

Id.

This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr. Simon had already begun negotiating the terms of the settlement agreement with Viking during the week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put

1 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
2 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
3 identified as the firm that solely advised the clients about the settlement. The actual language in the
4 settlement agreement, for the Viking claims, states:

5
6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
8 effect of this AGREEMENT and their release of any and all claims, known or
9 unknown and, based upon that explanation and their independent judgment by
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the
11 legal significance and the consequences of the claims being released by this
12 Agreement. PLAINTIFFS further represent that they understand and
13 acknowledge the legal significance and consequences of a release of unknown
14 claims against the SETTLING PARTIES set forth in, or arising from, the
15 INCIDENT and hereby assume full responsibility for any injuries, damages,
16 losses or liabilities that hereafter may occur with respect to the matters
17 released by this Agreement.

18 Id.

19 Also, Simon was not present for the signing of these settlement documents and never explained any
20 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
21 Vannah and received them back with the signatures of the Edgeworths.

22 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
23 Though there were email communications between the Edgeworths and Simon, they did not verbally
24 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
25 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
26 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
27 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
28 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
working on this claim, but he had no communication with the Edgeworths and was not advising
them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon

1 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
2 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
3 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
4 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
5 Simon never signed off on any of the releases for the Lange settlement.

6 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
7 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
8 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
9 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
10 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
11 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
12 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
13 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
14 doesn't seem in his best interests." (Def. Exhibit 53).

15 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
16 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
17 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
18 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
19 was attached to the letter), and that Simon continued to work on the case after the November 29,
20 2017 date. The court further recognizes that it is always a client's decision of whether or not to
21 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
22 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
23 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
24 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
25 with him, making it impossible to advise them on pending legal issues, such as the settlements with
26 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

27 //
28

1 Simon from effectively representing the clients. The Court finds that Danny Simon was
2 constructively discharged by the Edgeworths on November 29, 2017.

3
4 **Adjudication of the Lien and Determination of the Law Office Fee**

5 NRS 18.015 states:

6 1. An attorney at law shall have a lien:

7 (a) Upon any claim, demand or cause of action, including any claim for
8 unliquidated damages, which has been placed in the attorney's hands by a
9 client for suit or collection, or upon which a suit or other action has been
10 instituted.

11 (b) In any civil action, upon any file or other property properly left in the
12 possession of the attorney by a client.

13 2. A lien pursuant to subsection 1 is for the amount of any fee which has
14 been agreed upon by the attorney and client. In the absence of an agreement,
15 the lien is for a reasonable fee for the services which the attorney has rendered
16 for the client.

17 3. An attorney perfects a lien described in subsection 1 by serving notice
18 in writing, in person or by certified mail, return receipt requested, upon his or
19 her client and, if applicable, upon the party against whom the client has a
20 cause of action, claiming the lien and stating the amount of the lien.

21 4. A lien pursuant to:

22 (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or
23 decree entered and to any money or property which is recovered on account of
24 the suit or other action; and

25 (b) Paragraph (b) of subsection 1 attaches to any file or other property
26 properly left in the possession of the attorney by his or her client, including,
27 without limitation, copies of the attorney's file if the original documents
28 received from the client have been returned to the client, and authorizes the
attorney to retain any such file or property until such time as an adjudication
is made pursuant to subsection 6, from the time of service of the notices
required by this section.

5. A lien pursuant to paragraph (b) of subsection 1 must not be
construed as inconsistent with the attorney's professional responsibilities to
the client.

6. On motion filed by an attorney having a lien under this section, the
attorney's client or any party who has been served with notice of the lien, the
court shall, after 5 days' notice to all interested parties, adjudicate the rights of
the attorney, client or other parties and enforce the lien.

7. Collection of attorney's fees by a lien under this section may be
utilized with, after or independently of any other method of collection.

1 Nev. Rev. Stat. 18.015.

2 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms
3 are applied. Here, there was no express contract for the fee amount, however there was an implied
4 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his
5 services, and \$275 per hour for the services of his associates. This contract was in effect until
6 November 29, 2017, when he was constructively discharged from representing the Edgeworths.
7 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is
8 due a reasonable fee- that is, quantum meruit.

9
10 *Implied Contract*

11 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
12 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
13 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
14 created when invoices were sent to the Edgeworths, and they paid the invoices.

15 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
16 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
17 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as
18 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is
19 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that
20 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the
21 bills to give credibility to his actual damages, above his property damage loss. However, as the
22 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund
23 the money, or memorialize this or any understanding in writing.

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCPP
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
26 paid in full and there was never any indication given that anything less than all the fees had been
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
28

1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
2 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
6 Office retained the payments, indicating an implied contract was formed between the parties. The
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
8 date they were constructively discharged, November 29, 2017.

9
10 *Amount of Fees Owed Under Implied Contract*

11 The Edgeworths were billed, and paid for services through September 19, 2017. There is
12 some testimony that an invoice was requested for services after that date, but there is no evidence
13 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
14 fees was formed, the Court must now determine what amount of fees and costs are owed from
15 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
16 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
17 billings, the attached lien, and all other evidence provided regarding the services provided during
18 this time.

19 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
20 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
21 and attempted to create a bill for work that had been done over a year before. She testified that they
22 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
23 email that was read and responded to. She testified that the dates were not exact, they just used the
24 dates for which the documents were filed, and not necessarily the dates in which the work was
25 performed. Further, there are billed items included in the "super bill" that was not previously billed
26 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
27 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
28

1 indicated that there were no phone calls included in the billings that were submitted to the
2 Edgeworths.

3 This attempt to recreate billing and supplement/increase previously billed work makes it
4 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed
5 between the actual work and the billing. The court reviewed the billings of the "super bill" in
6 comparison to the previous bills and determined that it was necessary to discount the items that had
7 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,
8 downloading, and saving documents because the Court is uncertain of the accuracy of the "super
9 bill."

10 Simon argues that he has no billing software in his office and that he has never billed a client
11 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
12 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;
13 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
14 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
15 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
16 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
17 emails or calls, understanding that those items may be billed separately; but again the evidence does
18 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
19 This argument does not persuade the court of the accuracy of the "super bill".

20 The amount of attorney's fees and costs for the period beginning in June of 2016 to
21 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
22 which appears to indicate that it began with the initial meeting with the client, leading the court to
23 determine that this is the beginning of the relationship. This invoice also states it is for attorney's
24 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
25 amount has already been paid by the Edgeworths on December 16, 2016.²

26
27 ²There are no billing amounts from December 2 to December 4, 2016.
28

1 The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to
2 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
3 amount has already been paid by the Edgeworths on May 3, 2017.

4 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the
5 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for
6 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
7 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
8 been paid by the Edgeworths on August 16, 2017.³

9 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the
10 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for
11 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller
12 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
13 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
14 paid by the Edgeworths on September 25, 2017.

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
16 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
21 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

24 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

25
26 ³ There are no billings from July 28 to July 30, 2017.

⁴ There are no billings for October 8th, October 28-29, and November 5th.

27 ⁵ There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,
November 21, and November 23-26.

28 ⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
2 by the Edgeworths, so the implied fee agreement applies to their work as well.

3 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period
4 of September 19, 2018 to November 29, 2017 is \$284,982.50.

5
6 *Costs Owed*

7 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
8 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
9 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
10 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
11 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
12 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
13 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

14
15 *Quantum Meruit*

16 When a lawyer is discharged by the client, the lawyer is no longer compensated under the
17 discharged/breached/repudiated contract, but is paid based on quantum meruit. See e.g. Golightly v.
18 Gassner, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*
19 *quantum meruit rather than by contingency fee pursuant to agreement with client*); citing, Gordon v.
20 Stewart, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);
21 and, Cooke v. Gove, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*
22 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on
23 November 29, 2017. The constructive discharge terminated the implied contract for fees. William
24 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award
25 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
26 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
27 of the Law Office's work on this case.

1 In determining the amount of fees to be awarded under quantum meruit, the Court has wide
2 discretion on the method of calculation of attorney fee, to be “tempered only by reason and
3 fairness”. Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires
4 that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530
5 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee
6 must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the
7 reasonableness of the fee under the Brunzell factors. Argentina Consolidated Mining Co., v. Jolley,
8 Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that
9 “[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors
10 may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

11 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
12 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
13 Court notes that the majority of the work in this case was complete before the date of the
14 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
15 after the constructive discharge.

16 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
17 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

18 *1. Quality of the Advocate*

19 Brunzell expands on the “qualities of the advocate” factor and mentions such items as
20 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
21 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
22 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
23 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
24 Simon’s work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon’s
25 work product and results are exceptional.

26 *2. The Character of the Work to be Done*

27 The character of the work done in this case is complex. There were multiple parties,
28

1 multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the
2 gamut from product liability to negligence. The many issues involved manufacturing, engineering,
3 fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp
4 testified that the quality and quantity of the work was exceptional for a products liability case against
5 a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the
6 Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the
7 case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a
8 substantial factor in achieving the exceptional results.

9 3. The Work Actually Performed

10 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
11 numerous court appearances, and deposition; his office uncovered several other activations, that
12 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
13 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
14 other activations being uncovered and the result that was achieved in this case. Since Mr.
15 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
16 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
17 the Law Office of Daniel Simon led to the ultimate result in this case.

18 4. The Result Obtained

19 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
20 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
21 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
22 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
23 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
24 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
25 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
26 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
27 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
28

1 were made more than whole with the settlement with the Viking entities.

2 In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the
3 Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a)
4 which states:

5
6 (a) A lawyer shall not make an agreement for, charge, or collect an
7 unreasonable fee or an unreasonable amount for expenses. The factors to be
8 considered in determining the reasonableness of a fee include the following:

9 (1) The time and labor required, the novelty and difficulty of the
10 questions involved, and the skill requisite to perform the legal service
11 properly;

12 (2) The likelihood, if apparent to the client, that the acceptance of the
13 particular employment will preclude other employment by the lawyer;

14 (3) The fee customarily charged in the locality for similar legal
15 services;

16 (4) The amount involved and the results obtained;

17 (5) The time limitations imposed by the client or by the
18 circumstances;

19 (6) The nature and length of the professional relationship with the
20 client;

21 (7) The experience, reputation, and ability of the lawyer or lawyers
22 performing the services; and

23 (8) Whether the fee is fixed or contingent.

24 NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

25 (b) The scope of the representation and the basis or rate of the fee and
26 expenses for which the client will be responsible shall be communicated to the
27 client, preferably in writing, before or within a reasonable time after
28 commencing the representation, except when the lawyer will charge a
regularly represented client on the same basis or rate. Any changes in the
basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the
service is rendered, except in a matter in which a contingent fee is prohibited
by paragraph (d) or other law. A contingent fee agreement shall be in writing,
signed by the client, and shall state, in boldface type that is at least as large as
the largest type used in the contingent fee agreement:

(1) The method by which the fee is to be determined, including the
percentage or percentages that shall accrue to the lawyer in the event of
settlement, trial or appeal;

(2) Whether litigation and other expenses are to be deducted from the
recovery, and whether such expenses are to be deducted before or after the
contingent fee is calculated;

- 1 (3) Whether the client is liable for expenses regardless of outcome;
2 (4) That, in the event of a loss, the client may be liable for the
3 opposing party's attorney fees, and will be liable for the opposing party's
4 costs as required by law; and
5 (5) That a suit brought solely to harass or to coerce a settlement may
6 result in liability for malicious prosecution or abuse of process.
7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
8 with a written statement stating the outcome of the matter and, if there is a
9 recovery, showing the remittance to the client and the method of its
10 determination.

11 NRCP 1.5.

12 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
13 the Edgeworths, the character of the work was complex, the work actually performed was extremely
14 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
15 factors justify a reasonable fee under NRCP 1.5. However, the Court must also consider the fact
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be
17 responsible were never communicated to the client, within a reasonable time after commencing the
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,
22 from November 30, 2017 to the conclusion of this case.

23 CONCLUSION

24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
27 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
28 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
Simon as their attorney, when they ceased following his advice and refused to communicate with

1 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
2 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
3 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
4 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
5 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
6 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
7 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
8 constructively discharged, under quantum meruit, in an amount of \$200,000.

9
10 **ORDER**

11 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
12 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
13 Office of Daniel Simon is \$484,982.50.

14 IT IS SO ORDERED this 19 day of November, 2018.


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17 _____
18 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 2

12/28/2017

Vannah & Vannah Mail - Edgeworth v. Viking

Cc: John Greene <jgreene@vannahlaw.com>, Daniel Simon <dan@simonlawlv.com>

Bob,

Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.

Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.

Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>

Sent: Saturday, December 23, 2017 10:10:45 PM

To: James R. Christensen

Cc: John Greene; Daniel Simon

[Quoted text hidden]

[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com>

Tue, Dec 26, 2017 at 12:18 PM

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

Cc: John Greene <jgreene@vannahlaw.com>, Daniel Simon <dan@simonlawlv.com>

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com>

Tue, Dec 26, 2017 at 12:26 PM

Exhibit 3

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

October 31, 2018

VIA FACSIMILE & EMAIL: (702) 272-0415; jim@jchristensenlaw.com

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

Re: Edgeworth Family Trust, et.al. v. Daniel S. Simon, et.al.


Dear Mr. Christensen:

The Edgeworth Plaintiffs are willing to accept the rulings of the Court "as is", with the exception of the cost award in the amount of \$71,594.94, as we all agree that Danny Simon has been reimbursed in full for all costs advanced in this matter. If Danny is willing to forego appealing any of the orders of Judge Jones, Bob Vannah is willing to meet Danny at the bank, cut him a check for \$484,982.50 (\$556,577.43 minus \$71,594.93), cut a check to the Edgeworth's for the balance of funds in the account, and put an end to this. It's also advisable for our clients to sign a mutual release.

Please let us know if Danny is also willing to accept the rulings of Judge Jones, namely the amount awarded in the Decision and Order on Motion to Adjudicate Lien, minus the cost award of \$71,594.93, and put this behind him at this time.

Sincerely,

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

RDV/jg



Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com>
To: Jessie Romero <jromero@vannahlaw.com>

Wed, Oct 31, 2018 at 4:18 PM

Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number (702) 369-4161, Ext. 302:

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Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-10-31 Edgeworth .pdf	Success

Exhibit 4

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

November 19, 2018

VIA FACSIMILE & EMAIL: (702) 272-0415; jim@jchristensenlaw.com

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

Re: Edgeworth Family Trust, et.al. v. Daniel S. Simon, et.al.

Dear Mr. Christensen:

Again, the Edgeworths are willing to accept the amended orders of the Court "as is." If Danny is willing to forego appealing any of the orders of Judge Jones, Bob Vannah is willing to meet Danny at the bank, cut him a check for \$484,982.50, cut a check to the Edgeworths for the balance of funds in the account, and put an end to this. It remains advisable for our clients to sign a mutual release.

Please let us know if Danny is also willing to accept the amended orders of Judge Jones, namely the amount awarded in the Decision and Order on Motion to Adjudicate Lien.

Sincerely,

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

RDV/jg



Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com>
To: Jessie Romero <jromero@vannahlaw.com>

Mon, Nov 19, 2018 at 3:44 PM

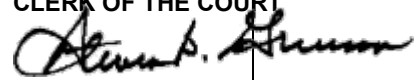
Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number (702) 369-4161, Ext. 302:

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Monday, November 19, 2018 at 03:43 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-11-19 Letter to Christensen .pdf	Success



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

Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

OPPOSITION TO PLAINTIFFS'
MOTION FOR RELEASE OF FUNDS

Date of Hearing: 2.5.19

Time of Hearing: 9:30 am

Case No.: A-18-767242-C

Dept. No.: 26

I. Introduction

An attorney *must* safekeep disputed funds in trust. NRPC 1.15. The Edgeworths filed a notice of appeal, to which Simon had to respond with a notice of cross appeal. Both parties provided notice of appeal of the decision and order adjudicating the attorney lien. Thus, there is a continuing dispute over the amount of money due Simon, and the disputed funds *must* be held in trust.

There is a second compelling ground to deny the Edgeworths' motion. The Edgeworths seek to force Simon to act in conformance with this Court's order adjudicating the attorney lien. However, when the Edgeworths filed their notice of appeal of the adjudication order, the Edgeworths divested this Court of jurisdiction to enforce the adjudication order. The adjudication order is on appeal, and this Court no longer has jurisdiction over the order.

II. Facts

The history of this case is well known to the Court, only the most relevant events are described.

On December 27, 2017, Simon counsel requested that the parties work collaboratively to resolve the fee and cost dispute. (Exhibit A.)

On January 4, 2018, the Edgeworths sued Simon for conversion.

On October 11, 2018, this Court issued a decision and order adjudicating the Simon attorney lien and dismissed the conversion case.

1 Simon filed a Rule 52 motion. Following, on November 19, 2018, this
2 Court issued an amended decision and order adjudicating the Simon attorney lien.

3 *On December 7, 2018, the Edgeworths filed a notice of appeal.* The
4 Edgeworths gave notice of their appeal from the decision and order adjudicating
5 the Simon attorney lien. (Exhibit B.)
6

7 On or around December 13, 2018, the Edgeworths filed the subject motion.
8 The motion was filed without a notice of motion. The motion was not set on
9 hearing calendar.
10

11 On December 17, 2018, Simon filed a notice of cross appeal in response to
12 the Edgeworth notice of appeal. Simon gave notice of an appeal from the decision
13 and order adjudicating the Simon attorney lien. (Exhibit C.)
14

15 On December 28, 2018, the Edgeworths filed a notice of hearing for the
16 subject motion. The Edgeworths did not amend the motion to reflect the appeals.
17

18 **III. Argument**

19 The Edgeworths forced Simon to hold the disputed funds in the trust account
20 when the Edgeworths filed a notice of appeal, and the notice of appeal also
21 divested this Court of jurisdiction over the order.

22 The Edgeworths are not unduly prejudiced. The trust account is interest
23 bearing, and the Edgeworths earn interest on all the funds in trust, including
24 whatever amount is due Simon for fees.
25

1 **A. An attorney cannot payout money that is in dispute.**

2 An attorney *must* safekeep disputed funds. NRPC 1.15(e) states:

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

9 The Edgeworths dispute the Court’s adjudication finding and filed a notice of
10 appeal to obtain appellate review. In response, Simon filed a notice of cross
11 appeal. Thus, the ownership of the money held in trust is still in dispute.

12 Accordingly, the money *shall* be held in the trust account “until the dispute is
13 resolved”.¹

14 An attorney’s obligation to hold disputed funds in trust is long settled law.
15 The Edgeworth motion is not “warranted by existing law, or by a nonfrivolous
16 argument for the extension, modification or reversal of existing law or the
17 establishment of new law”.² The law of garnishment does not apply on its face.
18 Simon has not garnished money from a third party, which the third party owed to
19 the Edgeworths, to secure Simon’s fee claim. The attempt to apply the law of
20 garnishment to this case is plainly frivolous, no garnishment took place, the
21
22
23
24

25 ¹ NRPC 1.15.

² NRCP 11.

1 Edgeworths ignored NRPC 1.15, the Edgeworths ignored their own notice of
2 appeal, and ignored Simon's cross notice of appeal.

3 The Edgeworths attachment of a settlement proposal to their motion breaks
4 convention, if not the law. Suffice to say, Simon responded to the take it or leave
5 it offer but did not gain traction on his counter proposal to begin a collaborative
6 discussion.
7

8 In the same vein, the Edgeworths' repeated attacks and name calling is
9 beyond the norm. Simon's compliance with the safekeeping property rule is not a
10 stunt, it is the law.
11

12 **B. The Edgeworths divested this Court of jurisdiction over the**
13 **adjudication order.**

14 It is well settled law that "the timely filing of a notice of appeal 'divests the
15 district court of jurisdiction to act and vests jurisdiction in this court.'" *Foster v.*
16 *Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 454-55 (2010); *citing, Mack-Manley v.*
17 *Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006); *quoting, Rust v. C.C.S.D.*,
18 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987). The *Dingwall* Court reiterated
19 that
20

21 [W]hen an appeal is perfected, the district court is divested of jurisdiction to
22 revisit issues that are pending before this court, [but] the district court retains
23 jurisdiction to enter orders on matters that are collateral to and independent
24 from the appealed order, i.e., matters that in no way affect the appeal's
25 merits.

Id.; *quoting, Mack-Manley*, 122 Nev. at 855, 138 P.3d at 529-30.

1 The adjudication order has been appealed by the Edgeworths, and then by
2 Simon. The Court does not have jurisdiction over the order.

3 **IV. Conclusion**

4 The Edgeworths escalated this fee dispute by suing Simon for conversion,
5 then continued the fee dispute by filing a notice of appeal, in response to which,
6 Simon was obligated to file a notice of cross appeal. The appeal and cross appeal
7 establish beyond question that the amount of fees due Simon are still in dispute.
8 Because the fees are still in dispute, the safekeeping property rule requires that the
9 settlement money must be held in trust “until the dispute is resolved”.
10
11

12 Further, the adjudication order is on appeal. Therefore, this Court no longer
13 has jurisdiction over the order.

14 The Edgeworths’ motion has no reasonable factual or legal basis. It must be
15 denied.
16

17 DATED this 11th day of January 2019.

18 /s/ *James R. Christensen*

19 James R. Christensen Esq.
20 Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
21 601 S. 6th Street
Las Vegas NV 89101
22 (702) 272-0406
(702) 272-0415 fax
23 jim@jchristensenlaw.com
Attorney for SIMON
24
25

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing OPPOSITION TO PLAINTIFFS' MOTIN FOR RELEASE OF FUNDS was made by electronic service (via Odyssey) this 11th day of January, 2019, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen
an employee of
JAMES R. CHRISTENSEN, ESQ

EXHIBIT A

RA000066

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101
Ph: (702)272-0406 Fax: (702)272-0415
E-mail: jim@jchristensenlaw.com
Admitted in Illinois and Nevada

December 27, 2017

Via E-Mail

Robert D. Vannah
400 S. 7th Street
Las Vegas, NV 89101
rvannah@vannahlaw.com

Re: Edgeworth v. Viking

Dear Bob:

I look forward to working with you to resolve whatever issues may exist concerning the disbursement of funds in the Edgeworth case. To that end, I suggest we avoid accusations or positions without substance.

This letter is in response to your email of December 26, 2017. I thought it best to provide a formal written response because of the number of issues raised.

Please consider the following time line:

- On Monday, December 18, 2017, Simon Law picked up two Zurich checks in the aggregate amount of \$6,000,000.00. (Exhibit 1; copies of checks.)
- On Monday, December 18, 2017, immediately following check pick-up, Mr. Simon called Mr. Greene to arrange check endorsement. Mr. Simon left a message.

- On Monday, December 18, 2017, Mr. Greene returned the call and spoke to Mr. Simon. (Exhibit 2; confirming email string.)
- During the Monday call, Mr. Simon advised that he would be on a holiday trip and unavailable beginning Friday, December 22, 2017, until after the New Year. Mr. Simon asked that the clients endorse the checks prior to December 22nd. (Exhibit 2.)
- During the Monday call, Mr. Greene told Mr. Simon that the clients would not be available to sign checks until after the New Year. (Exhibit 2.)
- During the Monday call, Mr. Greene stated that he would contact Simon Law about scheduling endorsement. (Exhibit 2.)
- On Friday, December 22, 2017, the Simon family went on their holiday trip.
- On Saturday, December 23, 2017, at 10:45 p.m., an email was sent which indicated that delay in endorsement was not acceptable. The email also raised use of an escrow account as an alternative to the Simon Law trust account. (Exhibit 2.)
- On Tuesday, December 26, 2017, I responded by email and invited scheduling endorsement after the New Year, and discounted the escrow account option. (Exhibit 2.)

In response to your December 26, 2017 email, please consider the following:

1. The clients are available until Saturday. This is new information and it is different from the information provided by Mr. Greene. Regardless, Mr. Simon is out of town until after the New Year.
2. Loss of faith and trust. This is unfortunate, in light of the extraordinary result obtained by Mr. Simon on the client's behalf. However, Mr. Simon is still legally due a reasonable fee for the services rendered. NRS 18.015.
3. Steal the money. We should avoid hyperbole.

4. Time to determine undisputed amount. The time involved is a product of the immense amount of work involved in the subject case, which is clearly evident from the amazing monetary result, and the holidays. And, use of a lien is not “inconsistent with the attorney’s professional responsibilities to the client.” NRS 18.015(5).
5. Time to clear. The checks are not cashier’s checks. (Exhibit 1.) Even a cashier’s check of the size involved would be subject to a “large deposit item hold” per Regulation CC.
6. Interpleader. The interpleader option - deposit with the Court - was offered as an alternative to the Simon Law trust account, to address the loss of faith issue. The cost and time investment is also minimal.
7. Escrow alternative. Escrow does not owe the same duties and obligations as those that apply to an attorney and a trust account. Please compare, *Mark Properties v. National Title Co.*, 117 Nev. 941, 34 P.3d 587 (2001); with, Nev. Rule of Professional Conduct 1.15; SCR 78.5; etc. The safekeeping property duty is also typically seen as non-delegable.

To protect everyone involved, the escrow would have to accept similar duties and obligations as would be owed by an attorney. That would be so far afield from the usual escrow obligations under *Mark*, that it is doubtful that an escrow could be arranged on shorter notice, if at all; and, such an escrow would probably come at great cost.

We are not ruling out this option, we simply see it as un-obtainable. If you believe it is viable and wish to explore it further, please do so.

8. File suit ourselves. An independent action would be far more time consuming and expensive than interpleader. However, that is an option you will have to consider on your own.

9. Fiduciary duty. Simon Law is in compliance with all duties and obligations under the law. *See, e.g.*, NRS 18.015(5).

10. Client damages. I can see no discernable damage claim.

Please let me know if you are willing to discuss moving forward in a collaborative manner.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

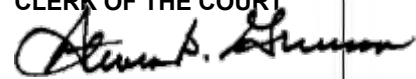
JAMES R. CHRISTENSEN

JRC/dmc

cc: Daniel Simon

enclosures

EXHIBIT B



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

DISTRICT COURT

CLARK COUNTY, NEVADA

--000--

EDGEWORTH FAMILY TRUST; 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 I through V and ROE CORPORATIONS
VI through X, inclusive,

Defendants.

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

NOTICE OF APPEAL

EDGEWORTH FAMILY TRUST; AMERICAN
GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

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

1 NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants EDGEWORTH FAMILY
2 TRUST and AMERICAN GRATING, LLC, hereby appeal to the Supreme Court of Nevada from
3 the Decision and Order on Motion to Adjudicate Lien and from the Amended Decision and Order
4 on Motion to Dismiss NRCP 12(B)(5), both of which were entered on November 19, 2018.
5

6 DATED this 7 day of December, 2018.

7 VANNAH & VANNAH

8
9 
10 ROBERT D. VANNAH, ESQ.
11 Nevada Bar No. 002503
12 JOHN B. GREENE, ESQ.
13 Nevada Bar No. 004279
14 400 S. Seventh Street, 4th Floor
15 Las Vegas, Nevada 89101
16 jgreene@vannahlaw.com
17 Telephone: (702) 369-4161
18 Facsimile: (702) 369-0104
19 *Attorneys for Plaintiffs/Appellants*
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

Electronically:

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

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

Traditional Manner:

None

DATED this 7th day of December, 2018.

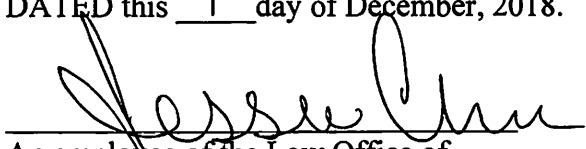
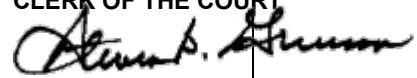

An employee of the Law Office of
Vannah & Vannah

EXHIBIT C



JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for Daniel S. Simon

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, 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; THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE entities 1
through 10;

Defendants.

Case No.: A-16-738444-C
Dept. No.: 10

NOTICE OF CROSS APPEAL

CONSOLIDATED WITH

Case No.: A-18-767242-C
Dept. No.: 10

1 NOTICE IS HEREBY GIVEN that Defendants/Appellants DANIEL S.
2 SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL
3 CORPORATION, hereby appeal to the Supreme Court of Nevada from the
4 Decision and Order on Special Motion to Dismiss Anti-Slapp, which was entered
5 on October 11, 2018; and, appeals to the Supreme Court of Nevada from the
6 Decision and Order on Motion to Adjudicate Lien, which was entered on
7 November 19, 2018.
8
9

10 DATED this 17th day of December 2018.
11

12 /s/ James R. Christensen

13 JAMES CHRISTENSEN, ESQ.

14 Nevada Bar No. 003861

15 601 S. 6th Street

16 Las Vegas, NV 89101

17 (702) 272-0406

18 (702) 272-0415

19 jim@jchristensenlaw.com

20 Attorney for Daniel S. Simon
21

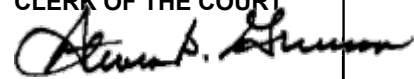
22 CERTIFICATE OF SERVICE

23 I CERTIFY SERVICE of the foregoing **NOTICE OF CROSS APPEAL**
24 was made by electronic service (via Odyssey) this 17th day of December, 2018, to
25 all parties currently shown on the Court's E-Service List.
26

27 /s/ Dawn Christensen

28 an employee of

JAMES R. CHRISTENSEN



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

DISTRICT COURT

CLARK COUNTY, NEVADA

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

20 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

28 Defendants.

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

**PLAINTIFFS' REPLY TO
OPPOSITION TO PLAINTIFFS'
MOTION FOR RELEASE OF FUNDS**

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

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

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC
2 (PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and
3 JOHN B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Reply to
4 Opposition to Plaintiffs' Motion for Release of Funds.
5

6 This Reply is based upon the attached Memorandum of Points and Authorities; the
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and,
8 any oral argument this Court may wish to entertain.

9 DATED this 28th day of January, 2019.

10 VANNAH & VANNAH

11 

BAC
No: 14530

12 ROBERT D. VANNAH, ESQ.
13

14 I.

15 SUMMARY

16 The facts of this matter are well known to this Court. The path to this intricate knowledge
17 was gained by, but not limited to, having listened to five days of comprehensive testimony; by
18 having reviewed the totality of the evidence presented; by having read hundreds of pages of pre
19 and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual
20 findings and orders. As this Court knows, on November 30, 2017, Simon filed a Notice of
21 Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an
22 amended attorneys lien with a net lien in the sum of \$1,977,843.80. On January 24, 2018, Simon
23 filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing. This honorable Court
24 issued her Decision and Order on Motion to Adjudicate Attorney Lien on November 19, 2018. In
25 her Order, the Court found there was an implied agreement for a fee of \$550 per hour between
26 attorney Daniel S. Simon (hereafter "Simon) and the Edgeworths, and once Simon started billing
27
28

1 the Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths
2 constructively discharged Simon as their attorney on November 29, 2017, when they ceased
3 following his advice and refused to communicate with him. The Court then found Simon was
4 compensated at the implied agreement rate of \$550 per hour for his services, and \$275 per hour
5 for his associates, up and until the last billing of September 19, 2017. For the period between
6 September 19, 2017 and November 29, 2017, the Court held Simon was entitled to his implied
7 agreement fee of \$550 an hour, and \$275 an hour for his associates, for a total amount of
8 \$284,982.50. Further, the Court decided that for the period after November 29, 2017, Simon
9 properly perfected his lien and is entitled to a reasonable fee for the services his office rendered in
10 quantum meruit: an amount the Court determined to be \$200,000. Accordingly, Simon and his
11 law office are owed a total amount of \$484,982.50 in fees—taken from the net lien in the sum of
12 \$1,977,843.80—pursuant to this Court’s Order adjudicating the attorneys lien.
13

14 The Edgeworths have expressed a willingness, in writing, to accept the Court’s rulings on
15 all issues, and sign mutual global releases, but Simon refuses to release the funds held in the trust
16 account. The same cannot be said for Simon and his law firm: even after this Court’s Order was
17 issued, Simon has refused to release the balance of the funds held in trust: a sum of
18 \$1,492,861.30. The Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to
19 their \$1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their
20 money—money to which they are legally entitled. Simon’s unreasonable, inappropriate
21 withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment,
22 which is untoward—not to mention unconstitutional.
23

24
25 PLAINTIFFS respectfully request that this Court issue an Order requiring Simon to
26 release to Plaintiff the remainder of the funds Simon is withholding in trust.

27 ///

28 ///

II.

ARGUMENTS

A. **SIMON'S WITHOLDING OF PLAINTIFFS' MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT: SIMON'S OPPOSITION FAILS TO CITE LEGAL AUTHORITY THAT INDICATES OTHERWISE**

Simon declares that application of the law of garnishment to this case is "plainly frivolous" and the law of garnishment "does not apply on its face." See Simon's Opposition, p. 4. Lines 18-22. Unsurprisingly, Simon fails to cite any statute, case—or any law whatsoever—in support of these sweeping claims. Simon merely asserts "no garnishment took place" and "Simon has not garnished money from a third party." *Id.* Simon's conclusory assertion that there has been no garnishment does not strengthen his position. In fact, the conspicuous absence of legal citation, references, and authorities in Simon's Opposition *speaks volumes*.

In reality, the law is not on Simon's side. He failed to address, distinguish—or even mention—the cases and authorities cited in Plaintiff's Motion: *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969)(holding prejudgment garnishments may violate the fundamental principles of due process); *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57 (2008) (which lays out the procedural formalities required before Nevada garnishments may take place); Nev. Rev. Stat. § 31(laying out the multiple due process protections in favor of garnishees in Nevada's statutory scheme).

While Simon did formally oppose the totality of Plaintiffs' Motion in writing, Simon's failure to address—his failure to oppose—Plaintiffs' legal authorities and arguments with respect to this garnishment issue can be construed as "an admission that the motion . . . is meritorious and consent to granting the same." EDCR 2.20(e). The Court would have authority to grant the portion of Plaintiffs' Motion with respect to this garnishment issue as unopposed under this

1 Court's local rules. But even if the Court were to consider the issue on the merits, Simon's hardly
2 compelling statement that "no garnishment took place" does not hold water.

3 As explained in Plaintiffs' Motion, Simon's withholding of Plaintiffs' money is
4 unconstitutional under the 14th Amendment of the United States Constitution. Simon did not
5 follow any of Nevada's garnishment requirements or comply with Nevada statutory garnishment
6 procedures. He did not first obtain a court order issuing a writ of attachment. Plaintiff has not
7 been formally served with a writ of garnishment, has not had a chance to object to the
8 withholding of money, and has not been given a hearing to address his objections to Simon's
9 behavior. Simon's vigilantism is in direct contravention of Nevada law. See NRS 31.240; NRS
10 31.249; NRS 31.260.

12 Coincidentally, the only "frivolous" argument is Simon's—which is conclusory and
13 unsupported by the law. This Court should find that Simon's withholding of funds is an
14 unconstitutional, prejudgment garnishment and grant Plaintiffs' Motion for Release of Funds in
15 its entirety.

17 **B. NRPC 1.15 DOES NOT APPLY TO THE FUNDS IN THIS CASE BECAUSE**
18 **THEY ARE NOT DISPUTED, THEY WERE HANDLED DIRECTLY BY**
19 **THIS COURT'S NOVEMBER 19, 2018 ORDER ON MOTION TO**
20 **ADJUDICATE ATTORNEYS LIEN, AND SIMON WAS NEVER**
21 **ENTITLED TO THE 1,977,843.80 HE IS NOW WITHHOLDING**

22 Simon's Motion cites Nevada's professional rule regarding safekeeping of client funds in
23 an attempt to justify his wrongdoing: his withholding of 1,977,843.80 . The rule Simon refers to
24 reads as follows:

25 (e) When in the course of representation a lawyer is in possession of funds or other
26 property in which two or more persons (one of whom may be the lawyer) claim interests,
the property shall be kept separate by the lawyer until the 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. NRPC 1.15(e).

27 The crux of Simon's argument is that the money held in trust is disputed because the Edgeworths
28 filed a notice of appeal and Simon filed a notice of cross appeal—and thus, must stay in trust.

Simon attempts to argue *broadly* that “the money held in trust” is disputed. But this is simply not the case. This argument contains a huge, unwarranted assumption and does not hold water for a simple reason: *Plaintiffs’ share* of the money held in trust is not disputed. Simon’s attempt to argue otherwise shows a misapprehension—or misconstruction—of the facts of this case. The Court made its decision. The Court’s Order Adjudicating the Attorneys Lien in this case is clear as day: “the reasonable fee due to the Law Office of Daniel Simon is \$484,982.50.” (See pg. 22, lines 12-13 of Court’s November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as “Exhibit 1.”). Pursuant to this Court’s Order, Plaintiffs are entitled to the \$1,492,861.30 held in trust: that is the amount Simon needs to release *now*—not in months or years from now after extensive litigation and appellate practice.

Simon attempts to distort the issues of the case by framing his wrongdoing in the context of attorney safekeeping of funds. But Simon (conveniently) forgets that Nevada’s professional rules provide a clear mandate: The lawyer shall *promptly* distribute all portions of the funds or other property as to which the interests are not in dispute. NRPC 1.15(e) (emphasis added). And this is precisely what Simon failed to do. He has held—and continues to hold—Plaintiffs’ funds even after this Court ruled directly on the issue. The truth is that Simon had an obligation under NRPC 1.15(e) to release Plaintiff’s \$1,492,861.30 *immediately*—“promptly”—after this Court’s November 19, 2018 Order on Motion to Adjudicate Attorneys Lien was issued. Simon did not do so—which is what necessitated Plaintiff’s current Motion for Release of Funds. The bottom line is that on November 19, 2018, the \$1,492,861.30 became Plaintiff’s money, Simon’s lien rights had been exhausted, and Simon was required to hand over the money promptly. NRPC 1.15(e) cannot and does not justify Simon’s behavior: in fact NRPC 1.15(e) goes *against* Simon’s position.

Even if the Court gives credence to Simon’s argument (which it should not) that the notice of appeal and cross appeal make the “ownership of the money held in trust” disputed for NRPC

1 1.15(e) purposes (See Simon’s Opposition, p. 4. Line 10), Simon should not be *rewarded* for
2 violating the Court’s November 19, 2018 Order. Even *before the appeals were filed*—during the
3 snapshot in time—between issuance of the Court’s November 19, 2018 Order and December 7,
4 2018, when the Edgeworths’ filed their of notice of appeal—Simon was disrespecting this Court
5 and violating this Court’s Order. It would be a travesty of justice, not to mention patently absurd,
6 to allow Simon’s unclean hands during this time period to effectively shelter him from his
7 obligation to release the funds to Plaintiffs.
8

9 Further, as discussed in Plaintiffs’ Motion, if this Court allows Simon to hold onto
10 Plaintiffs’ funds while this appeal is processed, it would be tantamount to an unconstitutional pre-
11 judgment garnishment: a principle *un-rebutted* by Simon in his Opposition. (see above). Just as
12 the Supreme Court in *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969) struck
13 down a statute for allowing a garnishee to be deprived of money *during the interim*—between
14 service of the action and a trial on the suit, this Court should strike down Simon’s attempt to
15 deprive Plaintiff of his money during the interim—between the issuance of the Court’s November
16 19, 2018 Order and the final resolution of this matter on appeal.
17

18 Simon’s gall is hardly subtle. He is attempting keep the full \$1,977,843.80 in trust: an
19 amount which *under no circumstances* he would ever be entitled. The Court explained in her
20 Order “[i]t is undisputed that no express written fee agreement was formed [between Edgeworths
21 and Simon].” (See Exhibit 1, pg. 7, line 15), “[i]t is undisputed that when the flood issue arose, all
22 parties were under the impression that Simon would be helping out the Edgeworths, as a favor”
23 (See *Id.* at p. 8, lines 11-12), and there was an *implied* agreement fee of \$550 an hour. (See
24 Exhibit 1, pg. 22, lines 1-8). In no world and under no circumstances is Simon entitled to keep
25 \$1,977,843.80. But that is what he has done here. The Court must put an end to it and Order
26 Simon to release Plaintiffs’ funds immediately.
27
28

1 **C. THIS COURT HAS JURISDICTION TO ORDER RELEASE OF**
2 **\$1,492,861.30 TO PLAINTIFFS BECAUSE THE COURT HAS**
3 **DISTRETION TO ENFORCE ITS ADJUDICATION ORDER AND**
4 **ALLOWING SIMON TO RETAIN THE FUNDS IS TANTAMOUNT TO**
5 **ALLOWING SIMON TO USE PLAINTIFFS' MONEY AS A**
6 **SUPERSEDEAS BOND**

7 Simon attempts to argue that the filing of notices of appeal strip this Court of jurisdiction.
8 (See Simon's Opposition, p. 5 Lines 14-25.). As discussed above, the Edgeworths' and Simon's
9 Notices of Appeal and Cross Appeal do not strip this Court of jurisdiction because Simon was
10 obligated to release Plaintiffs' funds *before* the Notices of Appeal and Cross Appeal were filed.

11 The truth is that Simon should have released Plaintiff's \$1,492,861.30 immediately after
12 this Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien was issued.
13 Simon did not do so, which is what necessitated Plaintiffs' current Motion for Release of Funds.
14 Simon now attempts to argue this Court has no jurisdiction to enforce its substantive ruling—
15 when it is *his own actions*—delaying the release of Plaintiffs' money in contravention of that very
16 ruling—which have led to the appeal in the first place! Simon cannot have it both ways: his
17 argument is disingenuous.

18 A notice of appeal does not, and never will, change the simple truth the Court decided this
19 issue by adjudicating the attorney lien—entitling Plaintiffs to \$1,492,861.30 immediately, and
20 Simon violated the Court's November 19, 2018 Order by failing to release Plaintiff's portion of
21 the funds. How could Simon file his Motion to Adjudicate Attorneys Lien on January 24, 2018,
22 *defy* the Court's November 19, 2018 Order adjudicating the same attorney lien—leading to the
23 present Motion—then argue that this Court has not jurisdiction to enforce the lien and recovery
24 rights it had *already determined*? He can't. This Court has discretion grant Plaintiff's Motion to
25 Disburse Funds.

26 Simon filed his notice of cross-appeal on December 17, 2018. Simon cannot now hold
27 onto Plaintiff's money during and throughout the entire appellate process. Allowing Simon to do
28

1 so would be tantamount to using *Plaintiff's money*—which he has inappropriately withheld— as
2 his own supersedeas bond! The level of absurdity and unfairness with such a result is
3 overwhelming.

4 **III.**

5 **CONCLUSION**

6 Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs'
7 Motion for Release of Funds, as indicated in this Motion.

8 DATED this 28th day of January, 2019.

9
10 VANNAH & VANNAH

11 
12 ROBERT D. VANNAH, ESQ.

Bar
No: 19530

CERTIFICATE OF SERVICE

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

Electronically:

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

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

Traditional Manner:
None

DATED this 28th day of January, 2019.

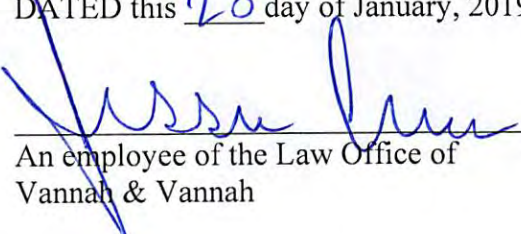

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

1 **ORD**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**
5

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

Consolidated with

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

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

**DECISION AND ORDER ON MOTION
TO ADJUDICATE LIEN**

19 DANIEL S. SIMON; THE LAW OFFICE OF
20 DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

22
23 **DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

24 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
25 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
26 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
27 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in
28

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**

7
8 **FINDINGS OF FACT**

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
11 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
12 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

15 2. The case involved a complex products liability issue.

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
17 suffered a flood. The house was still under construction and the flood caused a delay. The
18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
19 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
20 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
22 Viking, et al., also denied any wrongdoing.

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
26 resolve. Since the matter was not resolved, a lawsuit had to be filed.

27 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
28

1 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
2 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
3 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
4 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

5 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
6 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
7 had some discussion about payments and financials. No express fee agreement was reached during
8 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
9 It reads as follows:

10 We never really had a structured discussion about how this might be done.
11 I am more that happy to keep paying hourly but if we are going for punitive
12 we should probably explore a hybrid of hourly on the claim and then some
13 other structure that incents both of us to win an go after the appeal that these
14 scumbags will file etc.
15 Obviously that could not have been doen earlier snce who would have though
16 this case would meet the hurdle of punitives at the start.
17 I could also swing hourly for the whole case (unless I am off what this is
18 going to cost). I would likely borrow another \$450K from Margaret in 250
19 and 200 increments and then either I could use one of the house sales for cash
20 or if things get really bad, I still have a couple million in bitcoin I could sell.
21 I doubt we will get Kinsale to settle for enough to really finance this since I
22 would have to pay the first \$750,000 or so back to Colin and Margaret and
23 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

24 (Def. Exhibit 27).

25 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
26 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
27 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
28 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per

1 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

4 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
5 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
6 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
7 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
8 paid by the Edgeworths on August 16, 2017.

9 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
10 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
11 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
12 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
13 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
14 25, 2017.

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work
20 done in the litigation of this case. There were several motions and oppositions filed, several
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.

1 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
2 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
3 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

4 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to
5 come to his office to discuss the litigation.

6 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,
7 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
8 Exhibit 4).

9 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
10 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
11 communications with Mr. Simon.

12 18. On the morning of November 30, 2017, Simon received a letter advising him that the
13 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
14 et.al. The letter read as follows:

15 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
16 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
17 with the Viking entities, et.al. I'm instructing you to cooperate with them in
18 every regard concerning the litigation and any settlement. I'm also instructing
19 you to give them complete access to the file and allow them to review
20 whatever documents they request to review. Finally, I direct you to allow
them to participate without limitation in any proceeding concerning our case,
whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
28

1 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

2 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
3 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
4 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
5 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
6 due to the Law Office of Danny Simon.

7 22. The parties agree that an express written contract was never formed.

8 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against
9 Lange Plumbing LLC for \$100,000.

10 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
11 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
12 Simon, a Professional Corporation, case number A-18-767242-C.

13 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
14 Lien with an attached invoice for legal services rendered. The amount of the invoice was
15 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

16 17 **CONCLUSION OF LAW**

18 **The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The**

19 **Court**

20 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
21 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
22 738444-C under NRS 18.015.

23 NRS 18.015(1)(a) states:

24 1. An attorney at law shall have a lien:

25 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
26 damages, which has been placed in the attorney's hands by a client for suit or
collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

1 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
2 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
3 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
4 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
5 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
6 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
7 is enforceable in form.

8 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
9 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
10 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
11 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
12 under NRS 18.015, thus the Court must adjudicate the lien.

13 14 *Fee Agreement*

15 It is undisputed that no express written fee agreement was formed. The Court finds that there
16 was no express oral fee agreement formed between the parties. An express oral agreement is
17 formed when all important terms are agreed upon. See, Loma Linda University v. Eckenweiler, 469
18 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*
19 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the
20 payment terms are essential to the formation of an express oral contract to provide legal services on
21 an hourly basis.

22 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
23 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
24 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
25 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
26 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
27 22, 2017 email, titled "Contingency," he writes:

1 "We never really had a structured discussion about how this might be done. I
2 am more than happy to keep paying hourly but if we are going for punitive we
3 should probably explore a hybrid of hourly on the claim and then some other
4 structure that incents both of us to win an go after the appeal that these
5 scumbags will file etc. Obviously that could not have been done earlier snce
6 who would have thought this case would meet the hurdle of punitives at the
7 start. I could also swing hourly for the whole case (unless I am off what this
8 is going to cost). I would likely borrow another \$450K from Margaret in 250
9 and 200 increments and then either I could use one of the house sales for cash
10 or if things get really bad, I still have a couple million in bitcoin I could sell. I
11 doubt we will get Kinsale to settle for enough to really finance this since I
12 would have to pay the first \$750,000 or so back to Colin and Margaret and
13 why would Kinsale settle for \$1MM when their exposure is only \$1MM?"

14 (Dcf. Exhibit 27).

15 It is undisputed that when the flood issue arose, all parties were under the impression that Simon
16 would be helping out the Edgeworths, as a favor.

17 The Court finds that an implied fee agreement was formed between the parties on December
18 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
19 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
20 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the
21 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger
22 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
23 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
24 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
25 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

26 *Constructive Discharge*

27 Constructive discharge of an attorney may occur under several circumstances, such as:

- 28 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v. Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- Refusal to pay an attorney creates constructive discharge. See e.g., Christian v. All Persons Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).

- 1 • Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast
2 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also Maples v.
3 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
4 2017 Nev. Unpubl. LEXIS 472.
- 5 • Taking actions that preventing effective representation creates constructive discharge.
6 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

7 Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on
8 November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated,
9 has not withdrawn, and is still technically their attorney of record; there cannot be a termination.
10 The Court disagrees.

11 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and
12 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement
13 agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was
14 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
15 things without a compromise. Id. The retainer agreement specifically states:

16 Client retains Attorneys to represent him as his Attorneys regarding
17 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING
18 ENTITIES and all damages including, but not limited to, all claims in this
19 matter and empowers them to do all things to effect a compromise in said
20 matter, or to institute such legal action as may be advisable in their judgment,
21 and agrees to pay them for their services, on the following conditions:

- 22 a) ...
- 23 b) ...
- 24 c) Client agrees that his attorneys will work to consummate a settlement of
25 \$6,000,000 from the Viking entities and any settlement amount agreed to be
26 paid by the Lange entity. Client also agrees that attorneys will work to reach
27 an agreement amongst the parties to resolve all claims in the Lange and
28 Viking litigation.

29 Id.

30 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
31 Simon had already begun negotiating the terms of the settlement agreement with Viking during the
32 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put

1 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
2 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
3 identified as the firm that solely advised the clients about the settlement. The actual language in the
4 settlement agreement, for the Viking claims, states:

5
6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
8 effect of this AGREEMENT and their release of any and all claims, known or
9 unknown and, based upon that explanation and their independent judgment by
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the
11 legal significance and the consequences of the claims being released by this
12 Agreement. PLAINTIFFS further represent that they understand and
13 acknowledge the legal significance and consequences of a release of unknown
14 claims against the SETTLING PARTIES set forth in, or arising from, the
15 INCIDENT and hereby assume full responsibility for any injuries, damages,
16 losses or liabilities that hereafter may occur with respect to the matters
17 released by this Agreement.

18 Id.

19 Also, Simon was not present for the signing of these settlement documents and never explained any
20 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
21 Vannah and received them back with the signatures of the Edgeworths.

22 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
23 Though there were email communications between the Edgeworths and Simon, they did not verbally
24 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
25 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
26 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
27 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
28 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
working on this claim, but he had no communication with the Edgeworths and was not advising
them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon

1 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
2 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
3 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
4 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
5 Simon never signed off on any of the releases for the Lange settlement.

6 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
7 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
8 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
9 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
10 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
11 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
12 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
13 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
14 doesn't seem in his best interests." (Def. Exhibit 53).

15 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
16 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
17 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
18 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
19 was attached to the letter), and that Simon continued to work on the case after the November 29,
20 2017 date. The court further recognizes that it is always a client's decision of whether or not to
21 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
22 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
23 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
24 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
25 with him, making it impossible to advise them on pending legal issues, such as the settlements with
26 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

27 //

1 Simon from effectively representing the clients. The Court finds that Danny Simon was
2 constructively discharged by the Edgeworths on November 29, 2017.

3
4 **Adjudication of the Lien and Determination of the Law Office Fee**

5 NRS 18.015 states:

6 1. An attorney at law shall have a lien:

7 (a) Upon any claim, demand or cause of action, including any claim for
8 unliquidated damages, which has been placed in the attorney's hands by a
9 client for suit or collection, or upon which a suit or other action has been
10 instituted.

11 (b) In any civil action, upon any file or other property properly left in the
12 possession of the attorney by a client.

13 2. A lien pursuant to subsection 1 is for the amount of any fee which has
14 been agreed upon by the attorney and client. In the absence of an agreement,
15 the lien is for a reasonable fee for the services which the attorney has rendered
16 for the client.

17 3. An attorney perfects a lien described in subsection 1 by serving notice
18 in writing, in person or by certified mail, return receipt requested, upon his or
19 her client and, if applicable, upon the party against whom the client has a
20 cause of action, claiming the lien and stating the amount of the lien.

21 4. A lien pursuant to:

22 (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or
23 decree entered and to any money or property which is recovered on account of
24 the suit or other action; and

25 (b) Paragraph (b) of subsection 1 attaches to any file or other property
26 properly left in the possession of the attorney by his or her client, including,
27 without limitation, copies of the attorney's file if the original documents
28 received from the client have been returned to the client, and authorizes the
attorney to retain any such file or property until such time as an adjudication
is made pursuant to subsection 6, from the time of service of the notices
required by this section.

5. A lien pursuant to paragraph (b) of subsection 1 must not be
construed as inconsistent with the attorney's professional responsibilities to
the client.

6. On motion filed by an attorney having a lien under this section, the
attorney's client or any party who has been served with notice of the lien, the
court shall, after 5 days' notice to all interested parties, adjudicate the rights of
the attorney, client or other parties and enforce the lien.

7. Collection of attorney's fees by a lien under this section may be
utilized with, after or independently of any other method of collection.

1 Nev. Rev. Stat. 18.015.

2 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms
3 are applied. Here, there was no express contract for the fee amount, however there was an implied
4 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his
5 services, and \$275 per hour for the services of his associates. This contract was in effect until
6 November 29, 2017, when he was constructively discharged from representing the Edgeworths.
7 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is
8 due a reasonable fee- that is, quantum meruit.

9
10 *Implied Contract*

11 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
12 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
13 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
14 created when invoices were sent to the Edgeworths, and they paid the invoices.

15 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
16 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
17 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as
18 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is
19 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that
20 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the
21 bills to give credibility to his actual damages, above his property damage loss. However, as the
22 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund
23 the money, or memorialize this or any understanding in writing.

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCPP
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
26 paid in full and there was never any indication given that anything less than all the fees had been
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
28

1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
2 the NRC 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
6 Office retained the payments, indicating an implied contract was formed between the parties. The
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
8 date they were constructively discharged, November 29, 2017.

9
10 *Amount of Fees Owed Under Implied Contract*

11 The Edgeworths were billed, and paid for services through September 19, 2017. There is
12 some testimony that an invoice was requested for services after that date, but there is no evidence
13 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
14 fees was formed, the Court must now determine what amount of fees and costs are owed from
15 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
16 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
17 billings, the attached lien, and all other evidence provided regarding the services provided during
18 this time.

19 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
20 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
21 and attempted to create a bill for work that had been done over a year before. She testified that they
22 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
23 email that was read and responded to. She testified that the dates were not exact, they just used the
24 dates for which the documents were filed, and not necessarily the dates in which the work was
25 performed. Further, there are billed items included in the "super bill" that was not previously billed
26 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
27 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
28

1 indicated that there were no phone calls included in the billings that were submitted to the
2 Edgeworths.

3 This attempt to recreate billing and supplement/increase previously billed work makes it
4 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed
5 between the actual work and the billing. The court reviewed the billings of the "super bill" in
6 comparison to the previous bills and determined that it was necessary to discount the items that had
7 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,
8 downloading, and saving documents because the Court is uncertain of the accuracy of the "super
9 bill."

10 Simon argues that he has no billing software in his office and that he has never billed a client
11 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
12 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;
13 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
14 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
15 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
16 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
17 emails or calls, understanding that those items may be billed separately; but again the evidence does
18 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
19 This argument does not persuade the court of the accuracy of the "super bill".

20 The amount of attorney's fees and costs for the period beginning in June of 2016 to
21 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
22 which appears to indicate that it began with the initial meeting with the client, leading the court to
23 determine that this is the beginning of the relationship. This invoice also states it is for attorney's
24 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
25 amount has already been paid by the Edgeworths on December 16, 2016.²

26
27 ²There are no billing amounts from December 2 to December 4, 2016.

1 The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to
2 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
3 amount has already been paid by the Edgeworths on May 3, 2017.

4 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the
5 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for
6 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
7 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
8 been paid by the Edgeworths on August 16, 2017.³

9 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the
10 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for
11 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller
12 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
13 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
14 paid by the Edgeworths on September 25, 2017.

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
16 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
21 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

24 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

25
26 ³ There are no billings from July 28 to July 30, 2017.

⁴ There are no billings for October 8th, October 28-29, and November 5th.

27 ⁵ There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,
November 21, and November 23-26.

28 ⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
2 by the Edgeworths, so the implied fee agreement applies to their work as well.

3 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period
4 of September 19, 2018 to November 29, 2017 is \$284,982.50.

5
6 *Costs Owed*

7 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
8 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
9 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
10 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
11 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
12 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
13 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

14
15 *Quantum Meruit*

16 When a lawyer is discharged by the client, the lawyer is no longer compensated under the
17 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*
18 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*
19 *quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing, Gordon v.*
20 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);
21 *and, Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*
22 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on
23 November 29, 2017. The constructive discharge terminated the implied contract for fees. William
24 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award
25 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
26 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
27 of the Law Office's work on this case.

1 In determining the amount of fees to be awarded under quantum meruit, the Court has wide
2 discretion on the method of calculation of attorney fee, to be “tempered only by reason and
3 fairness”. Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires
4 that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530
5 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee
6 must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the
7 reasonableness of the fee under the Brunzell factors. Argentina Consolidated Mining Co., v. Jolley,
8 Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that
9 “[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors
10 may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

11 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
12 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
13 Court notes that the majority of the work in this case was complete before the date of the
14 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
15 after the constructive discharge.

16 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
17 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

18 *1. Quality of the Advocate*

19 Brunzell expands on the “qualities of the advocate” factor and mentions such items as
20 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
21 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
22 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
23 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
24 Simon’s work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon’s
25 work product and results are exceptional.

26 *2. The Character of the Work to be Done*

27 The character of the work done in this case is complex. There were multiple parties,
28

1 multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the
2 gamut from product liability to negligence. The many issues involved manufacturing, engineering,
3 fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp
4 testified that the quality and quantity of the work was exceptional for a products liability case against
5 a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the
6 Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the
7 case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a
8 substantial factor in achieving the exceptional results.

9 3. The Work Actually Performed

10 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
11 numerous court appearances, and deposition; his office uncovered several other activations, that
12 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
13 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
14 other activations being uncovered and the result that was achieved in this case. Since Mr.
15 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
16 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
17 the Law Office of Daniel Simon led to the ultimate result in this case.

18 4. The Result Obtained

19 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
20 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
21 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
22 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
23 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
24 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
25 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
26 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
27 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
28

1 were made more than whole with the settlement with the Viking entities.

2 In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the
3 Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a)
4 which states:

5
6 (a) A lawyer shall not make an agreement for, charge, or collect an
7 unreasonable fee or an unreasonable amount for expenses. The factors to be
8 considered in determining the reasonableness of a fee include the following:

9 (1) The time and labor required, the novelty and difficulty of the
10 questions involved, and the skill requisite to perform the legal service
11 properly;

12 (2) The likelihood, if apparent to the client, that the acceptance of the
13 particular employment will preclude other employment by the lawyer;

14 (3) The fee customarily charged in the locality for similar legal
15 services;

16 (4) The amount involved and the results obtained;

17 (5) The time limitations imposed by the client or by the
18 circumstances;

19 (6) The nature and length of the professional relationship with the
20 client;

21 (7) The experience, reputation, and ability of the lawyer or lawyers
22 performing the services; and

23 (8) Whether the fee is fixed or contingent.

24 NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

25 (b) The scope of the representation and the basis or rate of the fee and
26 expenses for which the client will be responsible shall be communicated to the
27 client, preferably in writing, before or within a reasonable time after
28 commencing the representation, except when the lawyer will charge a
regularly represented client on the same basis or rate. Any changes in the
basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the
service is rendered, except in a matter in which a contingent fee is prohibited
by paragraph (d) or other law. A contingent fee agreement shall be in writing,
signed by the client, and shall state, in boldface type that is at least as large as
the largest type used in the contingent fee agreement:

(1) The method by which the fee is to be determined, including the
percentage or percentages that shall accrue to the lawyer in the event of
settlement, trial or appeal;

(2) Whether litigation and other expenses are to be deducted from the
recovery, and whether such expenses are to be deducted before or after the
contingent fee is calculated;

- 1 (3) Whether the client is liable for expenses regardless of outcome;
2 (4) That, in the event of a loss, the client may be liable for the
3 opposing party's attorney fees, and will be liable for the opposing party's
4 costs as required by law; and
5 (5) That a suit brought solely to harass or to coerce a settlement may
6 result in liability for malicious prosecution or abuse of process.
7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
8 with a written statement stating the outcome of the matter and, if there is a
9 recovery, showing the remittance to the client and the method of its
10 determination.

11 NRCP 1.5.

12 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
13 the Edgeworths, the character of the work was complex, the work actually performed was extremely
14 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
15 factors justify a reasonable fee under NRPC 1.5. However, the Court must also consider the fact
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be
17 responsible were never communicated to the client, within a reasonable time after commencing the
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,
22 from November 30, 2017 to the conclusion of this case.

23 CONCLUSION

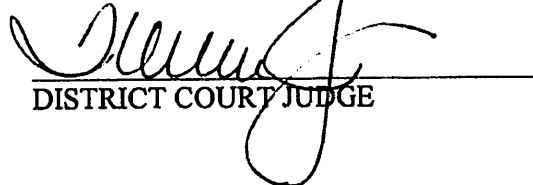
24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
27 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
28 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
Simon as their attorney, when they ceased following his advice and refused to communicate with

1 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
2 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
3 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
4 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
5 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
6 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
7 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
8 constructively discharged, under quantum meruit, in an amount of \$200,000.

9
10 **ORDER**

11 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
12 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
13 Office of Daniel Simon is \$484,982.50.

14 IT IS SO ORDERED this 19 day of November, 2018.


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17 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.



Tess Driver
Judicial Executive Assistant
Department 10

REGISTER OF ACTIONS

CASE NO. A-16-738444-C

Edgeworth Family Trust, Plaintiff(s) vs. Lange Plumbing, L.L.C.,
Defendant(s)

§
§
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§
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§

Case Type: **Product Liability**
Date Filed: **06/14/2016**
Location: **Department 10**
Cross-Reference Case Number: **A738444**
Supreme Court No.: **77678**
78176

RELATED CASE INFORMA...

Related Cases

A-18-767242-C (Consolidated)

PARTY INFORMATION

Lead Attorneys

Defendant Lange Plumbing, L.L.C.

Theodore Parker
Retained
7028388600(W)

Plaintiff Edgeworth Family Trust

Daniel S. Simon, ESQ
Retained
7023641650(W)

EVENTS & ORDERS OF THE COURT

02/05/2019 | **Motion** (9:30 AM) (Judicial Officer Jones, Tierra)

RA000112

Minutes

02/05/2019 9:30 AM

- APPEARANCES CONTINUED: Mr. Peter Christiansen Esq., present on behalf of Daniel Simon, robert Vannah Esq., and Brandonn Grossman Esq., on behalf of Edgeworth Family Trust. Following arguments by counsel. COURT ORDERED, Motion DENIED. This Court does not have Jurisdiction as this case has been bean appealed to the Supreme Court, and the a main issue is the funds. Plaintiff's counsel to prepare the order and submit to opposing counsel for review before submission to the Court.

[Parties Present](#)

[Return to Register of Actions](#)