IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH; EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AS HUSBAND AND WIFE ,

Appellants,
vs.

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

Respondents.

SUPREME COURT CASE NO.: 82058
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SIMON RESPONDENTS' APPENDIX IN SUPPORT OF ALL RESPONDENTS' ANSWERING BRIEFS

VOLUME V

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INDEX TO SIMON RESPONDENTS' APPENDIX IN SUPPORT OF ALL RESPONDENTS' ANSWERING BRIEFS

DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
09/29/2017	Deposition of Brian Edgeworth	I-II	RA000001-RA000301
11/11/2017	Email from Brian Edgeworth to Daniel Simon regarding mediator's proposal	II	RA000302
11/21/2017	Email from Brian Edgeworth to Daniel Simon regarding updated costs	II	RA000303
11/29/2017	Vannah & Vannah Fee Agreement	II	RA000304
12/07/2017	Edgeworth's Consent to Settle	II	RA000305-RA000306
01/08/2018	Receipt of Deposit of Settlement Checks and Hold	II	RA000307-RA000308
02/06/2018	Hearing Transcript for Motions and Status Check of Settlement Documents	II	RA000309-RA000354
08/27/2018	Hearing Transcript of Evidentiary Hearing, Day 1	II-III	RA000355-RA000559
08/29/2018	Hearing Transcript of Evidentiary Hearing, Day 3	III-IV	RA000560-RA000786
08/30/2018	Hearing Transcript of Evidentiary Hearing, Day 4	IV-V	RA000787-RA001028
12/31/2018	Letter from Jim Christensen to Robert Vannah	V	RA001029-RA001030
02/05/2019	Minute Order regarding Plaintiffs' Motion for An Order Directing Simon to Release Funds	V	RA001031-RA001032
09/17/2019	Amended Decision and Order on Special Motion to Dismiss Anti-Slapp	V	RA001033-RA001042
01/09/2020	Email chain between Robert Vannah and James Christensen	V	RA001043-RA001044
01/16/2020	Brief of Amicus Curiae of the National Trial Lawyers in Support of Daniel S. Simon and the Law Office of Daniel S. Simon; and in Support of Affirmance of the Dismissal of the Conversion Claim	V	RA001045-RA001062
05/18/2020	Brian Edgeworth Affidavit	V	RA001063-RA001077
06/04/2020	Angela Edgeworth Affidavit	V	RA001078-RA001080

06/08/2020	Email chain between Kendelee Works and Christine Atwood	V	RA001081-RA001082
07/09/2020	American Grating Business Entity Information form the Nevada Secretary of State website, accessed on July 9, 2020	V	RA001083-RA001084
07/10/2020	Declaration of James Christensen, Esq.	V	RA001085-RA001099
07/12/2020	Declaration of Peter Christiansen, Esq.	V	RA001100-RA001101
08/13/2020	Hearing Transcript regarding All Pending Motions	V	RA001102-RA001109
03/16/2021	Second Amended Decision and Order on Motion to Adjudicate Lien	V	RA001110-RA001134
03/16/2021	Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs	V	RA001135-RA001139
03/30/2021	Defendant's Motion for Reconsideration regarding Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs and Second Amended Decision and Order on Motion to Adjudicate Lien	V	RA001140-RA001170
04/12/2021	Declaration of Will Kemp, Esq.	V	RA001171-RA001174
04/13/2021	Opposition to Motion to Reconsider and Request for Sanctions; Counter Motion to Adjudicate Lien on Remand	V	RA001175-RA001204
04/15/2021	Minute Order Denying Defendant's Motion for Reconsideration Regarding Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs and Second Amended Decision and Order on Motion to Adjudicate Lien	V	RA001205-RA001206
04/28/2021	Third Amended Decision and Order on Motion to Adjudicate Lien	V	RA001207-RA001231
05/03/2021	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Sion's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	V	RA001232-RA001249
05/13/2021	Edgeworths' Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File	VI	RA001250-RA001265
05/13/2021	Opposition to the Second Motion to Reconsider; Counter Motion to Adjudicate Lien on Remand	VI	RA001266-RA001289

05/20/2021	Opposition to Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of File	VI	RA001290-RA001300
05/20/2021	Reply in Support of Plaintiffs' Renewed Motion for Reconsideration of Amended Decision and Order Granting in Part and Denying in Part Sion's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	VI	RA001301-RA001314
05/21/2021	Edgeworths' Reply in Support of Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File	VI	RA001315-RA001323
05/24/2021	Second Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs	VI	RA001324-RA001329
06/17/2021	Decision and Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand	VI	RA001330-RA001334
06/17/2021	Decision and Order Denying Edgeworth's Motion for Order Releasing Client Funds and Requiring Production of Complete File	VI	RA001335-RA001339
07/01/2021	Edgeworths' Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File and Motion to Stay Execution of Judgments Pending Appeal	VI	RA001340-RA001348
07/15/2021	Opposition to the Third Motion to Reconsider	VI	RA001349-RA001363
07/17/2021	Reply in Support of Edgeworths' Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File and Motion to Stay Execution of Judgments Pending Appeal	VI	RA001364-RA001371
07/29/2021	Minute Order Denying Edgeworths' Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File and Motion to Stay Execution of Judgments Pending Appeal	VI	RA001372-RA001373

Q He is, and he says clearly, we've never had a structured agreement on how this might work, but if you want I can pay you hourly, and we can just do the whole case on an hourly basis. And then in response to that, is not a suggestion, like here's a kind of agreement I would -- I would consider, the response to that by Danny is send an hourly bill, and then the client pays the bill, and that's the end of the discussion, right?

MR. CHRISTENSEN: Your Honor that's --

BY MR. VANNAH:

Q Do you have any other facts --

A I don't think that's an agreement, but --

THE COURT: Okay. Hold on just one second, because there's like everybody talking at the same time. Okay. Are you done asking your question?

MR. VANNAH: I thought I was.

THE COURT: Okay. Now --

THE WITNESS: And the answer is, no. I have no other facts in that other than --

THE COURT: Just one second, Mr. Christensen has an objection to that question.

THE WITNESS: Okay.

THE COURT: Mr. Christensen?

MR. CHRISTENSEN: I -- it's a two part objection, because the question was a little vague. If it's a hypothetical it's incomplete. If it's not, there's lacking foundation, because he didn't establish the date the

bill that was sent, or when it was paid, because it was actually many days later; not the next day as his question implied.

MR. VANNAH: I never said the next day.

BY MR. VANNAH:

Q My question is very specific can you answer it?

THE COURT: Can you clarify, just a very simple version of your questions, Mr. Vannah?

MR. VANNAH: Absolutely.

BY MR. VANNAH:

Q You know we have a meeting in San Diego, right?

A Right.

Q We know then we have the email afterwards where Mr. Edgeworth's saying, we've never had a structure settlement on our conversation, a structure conversation on this. I'm still willing to consider the hybrid situation, but, you know, I can also just swing hourly and pay an hourly bill. And then within a period after that happened, with no response from Danny, Danny didn't respond to the email, Danny sent another bill that was over $200,000, and Mr. Edgeworth paid it.

A Uh-huh.

Q Given that, that would be inconsistent with that he discontinued the hourly billing, right?

A No. Because he says here, they didn't have a discussion about how this might be done, and by might be done, I'm assuming he means reaching nirvana, getting the 6 million, you know, after a trial or appeal, that's what I'm assuming it means, okay. And he has two

approaches; 1) we do this hybrid; 2) I keep paying you hourly. There's no agreement that I see in either one.

Q I know. They already had an agreement to pay him hourly, and he says I can continue --

A Well, that's what you said --

Q I do.

A I know, but I've seen --

THE COURT: Okay. Mr. Vannah, he is not going to agree with you on this point. He's basically that's not how he understood it, and you understood it to be completely different.

BY MR. VANNAH:

Q Well, you know what, what you're understanding -- you understand the judge is going to make these decisions, right?

A I am -- I'm sure that that is true, here.

Q Okay.

A And that's probably the hardest decision, you know -- harder than my decision I think.

Q Right.

A What I'm saying that the reasonable value 2-4, I think that's pretty --

Q That would be great --

A Yeah.

Q -- if they had agreed at the end of the case you make the decision on the fee, but nobody agreed to that.

A If they want to do that, we could --

Q Well, the bottom line is, if there is an enforceable agreement between the parties as of June 17, that Mr. Simon will bill $550 an hour, and bill his costs, and continue the case, and get paid every hour for $550 an hour, plus his cost, until the case is concluded, then the proposed new agreement is one that Mr. Edgeworth could have agreed to, or say no; would you agree with that?

A If they had an agreement, I would agree that's the agreement.

Q All right. You know, what, it's really what --

A That's your question, right?

Q -- I appreciate -- you did. Yeah. That's a great answer, thank you.

MR. VANNAH: Thank you, Your Honor.

THE COURT: Thank you, Mr. Vannah. Mr. Christensen, any follow-up?

MR. CHRISTENSEN: Just a few things, Your Honor.

REDIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Mr. Kemp, I'd like to show what's been marked and admitted as Office Exhibit 80, this is Bate Stamp 3426. This is a document created by Mr. Edgeworth and --

A Right. I have a copy --

Q -- provided to Mr. Simon?

A -- of that up here. Uh-huh.

Q Okay. Where it says, not paid, or not invoiced, yet? Lawyer,

it says, do not know.

A Right.

Q Do you see that?

A Right.

Q Okay. Is that consistent with your understanding of whether or not there was an agreement in this case?

A You know, it -- really what happened here is what happens to all of us sometimes. You get into it with the client, and we both roll up our sleeves. We decide to beat up the enemy, and maybe you don't cross your T's, and dot your I's. So, yeah, I think it is consistent.

Q Okay.

A I mean, they did it -- it's unbelievable, like I keep saying. They got 6.1 million for a broken sprinkler that flooded a kitchen, and -- I'm not trying to diminish the importance of kitchens, but I mean, it's an amazing result.

MR. CHRISTENSEN: And I hate to disagree with Mr. Vannah, I'm playing along.

THE COURT: Do you know about this one?

MR. CHRISTENSEN: I gave him the wink.

MR. VANNAH: I haven't seen that reluctance.

BY MR. CHRISTENSEN:

Q I think 1.5 fee is kind of heading off in the wrong direction. Because we have a statute, we have an attorney fee statute in this State, correct?

A We do.

Q And NRS 18.0152 says, in the absence of an agreement the lien is for a reasonable fee for the services which the attorney has rendered for the client, correct?

A Right, right.

Q Is you opinion there was no agreement?

A I don't think there was an agreement. I mean --

Q That's the reasonable fee for the services which Mr. Simon rendered for the client?

A It would be the 224, in my opinion, if not higher. You know, like I keep saying, that's based on 40 percent. We would charge -- if you'd gotten in the door, which, you know, he seems like a nice guy, but friends or family would have had to bring this case in.

Q Okay. And, you know, 1.5(a) that we went over, for example (3) that contemplates using the measure of what other lawyers charge in the community?

A That is true.

Q Is that true?

A Uh-huh.

Q And that doesn't say contingent, hourly whatever, it just says what other folks charge for this kind of work, that's what you get if it's reasonable, correct?

A Yes.

Q Okay. Is that --

A And I point out again, this is a bar rule. You know, Polsenberg and these guys draft this up. So, they say we should do this

for our contingency agreements, they really --

Q Well, he usually works for the other side, doesn't he?

A Usually he does.

Q Okay. And under Brunzell you can go and look at what other folks in the community charge as well, correct?

A Yes.

Q And under the *Loma Linda* -- or I'm sorry --

A *Lindy Lodestar*. The name of the case --

Q *Lindy Lodestar*.

A -- was Lindy Lodestar is the informant.

Q Right. That's just saying, look at what other folks in the community charge for that type of service.

A You know, if that guy is reading the MDL manual early in the week, because I hadn't read the new MDL manual, and it has now become vogue that when they get into fee disputes that the judge makes the defendant to produce his case. So, they look at what the defendant's fees are, to determine what a reasonable fee is for the plaintiffs.

And usually that works out pretty good for the plaintiff's attorney, because the defendant usually has five or six silk stocking firms, and so they're overcharging the whole way. And so usually that's a bigger fee than you get with it being an 80 percent fee contract. But, yeah. In answer to your question, yes.

Q Okay. Thank you.

MR. CHRISTENSEN: No further questions.

THE COURT: Anything else, Mr. Vannah?

MR. VANNAH: I do.

RECROSS EXAMINATION

BY MR. VANNAH:

Q Well, we did that in this case, actually. We looked at what the Defense was charging, they were charging 185 to 225 an hour; were you aware of that?

A No. But I'm not surprised because I'm familiar with Mr. Nunez' firm and his rates.

Q And on that 1.5 --

[Counsel confer]

THE WITNESS: But I'll bet you the total charge by the defense was over 24. I bet you when you add up all the expert and the attorney's fees?

BY MR. VANNAH:

Q Nobody's ever -- I don't know.

A Yeah.

Q I don't really care, I'm actually here to talk about --

A Okay.

Q -- this case, but no, I appreciate that.

A Yeah.

Q Look we parse, and we just saw an example of taking something totally out of context and let me show you why.

A Okay.

Q So when you look at the fee, at 1.5 the first says, a lawyer shall not make an agreement for a charge or collect an unreasonable fee.

Do you see that?

A No. Is that the --

Q At that top --

A -- very beginning.

Q That's where --

A Yeah. I see that, yes. Uh-huh.

Q And that was the area he's talking about --

A Uh-huh.

Q -- so when I see he, Jim Christensen was saying to you, he had you go down in that section. So, it says, a lawyer shall not make an agreement for a charge, or collect an unreasonable fee, or an unreasonable amount for expenses; do you see that?

A Uh-huh.

Q And then down below, the way he -- then he directs your attention to several things. One being the fee customary charge in the locality for similar legal services; do you see that?

A Uh-huh.

Q So what he's saying is that if Mr. Simon had brought him to say, okay, I'm charging you an 80 percent contingency fee, then that would be something later that the client can say, well, wait a minute is that -- one of the factors would be, is that the fee that's customarily charged in the locality, right?

A I would think that would be on the high side.

Q I would agree with you. So, when Mr. Christensen gets up here and takes it out of context, what he's talking about, when he says

the fee customarily charged in the locality he's talking under Section A, as to whether or not the fee that is agreed to is unreasonable or not, correct?

A Right.

Q All right. So, thank you.

A But it's that --

Q But that's --

A Okay.

Q Let me just -- you know, I want to give him a chance to earn his money --

A Okay.

Q -- so if you got more to add?

A Not a problem Mr. Vannah. I will not say a word.

THE COURT: Mr. Christensen?

MR. CHRISTENSEN: I hate to disagree with Mr. Vannah again.

FURTHER REDIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Actually, it says, the factors to be considered in determining the reasonableness of fee include the following. It doesn't say unreasonable, right?

A Right.

Q It says reasonable?

A I don't think there's any dispute on a product's case, it would be 40 or 50 -- 40 to 45 or even 50 percent. So, I don't know what the

dispute is here.

Q And to go to the MDL we're not talking about just looking at the hourly rate of one single defense lawyer on a multi-defendant situation, we're talking about aggregating all of their charges and then comparing that to the plaintiff, correct?

A Right.

Q So we wouldn't need to know that the gentleman is making 185 an hour or 200, or whatever, we'd have to know what the aggregate is of all those defense attorneys and what they all made --

A Uh-huh.

Q -- and they compare that number, correct?

A Yeah. And it probably gets a little more complicated in this case, because apparently Viking has a team that goes from place to place, to place, to place and fights these cases. So, you probably have to throw in maybe a little more from past experience, and effort that they were bringing from other cases to this case.

Q But Mr. Greene is making 925 in this case, and he's adverse to Mr. Simon.

A You know, I have already tickled this for our annual meeting in January for a discussion, because I would charge a little bit less, but --

Q Okay.

MR. VANNAH: Well, I have more experience.

THE WITNESS: Well, Mr. Greene doesn't.

BY MR. CHRISTENSEN:

Q Your opinion is 2.44?

A Right.

MR. CHRISTENSEN: Okay. Thank you, Your Honor.

THE COURT: Thank you. Mr. Vannah, anything else?

MR. VANNAH: No, nothing, Your Honor.

THE COURT: Okay. You guys don't have anything else to say about Rule 1.5?

MR. VANNAH: Nothing.

THE COURT: Okay. Mr. Kemp, you may be excused. Thank you very much --

THE WITNESS: Thank you, Your Honor.

THE COURT: -- for your testimony here.

Mr. Christensen, do you have any more witnesses?

MR. CHRISTENSEN: No, Your Honor.

THE COURT: Does Defense have any? Okay.

MR. GREENE: We do, Your Honor. Angela Edgeworth.

THE COURT: Okay. Do we think we can question her in an hour?

MR. GREENE: I think I'm going to make the best effort of that I possibly can.

THE COURT: Okay. And, ma'am, if you could remain standing, raise your right hand. Thank you.

ANGELA EDGEWORTH, PLAINTIFF'S WITNESS, SWORN

THE CLERK: Please be seated. Stating your full name, spelling your first and last name for the record.

THE WITNESS: Angela Edgeworth, A-N-G-EL-A E-D-G-E-W-

O-R-T-H.

THE COURT: Okay.

MR. GREENE: Your Honor, can Mr. Kemp be excused?

THE COURT: Yes.

MR. GREENE: Thank you, Your Honor.

THE COURT: Yes. Mr. Kemp you may be excused. Thank you very much.

MR. CHRISTIANSEN: And, Judge, this is my witness, and Your Honor asked if we can complete it in an hour. I'd like to complete it cumulatively, not end on the direct examination, and come back later. So, if we can all complete the witness, then I'm good to go.

THE COURT: Well --

MR. CHRISTIANSEN: If Mr. Greene is going to go right up to 5:00, and I go, oh, shoot, I didn't know it would take this long.

THE COURT: Well, and that was my question. And like as you understand my concern is -- I mean, I have to assume, Mr. Edgeworth was the very first witness to testify in this at all. We've heard from several other witnesses -- well, yes, only a couple, it seems like several because it's day 4, in that amount of time.

So, I don't know how much questioning you guys have for her. But I would agree, I meant cumulative. Because I don't -- what I don't want, is because in all honesty, whatever we don't finish today, I don't know when we're going to finish this again. So, I don't want her to begin now if we're not going to finish her, because I don't want to forget what she said.

And then I'm sitting here like three days later -- well, I mean, three months later watching the JAVS, because the problem is this, I'm not here tomorrow, because I thought this hearing was going to go three days, so tomorrow is not available. I start a trial next week on Tuesday that is going to run the entire week.

The following week begins my criminal stack that goes for five weeks. We can anticipate some things may not go, but I can't ever make that promise to you. My next civil stack begins October 15th. I'm at judicial college, I'm not here that week. October 22nd I have had a med-mal, that's supposed to start, but you guys all know how that works, and it may start, it may not.

So in regards to us looking at a different date to continue, I just don't know how much longer from today that's going to be. So, I don't want her to get halfway through her testimony and then I don't remember what she said.

MR. VANNAH: Your point's well-taken. And I think that would risky, because -- what do you think?

MR. GREENE: I think it is risky, Your Honor.

MR. VANNAH: So, I don't want to do something that would --

THE COURT: Yeah. And I apologize if I gave you the impression I only wanted one of you to finish today, or Mr. Christiansen, so I'm glad you cleared that up, because I don't want that at all, because I won't remember what she said.

MR. VANNAH: You know, that's a good point.

THE COURT: Yeah.

MR. VANNAH: So why don't we --

MR. CHRISTIANSEN: And, Judge, if the Court's -- Mr. Greene, I'm sorry, I almost called you John. If Mr. Greene says, hey I got 45 minutes and the Court's willing to go like 5:15, 5:30, and we can just jamb it all in. My preference is to finish completely, what I just don't want to do is have my side hamstrung, you only hear direct, and then I come back to cross, the witness in two and a half months, and nobody's memory is fresh.

THE COURT: No. And I don't want that either. But I'm willing to stay until like 5:15, but my thing is I'm not keeping my staff here until 7:00, while we go back and forth on her. So, you guys tell me how long this going go?

MR. GREENE: It's going to take at least an hour, maybe an hour and a half.

THE COURT: Okay.

MR. GREENE: I mean, she wants to be heard, Your Honor. So, I don't want to --

THE COURT: Well, and I mean that's what I was anticipating, and in light of, you know, the testimony that has come since her husband has testified, I would just as soon that there's things you guys have to ask her, that may have been brought up in regard to -- I know there's an email now out there that she sent to Mr. Simon, while Mr. Edgeworth, was in China, so I know you guys want to talk about that.

So, I mean, I just don't want to start it either, if we're not going to

finish.

MR. VANNAH: Well, said and I think you're right. So, we'll --

MR. GREENE: That's fair.

MR. VANNAH: Well, why don't we adjourn.

THE COURT: Okay.

MR. VANNAH: We've got one last witness, and then --

THE COURT: Is she your only witness?

MR. GREENE: Yes. The last one.

THE COURT: Okay. Well, I mean, also we have the cell phone records issue that's still out there.

MR. VANNAH: We do.

THE COURT: As well as -- I mean, I don't know, are you guys inclined to do your closings in writing, or did you guys want to do an oral presentation of those?

MR. VANNAH: So, let's ask you, Judge. I mean, what would you prefer, in all honesty?

THE COURT: Well, I would -- because I'm going to tell you this right now, and I thought I said it earlier, but I don't know that I did, because I want you guys to do findings of fact, from your -- I want each one of you to do them now that you've heard the evidence. But I will assume you guys wouldn't be prepared to close until you saw those cell phone records?

MR. VANNAH: Yeah. I wanted to see those.

THE COURT: Because in regards to the calculations and everything that you asked about, I assumed you guys wouldn't want to

close until you got those.

MR. VANNAH: It's just one thing, and there may be nothing I care about, but I'd just like to see them.

THE COURT: Right. But I just assumed you wanted to read those, first.

MR. VANNAH: So, we talked about that, but -- so I don't know if you want to give us any guidance as to -- we're almost done. I mean, there's nothing staggeringly new you're going to learn here. Just, obviously she's not as involved as Brian was.

THE COURT: Right.

MR. VANNAH: So, we talked about it the other day, all of us, about the closing and how that's going to work. So, there's two ways of doing it, either an oral closing, but I mean, if you want -- if you have some area of the law that you wanted to -- I just don't know where you are on it.

So, we -- you're very good at hiding the cards, we have no idea. At least I have no idea where you're leaning, or what you're looking at, or what you're concerned about.

So, when we had our initial conversation the other day, I was like, I'm lazy, so it would be a lot easier to argue for an hour, but when you write these briefs, it takes like four days, I mean, they're really time consuming.

THE COURT: I understand, I understand. Well, I mean -- and I mean, what do you want to say about that Mr. Christensen? I mean, is that what you guys discussed, or --

MR. CHRISTENSEN: I'm a little taken aback at the time estimate on direct of Ms. Edgeworth, given the extent of the testimony already adduced to the Court today. Putting that aside the fact that memories may fade is of course something that we're all subject to.

So, I'm a little concerned that with the Court's schedule as you just indicated that, we're talking about maybe taking this testimony even maybe two months down the road, three months? We really don't know.

THE COURT: right.

MR. CHRISTENSEN: And that's going to be awkward. So, I have been kind of mulling that over, and I'm not really sure what the conclusion is, other than I guess we're going to have to hope for a clean date from the Court at some point, maybe we could be on 72-hour notice?

THE COURT: Well, I mean, that's the thing, I mean, I do my criminal calendar calls on Monday. If I have a week that nobody announces ready, I'm more than happy to get you guys in here and wrap this up sometime in the month of September. But as I sit here right now I just cannot promise you that that's going to happen.

MR. VANNAH: And listen, here's the deal too, I mean, let's be honest. I mean, Jim's got his schedule, I've not mine --

THE COURT: Right.

MR. VANNAH: -- Pete's got his, Danny's got a schedule, I mean, and all of us, and you have a schedule. So, it's not -- it was hard to get the dates we got one, and listen we got four days, which is

wonderful, thank you, from all of us, you gave us Thursday. We're just so close to being done, but -- so we need -- you know, we have vacations, we have trials we've got to do, and you got things to do.

So, I don't know what the solution is here, other than obviously we're going to have to come back another time. So, whether we like it or not, like work until -- and I don't blame your for not wanting your staff to stay, and frankly, I don't want to stay either. I'm old and I need to go home and eat.

THE COURT: Well, I mean, because that's the thing, I could give you guys a Monday and then just start a criminal trial on Tuesday. Because if they're my cases they can go into the next week.

MR. VANNAH: That would be great, Your Honor.

MR. CHRISTIANSEN: And, Judge, I don't --

MR. VANNAH: Next week [indiscernible].

MR. CHRISTIANSEN: -- from my perspective, if Mrs. Edgeworth is the last witness and her direct is an hour, her cross won't be an hour, and if the Court wants briefs, we can argue, or the Court wants briefs, but, it seems to me that the window of time needed to set aside is not more than a half day, I guess, is what I'm saying.

THE COURT: Well, that's what I was thinking. I mean, and I can give you guys like an afternoon on a Monday. I'll do my criminal--

MR. CHRISTIANSEN: So, Mr. Vannah --

THE COURT: -- calendar and give you guys the Monday.

MR. CHRISTIANSEN: -- and I could show up, or Mr. Greene, or whoever. And she's my witness, she's Mr. Greene's witness it looks

like, adduce that testimony --

THE COURT: Okay.

MR. CHRISTIANSEN: -- in a couple of hours on a Monday morning, and then if you want to hear closings, or if you say you want them in briefs, we could do either, then the window that you've got to set aside even is a little smaller. Maybe you could start your criminal trial at 11:30 and we can start at 9:00 and be done.

MR. VANNAH: You know, Pete makes a good argument, and I have to agree with him. I don't have to be here, and Jim you don't have to be here. If I'm here, I'm here, but I don't want hold up finishing up a trial on my schedule, so --

MR. CHRISTENSEN: I agree.

MR. VANNAH: John's more available, and it sounds like you are.

MR. CHRISTIANSEN: Well, I'll make myself available --

MR. VANNAH: It's a lot easier --

MR. CHRISTIANSEN: -- for a couple of hours Monday morning. I get whoever else I'm in front of.

THE COURT: Well, then I could do it, I mean, on the 10th. Because I'm looking at my trial stack. There's a trial that has to go, and I'm pretty sure that trial is going to go longer than five days anyways, so they're going into the next week anyways.

MR. VANNAH: I mean, let's look here before we --

THE COURT: What does the 10th look like for you guys?

MR. CHRISTIANSEN: Of September?

THE COURT: Yeah.

MR. CHRISTIANSEN: Unless we juggle -- I'm in Scotland dropping my daughter off until the 12th, Judge, so --

THE COURT: Through the 12th?

MR. CHRISTIANSEN: Through the 5th through the 12th. And I'm here for the duration, besides that.

MR. VANNAH: Yeah.

MR. GREENE: And I'm out of town that one Monday.

THE COURT: You are out of town the Monday, okay. So, let's look at --

MR. VANNAH: If you had the 17th I could do it?

THE COURT: So, what about the 17th?

MR. CHRISTIANSEN: Yeah.

MR. VANNAH: Let me look here.

THE COURT: That's a much shorter criminal stack.

MR. GREENE: I'm here too.

MR. CHRISTIANSEN: Judge, I can do it, as long as the Court wouldn't mind maybe confirming with Department 3, where I'll be in a murder trial, that I need to start a little bit late.

THE COURT: I will contact --

MR. CHRISTIANSEN: If you tell Judge Herndon --

THE COURT: I will contact --

MR. CHRISTIANSEN: -- then I'll be here, and I'll be prepared to finish Ms. Edgeworth at that time.

THE COURT: Okay.

MR. CHRISTIANSEN: Can you do the 17th, John?

MR. GREENE: I can.

THE COURT: Okay.

MR. VANNAH: I can't, but that's okay. I don't need to be here.

THE COURT: Okay. So, if you're not going to be here, would you rather do closings in writing then, since you're not going to be here?

MR. VANNAH: Well, that's -- so let's talk about that just for a minute, Judge --

THE COURT: Okay. Well, first of all, let's see if Ms. Edgeworth, are you available --

MS. EDGEWORTH: Can I check my phone?

THE COURT: Yes.

MS. EDGEWORTH: Okay. Thank you.

MR. VANNAH: Yeah. Let's make sure she's there.

MS. EDGEWORTH: It's the 17th of September?

THE COURT: Yes.

MR. VANNAH: While she's doing that, it just takes a million hours to do it by --

MR. CHRISTENSEN: At 925 an hour you're complaining.

MR. VANNAH: I'm not complaining.

[Counsel confer]

MS. EDGEWORTH: Your Honor, I'm out of town that day. I get back that evening.

MR. VANNAH: Is that Friday a possibility.

THE COURT: Well, the problem is every Friday in the month of September I have an evidentiary hearing.

MR. VANNAH: I see.

THE COURT: Like it's just been crazy, I don't know why.

MR. CHRISTIANSEN: John, could you do Tuesday the 11th? John? If your client -- if that's okay Ms. Edgeworth?

MR. GREENE: Yes.

MS. EDGEWORTH: Yes.

THE COURT: Over --

MR. CHRISTIANSEN: Could we do --

THE COURT: The only problem is on Tuesday I have to make a presentation at the civil bench bar at 11:30.

MR. CHRISTIANSEN: Or Wednesday the 12th.

MR. CHRISTENSEN: 11:30 she said.

MR. CHRISTIANSEN: Oh, 11:30, we could finish by then, Judge.

MR. VANNAH: Well, if we start at 9:00.

MR. CHRISTIANSEN: Yeah. If we start here at 9:00 --

THE COURT: I have a criminal calendar -- I mean a civil calendar, we can't start until 11:00.

MR. VANNAH: That makes sense.

THE COURT: We have a calendar.

MR. VANNAH: Afternoon, that afternoon, or something?

THE COURT: I mean, I could give you the -- what about the 18th -- well, Mr. Christiansen you're not even here on the 11th, right?

MR. CHRISTIANSEN: Correct. .

MR. CHRISTENSEN: That's right, he's not back until the 20th

THE COURT: So, what the 18th?

MR. CHRISTIANSEN: I could do it. I'm just going to ask Judge Herndon to verify that I'm down here for a couple of hours and --

THE COURT: Oh, Judge Herndon, yeah he --

MR. CHRISTENSEN: He's good like that.

THE COURT: -- starts criminal calendar at 9:30-ish.

MR. CHRISTIANSEN: And I'm in a murder -- I'm in a retrial of a capital case in front of him. So, he'll -- he's fine, he'll push it off.

THE COURT: Yeah. And so, he won't finish his criminal calendar probably until somewhere around like 11:00.

MR. GREENE: The 18th would be perfect.

MR. CHRISTENSEN: John, can you do the 18th?

MS. EDGEWORTH: I' available as well, Your Honor.

THE COURT: Okay. Are available on the 18th.

MR. GREENE: Are you?

MR. VANNAH: Yeah, I am.

MR. GREENE: I'm in an arbitration that day, but since I'm the arbitrator, I guess you knew that.

THE COURT: Okay. So, we're going to do it on the 18th. That is civil day, so we'll start at 11:00.

MR. CHRISTENSEN: Great.

MR. GREENE: 11:00, okay.

MR. CHRISTIANSEN: And Judge, can we, without imposing

too much on your staff, could we work through lunch, so I can get back to my murder trial. So, it might go an hour and then --

THE COURT: They're going to kill me, Mr. Christensen. We've got to get this --

MR. CHRISTIANSEN: I'm happy to bring sandwiches or something.

[Counsel confer]

THE COURT: Okay. They're okay with that, Mr. Christensen.

MR. CHRISTENSEN: Thank you very much

THE COURT: Okay. So, we'll do it on the 18th.

Okay. Mr. Vannah, in regards to closing.

MR. VANNAH: So, the last time I did those things in writing, I mean, I'm telling you, it is a lot of time.

THE COURT: Well, if you're going to be here we can do them orally.

MR. VANNAH: Yeah. Well, you know what, we could, why don't we.

THE COURT: Okay.

MR. VANNAH: Then if you have some issues you can ask --

THE COURT: Right, yeah. If you're going to be -- I just didn't want -- I just figured you would be the one doing the closing, so I didn't think you'd be comfortable doing it orally, if you're not here.

MR. VANNAH: No, I am going to do the closing.

THE COURT: Okay.

MR. VANNAH: So, the 18th.

THE COURT: The 18th, we'll just do it.

MR. VANNAH: Yeah. So that's great.

THE COURT: Okay. We'll do it orally. But I do need you guys to prepare findings of fact --

MR. VANNAH: Yes.

THE COURT: -- and submit them to my law clerk.

MR. VANNAH: Yes. That's --

THE COURT: Based on the evidence that you heard.

MR. VANNAH: Yeah.

MR. CHRISTIANSEN: Between now and the 18th, Your Honor?

THE COURT: Between now and the 18th.

MR. CHRISTIANSEN: Very good, that's perfect.

MR. CHRISTENSEN: Yes, Your Honor.

THE COURT: Prepare findings of fact, submit it to law clerk in a Word document.

MR. VANNAH: Okay.

THE COURT: All right.

MR. CHRISTENSEN: No. That's very good, Your Honor.

THE COURT: Yeah. If she has them by that day, because I am not going to rule from the bench that day. You'll get a ruling after. So, she just has them by the time we start on the 18th.

MR. VANNAH: No, I understood, I figured that. But we'll start at 11:00 on the 18th, and just go through that day and do it.

THE COURT: Yeah, just go through until we're done.

[Counsel confer]

MR. VANNAH: Okay. So sounds great.

So, let me be kind to your staff. So now we're looking to at 11:00, so from 11:00 a.m. to 5:00, which I don't have a problem with. But --

THE COURT: At some point we're going to have to break in there, I mean, I understand Mr. Christensen is going to schedule, we'll work it out with Judge. Herndon. But yeah, at some we're going to have to a break and eat, we all need to eat.

MR. CHRISTIANSEN: As soon as I am done with the witness I will go back to my murder trial and let --

THE COURT: Oh, okay, okay. Yeah. Well we're still going to take a little recess.

[Counsel confer]

THE COURT: Yeah. We'll get Mr. Christiansen out of here then we will break for lunch, and then you guys --

MR. CHRISTIANSEN: And then come back.

THE COURT: Yeah. So, I'll keep that whole afternoon open for you guys. So, yeah, that's what we'll do. We'll get Mr. Christiansen, so will get Mrs. Edgeworth on, Mr. Christiansen out of here, and then we'll break for lunch, and then you guys will come back and close.

MR. CHRISTIANSEN: Thank you very much.

MR. VANNAH: Thank you, Judge.

THE COURT: Thank you.

MR. CHRISTIANSEN: Judge, thanks for you accommodations.

MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

[Proceedings adjourned at 4:16 p.m.]

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

_____

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

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 31, 2018

Via E-Serve

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

Re: Edgeworth v. Viking

Dear Mr. Vannah:

In December of 2017, I wrote to you and explained that Mr. Simon was willing to work collaboratively to resolve the attorney lien. I also advised that accusations of theft and conversion were counterproductive. The offer to work collaboratively was impliedly rejected when your office filed and served a complaint against Mr. Simon alleging conversion.

Plaintiffs' motion for an order directing Simon to release funds repeats the conversion accusation. (*See, e.g.*, Mot., at 6:7-9.)

Accusing Mr. Simon of illegality and conversion - without basis - does not promote a collaborative discussion and resolution of the lien issue, and/or disposition of the trust account during appeal.

If you would like to begin a collaborative dialogue, please contact me.

I look forward to hearing from you.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ *James R. Christensen*

JAMES R. CHRISTENSEN

JRC/dmc
cc: Daniel Simon

R. GISTER 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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Case Type: **Product Liability**
Date Filed: **06/14/2016**
Location: **Department 10**
Cross-Reference Case Number: **A738444**
Supreme Court No.: **77678**
78176
83258

RELATED CASE INFORMATION

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)
Plaintiffs' Motion For An Order Directing Simon To Release Plaintiffs' Funds

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

ORDR

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

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

AMENDED DECISION AND ORDER ON SPECIAL MOTION TO DISMISS ANTI-SLAPP

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

AMENDED DECISION AND ORDER ON SPECIAL MOTION TO DISMISS ANTI-SLAPP

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff' or "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS**:

FINDINGS OF FACT

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

Mr. Simon and his wife were close family friends with Brian and Angela Edgeworth.

2. The case involved a complex products liability issue.

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

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

5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc., dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately $500,000. One of the elements of

the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

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

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

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks. 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 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no indication on the first two invoices if the services were those of Mr. Simon or his associates; but the bills indicated an hourly rate of $550.00 per hour.

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

10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount of $255,186.25 for attorney's fees and costs; with $191,317.50 being calculated at a "reduced" rate of $550 per hour for Daniel Simon Esq., $60,981.25 being calculated at a "reduced" rate of $275 per hour for Ashley Ferrel Esq., and $2,887.50 being calculated at a "reduced" rate of $275 per hour for Benjamin

Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September 25, 2017.

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

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

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

14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the open invoice. The email stated: "I know I have an open invoice that you were going to give me at a mediation a couple weeks ago and then did not leave with me. Could someone in your office send Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

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

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

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

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

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

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review 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."

(Def. Exhibit 43).

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

20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the Law Office filed an amended attorney's lien for the sum of $2,345,450, less payments made in the sum of $367,606.25, for a net lien in the sum of $1,977,843.80. This lien includes court costs and out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of $76,535.93.

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

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

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

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

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

CONCLUSIONS OF LAW

The Court has adjudicated all remaining issues in the Decision and Order on Motion to Dismiss NRCP 12(b)(5), and the Decision and Order on Motion to Adjudicate Lien; leaving no remaining issues.

CONCLUSION

The Court finds that the Special Motion to Dismiss Anti-Slapp is MOOT as all remaining issues have already been resolved with the Decision and Order on Motion to Dismiss NRCP 12(b) and Decision and Order on Motion to Adjudicate Lien.

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ORDER

It is hereby ordered, adjudged, and decreed, that the Special Motion to Dismiss Anti-Slapp is MOOT.

IT IS SO ORDERED this ___ day of September 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:
JAMES R. CHRISTENSEN PC

James R. Christensen Esq.
Nevada Bar No. 3861
601 S. 6th Street
Las Vegas, Nevada 89101
Attorney for SIMON

Approved as to form and content:
VANNAH & VANNAH

Robert D. Vannah, Esq.
Nevada Bar No. 2503
John B. Greene, Esq.
Nevada Bar No. 4279
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

Daniel Simon

From: Daniel Simon
Sent: Friday, January 10, 2020 12:50 PM
To: Daniel Simon
Subject: FW: Simon/Edgeworth

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Thursday, January 9, 2020 4:11 PM
To: James R. Christensen <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>
Subject: Re: Simon/Edgeworth

Are you talking about a separate order; I didn't think she denied the order, I thought she said she couldn't hear it.

Sent from my iPad

On Jan 9, 2020, at 3:11 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Counsel,

1. Is the attached proposed order acceptable?
2. The writ of attachment argument is in your brief at pg 13 and is later mentioned as well. If its not part of your appeal, why is the argument in your brief?

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: Thursday, January 9, 2020 10:11 AM
To: James R. Christensen <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>
Subject: Re: Simon/Edgeworth

I think I was at the hearing on the motion to release the funds. My recollection of that was that the judge stated that she could not hear the motion because the case was on appeal. Did I misunderstand that? I do not see our appeal as asking the court to reverse that decision. I think I would have to file something with the appellate court in order to have that heard. I have no intention of abandoning our efforts to hold Danny Simon liable for what he has done in this case, which I interpret as taking our clients' money hostage… Whether you call that conversion, or some other tort, doesn't really matter to me. The bottom line is he deprived our clients of access

to their money without a reasonable basis to do so. I am asking the Supreme Court to reverse that dismissal of our case, then I intend to pursue that case, including punitive damages. Bottom line, we just agree to disagree, that doesn't change my respect for you one iota. We just don't see this case the same way. Have we heard anything from the court on your petition for writ of mandate?

Sent from my iPad

> On Jan 3, 2020, at 1:22 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:
>
> Please see attached.
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
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> <Order denying motion to release funds 1.3.20.pdf>

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

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Jan 16 2020 10:01 a.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,

NO. 79821

And

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Real Parties in Interest.

BRIEF OF AMICUS CURIAE OF THE NATIONAL TRIAL LAWYERS IN SUPPORT OF DANIEL S. SIMON AND THE LAW OFFICE OF DANIEL S. SIMON; AND, IN SUPPORT OF AFFIRMANCE OF THE DISMISSAL OF THE CONVERSION CLAIM

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other

I. Issue Addressed by Amicus

Amicus addresses the following question:

Does an attorney convert settlement funds when the attorney secures their fees and costs by use of a statutory attorney charging lien pursuant to NRS 18.015?

Or, more broadly, can a conversion occur when funds are safekept in a trust account? In the case below, a former client sued their attorney for conversion because the attorney used an attorney charging lien pursuant to NRS 18.015[1] to resolve a billing dispute, while safekeeping the disputed

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[1] NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

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

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

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

4. A lien pursuant to:

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

(b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including,

fund in a trust account. The District Court dismissed the conversion complaint. Amicus supports the dismissal of the conversion complaint, because when an attorney uses a lawful charging lien, a conversion does not occur. Rather, the use of a statutory charging lien to resolve a billing dispute is authorized by the law and is good policy. Further, if use of an attorney charging lien is held to fulfill the elements of conversion, then the charging lien statute will have been nullified and clients, attorneys and the judiciary will be deprived of a fast and fair method to resolve fee disputes. This will also have a chilling effect on the practice of law and deprive many clients of legal services who are in need of representation. This will undermine the fair and effective representation of clients.

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without limitation, copies of the attorney's file if the original documents 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, Ê 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.

II. The Identity, Interest and Authority of Amicus

Amicus, the National Trial Lawyers, is a nationwide network of elite trial attorneys that promotes a fair and effective justice system and promotes the fair and effective representation of clients. In order to promote the standards of practice and to effectively represent clients, an attorney charging lien is a necessary tool and effective process to allow lawyers to effectively do their job without the fear of a disgruntled client attempting to compromise the work performed by filing a collateral action.

The National Trial Lawyers has a significant interest in preserving the spirit and intent of the charging lien statutes and case law in order to protect the fair and effective representation of clients.

History and Mission of The National Trial Lawyers

This attorney charging lien dispute addresses the use and preservation of judicial resources, the attorney client relationship and one of the most common areas of friction between a client and counsel, payment of the lawyer. Because The National Trial Lawyers is comprised of trial lawyers that are considered the top lawyers in their field, upholding the standards of practice to facilitate quality representation is of upmost

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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.

importance and our esteemed members are involved in those areas of law and most likely to be involved with use and resolution of an attorney charging lien.

The National Trial Lawyers and its members have a significant interest in promoting the use of an attorney charging lien to resolve billing disputes; such a fast and fair process to protect scarce judicial resources, which improves access to justice and provides a fast and fair method to resolve a billing dispute, which mutually benefits clients and counsel. It also promotes the representation of clients in need to avoid the chilling effect of lawyers being sued for doing their job and consequently will otherwise be reluctant to represent clients with difficult cases.

A fast and fair attorney charging lien resolution process is a win-win-win for the courts, clients and counsel. In contrast, a finding that a claim for conversion may lie against a lawyer who followed an attorney lien statute and promptly moved for adjudication of a charging lien is bad policy; poses a threat to judicial resources; and, poses a threat to the best interests of client and counsel, all of which, is what the National Trial Lawyers and its members are committed to prevent. Accordingly, the National Trial Lawyers has a significant interest in this case.

NRAP 29(a) provides the authority for the National Trial Lawyers to seek leave to file this amicus brief. The National Trial Lawyers has filed a motion for leave pursuant to NRAP 29.

III. Argument

The National Trial Lawyers addresses the scenario of when an attorney asserts a statutory charging lien according to law. In such a case, a claim for conversion cannot be maintained against the attorney. The elements of conversion are not met, in any sense, when a lawyer asserts a statutory attorney lien. Further, it would be bad public policy to allow a claim for conversion under such circumstances.

The National Trial Lawyers does not need to address what happens when there is an unauthorized trust account withdrawal by a lawyer for personal use, because those facts are not presented in the case *sub judice.*

The modern tort of conversion has a long history dating back to the 18th century, and in turn having arisen from the common law claim of trover which began in the 16th century.[2] While a concrete definition of conversion is difficult to express, Dean Prosser observed that there is a "tacit

[2] William L. Prosser, *Nature of Conversion*, 42 Cornell L. Rev. 168 (1957).

agreement" about the basics.[3] Nevada follows a common definition. "Conversion is "a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with this title or right therein or in derogation, exclusion, or defiance of such title or rights.""[4]

Examination of the basics establishes that conversion cannot be found when a statutory attorney charging lien is used to resolve a fee dispute, while funds are safekept. First, to allege conversion, the plaintiff must hold an unconditional right to immediate possession of the property. Such a right does not match with what a client is due to recover from a settlement or judgment after attorney fees and costs are paid, and any lien or other claims are satisfied. At best, the client has a conditional right to recover a portion of the fund created by the fruits of the labor of the attorney.

Nevada discussed the unconditional right or "exclusivity" to possession of the chattel as an element of conversion in *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536, 543 (2008). In *MC Multi-Family* the Nevada Supreme Court, citing California

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[3] *Id.*, at 168.

[4] *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000); *quoting*, *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958).

law, recognized the right to "exclusivity" of the chattel as an element of conversion. A client cannot establish an exclusive right to a settlement or judgement in any State which allows an attorney charging lien. Just so, in Nevada the client's right to possession of the fund created by the work of the lawyer is subject to a statutory attorney charging lien. Likewise, a client would not satisfy the exclusivity element to find a conversion claim against an attorney when settlement or judgment funds are withheld to satisfy a contractual assignment to a medical provider, a statutory hospital lien, or for repayment to a health insurer-public or private.

Further, the client's claim to a share of a settlement is based in contract.[5] And, an alleged contract right to possession is not exclusive enough, without more, to support a conversion claim:

> "A mere contractual right of payment, without more, will not suffice" to bring a conversion claim.[6]

Finding exclusivity before resolution of the fee dispute, puts the cart in front of the horse.

Second, safekeeping a disputed fund in a trust account, which is akin to interpleading a disputed fund with the court[7], while a court resolves the

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[5] *See, e.g., May v. Anderson*, 121 Nev. 668, 119 P.3d 1254 (2005).
[6] *Plummer v. Day/Eisenberg*, 184 Cal.App.4th 38, 45 (Cal. CA, 4th Dist. 2010). *See*, Restatement (Second) of Torts §237 (1965), comment d.

dispute pursuant to a statutory process, does not come close to approaching the level of interference with chattel or taking required to allege a conversion. Thus, no conversion can be established when the funds remain in a protected trust account, which is conceded in this case.

The idea of conversion involves the complete and total denial of the chattel to its exclusive owner. Nothing makes this clearer than the damages remedy for conversion, which is the full value of the chattel.[8] Dean Prosser likened the remedy to a forced sale.[9] The mere delay in disbursement that results from holding disputed funds in a trust account pending judicial resolution of a statutory charging lien does not call for the remedy of a forced sale. Quite the opposite, statutory attorney charging liens provide a suitable remedy, fast and fair adjudication followed by disbursement of the funds pursuant to final judicial determination. There can be no conversion when the amounts owed to any party having an interest in the proceeds is in dispute pending a final judicial determination.

The interference element of a conversion claim leads to the third issue which is legal justification. Conversion cannot be established when

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[7] *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 373 P.3d 103, 106 (Nev. 2016).

[8] Restatement (Second) of Torts §222A (1965).

an attorney follows a process recognized by case law (as in California) or by statute (as in Nevada). The Restatement (Second) of Torts §237 (1965) refers to a refusal to tender chattel "without proper qualification". When an attorney acts according to law and funds are safekept in a trust account pending judicial resolution of a charging lien, there is proper qualification for delaying disbursement, an essential element of conversion is missing, and a conversion has not occurred.

Legal justification to assert a lien is not new. Statutory and common-law liens are well recognized under the law.[10] It is also true that a Legislature may properly create and define a statutory lien.[11] The court, the client and an attorney may rely upon a lien statute without fear of a claim based on the observance of the statute. It should be axiomatic that a person does not convert when they follow the law. When an attorney charging lien is used properly, all elements of conversion cannot be met as a matter of law.

Lastly, permitting conversion to be alleged when an attorney follows the statutory process to adjudicate a charging lien is bad policy. Moving

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[9] William L. Prosser, *Nature of Conversion*, 42 Cornell L. Rev. 168, 170 (1957).
[10] *See, e.g.*, 51 Am. Jur. 2d Liens §52.
[11] *See, e.g.*, 51 Am. Jur. 2d Liens §53.

beyond the fact that the Judiciary likely cannot find an act permitted by the Legislature to be a tort, the whole point of an attorney lien statute creating a process to resolve a charging lien, is to provide a fast and fair resolution to an attorney-client fee dispute, not to create more litigation. If a client may elect to sue a lawyer for conversion when a charging lien is lawfully used, then the attorney lien statute has been nullified, and the law regarding the attorney-client relationship will have to be re-written. This undermines the fair and effective representation of clients and the public policy to preserve judicial resources.

IV. Conclusion

An attorney does not convert safekept funds when the attorney uses a statutory charging lien process to resolve a fee dispute. Finding otherwise would nullify the charging lien statute and would cause a marked increase in litigation over fee disputes, wasted judicial resources, a delay in resolution of fee disputes and resulting in harm to the judiciary, clients and counsel.

The National Trial Lawyers support affirmance of the District Court decision dismissing the conversion claim.

Dated this 16th day of January, 2020.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief of Amicus Curiae of the National Trial Lawyers in Support of Daniel S. Simon and The Law Office of Daniel S. Simon; and, Supporting Affirmance of the Dismissal of the Conversion Claim complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect 11 in 14 point Times New Roman font. I further certify that this brief complies with the page or type volume limitation of NRAP 32(a)(7) because, excluding the parties of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 30 pages.

I hereby certify that I have read this Brief of Amicus Curiae of the National Trial Lawyers in Support of Daniel S. Simon and The Law Office of Daniel S. Simon; and, Supporting Affirmance of the Dismissal of the Conversion Claim, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief filed in conjunction with the Answering Brief of Law Office of Daniel S. Simon and the Petition for Writ of Mandamus complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding

matters in the record be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I certify that I have been a member of the National Trial Lawyers Executive Committee for 12 years and will be inducted as President-Elect of the National Trial Lawyers on January 19, 2020 at our National Trial Lawyers Executive Committee Meeting at the National Trial Lawyers Summit held annually in Miami, FL. I further certify that I have authority to file this motion and the brief of Amicus Curiae on behalf of the National Trial Lawyers.

I understand that I may be subject to sanctions in the event that it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 16th day of January, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of January, 2020, I served a copy of the foregoing Brief of Amicus Curiae of the National Trial Lawyers in Support of Daniel S. Simon and The Law Office of Daniel S. Simon; and, Supporting Affirmance of the Dismissal of the Conversion Claim electronically to all registered parties.

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, A AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREEN ESQ.; AND ROBERT D. VANNAH, CHTD, d/ VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **AFFIDAVIT OF BRIAN EDGEWORTH FIFTY (50) PERCENT OWNER OF AMERICAN GRATING, LLC**

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, being duly sworn, states:

1. I am owner of a fifty (50) percent interest in American Grating LLC (also known as "AMG").
2. I have personal knowledge as to the facts and circumstances surrounding the case filed in the Eighth Judicial District Court under Case No. A-19-807433-C.
3. As fifty (50) percent owner of American Grating, LLC, I am authorized to make representations on behalf of the company.
4. On April 10, 2016, a flood, caused by a Viking fire sprinkler installed by Lange Plumbing during the construction of my home, resulted in significant property damage.
5. Thereafter, I filed submitted a claim to Lange who filed a claim with Kinsale Insurance for the actual damages that occurred.
6. In May 2016, Kinsale Insurance informed me that the sprinkler that caused the flood had a manufacturing defect, and the responsible party was Viking, the manufacturer of the defective sprinkler.
7. On May 27, 2016, I drafted an email to Plaintiff Simon to discuss representation in a claim against Viking.
8. On May 28, 2016, I met with Plaintiff Simon to discuss retention.
9. During that meeting, we discussed retaining Plaintiff Simon to write letters to the responsible parties (Kinsale, Lange, and Viking) regarding compensation for the damages I had occurred.
10. On June 2, 2016, Plaintiff Simon sent representation letters to Kinsale, Lange, and Viking.
11. On or between June 8, 2016 and June 10, 2016, Plaintiff Simon called to discuss that he needed to file a lawsuit and he would need to start billing. During that call he indicated that his court

approved rate was $550 per hour and that based on his extensive experience in the courtroom trying cases that he believed he could recover the damages incurred from Lange.

12. I had previously contacted Attorney Craig Murquiz, a construction defect attorney to discuss representation, and he had quoted me a rate of $500 per hour.

13. Although Plaintiff Simon had requested a higher rate of pay than Mr. Murquiz and what I found to be the market average, I decided to hire Plaintiff Simon because he told me about his extensive experience and assured me that his reputation would compel the companies to resolve the matter quickly, and because our wives were friends.

14. No written fee agreement was drafted, but I believed based on this conversation that Plaintiff Simon would work on the case and bill me at a rate of $550 per hour.

15. On June 14, 2016, Plaintiff Simon filed a Complaint against Viking and Lange.

16. In December 2016, I received the first bill for legal services from Plaintiff Simon totaling $42,564.95, at the previously discussed rate of $550 per hour,. After asking Plaintiff Simon where the check should be sent, I paid the amount billed in full.

17. Plaintiff Simon deposited the check from the payment of this bill and the funds cleared.

18. On May 3, 2017, I received a second bill from Plaintiff Simon for legal services totaling $46,620.69, at the previously discussed rate of $550 per hour, of which $11,365.69 was for costs. This bill was paid in full in a prompt and timely manner.

19. Plaintiff Simon deposited the check from the payment of this bill and the funds cleared.

20. That same day, on May 3, 2017, the deposition of the PMK for Viking was taken. It was during this deposition I began to recognize inconsistencies in the versions of events.

21. The PMK produced the first set of documents we had received from Viking. I reviewed the documents at length, which included information alleging that the flood was the result of a faulty installation.

22. Between May 3, 2017 and August 9, 2017, I conducted continued and tireless research and work on the matter, and it became clear that the matter against Viking and Lange implicated a wide-spread product defect and failure to certify claim, potentially worth well more than the initial estimated damages of $528,000.00.

23. On August 9, 2017, Plaintiff Simon and I traveled to San Diego to meet with a retained engineering expert regarding my claim.

24. That same day, during the trip back to Las Vegas, now more than a year into his representation, Plaintiff Simon approached me for the first time to discuss modifying the fee agreement to allocate a portion of the proceeds to Plaintiff Simon.

25. I had paid all of the bills for fees that Simon had presented to me, and covered all of the costs known to me as well, so I did not believe that modifying the fee agreement was appropriate at that time, so I declined to accept Plaintiff Simon's request to modify the existing agreement.

26. On August 16, 2017, I received a bill from Plaintiff Simon totaling $142,081.20, of which $31,943.70 was costs. As with the previous bill, I remitted payment to Plaintiff Simon in full in a prompt and timely manner.

27. Plaintiff Simon deposited the check from the payment of this bill and the funds cleared.

28. On August 22, 2019, I sent an email to Plaintiff Simon asking if he wanted to sit down to discuss a formal structured fee agreement, and assured him that if the case continued on an hourly, rather than some other structure, I was not worried about having the money to pay his fees.

29. Plaintiff Simon never responded to this inquiry.

30. On September 25, 2017, I received a bill from Plaintiff Simon totaling $255,185.25, of which $71,555 was for costs. As with the previous bill, I remitted payment to Plaintiff Simon in full in a prompt and timely manner.

31. Plaintiff Simon deposited the check from the payment of this bill and the funds cleared.

32. Viking continued to send voluminous documents, some completely unrelated to this claim, in response to our document requests.

33. On October 20, 2017, the parties attended mediation at JAMS with Floyd Hale. Although the mediation was unsuccessful, at its conclusion, I told Mr. Hale that knowing my damages, I would have walked away at $4.5 million as the settlement agreement.

34. Viking continued to send voluminous documents, some completely unrelated to this claim, in response to our document requests. On October 24, 2017 in particular, we received between 12,000 – 18,000 pages of documents from Viking.

35. On November 10, 2017, we attended a second mediation at JAMS, again with Floyd Hale. This time I had additional information regarding the claim, which I believed significantly increased the settlement value of my claim.

36. During the mediation Plaintiff Simon presented me with a bill for attorney's fees totaling around $72,000, and informed me that there was a "large cost" bill that would follow for expert costs.

37. It quickly became apparent that we would not reach an agreement at the mediation.

38. Before we left, Mr. Hale suggested a Mediator's Proposal for settlement in the amount of $6,000,000, with two weeks to respond.

39. Because we had court hearings that were significant to the case, we agreed that the Mediator's Proposal would include settlement for $6,000,000, and Viking would have until November 15, 2017, just five days later to respond.

40. On November 15, 2017, I notified Simon that we would accept the mediator's proposal, which was a confirmation of my email the week earlier stating same.

41. On November 16, 2017, I received a text message from Plaintiff Simon with a picture of a letter from Viking's counsel to Mr. Hale and message that said "Floyd [expletive removed] us, Case is back on."

42. I reviewed the letter in the photo and identified the terms of the settlement agreement found therein. I noted that there was a confidentiality clause as to ONLY the amount of the settlement agreement. I was in agreement with the terms as they were drafted and notified Plaintiff Simon of same, and informed Simon of that via text.

43. On November 17, 2017, at approximately 7:20am, I received a text message from Plaintiff Simon asking me to come to his office to discuss getting things finished or keeping dates on the calendar.

44. I contacted my wife Angela, who has the other fifty (50) percent interest in American Grating LLC (AMG), and we planned to meet at Plaintiff Simon's office at approximately 8:30am.

45. During the meeting at Plaintiff Simon's office, he seemed irritated that Angela had come with me, but I was not sure why. Plaintiff Simon spent a significant time telling us what an excellent job he had done representing me during the course of the claim, and that HE was able to get us far more money than we deserved, so he needed to settle with us on how much of the settlement he would be receiving. I told him that he had been paid hourly for all of the fees billed and I had covered all of the costs, and he was not entitled to any additional compensation.

46. Plaintiff Simon became angry and told me that being paid hourly is not how he works, and he was entitled to forty (40) percent of the settlement, but since he knew we had some costs he was going to "rip himself off" and only take forty (40) percent of the amount in excess of our losses which he calculated to be no more than $3,000,000.

47. I informed Plaintiff Simon that our total incurred losses were significantly higher than $3,000,000, but he stated that those were "not real losses."

48. Plaintiff Simon insisted that he had done a super job for us on this case and emphasized that he had lost money representing us for a number of reasons.

49. At this point Plaintiff Simon told us that if we were not going to treat him fairly, he would not continue to lose money and represent us. He told us that the settlement was not finalized and we could lose the deal if he was no longer a part of it. Simon claimed that he was being overly fair with the settlement agreement he had proposed, and the judge would give him what he was asking us to pay because his office operated exclusively on contingency fees, so he was owed a portion of the settlement. He indicated that he was doing us a favor and ripping himself off, but we could not figure out what exactly he was asking for.

50. Angela and I never agreed to this new deal because we had already paid him almost $500,000 to represent us based on the bills presented for work at his hourly rate.

51. After an hour in Plaintiff Simon's office, we left and went about our day. Plaintiff Simon proceeded to call me three times that day demanding an answer to his proposed fee agreement.

52. Plaintiff Simon became angry with me that we had not agreed to his deal by that evening, and I told him that we were not even really sure what he wanted and asked for the proposal in writing. At that time Plaintiff Simon informed me that he would be leaving for Peru in the morning and needed an answer. I was shocked that Plaintiff Simon was planning to leave the country with the settlement deal incomplete and some very important upcoming hearings that he appeared to have not prepared for.

53. Plaintiff Simon proceeded to call me multiple times a day while on his trip to Peru to discuss various issues related to what he believed he was owed from the Viking settlement.

54. On November 27, 2017, while I was on a business trip to China, Plaintiff Simon sent my wife and I a letter. (see demand letter attached as **Exhibit B** to Defendant's Anti-SLAPP Motion to Dismiss).

55. The letter and its attachments amounted to a newly proposed settlement breakdown and a proposed retainer agreement. These documents set forth additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of the favorable settlement that was reached with the defendants in the flood litigation.

56. At that time, these additional "fees" were not based upon invoices submitted to me or for detailed work performed by Plaintiff Simon. The proposed fees and costs were in addition to the $486,453.09 that I had already paid to Plaintiff Simon pursuant to the fee contract, the invoices that Plaintiff Simon had presented to me, the evidence produced to defendants in the flood litigation, and the amounts set forth in the computations of damages disclosed by Plaintiff Simon in the flood litigation.

57. One reason given by Plaintiff Simon to modify the contract was he claimed he was losing money on the flood litigation. Another reason given by him was that he purportedly under billed us on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. According to Plaintiff Simon, he under billed in the flood litigation in an amount in excess of $1,000,000.00.

58. Plaintiff Simon made sure to indicate that he had "carefully drafted" this correspondence, and his intention was to make sure that Angela and I were crystal clear on each and every point.

59. Plaintiff Simon concluded the letter of November 27, 2017, with these words: "I have thought about this and this is the lowest amount I can accept…If you are not agreeable, then I cannot continue to lose money and help you…I will need to consider all options available to me." I interpreted these words to clearly mean that if I didn't agree to sign a new retainer agreement that would give Plaintiff Simon an additional $1,114,000 in fees, he would no longer agree to be our lawyer. Meaning he would quit, despite the looming reality that the litigation against the Lange defendant was set for trial early in 2018.

60. I later learned that prior to sending this demand letter on November 27, 2017, Plaintiff Simon had retained counsel to represent him in the "Edgeworth Fee Dispute." (see Billing Invoice, attached hereto as **Exhibit C** to Defendant's Anti-SLAPP Motion to Dismiss).

61. Plaintiff Simon did not inform me until much later that he had retained counsel to represent him on this fee issue, leaving me to believe that he was still my advocate, not my adversary.

62. This further demonstrated that Plaintiff Simon's claim that he incurred damages because he was forced to retain an attorney to defend himself is patently false. He clearly had an attorney long before the Edgeworth Complaint was filed and served, and even before I met with Vannah to discuss retention.

63. After reviewing Plaintiff Simon's aggressive and demanding correspondence, I felt the need to consult an attorney to assist with finalizing the settlement and distributing the funds.

64. On November 29, 2017, I flew back to the United States from China and I met with Robert D. Vannah, of Vannah & Vannah in his office. John B. Greene, one of his associates, was also present.

65. Following retention of Mr. Vannah he took over communications with Plaintiff Simon.

66. On December 7, 2017, Mr. Vannah received a letter from Plaintiff Simon wherein he again claimed he had underbilled in the flood litigation and that the worked performed by him that had not been billed, "may well exceed $1.5M." I was informed of this contact by Mr. Vannah.

67. Despite Plaintiff Simon's requests and demands for the payment of more in fees, Angela and I did not agree to alter or amend the terms of the contract because Plaintiff Simon had already been significantly compensated pursuant to our hourly-bill agreement.

68. When Angela and I refused to alter or amend the terms of the contract, Plaintiff Simon refused to agree to release the full amount of the Viking settlement proceeds. Instead, Plaintiff Simon

served two attorney's liens and reformulated his billings to add entries and time that never saw the light of day in the flood litigation.

69. When Plaintiff Simon finally submitted his "new" invoices on January 24, 2018, they totaled $692,120 for "additional" services billed at the contract rate of $550/$275 per hour. The total was less than 1/2 of the amount that he'd written to Mr. Vannah about six weeks earlier. Yet, despite the contract, 18 months of course of dealing, and the amount of the "new" invoice/super bill of $692,120, Plaintiff Simon's Amended Lien wrongfully exercised dominion and control to over $1,977,843 of the settlement proceeds. Additionally, Plaintiff Simon refused to release to Angela and me the funds in excess of the amount of Plaintiff Simon's own super bill.

70. I had been requesting final bills for more than seven (7) weeks without receiving them. My attorney Vannah had been requesting final bills for more than four (4) weeks on my behalf. These requests were ignored.

71. When Plaintiff Simon continued to exercise dominion and control over settlement proceeds he was clearly not entitled to, as evidenced by his own bill, litigation was filed and served. On January 4, 2018, Mr. Vannah filed and served a Complaint on behalf of Angela and I and our entities, and an on March 15, 2018, an Amended Complaint was filed, asserting against Plaintiff Simon claims of Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing.

72. I relied on Mr. Vannah, the senior partner of the firm, to make the decisions to file the pleadings with the claims made and thereafter, the arguments presented in briefs, in court, and all other judicial proceedings, including the pending appeal. I trusted that these decisions were made after a thorough review of the law pertaining to these claims, and a good faith belief that all of the written and oral communications made to the court are accurate and well-founded in the law, and not done for any ulterior or improper motive.

73. To date, Plaintiff Simon hasn't filed an Answer to either of the Edgeworth Complaints. Instead, he filed a Motion to Adjudicate his lien, two Motions to Dismiss (one for the Complaint and another for the Amended Complaint), and two "Special" Motions to Dismiss: Anti-SLAPP.

74. Judge Tierra Jones held an evidentiary hearing on Plaintiff Simon's Motion to Adjudicate, and that hearing took place over five days. At the conclusion of the hearing, Judge Jones asked the parties to submit written closing arguments and written findings of fact. On October 11, 2018, Judge Jones issued a Decision and Order on Motion to Adjudicate Lien (LDO). On that same date, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) and a decision and Order on Motion to Dismiss Anti-SLAPP. Plaintiff Simon's Motion to Dismiss was granted without any discovery allowed and with findings that clearly show that Judge Jones chose to believe Plaintiff Simon's account of several contested facts as opposed to the legal standard of accepting all allegations as true. Judge Jones deemed the Anti-SLAPP Motion as moot.

75. Of primary significance in the LDO, Judge Jones found that: 1.) this is not a contingency fee case; 2.) an implied agreement for fees was in existence at the rate of $550 per hour for Plaintiff Simon and $275 per hour for his two associates; 3.) Plaintiff Simon was paid in full by Angela and me for his fees for services rendered from May of 2016 through September 19, 2017; 4.) Plaintiff Simon is entitled to $284,982.50 in fees at the hourly rate of $550 for Plaintiff Simon and $275 for his associates from September 19, 2017, through November 29, 2017; and, 5.) Plaintiff Simon is entitled to $200,000 in fees under quantum meruit from the date he was constructively discharged on November 30, 2017, until the case concluded in early January of 2018.

76. On October 29, 2018, Plaintiff Simon filed a Motion for Reconsideration and to Clarify, seeking to rehash his losses and to clarify whether the agreement for fees was an implied oral agreement versus an implied agreement. Of note, the parties agreed that the LDO incorrectly awarded additional costs to Plaintiff Simon, when the parties stipulated that no additional costs were owed.

77. On October 31, 2018, Mr. Vannah sent a letter to James R. Christensen, Esq., advising him that, despite arguable errors by Judge Jones in finding a constructive termination as of December 1, 2017, in dismissing the Edgeworth Amended Complaint, and in awarding $200,000 in extra fees in quantum meruit when Plaintiff Simon had "only" billed $33,811.25 in fees for that time frame, Angela and I are willing to pay Plaintiff Simon the $484,982.50 in fees that Judge Jones awarded in the LDO…and call it a day. Plaintiff Simon never responded to that letter.

78. On November 14, 2018, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) that removed the reference to an "oral" agreement as opposed to an implied agreement and a LDO that removed any award of costs to Plaintiff Simon, as stipulated.

79. On November 19, 2018, Mr. Vannah sent yet another letter to Mr. Christensen telling him that, despite the same arguable errors of Judge Jones as outlined earlier, Angela and I are still willing to pay Plaintiff Simon the **$484,982.50** in fees that Judge Jones awarded/reiterated in the LDO of November 19, 2018. Plaintiff Simon didn't respond to that letter, either. Since Plaintiff Simon remained fixed and immovable in his quest for more in fees, and since a settlement couldn't be reached with one who won't communicate, Mr. Vannah filed an appeal on our behalf of the LDO and the Decision and Order on Motion to Dismiss NRCP 12(B)(5). Briefing is now complete and we are waiting for further instruction and action from the Nevada Supreme Court.

80. Thereafter, Plaintiff Simon filed a Motion for Fees and Costs, seeking $262,099.48 in fees and $18,434.73 in costs. The Motion was vague as to whether the fees and costs he sought were related to the Motion to Adjudicate, the Motions to Dismiss, or both. Mr. Vannah argued in the opposition filed on behalf of Angela and me that there wasn't and isn't any basis in the law for Plaintiff Simon to seek or obtain fees and costs in a Motion to Adjudicate a Lien for Fees and Costs AND that all of the fees related to Peter S. Christiansen, Esq., all of the costs associated with Will Kemp, Esq., and the vast majority of the fees associated with James R. Christensen, Esq., were incurred adjudicating Plaintiff Simon's lien in its exorbitant amount. In Plaintiff Simon's Reply, he limited his request for fees and costs allegedly incurred in seeking the dismissal of the Edgeworth Complaint (original and amended), namely the claim for conversion.

81. On February 6, 2019, Judge Jones signed an order granting in part and denying in part Plaintiff Simon's Motion. The Court found that the conversion claim was not maintained upon reasonable grounds; that the purpose of the evidentiary hearing was primarily for the Motion to Adjudicate Lien; Mr. Kemp's costs were incurred solely for the purpose of the Motion to Adjudicate Lien; that the costs of David Clark, Esq., were incurred to defend the lawsuit; and, awarded $50,000 in fees and $5,000 in costs.

82. In her ruling, Judge Jones seemed to adopt the position of Plaintiff Simon that conversion can't happen without some measure of actual theft or sole control.

83. Following a consultation with my attorney Mr. Vannah, who is highly experienced, and my own review of the facts and applicable law, I believed, and still believe, that Plaintiff Simon's intentional act of exerting dominion of any portion of the settlement proceeds that exceeds the amount of his own billings, including his super bill of $692,120, is inconsistent with his rights and in direct conflict with that of mine and Angela's rights to those funds. I further believe

that Nevada law clearly supported a claim for conversion against Plaintiff Simon. And the act of conversion continues to this day, over two years after the settlement proceeds were received and eighteen (18) months since Plaintiff Simon's lien was adjudicated.

84. The evidence shows that Plaintiff Simon has no reasonable basis to make a claim for 40% of the proceeds from the Viking settlement. NRPC 1.5(c) requires that all contingency fee agreements be in writing with specific language and Plaintiff Simon waited until November 27, 2017, to present one to Angela and me, who rightfully declined to sign it. By then all of the risk that is generally associated with contingency fee agreements was gone, as the lucrative Viking settlement had already been reached. Plaintiff Simon also acknowledged in his letter of November 27, 2017, that he didn't and can't have a contingency fee agreement. Judge Jones also told him and Ordered that he cannot have one, either. Yet, Plaintiff Simon still refuses to relinquish the control he has over the settlement funds, an amount that still closely resembles a 40% contingency fee when all payments and offered payments are factored in.

85. The sad irony here is that Angela and I wanted none of this. Instead we got all of this. All Angela and I want is what is owed to us from the settlement. Instead, we have been forced to wait for our property to be given to us, which we are told could be years more to come, in addition to this lawsuit and hundreds of thousands of dollars in legal bills.

86. I believe that Plaintiff Simon knew, and still knows, that he is not entitled to any more compensation beyond what he has been offered and paid. Yet, Plaintiff Simon still won't relinquish the dominion and control that he has been exercising since January of 2018.

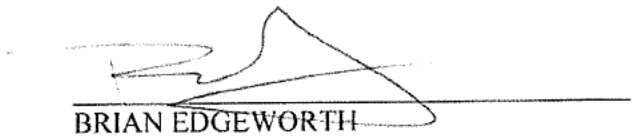
87. These facts stand in stark contrast to the allegations made in the SLAPP of Plaintiff Simon. My wife Angela, my company, and me, are all being sued for making, in good faith, written and oral communications in judicial proceedings. Each of the claims for relief in the

complaints that are being attacked by Plaintiff Simon in his SLAPP are supported by the facts, the evidence, and by Nevada law.

88. The documents that have been attached to this Special Motion as Exhibits, as well as the exhibits attached to Defendant AMG's Anti-SLAPP Motion to Dismiss support the claims for relief brought by in the Edgeworth Complaint and the Edgeworth Amended Complaint and undermine the SLAPP of Plaintiff Simon.

Pursuant to N.R.S. §53.045, I declare under penalty of perjury that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



BRIAN EDGEWORTH

DECLARATION OF ANGELA EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, ANGELA EDGEWORTH, being duly sworn, states:

1. I am owner of a fifty (50) percent interest in American Grating LLC (also known as "AMG").
2. I have personal knowledge as to the facts and circumstances surrounding the case filed in the Eighth Judicial District Court under Case No. A-19-807433-C.
3. As fifty (50) percent owner of American Grating, LLC, I am authorized to make representations on behalf of the company.
4. My husband, Brian Edgeworth and I, are the trustees of the Edgeworth Family Trust.
5. Lisa Carteen is an attorney licensed in the State of California who has represented various business and personal interests for myself and my husband since 2006.
6. The conversations I had with Lisa Carteen regarding the dispute we had with Plaintiffs were either attorney-client privileged communications made in the context of anticipation of litigation, on-going litigation and/or my opinions regarding what had occurred and how same made me feel.
7. My statements made to Ms. Carteen regarding our dispute with Plaintiffs were made either in anticipation of litigation or in the context of seeking legal guidance from an attorney who has also become a friend over the many years she has represented my business interests.
8. My conversation with Ms. Carteen about this matter occurred at a dinner at a sushi restaurant in Henderson, NV, where we met to discuss a number of business matters.
9. The issues with Plaintiff Simon came up in the conversation as it related to what I was experiencing, how I felt, and what remedies I might have.

10. I have trusted Ms. Carteen's legal advice over many years, and sought her advice in anticipation of litigation as a trusted legal counselor and friend.

11. I told Ms. Carteen that I felt like I was being extorted or blackmailed. This was purely my opinion regarding how the situation and happenings with Plaintiff Simon made me feel.

12. My statements to Ms. Carteen regarding our dispute with Plaintiffs were made regarding issues anticipated to be placed into the consideration of a judicial body and/or which were then being considered by a judicial body, were made in a place open to the public regarding an issue of public interest and were comprised of nothing more than my opinions as to what had occurred and how same made me feel.

13. My statements to Ms. Carteen regarding the dispute between us and Plaintiffs were made in the context of the underlying litigation, were opinions and/or were made in a place open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is of public interest.

14. Justice Miriam Shearing and I serve as Directors for a women's organization in Las Vegas.

15. I knew Justice Shearing to be a well-respected attorney and member of the judiciary, as well as knowing that she had been the Chief Justice of the Nevada Supreme Court.

16. My discussion with Justice Miriam Shearing about the dispute with Plaintiffs occurred on February 8, 2018 at a luncheon held at Lago at the Bellagio. The luncheon was put on by the women's' group we served, during a special women's Forum.

17. At that time I expressed to Justice Shearing my opinions on what had occurred between us and Plaintiffs, how same made me feel, and asked Justice Shearing for legal advice regarding whether what Plaintiffs had done was legally justified and whether we were legally justified in filing the Edgeworth Complaint.

18. My statements to Justice Shearing regarding our dispute with Plaintiffs were made regarding issues anticipated to be placed into the consideration of a judicial body and/or which were then being considered by a judicial body, were made in a place open to the public regarding an issue of public interest and were comprised of nothing more than my opinions as to what had occurred and how same made me feel.

19. My discussion with Justice Shearing was rooted in her reputation and ability as an attorney and member of the judiciary in Nevada.

20. My statements to Ms. Carteen and Justice Shearing regarding the dispute between us and Plaintiffs were made in the context of the underlying litigation, were opinions and/or were made in a place open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is of public interest.

21. I never used or utilized the words "stole[,]" "stolen" or "theft" during any statements made to Ms. Carteen or Justice Shearing.

22. I never spoke with Ruben Herrera regarding the dispute we were having with Plaintiffs.

23. The statements contained within my husband Brian Edgeworth's Affidavit, for which I have personal knowledge, are true and correct as presented therein to the best of my knowledge and recollection.

Pursuant to N.R.S. §53.045, I declare under penalty of perjury that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

ANGELA EDGEWORTH

From: "Christine L. Atwood" <CAtwood@messner.com>
Date: June 8, 2020 at 8:40:10 AM PDT
To: Kendelee Works <kworks@christiansenlaw.com>, "patricia@marrlawlv.com" <patricia@marrlawlv.com>, Patricia Lee <plee@hutchlegal.com>, Renee Finch <rfinch@messner.com>
Cc: "Peter S. Christiansen" <pete@christiansenlaw.com>, Jonathan Crain <jcrain@christiansenlaw.com>, Caleb Meyer <cmeyer@messner.com>, "Nicholle M. Pendergraft" <NPendergraft@messner.com>, Jackie Olivo <JOlivo@messner.com>
Subject: RE: Simon v. Edgeworth et al: motions to dismiss

Counsel,

We are in agreement that for judicial economy, we should request that the motions be heard on one date. However, we do not believe that the NRCP allows for an Amended Complaint after an Anti-SLAPP Motion to Dismiss is filed pursuant to NRS 41.637, so we cannot agree to withdraw our original motions and recognize the Amended Complaint as operative in this matter. If you would like to coordinate the new hearing date with the Court, we are happy to have you take the lead on that. Otherwise, my office can contact Department 24 to obtain some potential hearing dates.

Christine L. Atwood
Attorney

Messner Reeves LLP
8945 W. Russell Road | Suite 300
Las Vegas, NV 89148
702.363.5100 main | 702.363.5101 fax
catwood@messner.com
messner.com

-----Original Message-----
From: Kendelee Works <kworks@christiansenlaw.com>
Sent: Friday, June 5, 2020 5:59 PM
To: patricia@marrlawlv.com; Patricia Lee <plee@hutchlegal.com>; Renee Finch <rfinch@messner.com>; Christine L. Atwood <CAtwood@messner.com>
Cc: Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>
Subject: Simon v. Edgeworth et al: motions to dismiss

Good Evening Counsel,

As you know, Plaintiffs filed and served their amended complaint on May 21, 2020. Although we have already opposed Defendants' motions to dismiss the initial complaint, it makes little sense to go forward with replies and hearings on the first round of motions because the Court will nevertheless need to address the operative amended complaint. We would also like to avoid the court having to do unnecessary work, especially given the lengthy briefings on these issues. Consistent with the intent of the most recent amendments to NRCP 15 (which allows a plaintiff to amend within 21 days of a Rule 12 motion), will all parties agree to vacate the hearings on Defendants' various motions to dismiss and anti-slapp motions and request that the Court schedule a hearing on all motions regarding the amended complaint in early August, with a mutually agreeable briefing schedule in advance of that date?

If all parties are amenable, we will contact the court for a date in August and prepare a draft stipulation and order to that end. We would appreciate receiving a response no later than Tuesday, June 9, 2020.

Thank you,

Kendelee L. Works, Esq.
Christiansen Law Offices
810 S. Casino Center Blvd., Suite 104
Las Vegas, NV 89101
(702) 240-7979

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

AMERICAN GRATING LLC

Entity Number:

E0133852006-1

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

02/24/2006

NV Business ID:

NV20061504091

Termination Date:

Perpetual

Annual Report Due Date:

2/28/2021

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

AMERICAN GRATING LLC

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

1191 CENTER POINT DR, LAS VEGAS, NV, 89074, USA

Mailing Address:

Individual with Authority to Act:

Fictitious Website or Domain Name:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Manager	BRIAN EDGEWORTH	1191 CENTERPOINT DR, HENDERSON, NV, 89074, USA	01/25/2019	Active
Manager	ANGELA EDGEWORTH	1191 CENTERPOINT DR, HENDERSON, NV, 89074, USA	01/25/2019	Active

Page 1 of 1, records 1 to 2 of 2

Filing History Name History Mergers/Conversions

DECLARATION OF JAMES R. CHRISTENSEN

1. I am counsel of record for Daniel Simon and the Law Office of Daniel Simon (collectively Simon) in A-16-738444-C & A-18-767242-C, which were consolidated before the Honorable Judge Tiara Jones; and, which are currently consolidated and pending before the Nevada Supreme Court. I have been an active litigation attorney in Clark County Nevada for 30 years. My CV is attached to this declaration at Ex., 1. One focus of my work is on attorney practice and standards including lien resolution. A partial list of my experience in this area is attached at Ex 2.

2. Regarding the Simon Master Exhibit List, which I reference for sake of expediency, the copies of my letters to Robert Vannah found at Exhibits 28 & 34 are true and accurate copies of my original letters. The copies of email(s)/email strings found at Exhibits 20, 27, 29, 31 & 32, are true and accurate copies of the electronic mail sent and or received by me, which were then printed from my office email system.

3. In this Declaration I address the basic facts and circumstances surrounding the Edgeworth conversion claim, which was brought and maintained against Simon in A-18-767242-C, as well as, the finality of facts and law as determined by the Honorable Judge Tiara Jones in that case. I will not go through a detailed history of the case, rather I will concentrate on events in December of 2017 through January of 2018, and then move ahead to the *decision* by Judge Jones that the conversion claim "was not maintained on reasonable grounds" for which Judge Jones awarded $55,000.00 in fees and costs. (A-18-767242-C, 2/8/2019 order at finding #1.)

4. Judge Tiara Jones *found* that Simon agreed to work for the Edgeworths as a "favor between friends" with no discussion of payment. (A-16-738444-C, 11/19/2018 Decision and Order on Motion to Adjudicate Lien at finding #1.) Judge Jones *determined* that an oral contract was never formed. (*Id.*, at page 7.) Judge Jones' decision was supported in

part by a written admission by Brian Edgeworth that no express contract with Simon was ever formed.[1] (*Id.*, at page 7-8.)

5. Judge Tiara Jones *determined* that Simon's deposit of Edgeworth checks created an implied contract which was then terminated by the Edgeworths on November 29, 2017, while a proposed $6,000,000.00 settlement with Viking was pending. (*Id.*, at page 8-12 & 13-14.) Shortly after discharge, Simon perfected an attorney lien pursuant to NRS 18.015. Judge Jones *determined* that the Simon attorney lien was valid, enforceable and complied with NRS 18.015. (*Id.*, at page 6-7.)

6. Judge Jones *determined* that in late November of 2017 the Edgeworths hired attorneys Robert Vannah (Vannah) and John Greene (Greene) to replace Simon. (*Id.*, at page 8-12.) Judge Jones found and determined that the Edgeworths discharged Simon on November 29, 2017. (*Ibid.*) In December of 2017, I entered a dialogue with Vannah & Greene on behalf of Simon. On December 26, 2017, at 10:45 p.m., Vannah stated in an email:

> 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.* (Italics added.)

7. On December 27, 2017, I asked Vannah to avoid baseless accusations and encouraged everyone to work together to resolve the dispute.

---

[1] Brian Edgeworth gave Judge Jones several different factual stories in support of the Edgeworth allegation of an oral contract. As the Edgeworths argue on appeal, Judge Jones did not find Brian Edgeworth credible. In the declaration of Brian Edgeworth submitted by Defendant American Grating LLC, in this case, Edgeworth provides yet another factual version of events, which conflicts with what Judge Jones determined the facts to be.

8. On December 28, 2017, Vannah suggested that a single purpose joint trust account could be opened for the settlement drafts. The suggestion was a good one, and I quickly agreed. I am informed that the Edgeworths are currently claiming that the mutual explicitly agreed upon decision to place the funds into a joint trust account is now being raised as a *post hoc* rational for the filing of the conversion complaint. If so, that is a frivolous argument. I agreed to Bob's suggestion as an alternative to interpleading the money with the Court. The use of a *non* IOLTA account benefits the Edgeworths because they enjoy all the interest off the account, including interest on the money still due Simon-which is still in the account because the matter is still under dispute, because the Edgeworths filed an appeal. Further, even if it was a valid argument-which it is not-it is barred by the rule of finality because the argument was never raised before Judge Jones.

9. On January 4, 2018, the parties worked together to set up the joint trust account. Also, on this date, the Edgeworths sued Simon for conversion of the settlement, even though the checks had not been deposited yet. Judge Jones included the pre-mature filing in the decision to dismiss the conversion complaint as a matter of law. (A-18-767242-C, 11/19/2018 Decision and Order on Motion to Dismiss pursuant to NRCP 12(b)(5) at page 7.)

10. On January 8, the parties worked together to endorse and deposit the Viking settlement drafts.

11. On January 9, the Edgeworth conversion complaint was served on my office. The conversion complaint plainly spelled an end to working together. The foundation of the complaint was the assertion that an express oral contract was formed at the outset of the representation, a claim which Judge Jones explicitly rejected. The keystone of the complaint raised on the (rejected) foundation was that Simon was not owed any money, at all. Judge Jones stated:

> The Third Claim for Relief is for conversion based on the fact that the Edgeworths believed that the settlement proceeds were solely theirs and Simon asserting an attorney's lien constitutes a claim for

conversion. (A-18-767242-C, 11/19/2018 Decision and Order on Motion to Dismiss pursuant to NRCP 12(b)(5) at page 7.)

Judge Jones then explicitly rejected the Edgeworth claim that Simon was owed nothing. (*Ibid.*) The argument the Edgeworths brought before Judge Jones was that Simon was owed nothing, so the Simon lien was invalid/excessive *ab initio*. Judge Jones explicitly found against that claim. I am informed that the Edgeworths have tried to resurrect the claim by arguing a variant of the excessive lien claim rejected by Judge Jones. That is frivolous, the issue has been decided. To the extent a real distinction exists, which is unlikely, the Edgeworths are barred because the argument should have been raised in front of Judge Jones. In other words, this case does not present the Edgeworths a second bite at the apple on matters already decided by Judge Jones.

12. Yet, at almost the same time as the complaint was served on my office, Greene sent me an email inquiring as to Simon's progress on the underlying case, as if the conversion complaint did not exist. Later, Vannah emailed that damages against Simon would increase if Simon withdrew. The Edgeworths plainly sought to create the fictional narrative that Simon was still their attorney, despite the conversion complaint, in order to avoid a fee payment in quantum meruit to Simon which is due to a discharged attorney.

13. Shortly after service of the conversion complaint, to avoid prolonged litigation, I called and spoke with John Greene about the basis for the conversion complaint. I asked John if he had any supporting authority for the conversion claim. I frankly told him if there was support for the conversion claim, I would have a heart to heart discussion with Simon. John replied that they believed in their complaint but did not provide authority. I told John that I was unable to find any authority in support of the conversion claim. I tried to impress upon John that a baseless conversion complaint would likely kill any chance of a peaceful resolution. John was unmoved, and protracted litigation inevitably followed.

14. On behalf of Simon, I soon filed a motion to adjudicate the lien, to obtain a timely resolution for all concerned. The Edgeworths opposed

adjudication by Judge Jones under the flimsy claim that the collateral conversion complaint somehow barred adjudication of an attorney lien under the statute. Rather than a speedy adjudication, the Edgeworths wanted to wait years for a trial date for resolution. Judge Jones rejected the Edgeworths' bid to delay, followed the law and adjudicated the lien pursuant to the statute.

15. I banged on the no support for the conversion complaint drum often during the litigation before Judge Jones. The Edgeworths and their counsel never took any of the many opportunities given to them to demonstrate a *prima facie* conversion case. In fact, in my opinion, they never made a serious attempt. For example, on January 15, 2019, at oral argument on Simon's motion for fees, the Edgeworths were challenged to produce objective support for the claim. John Greene responded with only a subjective view of the case, which largely ignored the Court's evidentiary findings. John Greene did not offer a single on-point citation to authority in support of the conversion complaint against Simon. Even as late January of 2020, the Edgeworths stated an intent to maintain their frivolous conversion complaint. (*See*, Simon Master Exhibit #32.)

16. Throughout the cases, instead of offering objective facts or authority in support of the conversion claim, the Edgeworths would often make unsupported claims of an ethical violation against Simon based solely or in part on the fact that Simon asserted an attorney's lien pursuant to NRS 18.015. Moving beyond the fact that a civil court is not the proper arena for addressing an ethics violation, the Edgeworths never addressed the impact of NRS 18.015(5) which clearly states assertion of an attorney lien *is not inconsistent* with an attorney's duties to their client.

17. The Honorable Judge Tiara Jones determined the facts and law of the Edgeworth Simon dispute. Under the concept of finality; whether it be expressed as *res judicata*, claim or issue preclusion, or law of the case, matters determined by Judge Jones may not be re-visited by a sister court. Unless modified by a higher court, the facts and law determined by Judge Jones are final and are not subject to revision by the Edgeworths in this sister Court.

18. Therefore, in conclusion, after service, I immediately placed the Edgeworths and their counsel on notice that they were pursuing a frivolous conversion claim. Though counsel, I asked that the Edgeworths abandon their conversion complaint. The Edgeworths, by or through their counsel, decided not to abandon the frivolous conversion complaint and instead made a choice to maintain the conversion complaint without reasonable grounds. Following, the Honorable Judge Tiara Jones held a lengthy evidentiary hearing from which the Court determined that: (A) Simon started work as a favor; (B) That no express contract, written or oral, was ever formed; (C) That the implied contract that was eventually formed was terminated by the Edgeworths; (D) That the Edgeworths discharged Simon; (E) That Simon complied with NRS 18.015 and served a valid and enforceable lien after discharge; (F) That the Edgeworths owed Simon fees and costs when Simon was discharged; (G) That the Edgeworth conversion complaint against Simon could be dismissed as a matter of law; and, (H) That the conversion complaint "was not maintained on reasonable grounds". (A-16-738444-C, 11/19/2018 Decision and Order on Motion to Adjudicate Lien; (A-18-767242-C, 11/19/2018 Decision and Order on Motion to Dismiss pursuant to NRCP 12(b)(5); and, A-18-767242-C, 2/8/2019 order at finding #1.)

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Dated this 10th day of July, 2020.

JAMES R. CHRISTENSEN

Exhibit 1

NRPC 1.4(c) Biographical data form for James R. Christensen

Education

Northern Illinois University, College of Law, DeKalb, Illinois, Juris Doctor, May of 1988; graduated *Cum Laude*. Honors include: Dean's List; Law Review Assistant Editor 1987-88, staff 1986-87; Chicago Bar Association Rep. 1986-87.

Indiana University, Bloomington, Indiana, Bachelor of Arts, Economics, co-department major, History, May 1985.

Publication

Comment, *Strict Liability and State of the Art Evidence in Illinois*, Vol. 7, No. 2, No. Ill. L. Rev. 237 (1987)

Experience

30 years of litigation, including over 35 trials to a verdict in State and Federal Court, and more than 100 arbitrations. Matters taken include medical malpractice, product defect, premises liability, construction defect, personal injury, wrongful death, land transactions, breach of contract, fraud, insurance bad faith, the financial industry and FINRA, Native American gaming law and governance, legal practice standards and malpractice, ERISA, and disability claims.

Appellate work includes over 10 appearances before the Nevada Supreme Court and several appearances before the 9th Circuit Court of Appeals.

Experience includes serving as an arbitrator on hundreds of cases in Nevada, service on the Nevada Medical Dental Screening Panel in Nevada, and service on the Southern Nevada Disciplinary Panel for the State Bar of Nevada.

Expert experience includes testimony on insurance claims practices and on legal practice standards.

Rated "AV" by Martindale-Hubbell.

Reported cases

Gunderson v. D.R. Horton, Inc., 319 P.3d 606 (Nev. 2014).
D.R. Horton v. The Eighth Judicial District Court, 215 P.3d 697 (Nev. 2009).
D.R. Horton v. The Eighth Judicial District Court, 168 P.3d 731 (Nev. 2007).
Powers v. USAA, 962 P.2d 596 (1998); *rehearing denied*, 979 P.2d 1286 (Nev. 1999)(briefing).

Work history

April 2009 – Present
James R. Christensen PC
601 S. Sixth St.
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November 2009 – 2016
Fox Rothschild LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, NV 89169

February 2005 – April 2009
Quon Bruce Christensen
2330 Paseo del Prado, Suite C-101
Las Vegas, NV 89102

December 1994 – February 2005
Brenske & Christensen
630 S. Third Street
Las Vegas, NV 89101

September 1989 – December 1994
Law Office of William R. Brenske
610 S. Ninth Street
Las Vegas, NV 89101

August 1988 – August 1989
Law Clerk: Honorable Earl W. White
Eighth Judicial District Court of Nevada, Department IV

January 1988 – April 1988
Judicial Externship: Honorable Stanley J. Roszkowski
United States District Court, Northern District of Illinois, Western Division

April 1987 – May 1988
Law Clerk: Office of the Legal Counsel
Northern Illinois University

Licenses & affiliations

State Bar of Illinois (admitted 1989); State Bar of Nevada (admitted 1990); U.S. Court of Appeals 9th Circuit; Nevada Bar Association; Illinois Bar Association; Clark County Bar Association; American Association for Justice; Nevada Justice Association.

Exhibit 2

James R. Christensen
Attorney Practice History

1995-2001, counsel for Dr. Ames *et. al*., against attorney David Curtis *et al*., for claims including legal malpractice associated with a real estate dispute. EJDC Case No. 312219. Trial court judgment against Curtis reversed on appeal, judgments against other defendants upheld.

1997-2003, counsel for the law firm of Myers & Gomel in defense of taking and leaving claims brought by attorney Carl F. Piazza over approximately 300 files. EJDC Case No. A382663. Confidential resolution during jury trial.

1998-2000, counsel for the law firm of Mainor & Harris in defense of lien and intentional misconduct claims stemming from the Rhodes Fire Litigation brought by the Pico & Mitchell law firm. EJDC Case No. A384766. Confidential resolution.

In 1999-2003, counsel for attorney Nancy Quon in a law firm breakup dispute with Robert Maddox. EJDC Case No. A403739. Confidential resolution.

1999-2004, counsel for attorney George Bochanis in defense of a claim brought by Dr. Mark Taylor D.C., LTD. Clark County Justice Court Case No. 99c-003240-001. Case dismissed.

2003-05, counsel for the Law Office of Daniel S. Simon in defense of a lien claim brought by attorneys Connelly and Marlowe in EJDC Case No. A430916. Lien adjudicated by the Court; Connelly & Marlowe appeal dismissed by motion.

In 2006, counsel for the law firm of Netzorg & Caschette in defense of a claim of legal malpractice. EJDC Case No. 06-A-516271. Case dismissed with prejudice by motion.

In 2010, counsel for the Alan Stanton Corp., against attorney David Stephens for alleged malpractice in filing and perfecting a mechanics lien. Resolution in favor of Alan Stanton Corp.

In 2010, counsel for Law Office of Daniel S. Simon on matters stemming from the transfer of attorney Chris Burk to the law firm of Poisson & Bernstein, including lien adjudication in EJDC Case No. A572369. Confidential resolution.

In 2011-12, resolved issues related to the transfer of attorney Adam Muslusky from attorney George Bochanis to Law Office of Daniel S. Simon. Confidential resolution.

In 2012, served as a retained expert in *McKay v. Francis*, Fee Dispute No. R13-072. Report provided.

In 2012, served as a retained expert on legal practice standards in *Leavy v. Bailey*, EJDC Case No. A-10-614933, report provided.

2012 served as a retained expert on legal practice standards in *Tatom v. Goldberg*, EJDC Case No. A-12-654611, report provided.

In 2012-13, counsel for Deeann and Ivan Clark against attorney William K Errico. Claims included legal malpractice. EJDC Case No. A-12-657001-C. Confidential resolution.

In 2013, served as a retained expert on legal practice standards in *Talbot v. Harford*, U.S.D.C., D. Nev., Case No. 2:11-CV-01766-KJD-CWH, report provided and deposed.

In 2013, counsel for attorney George Bochanis for matters attendant to the transfer of a client file to attorney Parviz Heshmati. Resolved.

In 2013-14, counsel for two children regarding settlement funds taken by attorney Barry Levinson. Recovery made from the Client Security fund.

In 2013-2015, counsel for Allyn and Barry Shulman against attorney Jeffrey A. Bendavid. Claims included legal malpractice in the handling of a real estate transaction. EJDC Case No. A-13-682679-C. Confidential resolution.

In 2014, counsel for attorney Adam Clarkson on matters related to the dissolution of the Fuller Jenkins law firm. Confidential resolution.

In 2014-2015, counsel for Linda Talley against attorney William K Errico. Claims included legal malpractice and Nevada RICO. EJDC Case No. A-14-703989-C. Confidential resolution.

In 2014-2015, counsel for Letricia and Winthrop Robinson in defense of a claim for declaratory relief regarding an attorney lien brought by attorney William K. Errico, and pursuit of a counter claim for legal malpractice. EJDC Case No. A-14-705047-C. Confidential resolution.

In 2015, counsel for Law Office of Daniel S. Simon for collection of fees due from attorney Liborius Agwara on a lien. Fees paid.

In 2015-16, personal counsel for attorney Anastasia Noe in U.S.D.C., D. Nev., Case No. 2:14-CV-01841-GMN-GWF.

In 2016, counsel for Angela Kassan against attorney Michael A. Hagemeyer for payment of settlement monies due. Confidential resolution.

In 2016-2017, counsel for The Clarkson Law Group in defense of claims including misappropriation of trade secret, conversion, & intentional interference with contractual relations. EJDC Case No. A-16-743784. Case dismissed with no payment and no confidentiality.

In 2016-18, counsel for Dusty Rhodes against attorney Jason J. Bach. Claims include legal malpractice and overbilling in a Carmack action. EJDC Case No. A-16-738933-C. Confidential resolution.

2016-present. Expert for the State of Nevada, *The State of Nevada vs William Errico*, EJDC Criminal Case No. 15307611X/C307611. Reports provided.

In 2017, counsel for The Clarkson Law Group in defense of various claims including legal malpractice related to a home foreclosure. U.S.D.C., D. Nev., Case No. 3:16-cv-00758-RCJ-VPC. Case dismissed without prejudice with no payment and no confidentiality.

In 2017, counsel for attorney David Newman in defense of various claims including breach of contract, breach of fiduciary duty and breach of duty of loyalty. EJDC Case No. A-17-752287-B. Case dismissed by motion.

In 2017, counsel for The Clarkson Law Group on matters associated with EJDC A-13-680532.

In 2017, counsel for the law firm of Maddox, Isaacson & Cisneros, for matters related to jointly prosecuted cases impacted by the breakup of the Maier Gutierrez Ayon law firm. Issues resolved.

In 2018, counsel for attorney Adam Clarkson on issues arising after the dissolution of the Fuller Jenkins law firm. Confidential resolution.

In 2018, counsel for David Alessi Esq., in defense of a legal malpractice case in EJDC Case No. A684539. Case resolved.

In 2018, counsel for an attorney who received a confidential Bar inquiry generated by an on-line Bar complaint. Inquiry closed without a formal investigation.

In 2018, counsel for Dr. Van Vooren in matters related to a dispute with attorney Esteban-Trinidad. Issues resolved.

In 2018-present, counsel for Law Office of Daniel S. Simon in a lien dispute in EJDC Case No. A738444 and defense of a collateral conversion action in EJDC Case No. A767242. Conversion case dismissed with fees and costs assessed against Plaintiffs, lien adjudicated, consolidated appeal and writ pending.

In 2019, counsel for the Law Office of Daniel S. Simon in a lien dispute in EJDC Case No. A-19-793213-C. Lien adjudicated.

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Las Vegas, Nevada 89101
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DECLARATION OF PETER CHRISTIANSEN, ESQ. IN SUPPORT OF PLAINTIFFS' OPPOSITIONS TO DEFENDANTS MOTIONS TO DISMISS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

PETER S. CHRISITIANSEN, ESQ., being first duly sworn, under oath, deposes and says that:

1. Declarant is an attorney licensed to practice law in the State of Nevada and is counsel for Plaintiffs in this matter;

2. Defendants Robert D. Vannah, Esq., John B. Green, Esq., and Robert D. Vannah, Chtd., d/b/a Vannah & Vannah, (hereinafter the "Vannah Defendants") filed several Special Motions to Dismiss Plaintiffs' Complaint: Anti-Slapp and several motions to dismiss pursuant to NRCP 12(b)(5).

3. Defendants American Grating, LLC, Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth (hereinafter the "Edgeworth Defendants") filed several Special Motions to Dismiss Plaintiffs' Complaint – Anti-SLAPP and several motions to dismiss pursuant to NRCP12(b)(5).

4. The motions seek dismissal of all claims based on litigation privilege and Anti-SLAPP. In the event that the Court is inclined to grant any of the motions, Plaintiffs seek discovery.

5. There is substantial evidence in the exclusive possession of the Defendants. Pursuant to NRS 41.660(4), Plaintiffs seek discovery pending this motion if the court does not deny the motion outright. Specifically, Plaintiff seeks discovery about what the Defendants knew or did not know when filing the initial complaint and/or subsequent pleadings. The Vannah

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attorneys aver they did substantial research prior to filing the initial complaint in support of their good faith basis. However, they have not provided any evidence of this research. Discovery surrounding their research, including the specific research and the research trails is crucial to determine the asserted good faith by the Vannah Attorneys. Plaintiffs also seek discovery about what the Edgeworth Defendants told Rueben Herrera, Justice Miriam Shearing and attorney Lisa Carteen, among other witnesses. The new Edgeworth affidavits attached to their renewed special motion to dismiss: anti-slapp specifically address what they assert was told to these witnesses and their depositions are crucial to determine exactly what was said to these witnesses. Additional discovery surrounding the email communications, text communications as to what they knew, their plan and on-going abuses is also needed to address the core issue of good faith at the time the initial complaint and subsequent filings were made. All Defendants are in exclusive possession of this information and thus far have refused to allow imaging of their portable devices to allow Plaintiffs to preserve this evidence.

6. I make this declaration under penalty of perjury.

PETER S. CHRISTIANSEN, ESQ.

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, Plaintiff, vs. EDGEWORTH FAMILY TRUST, Defendant.	CASE#: A-19-807433-C DEPT. XXIV

BEFORE THE HONORABLE JIM CROCKETT, DISTRICT COURT JUDGE

THURSDAY, AUGUST 13, 2020

RECORDER'S TRANSCRIPT OF HEARING RE: ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff: PETER S. CHRISTIANSEN, ESQ.
KENDELEE WORKS, ESQ.

For the Defendants:
Vannahs — PATRICIA A. MARR, ESQ.
Edgeworths — RENEE M. FINCH, ESQ.
RAMEZ A. GHALLY, ESQ.

RECORDED BY: NANCY MALDENADO, COURT RECORDER

Las Vegas, Nevada, Thursday, August 13, 2020

*****

[Hearing began at 10:09 a.m.]

THE CLERK: Pages 7 through 8, A807433, Law Office of Daniel S. Simon versus Edgeworth Family Trust.

MR. CHRISTIANSEN: Good morning, Your Honor. Pete Christiansen and Kendelee Works on behalf of the Plaintiffs, Simons.

THE COURT: Good morning.

MS. MARR: Good morning, Your Honor. Patricia Marr, appearing on behalf of defendants, Robert Vannah, John Greene, and Robert Vannah Chartered.

THE COURT: Okay, thank you for that.

MS. FINCH: Your Honor, Renee Finch, appearing on behalf of Brian and Angela Edgeworth, The Edgeworth Family Trust, and American Grating.

THE COURT: I'm sorry. Would you say your name again, please.

MS. FINCH: Sure. I'm sorry, Your Honor, it's Renee Finch.

THE COURT: Renee Finch. Okay, good morning, Ms. Finch.

MS. ATWOOD: Good morning, Your Honor. Christine Atwood. I'm also appearing on behalf of the Edgeworth defendants.

THE COURT: Okay. Good morning.

Well, this is going to be short because we're not deciding this one today, and I'll tell you why.

This is the motion of Robert Darby Vannah, John Buchanan

Greene, and Robert D. Vannah to dismiss plaintiff's complaint, and a motion in the alternative for a more definite statement.

So as to all matters currently on calendar today in this case, between the motions to dismiss, the special anti-SLAPP motions to dismiss, joinders, and errata, the lawyers have filed literally several thousand pages of materials.

And then on May 29th of 2020, Law Offices of Daniel Simon filed a 60-page opposition without permission to exceed the 30-page limit and attached to that 60-page opposition, 298 pages of exhibits.

Then, two days later, on June 1st, 2020, plaintiff Simon Law Offices filed an errata to the May 29th, 2020, opposition, this time with a 61-page opposition with 312 pages of exhibits.

Now, is there overlap between those documents? I don't know, because I didn't read anything there because both oppositions exceeded the 30-page limit, and permission was never granted to exceed the 30-page limit.

It reminds me of a no-knock entry. Knock knock, door comes down, police enter. In this case, there's a pretense in asking the Court's permission to file a brief in excess of 30 pages, but, in fact, there was no request for that, and the Court never granted it.

And counsel, I would ask you to consider something. The purpose of filing pleadings, you may find that a secondary purpose is to bludgeon your opposition with paperwork. But your goal and your communications with the Court is not to bludgeon, it is to inform, and educate, and persuade the Court to your point of view.

So the last thing you want to do is start up by insulting the Court by filing a 60-page document without permission, when 30 pages is the maximum it allowed.

And you also need to ask yourself, if you haven't informed, educated, and persuaded your reader with 30 pages, do you really think another 30 pages is going to do it? I can tell you that the answer is generally no.

Then, just to further complicate things, so the motions to dismiss special, and general, and joinder, they started April 23rd of 2020. Then May 14th, May 15th, May 18th, then joinders all over the place, but then on May 21st of 2020, plaintiff filed an amended complaint rendering all those previous filings moot and irrelevant. And, of course, the May 29th filing by Simon, and the June 1st errata were also irrelevant because they were opposing the motions to dismiss that were filed against the original complaint.

Having filed an amended complaint on May 21st, rendering all those previous filings moot, then the defendants started up filing their motions to dismiss, special and general, against the amended complaint.

So no motions filed before the amended complaint, or oppositions or replies are to be considered, nor will any brief in excess of 30 pages, exclusive of exhibits.

So, first, the Court will only consider general and special motions to dismiss, oppositions, joinders, and replies filed in regard to the amended complaint which was filed May 21st, 2020. Anything filed after May 21st, 2020, that is not with regard to the amended complaint

filed on May 21st, 2020, will not be considered, such as plaintiff's May 29th, 2020, filing and June 1st, 2020, errata.

Next, the briefing schedule is as follows, and this is going to involve you basically just re-dating, the resigning, and refiling motions and joinders that are dated after May 21st of 2020, and are directed at the amended complaint. And I know that some of those things are already on file, but it's a hodgepodge and a rat's nest. And I also want to have these filed so that it triggers the need for an opposition on behalf of plaintiff Simon that which plaintiff will file an opposition brief of 30 pages or less, not counting exhibits.

So given you're just going to be re-dating, and resigning, and refiling these, I'm going to say two weeks from today, which would mean by August 27th all motions, both general and special, and joinders are to be filed.

Opposition to general and special motions and their joinder, what would be a judicial date two weeks after August 27th?

MS. MARR: That would be September 10th, Your Honor.

THE COURT: September 10th, 2020, will be the deadline for filing oppositions to the general and special motions filed on August 27th of 2020.

And then September 24th, two weeks later, will be the deadline for filing reply briefs in response to the opposition. And then what would be a Thursday hearing date, about seven to ten days after September 24th, 2020?

MS. MARR: The next Thursday would be October 1st, Your

Honor.

THE COURT: Okay. Any questions.

MR. CHRISTIANSEN: Your Honor, Pete Christiansen for the plaintiff. No questions, and I take the Court's direction at face value and we'll keep things under. I did want the Court to recognize the need for the lengthy 529 and 6.1 filings necessitated from the Edgeworth's counsel refusal to address everything to the amended complaint and their desire to litigate stuff, both the first and second complaint, so that was the need for those.

And then additionally, Your Honor, the matters were briefed in accordance with the local rule in under 30 pages after our last hearing with you which was June 11th. You directed everybody, both sides, defendants and plaintiffs, to have – actually what you did, you denied everybody's request to exceed the page limit and told us to get everything done within the local rules and under 30 pages.

So I take everything you say and will abide by the briefing schedule. I just wanted the Court to understand why plaintiff had filed lengthy oppositions to a motion related to the first complaint. It was only because the defendant refused to withdraw that motion and forced those filings.

THE COURT: Okay. Anything else?

MR. CHRISTIANSEN: Not from plaintiff, Your Honor.

THE COURT: Anything from the defense?

MS. FINCH: Thank you, Your Honor. This is Renee Finch on behalf of the Edgeworth and American Grating. Just briefly in response.

You know, we did, and I don't know if Your Honor even had the opportunity to brief everything, there is an argument that's been perpetuated that, in fact, that amended complaint is a foreign or a rogue document because it was filed after the filing of anti-SLAPP motions to dismiss, which pursuant to California law, which is all we have in this case, makes that amended complaint moot and a frivolous document, which is why the defendant didn't withdraw their original documentation because we weren't sure how the Court would interpret that rule, because it hasn't been addressed in the State of Nevada. So we're following the California guidance on that issue, and that's why we have duplicative briefing.

So I'm not sure if Your Honor saw that, if you had the opportunity to read through any of this or not. But I wanted to bring that to the Court's attention.

THE COURT: I appreciate that, but there was no point in trying to read through this when I saw that one of the things I was dealing with was an opposition that was 60 pages long. So do I not read it at all, do I read the first 30 pages, or the last 30 pages, or just pick out 30 of the 60 pages to read and ignore the rest.

So it was a total rat's nest. But you do have this guidance. As far as I'm concerned, the filing of the amended complaint on May 21st of 2020 does supersede the original complaint, and as such, any motions that are challenging the complaint document need to be addressing the amended complaint.

And so the things that I will be reading in this case to make a

decision are pleadings filed between August 27th, 2020, and – actually between today. I suppose people could get some things filed early, but pleadings filed between today, August 13, 2020, and September 24th of 2020, in anticipation of being prepared for a hearing on October 1st of 2020.

So is everybody clear that I am of the view that the filing of the amended complaint supersedes the original complaint and, therefore, renders the motions to dismiss, both, general and special, moot as to that original document.

MR. CHRISTIANSEN: Understood, Your Honor.

MS. MARR: Yes, Your Honor, we're clear.

MS. FINCH: Yes, Your Honor.

THE COURT: Anything else?

MR. CHRISTIANSEN: No, Your Honor. Thank you for your time.

THE COURT: All right. Thank you.

MS. MARR: Thank you, Your Honor.

MS. FINCH: Thank you.

[Hearing concluded at 10:23 a.m.]

* * * * * *

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

Susan Schofield

SUSAN SCHOFIELD
Court Recorder/Transcriber

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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.	CASE NO.: A-18-767242-C DEPT NO.: X **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**SECOND AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

SECOND AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

Hon. Tierra Jones
DISTRICT COURT JUDGE

DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

Case Number: A-16-738444-C

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

FINDINGS OF FACT

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

2. The case involved a complex products liability issue.

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

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

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

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

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

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

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks. 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

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

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

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

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review 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."

(Def. Exhibit 43).

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

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

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

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

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

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

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

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

CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

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

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

Fee Agreement

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

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

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

(Def. Exhibit 27).

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

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

Constructive Discharge

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

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

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

Id.

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

Further, the Edgeworths did not personally speak with Simon after November 25, 2017. Though there were email communications between the Edgeworths and Simon, they did not verbally speak to him and were not seeking legal advice from him. In an email dated December 5, 2017, Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim 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 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim. The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr. Simon never signed off on any of the releases for the Lange settlement.

Further demonstrating a constructive discharge of Simon is the email from Robert Vannah Esq. to James Christensen Esq. dated December 26, 2017, which states: "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." (Def. Exhibit 48). Then on January 4, 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating, LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that doesn't seem in his best interests." (Def. Exhibit 53).

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

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

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

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

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

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

4. A lien pursuant to:

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

(b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including, without limitation, copies of the attorney's file if the original documents 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.

Nev. Rev. Stat. 18.015.

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

Implied Contract

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

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

Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP 16.1 disclosures and computation of damages; and these amounts include the four invoices that were paid in full and there was never any indication given that anything less than all the fees had been

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

Amount of Fees Owed Under Implied Contract

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

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

billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing indicated that there were no phone calls included in the billings that were submitted to the Edgeworths.

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

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

The amount of attorney's fees and costs for the period beginning in June of 2016 to December 2, 2016 is $42,564.95. This amount is based upon the invoice from December 2, 2016 which appears to indicate that it began with the initial meeting with the client, leading the court to determine that this is the beginning of the relationship. This invoice also states it is for attorney's fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This

amount has already been paid by the Edgeworths on December 16, 2016.[2]

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

The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the services of Daniel Simon Esq. is $72,077.50. The amount of attorney's fees for this period for Ashley Ferrel Esq. is $38,060.00. The amount of costs outstanding for this period is $31,943.70. This amount totals $142,081.20 and is based upon the invoice from July 28, 2017. This amount has been paid by the Edgeworths on August 16, 2017.[3]

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

From September 19, 2017 to November 29, 2017, the Court must determine the amount of attorney fees owed to the Law Office of Daniel Simon.[4] For the services of Daniel Simon Esq., the total amount of hours billed are 340.05. At a rate of $550 per hour, the total attorney's fees owed to the Law Office for the work of Daniel Simon Esq. is $187,027.50. For the services of Ashley Ferrel Esq., the total amount of hours billed are 337.15. At a rate of $275 per hour, the total attorney's fees owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November 29, 2017 is $92,716.25.[5] For the services of Benjamin Miller Esq., the total amount of hours billed are 19.05. At a rate of $275 per hour, the total attorney's fees owed to the Law Office for the work

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[2]There are no billing amounts from December 2 to December 4, 2016.

[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.

[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.

of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is $5,238.75.[6]

The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq. or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid by the Edgeworths, so the implied fee agreement applies to their work as well.

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

Costs Owed

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

Quantum Meruit

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

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

is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion of the Law Office's work on this case.

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

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

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

1. Quality of the Advocate

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

work product and results are exceptional.

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

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

3. *The Work Actually Performed*

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

4. *The Result Obtained*

The result was impressive. This began as a $500,000 insurance claim and ended up settling for over $6,000,000. Mr. Simon was also able to recover an additional $100,000 from Lange Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle the Lange Claim for $25,000 but Simon kept working on the case and making changes to the settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from

Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible. Mr. Kemp also testified that he has never heard of a $6 million settlement with a $500,000 damage case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they were made more than whole with the settlement with the Viking entities.

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

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

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

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after 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;
>
> (3) Whether the client is liable for expenses regardless of outcome;
>
> (4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and
>
> (5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.
>
> Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for the Edgeworths, the character of the work was complex, the work actually performed was extremely significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell factors justify a reasonable fee under NRPC 1.5.

However, the Court must also consider the fact that the evidence suggests that the basis or rate of the fee and expenses for which the client will be responsible were never communicated to the client, within a reasonable time after commencing the representation. Further, this is not a contingent fee case, and the Court is not awarding a contingency fee.

Instead, the Court must determine the amount of a reasonable fee. In determining this amount of a reasonable fee, the Court must consider the work that the Law Office continued to provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the Edgeworths were ready to sign and settle the Lange claim for $25,000 but Simon kept working on the case and making changes to the settlement agreement. This resulted in the Edgeworth's recovering an additional $75,000 from Lange plumbing. Further, the Law Office of Daniel Simon continued to work on the Viking settlement until it was finalized in December of 2017, and the

checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr. Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year. The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon himself were continuing, even after the constructive discharge. In considering the reasonable value of these services, under quantum meruit, the Court is considering the previous $550 per hour fee from the implied fee agreement, the Brunzell factors, and additional work performed after the constructive discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of $200,000, from November 30, 2017 to the conclusion of this case.

CONCLUSION

The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of $550 per hour between Mr. Simon and the Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The 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 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied agreement rate of $550 per hour for his services, and $275 per hour for his associates; up and until the last billing of September 19, 2017. For the period from September 19, 2017 to November 29, 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of $550 an hour, and $275 an hour for his associates, for a total amount of $284,982.50. For the period after November 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being constructively discharged, under quantum meruit, in an amount of $200,000. The Court further finds that the Law Office of Daniel Simon is entitled to costs in the amount of $71,594.93.

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ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law Office of Daniel Simon is $556,577.43, which includes outstanding costs.

Dated this 16th day of March, 2021

IT IS SO ORDERED this 16th day of March, 2021.

DISTRICT COURT JUDGE

B7B 840 B8A7 FF62
Tierra Jones
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Edgeworth Family Trust, Plaintiff(s) vs. Lange Plumbing, L.L.C., Defendant(s)	CASE NO: A-16-738444-C DEPT. NO. Department 10

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 3/16/2021

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 3/17/2021

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128

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03/16/2021 2:52 PM
CLERK OF THE COURT

ORD

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.	CASE NO.: A-18-767242-C DEPT NO.: X **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**AMENDED DECISION AND ORDER GRANTING IN PART AND DENYING IN PART, SIMON'S MOTION FOR ATTORNEY'S FEES AND COSTS**

AMENDED DECISION AND ORDER ON ATTORNEY'S FEES

This case came on for a hearing on January 15, 2019, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through Brian and Angela

Edgeworth, and by and through their attorneys of record, the law firm of Vannah and Vannah, Chtd. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS after review**:

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

1. The Court finds that the claim for conversion was not maintained on reasonable grounds, as the Court previously found that when the complaint was filed on January 4, 2018, Mr. Simon was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust account. (*Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)*). As such, Mr. Simon could not have converted the Edgeworth's property. As such, the Motion for Attorney's Fees is GRANTED under 18.010(2)(b) as to the Conversion claim as it was not maintained upon reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworth's property, at the time the lawsuit was filed.

2. Further, The Court finds that the purpose of the evidentiary hearing was primarily on the Motion to Adjudicate Lien. The Motion for Attorney's Fees is DENIED as it relates to other claims. In considering the amount of attorney's fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against Mr. Simon, on January 4, 2018. However, they were also the attorneys in the evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found was primarily for the purpose of adjudicating the lien by Mr. Simon. The Court further finds that the costs of Mr. Will Kemp, Esq. were solely for the purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr. David Clark, Esq. were solely for the purposes of defending the lawsuit filed against Mr. Simon by the Edgeworths.

3. The court has considered all of the *Brunzell* factors pertinent to attorney's fees and attorney's fees are GRANTED. In determining the reasonable value of services provided for the defense of the conversion claim, the COURT FINDS that 64 hours was reasonably spent by Mr. Christensen in preparation and defense of the conversion claim, for a total amount of $25,600.00. The COURT FURTHER FINDS that 30.5 hours was reasonably spent by Mr. Christiansen in preparation of the

defense of the conversion claim, for a total of $24,400.00. As such, the award of attorney's fees is GRANTED in the amount of $50,000.00 and costs are GRANTED in the amount of $5,000.00.

Dated this 16th day of March, 2021

IT IS SO ORDERED this 16th day of March, 2021.

DISTRICT COURT JUDGE

4DA 7C0 B8B6 9D67
Tierra Jones
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Edgeworth Family Trust, Plaintiff(s) vs. Lange Plumbing, L.L.C., Defendant(s)	CASE NO: A-16-738444-C DEPT. NO. Department 10

AUTOMATED CERTIFICATE OF SERVICE

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 3/17/2021

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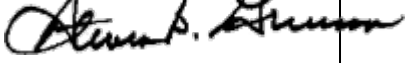

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC,

Plaintiffs,

v.

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 d/b/a SIMON LAW; DOES 1 through 10; and ROE entities 1 through 10;

Defendants.

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

Consolidated with

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

DEFENDANT'S MOTION FOR RECONSIDERATION REGARDING COURT'S AMENDED DECISION AND ORDER GRANTING IN PART AND DENYING IN PART SIMON'S MOTION FOR ATTORNEY'S FEES AND COSTS AND SECOND AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

(HEARING REQUESTED)

COME NOW, Defendants EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC by and through their attorneys of record, LAUREN D. CALVERT, ESQ., and CHRISTINE L. ATWOOD ESQ., of MESSNER REEVES LLP, and hereby submit Defendants' Motion For Reconsideration Regarding Court's Amended Decision And Order Granting In Part And Denying In Part Simon's Motion For Attorney's Fees And Costs and Second Amended Order on Motion to Adjudicate Lien.

DATED this 30th day of March, 2021.

MESSNER REEVES LLP

/s/ Christine Atwood

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Edgeworth Family Trust and American
Grating, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises from a complex litigation arising from water damage to a property being built by Brian and Angela Edgeworth (hereinafter "Edgeworth" and "Angela Edgeworth" respectively). The Edgeworths, by and through the Edgeworth Family Trust, and their company American Grating (collectively hereinafter "the Edgeworths"), were represented by Daniel Simon of the Law offices of Daniel Simon (hereinafter "Simon") in case A-16-738444-C (hereinafter referred to as the "flood litigation"). At the conclusion of the flood litigation, a dispute arose between Simon and Edgeworth regarding the remaining attorney's fees owed to Simon. After an evidentiary hearing on the motion to adjudicate lien – during which Simon's case file for the Edgeworth litigation had not been turned over to

the client and still has not been turned over to the Edgeworths, in apparent contravention of NRS 7.055 – this Court ordered additional fees paid to Simon by Edgeworth and dismissed the Edgeworth Complaint. The matters were appealed, and in the consolidated case before the Nevada Supreme Court, an order was issued on December 30, 2020, stating "***we vacate the district court's order awarding $50,000 in attorney fees and $200,000 in quantum meruit and remand for further findings regarding the basis of the awards***." After the matter was remanded, on March 16, 2021, this Court issued a Second Amended Decision and Order on Motion to Adjudicate Lien, and Amended Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs, despite the fact that the full case file had still not been provided to the Edgeworths or this Court for evaluation, in apparent contravention of NRS 7.055. The Edgeworths now seek reconsideration on matters related to the Amended Orders as outlined below.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

This matter arises out of two civil cases that have since been consolidated. On April 10, 2016, a house the Edgeworths were building suffered a flood. The house was still under construction, but the cost of repairs was approximately $500,000. Simon represented the Edgeworths in the resulting case of Edgeworth Family Trust and American Grating LLC vs. Lange Plumbing, LLC, the Viking Corporation, Supply Network Inc., dba VikingSupplynet, which was assigned case No. A-16-738444-C. Over the course of his representation of the Edgeworths Simon was paid $368,588.70 in attorney fees and $114,864.39 in litigation costs, making the total amount paid out of pocket by the Edgeworths to Simon $483,453.09 through September 25, 2017. These bills were billed at the rate of $550.00 per hour, and were found by this court to be an implied contract between Simon and Edgeworth.

On or about November 15, 2017, the Edgeworths accepted a mediator's proposal to settle with Viking for $6,000,000 (hereinafter "Viking Settlement"). On November 17, 2017, Simon called the Edgeworths to his office to discuss the settlement. During that meeting, Simon indicated that he believed he was entitled to compensation over and above the hourly rate he was being paid. He supported his argument by stating that a judge would automatically award him forty (40) percent of the Viking

settlement, so taking anything less was cheating himself. Simon further stated that if the Edgeworths did not agree to additional compensation for Simon, the Viking Settlement would fall apart because it required his signature and there were ***many terms to still be negotiated***. In the following days, Simon, who was on vacation in Peru, placed numerous phone calls to the Edgeworths, asking them to commit to additional compensation. On November 21, 2017, counsel for Viking Janet Pancoast, Esq., sent a draft of the settlement agreement for the Viking settlement to the other counsel for Viking, Dan Polsenberg, Esq., which indicated that issues had arose with the confidentiality and non-disparagement clauses proposed therein.[1] This email and the attached version of the settlement agreement, are evidence irreconcilable with Simon's testimony that he negotiated regarding the confidentiality clause on November 27, 2017.

A bill from James Christensen indicates that Simon hired him on November 27, 2017 to represent Simon regarding the "Edgeworth Fee Dispute,"[2] a dispute that notably did not exist at that time.[3] That same day Simon sent correspondence to the Edgeworths detailing his position and asking them to sign a fee agreement entitling him to nearly $1,200,000 in additional attorney's fees.[4] Based upon this and other new evidence, which was not presented at the time of evidentiary hearing, it appears that many facts as presented by Simon are irreconcilable with the facts contained in the documents and, as such, the Edgeworths respectfully request that this Court reconsider the new evidence in order to make a determination regarding whether what was testified to as the evidentiary or the documentary new evidence is more credible in this Court's resolution of the matter and corresponding orders.[5]

In the November 27 letter to the Edgeworths, Simon indicated that there was a lot of work left to be done on the settlement, including the language, "which had to be very specific to protect everyone."

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[1] *See* Email from Pancoast to Polsenberg dated November 21, 2017, including attached draft settlement agreement, attached hereto as **Exhibit A**.
[2] *See* Billing Invoice from James Christensen, attached hereto as **Exhibit B**.
[3] Although no conclusive response was provided to questions at the lien adjudication hearing regarding when he hired James Christensen, we now know from Christensen's own bill that Simon retained him on or before November 27, 2017, to represent him for the Edgeworth Fee Dispute.
[4] *See* Letter of Daniel Simon, Esq. dated November 27, 2017, attached hereto as **Exhibit C**.
[5] *See* **Exhibits A, B and C**; *see also* December 12, 2017 Email from Janet Pancoast, without attachments, **Exhibit D**; *see also* Full Version of December 12, 2017 Email from Janet Pancoast, with attachments, attached hereto as **Exhibit E**. The Edgeworths further note that there are many other instances of irreconcilable "facts" as testified to by Mr. Simon at the evidentiary hearing and as found in the record and/or newly discovered evidence. The Edgeworths believe that more irreconcilable purported "facts" will come to light upon Simon finally turning over his entire, unredacted case file for his representation of the Edgeworths apparently compliance to NRS 7.055. The Edgeworths hereby specifically reserve any and all rights and/or objections in this regard.

He claimed that this language must be negotiated, and if that could not be achieved, there would be no settlement. He asked the Edgeworths to sign the fee agreement so that he could proceed to attempt to finalize the agreement. Simon went on to assert that he was losing money working on the Edgeworths' matter despite being paid $550 per hour. Interestingly, at the time Simon drafted the November 27, 2017 Letter he had been paid $368,588.70 in attorney fees plus costs over 16 months. Simon further claimed that he had thought about it a lot, and the proposed fee agreement was the lowest amount he could accept, and if the Edgeworths were not agreeable he could no longer "help them." Simon claimed he would be able to justify the attorney's fee in the attached agreement in any later proceeding, as any court will look to ensure he was fairly compensated for the work performed and the exceptional result achieved. The first time the Edgeworths ever saw this agreement was after the $6,000,000 settlement was agreed upon, and after Simon had hired James Christensen to represent him in the "Edgeworth Fee Dispute."[6] Simon conceded in the letter that he did not have a contingency agreement and was not trying to enforce one.[7] Simon concluded the letter by indicating to Brian and Angela that if they did not agree to the modified fee arrangement entitling him to an additional $1.2mil, that he would no longer represent the Edgeworths.[8] At this point the Edgeworths were unaware that Simon had retained Christensen to represent him.

On November 27, 2017, Angela Edgeworth requested a copy of the settlement agreement.[9] Simon replied that he did not have the agreement, likely because of the holidays.[10] Angela responded, requesting that she be informed of all settlement discussions both verbal and in writing so she could run it by her personal attorney.[11] No response was received.

On November 29, 2017, the Edgeworths' engaged Robert Vannah, Esq. and the firm of Vannah & Vannah. On that same day, November 29, 2017, at approximately 9:35 a.m., Mr. Simon received a faxed letter from Brian Edgeworth advising that the Edgeworths had retained Vannah to assist in the

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[6] *See* **Exhibits B and C**.
[7] *See* **Exhibit C,** at page 4.
[8] *See* **Exhibit C**, at p. 5.
[9] *See* Email String Between Angela Edgeworth Simon dated November 27, 2017, attached hereto as **Exhibit F**.
[10] *Id*. Interestingly, according to the email from Pancoast on November 21, 2017, we now know that the agreement did exist at that time. Further, Simon testified at the hearing that he had the agreement as soon as he returned from Peru, which occurred on November 25, 2017.
[11] *Id*.

litigation and cooperate with Simon.[12] This email was followed up with a phone call between Simon and John Greene, Esq., of Vannah and Vannah (hereinafter "Greene").

On November 30, 2017, at 8:39am, Simon sent a proposed Viking Settlement agreement to the Edgeworths.[13] The proposed agreement included an edit identified with track changes, that would add Simon's name on the settlement check and included a confidentiality agreement.[14] Interestingly, Simon testified at the lien adjudication hearing that the settlement terms were all negotiated on November 27, 2017, including removal of the confidentiality agreement and that the final settlement agreement was not reached until December 1, 2017, despite the fact that Simon sent Greene and the Edgeworths what Simon called the "final settlement agreement" via email on November 30, 2017 at 5:31 p.m., as discussed below.[15] Further, a draft of the original settlement agreement shows that Simon's name was not originally slated to be included on the settlement check.[16] The change was made without the consent of the Edgeworths sometime between when the original settlement agreement was drafted by Viking and when it was presented as the proposed settlement agreement to the Edgeworths on the morning of November 30, 2017, notably after Angela had asked to be involved in negotiation of any and all terms of the agreement.

On November 30, 2017, at 5:31pm that day, Simon sent a "final settlement agreement" to Vannah.[17] Simon confirmed that Vannah would advise the Edgeworths of the effects of the release and confirmed that the Edgeworths had desired to sign the settlement agreement "as is" as it was sent that morning. Regardless of the Edgeworths wanting to sign the agreement as drafted, without their knowledge or consent, Simon negotiated terms that only benefited him. Simon confirmed this in the email stating that he had negotiated to "omit the confidentiality provision, provide a mutual release and allow the opportunity to avoid a good faith determination from the court if the clients resolve the Lange claims,

[12] *See* November 29, 2017 Faxed Correspondence from B. Edgeworth to Simon, attached hereto as **Exhibit G**.
[13] *See* Email from Simon to the Edgeworths dated Nov. 30, 2017 at 8:39am, attached hereto as **Exhibit H**.
[14] *Id*. at Simon's "Proposed" Settlement Agreement as attached to the Email Simon sent to the Edgeworth on Nov. 30, 2017 at 8:39 a.m.
[15] *See* Transcript of Day 4 of Evidentiary, dated August 30, 2019, at 15:19-24, 16:6-8, 16:17-17:18, 82:16-85:5, 38:14-23, attached hereto as **Exhibit I**.
[16] *See* **Exhibit A**.
[17] *See* Email from Simon to Greene, Dated November 30, 2017, at 5:31pm, attached hereto as **Exhibit J**.

provided Lange agreed to dismiss its claims against Viking."[18] Simon claimed that these were substantial and additional beneficial terms to the Edgeworths. However, the Edgeworths never agreed to these changes, and were not in agreement with the removal of the confidentiality agreement.

Later that day, on November 30, 2017, Simon contacted Ruben Herrera (hereinafter "Herrera"), club director and coach of the Las Vegas Aces Volleyball Club, where both Simon and Edgeworth's daughters played. In his email Simon stated that due "ongoing issues with the Edgeworths," Simon was requesting that his daughter be released from her player's contract with the Club.[19] On December 4, 2017, Simon sent a second email to Herrera, stating "[a]s for the other issue with the Edgeworths, just as you, we believed we were friends. However, as parents, we must do everything in our power to protect our children. This is why she could not have come to the gym." The statements in these emails clearly implied wrongdoing by the clients Simon allegedly still represented, and had a duty to act in their best interest.

Without providing any further invoices for payment of his fees under the hourly agreement, and without an agreement by the Edgeworths to pay any additional compensation outside the hourly agreement, on November 30, 2017, Simon filed a Notice of Attorney's Lien against the Viking Settlement, claiming by supporting affidavit that $80,326.86 was allegedly outstanding and had not been paid by the Edgeworths.[20] On January 2, 2018, Simon filed a second Notice of Amended Attorney's Lien wherein he claimed outstanding costs of $76,535.93 and entitlement to a sum total of $2,345,450 in attorney's fees, less payments received in the sum of $367,606.25, for a net lien in the sum of $1,977,843.80 in total attorneys' fees against the Viking Settlement.[21]

On December 1, 2017, the Edgeworths fully executed the Viking settlement agreement even though it contained terms they were not in agreement with.[22] On December 7, 2017, the Edgeworths fully executed the Lange settlement agreement.[23] On December 12, 2017, Janet Pancoast emailed Simon and

[18] Negotiation of the removal of this term was unbeknownst to the Edgeworths, and without their consent. Further, Simon testified at the evidentiary hearing that he had negotiated that term out days before.
[19] *See* Emails Between Simon and Herrera, Attached hereto as **Exhibit K**.
[20] *See* November 30, 2017 Notice of Attorney's Lien, attached hereto as **Exhibit L**.
[21] *See* Notice of Amended Attorney's Lien, attached hereto as **Exhibit M**.
[22] *See* Executed Viking Settlement Agreement, attached hereto as **Exhibit N**.
[23] *See* Executed Lange Settlement Agreement attached hereto as **Exhibit O**.

informed him that the checks had arrived but were not certified as previously agreed upon.[24] Pancoast indicated that she wanted to exchange the checks that day for a limited Stipulation and Order for dismissal of the claims against Viking only to ensure they cleared and the Edgeworths received the funds by December 21, 2017, as agreed. The Edgeworths were never notified that the checks were available at that time, and this fact is irreconcilable with Simon's testimony that he did not have access to the checks much later in support of his argument that conversion was a legal impossibility.

On January 4, 2018, Vannah filed a Complaint in case A-18-767242-C alleging breach of contract, declaratory relief and conversion.[25] In response to this and the Amended Complaint later filed, Plaintiffs filed a Motion to Dismiss and a Special anti-SLAPP Motion to Dismiss. The Edgeworths filed Oppositions to same. On January 24, 2018, Simon filed a Motion to Adjudicate Lien. This Court held a five (5) day evidentiary hearing on the Motion to Adjudicate the Lien between August 27, 2018 and September 18, 2018.[26] On November 19, 2018, this Court granted Plaintiffs' Motion to Adjudicate Attorney's Lien, finding that Simon was entitled to attorney's fees totaling $484,982.50 under the hourly agreement.[27] Simon's Special Anti-SLAPP Motion to Dismiss was specifically denied as moot and the Edgeworths' Complaints were dismissed. On August 8, 2019, the Edgeworths filed an appeal challenging this Court's Order Adjudicating the Lien. Plaintiffs also filed a Petition for Writ of Prohibition or Mandamus on October 17, 2019, challenging the amount adjudicated by Judge Jones. The Appeal and Writ were consolidated by the Nevada Supreme Court.[28]

On December 30, 2020, the Nevada Supreme Court issued an order Affirming in Part, Vacating in Part and Remanding the case to address how this Court arrived at its decision to award $50,000 in fees, and $200,000 in quantum meruit to Simon, pursuant to *Brunzell*.[29] On March 16, 2021, this Court issued the Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's

[24] *See* **Exhibits D and E**.
[25] S*ee* pleadings on file herein.
[26] *See* Transcript of Proceedings in its entirety, on file herein.
[27] Notably, this amount is nearly $1,500,000 less than the amount Simon was exercising dominion and control over by refusing to provide his signature for it to be released.
[28] *See* Pleadings and exhibits related to docket 78176, and 79821 respectively.
[29] *See* December 30, 2020 Supreme Court Order, attached hereto as **Exhibit P**.

Fees and Costs, and Second Amended Decision and Order on Motion to Adjudicate Lien. This Motion for Reconsideration follows for the reasons outlined *infra*.

III. LEGAL STANDARD

Courts have the discretion and power to "mend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on a motion in the progress of the cause or proceeding." *Trail v. Faretto*, 91 Nev. 401, 403 (1975). EDCR 2.24, which governs rehearing and reconsideration of motions, states:

> (b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30-day period for filing a notice of appeal from a final order or judgment.

The trial judge is granted discretion on the question of a rehearing. *See*, *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 606 P.2d 1095 (1980). In *Harvey's Wagon Wheel, Inc.* the District Court denied the first motion for partial summary judgment without prejudice, initially concluding that the contract language was not clear and thus summary judgment was not warranted. *Id*. Later, the District Court reconsidered the motion for partial summary judgment, finding that although the facts and the law were unchanged, the judge was more familiar with the case by the time the second motion was heard, and he was persuaded by the rationale of the newly cited authority. *Id.* at 218. The Nevada Supreme Court found that the district judge did not abuse his discretion by rehearing the motions for partial summary judgment. *Id*. A rehearing is appropriate when "the decision is clearly erroneous." *See*, *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 941 P.2d 486 (1997)(emphasis added); *see also*, *Moore v. City of Las Vegas*, 92 Nev. 402, 405,551 P.2d 244 (1976); *Mustafa v. Clark County School Dist.*, 157 F.3d 1169, 1179 (9th Cir. 1998)(holding reconsideration is appropriate when "district court committed clear error or manifest injustice").

In *Trail v. Faretto*, the Nevada Supreme Court explained it is well-within this Court's inherent authority to amend, correct, reconsider or rescind any of its prior orders. 91Nev. 401, 403, 536 P.2d 1026,

1027 (1975); *accord Goodman v. Platinum Condo. Dev., LLC*, 2012 WL 1190827, *1 (D. Nev. Apr. 10, 2012) ("the court has inherent jurisdiction to modify, alter or revoke [a non-appealable order]"); *Sussex v. Turnberry/MGM Grand Towers, LLC*, 2011 WL 4346346, at *2 (D. Nev. Sept. 15, 2011) (court has "inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient"). Further, in deciding this dispute, Nevada jurisprudence has long held a "policy of favoring adjudication on the merits." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1059, 194 P.3d 709, 716 (2008); *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 645, 837 P.2d 1354, 1359 (1992); *Blanco v. Blanco*, 129 Nev. 723, 730, 311 P.3d 1170, 1174 (2013).

IV. LEGAL ARGUMENT

A. A SECOND AMENDMENT TO THE AMENDED ORDERS IS WARRANTED BASED ON NEW INFORMATION

A motion to reconsider must provide a court with valid grounds for reconsideration by: (1) showing some valid reason why the court should reconsider its prior decision, and (2) setting forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision. *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Id*. In this case, reconsideration of the Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Fees and Costs is necessary due to the discovery of significant new evidence since the time of the Evidentiary hearing and due to erroneous statements of fact set forth in the Court's Order, as follows.

i. New Evidence Shows That Simon Had Access to The Settlement Proceeds As Early As December 12, 2018 And Failed To Notify The Edgeworths Of Same

The Edgeworths Respectfully Request Reconsideration Regarding the Court's Finding that Simon did not have access to the settlement funds when the conversion claim was made due to new evidence that indicates that Simon had access to the funds as early as December 12, 2017. The Court's

award of Attorney's Fees was granted pursuant to NRS 18.010(2)(b), which allows the Court to assess attorney's fees:

> Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims, and increase the costs of engaging in business and providing professional services to the public.

Here, the Court determined that the Edgeworths' conversion claim was not maintained on reasonable grounds because "it was an impossibility for Simon to have converted the Edgeworth's property at the time the lawsuit was filed." Specifically, the Court reasoned that Simon could not have converted the Edgeworth's funds as of the date the complaint was filed on January 4, 2018, because Simon "was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust account."[30]

Here, however, evidence not presented at the lien adjudication hearing conclusively establishes that Simon had the ability to access to the settlement proceeds as early as December 12, 2017. The Edgeworths recently received an email sent by Janet C. Pancoast, Esq., (hereinafter "Pancoast"), counsel for the Viking entities, on December 12, 2017, showing that Simon had access to the settlement funds and critical information regarding the settlement agreement which he intentionally withheld from the Edgeworths and Vannah at that time, and concealed from the Court thereafter.[31] In this email Pancoast informed Simon that the Viking entities had issued two standard, non-certified settlement checks in breach of the settlement agreement, which contained a specific provision requiring certified checks Pancoast attached scanned copies of the settlement checks to her correspondence stating that she was willing to provide the same to the Edgeworths ***that very day*** should Simon provide a signed stipulation for dismissal.

[30] *See* Amended Decision and Order Granting in Part and Denying in Part, Simon's Motion for Fees and Costs, Dated March 16, 2021, at Finding No. 2, p.2: 5 – 12, on-file herein.
[31] *See* **Exhibits D and E**.

Simon did not inform the Edgeworths nor Vannah of the Viking entities breach nor was Ms. Pancoast's correspondence ever forwarded to the Edgeworths. In fact, the Edgeworths were not even aware of the existence of the email until Simon provided an edited copy of the same as part of thousands of pages provided years later. The copy of the email was however, stripped of its attachments in what can only be considered a deliberate attempt to conceal or bury this fact. Simon did not inform the Edgeworths or Vannah of any of this extremely pertinent information until December 28, 2017. In withholding information related to the status of the settlement funds and a significant breach in the terms of the settlement agreement, Simon deprived the Edgeworths of their right to determine how to proceed. It cannot be overstated that this right belonged to the Edgeworths exclusively as the clients in the relationship. Simon's omission thus rendered the Edgeworths unable to choose to sign the stipulation and order and obtain the checks on December 12, 2017, should they have wished to do so, and was in direct controversy with their best interests.

In light of this newly discovered evidence, the Court's factual findings with respect to the Edgeworth's conversion claim are misguided. It was not an "impossibility for Simon to have converted the Edgeworth's property" at the time the lawsuit was filed on January 4, 2018 because such a conversion could have and indeed did occur as of December 12, 2017. Conversion occurs where "one exerts wrongful dominion over another person's property or wrongful interference with the owner's dominion." *Bader v. Cerri,* 96 Nev. 352, 609 P.2d 314 (1980). The Nevada Supreme Court has defined conversion as "a distinct ***act of dominion wrongfully exerted over another's personal property*** in denial of, or inconsistent with his title or rights therein or in derogation, exclusion or defiance of such title or rights." *Wantz v. Redfield,* 794 Nev 196, 198, 326 P.2d 413, 414 (1958) (emphasis added).

In failing to inform the Edgeworths that the checks were available, of the breach to the settlement agreement, and the Viking entities proposed solution to exchange a stipulation for dismissal for the settlement checks on December 12, 2017, Simon undeniably asserted wrongful dominion over the Edgeworths' property and acted inconsistent with their rights with respect to the same. Nevada's Rules of Professional conduct delineate specific rights to all clients, including the right to determine whether to

settle a matter as secured by Rule 1.2(a). Furthermore, NRPC 1.4 required Simon to "[r]easonably consult with the client about the means by which the client's objectives are to be accomplished" and to "[K]eep the client reasonably informed about the status of the matter." *See* NRPC 1.4 (2), (3).

Simon's failure to timely inform the Edgeworths or Vannah of Ms. Pancoast's offer to provide the non-certified settlement checks in exchange for a signed Stipulation and Order deprived the Edgeworths of their decision-making authority in violation of the aforementioned rules of professional conduct. Additionally, it deprived them of access to the settlement proceeds that could have been secured as early as December 12, 2017. Simon assured Ms. Pancoast that he would communicate her proffered solution to the Viking entities breach to the Edgeworths yet completely failed to do so for weeks. In doing Simon he deprived the Edgeworth's access to the settlement proceeds and their decision-making power in determining how to address a breach of contract that occurred, which standing alone carries significant potential rights and remedies. As such, the Edgeworths maintain that Simon asserted unlawful dominion over the settlement proceeds, thus the conversion occurred well before the filing of their January 4, 2018 Complaint. Considering this new evidence, the Edgeworths respectfully request that the finding in the Amended Order is reconsidered to correct the Court's finding that their conversion claim was an ***impossibility and not maintained upon reasonable grounds***.

Furthermore, the complete version of Ms. Pancoast's email demonstrates that Simon is likely in possession of further evidence supporting the Edgeworth's conversion claim that has been withheld. As is noted above, the copy of Ms. Pancoast's December 12, 2017 email correspondence provided in the file disclosed by Simon in June of 2020 was incomplete in an apparent attempt to conceal the fact that the proposed stipulation and order and settlement checks were attached thereto. As there is no conceivable reason why Simon would have provided an incomplete version of the email other than to mislead the Edgeworths and the Court, one must assume that this withholding was intentional. That Simon provided an edited version of the email is proof positive that Simon has intentionally withheld documents from the Edgeworths and the Court, and that the evidence withheld likely provides further proof in support of the Edgeworth's conversion claim.

In this case, the reasonableness of the Edgeworth's conversion claim goes to the very heart of the Court's decision to award significant attorney's fees and costs to Simon. As such, the Edgeworths respectfully request that, at a minimum, the Court issue an Order compelling Simon to disclose the full, complete and unredacted Edgeworth file prior to issuing a revised determination on Plaintiff's Motion for Attorney's Fees and Costs. Alternative, the Edgeworths request that this finding is amended to conform to the facts.

ii. New Evidence Shows That James Christensen Was Retained On Or Before November 27, 2017

The Edgeworths Respectfully Request Reconsideration Regarding the Court's Finding that James Christensen was retained ***after the filing of the lawsuit*** against Simon on January 4, 2018. The Court's Order only grants Simon's request for those attorney's fees and costs incurred in defending against the Edgeworth's conversion claim, and explicitly denies Simon's request for fees as to any other claims, including the Motion to Adjudicate Lien.[32] The Court granted Simon's request for attorney's fees related to James Christensen, Esq.'s defense of the conversion claim, , finding that his services "were obtained after the filing of the lawsuit against Simon, on January 4, 2018."[33] The Edgeworths respectfully submit that this finding is erroneous given the billing records disclosed by Mr. Christensen as well as testimony given at the evidentiary hearing.

Mr. Christensen's billing statement from November and December of 2017, titled "Simon Law Group-Edgeworth Fee Dispute" provides clear evidence to this Court that he was retained by Simon on November 27, 2017.[34] He had multiple meetings, email exchanges and telephone conference with Simon, who is identified as "client" in the billing statement, thus evidencing that an attorney-client relationship had been formed at that time. This Court has unfortunately been misled regarding the date of Mr. Christensen's retention on several occasions. During day four (4) of the evidentiary hearing Simon implied that he did not consult with any counsel until December 1, 2017 when he forwarded the

[32] *See* Amended Decision and Order Granting in Part and Denying in Part, Simon's Motion for Fees and Costs, dated March 16, 2021, at Finding No. 2, p.2: 13 – 22, on-file herein.
[33] *Id.*
[34] *See* **Exhibit B.**

contingency email of August 22, 2017 to Mr. Christensen.[35] This deception is significant as it implies that Simon did not seek counsel until after he learned the Edgeworths had retained Vannah, allegedly leading Simon to believe he was "out" of the case. In reality, however, Simon conferred with Mr. Christensen days before he was aware of Vannah's involvement, as plainly evidenced by the bill from Christensen. While this erroneous testimony may seem more easily explained by accidental oversight or forgetfulness, the totality of Simon's testimony at the evidentiary hearing demonstrates that the discrepancy is more than a mishap. Simon testified that he consulted with Mr. Christensen because he felt he was terminated because the Edgeworths were consulting with Vannah.[36]

This explanation regarding Simon's motivation to consult with Mr. Christensen is incredulous given that the representation began days prior on November 27, 2017, and the two had communicated regarding the "Edgeworth fee dispute" multiple times prior to November 30, 2017, when the Edgeworth's sent Simon the letter of direction first advising him of Vannah's involvement. Mr. Christensen then pursued additional questioning to further solidify December 1, 2017 as the date of retention, despite knowing he was retained days prior, by asking Simon if his retention of Mr. Christensen occurred the same day that Simon's first attorney's lien was filed.[37] As Simon's first attorney's lien was filed on December 1, 2017, this testimony only served to mislead the Court regarding the date of and motivation behind Simon's retention of Mr. Christensen.

In this case, whether or not Simon retained Christensen in response to the lawsuit is central to the Court's decision to award related attorney's fees and costs to Simon. Considering this new evidence, the Edgeworths respectfully request that the finding in the Amended Order is reconsidered to reflect that Christensen was retained on or before November 27, 2017, and not after the January 4, 2018 Complaint was filed.

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[35] *See* **Exhibit I** at 164-165.
[36] *Id.* at p. 164:21 – 165:3.
[37] *Id.* at p. 165:19 – 21.

iii. New Evidence Shows That David Clark Was Retained Prior To The Edgeworth Complaint Being Filed On January 4, 2018, And Not Solely In Response To The Suit

The Edgeworth's also request reconsideration of the Court's findings regarding the timing and scope of Simon's retention of David Clark, Esq. Here, the Court's Order finds that "the costs of Mr. David Clark, Esq. were solely for the purpose of defending the lawsuit filed against Simon by the Edgeworths."[38] This finding requires correction as the available evidence establishes that Mr. Clark was retained and began work on the "Edgeworth Fee Dispute" well before the Edgeworth's Complaint was filed. Mr. Christensen's November/December 2017 Billing Statement reflects that he and Mr. Clark had a call on December 5, 2017 related to the Edgeworth Fee Dispute, and Mr. Clark was seemingly performing work regarding the dispute thereafter as he and Mr. Christensen had a second call on December 28, 2017 to discuss the trust account.[39] As such, it is evident that Mr. Clark was initially retained to provide support for Simon's attorney's lien and not solely retained to defend against the Edgeworth's Complaint as is stated in the Court's Amended Order. The Edgeworths do not dispute that Mr. Clark ultimately performed some work in furtherance of Simon's defense against their Complaint, but instead merely wish to correct the record with respect to the fact that it is an impossibility that he was exclusively retained for this purpose because his retention occurred well before the suit was ever filed. Simon has never disclosed an itemized invoice for Mr. Clark's services and has offered only the $5,000.00 check paid for Mr. Clark's retainer as evidence of these costs. Mr. Clark's declaration states that he charged an hourly rate of $350.00 in preparing his Declaration and Expert Report, however it is not clear whether his entire retainer was exhausted in preparation of the same, or whether other work was performed on Simon's behalf unrelated to the Edgeworth Complaint.[40]

In this case, whether or not Simon retained Clark solely in response to the lawsuit is central to the Court's decision to award related attorney's fees and costs to Simon. Considering this new evidence, the Edgeworths respectfully request that the finding in the Amended Order is reconsidered to reflect that

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[38] *See* Amended Decision and Order Granting in Part and Denying in Part, Simon's Motion for Fees and Costs, dated March 16, 2021, at p. 2:19 – 22, on-file herein.
[39] *See* **Exhibit B**.
[40] *See* Declaration and Expert Report of David Clark, attached hereto as **Exhibit Q**.

Clark was retained on or before November 27, 2017, and not after the January 4, 2018 Complaint was filed.

A. SIMON HAS FAILED TO ESTABLISH THAT THE *BRUNZELL* FACTORS WERE MET TO JUSTIFY THE FEES AWARDED

The Edgeworths respectfully request that this Court reconsider its Second Amended Order awarding Simon $200,000.00 in quantum meruit for legal fees for the period between November 30, 2017 and January 8, 2018, as well as this Court's Order granting Simon $50,000.00 in attorney's fees for the representation Simon received from his counsel in the lawsuit brought by the Edgeworths. This reconsideration is appropriate because the *Brunzell* factors, and *Logan* do not support an award for same, in direct controversy with the Nevada Supreme Court precedent.

A district court abuses its discretion when it bases its decision on an erroneous view of the law or clearly disregards guiding legal principles. *See Bergmann v. Boyce,* 109 Nev. 670, 674, 856 P.2d 560, 563 (1993), *superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.,* 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017). "Rifle proper measure of damages under a *quantum meruit* theory of recovery is the reasonable value of [the] services." *Flamingo Realty, Inc. v. Midwest Dev., Inc.,* 110 Nev. 984, 987, 879 P.2d 69, 71 (1994) (alteration in original) (internal quotation marks omitted). A district court must consider the *Brunzell* factors when determining a reasonable amount of attorney fees. *Logan v. Abe,* 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). The *Brunzell* factors are: (1) the quality of the advocate; (2) the character of the work; (3) the work actually performed by the advocate; and (4) the result. *Brunzell v. Golden Gate Nat'l Bank,* 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). An order of a district court which indicates it considered the *Brunzell* factors must also demonstrate that its awarding of attorney's fees is supported by substantial evidence. *Logan* at 266-267, 350 P.3d at 1143 (*citing Uniroyal Goodrich Tire,* 111 Nev. 318, 324, 890 P.2d 785, 789 (1995) (superseded by statute on other grounds as stated in *RTTC Communications, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 110 P.3d 24 (2005))).

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i. The Edgeworths Request Reconsideration as To The Court's Application Of The *Brunzell* Factors And *Logan* To The Facts

In this case, the Edgeworths respectfully request reconsideration regarding the Court's award of attorney's fees to Simon based on the application of *Brunzell* factors and *Logan* to the facts at hand. The Viking settlement was reached on November 15, 2017. Simon sent Vannah what he called the finalized Settlement Agreement on November 30, 2017. As such, the work claimed to have been done by Simon between November 30, 2017 and January 8, 2018 (a total of 39 days) is not in furtherance of the settlement and does not warrant an award of fees, especially when viewed in the context of the ruling that Simon was constructively discharged on November 29, 2017. It must also be noted that Simon himself was on vacation and unavailable between December 19, 2017 and January 2, 2018, meaning that there were only a total of 25 days that Simon could have worked on the Edgeworth matter in this same time period.

Despite the reduced time period, Simon's vacation days, and the holidays, Simon billed 51.85 hours ($28,517.50) and his associate Ashley Ferrell (hereinafter "Ferrell") billed 19.25 hours ($5,293.75) for a total billing on the file of 71.1 hours ($33,811.25) ***after*** this Court adjudicated, he had been constructively discharged and was no longer representing the Edgeworths. As such, the *Brunzell* factors specifically demonstrate that Simon should not have been awarded anywhere near the $200,000.00 this Court awarded in attorney's fees for the period between November 30, 2017 and January 8, 2018, if anything.

Further, Simon failed to adequately address most, if not all, of the *Brunzell* factors within his Motion for Attorney's Fees upon which this Court granted $50,000.00 in attorney's fees.[41] As such, while this Court's Order states that this Court considered the *Brunzell* factors, the Order could not be based upon substantial evidence provided to the Court, requiring reconsideration per *Logan* because they were not sufficiently presented to the Court for consideration. More concerning and supporting the need for reconsideration, is Simon's continuing refusal to provide the Edgeworths with their case file as required by NRS 7.055 to allow for a full evaluation of the work done between November 30, 2017 and January 8, 2018. As such, a full, proper and accurate evaluation of the *Brunzell* factors cannot properly be

[41] *See*, Simon's Motion for Attorney's Fees and Court's Amended Order, on-file herein.

accomplished by the Edgeworths or the Court until the full, unredacted version of the case file is finally provided by Simon. Based upon this alone, this Court should grant reconsideration and require that Simon provide a full, unredacted version of his case file to the Edgeworths and/or this Court to allow for a full, proper and adequate evaluation of the *Brunzell* factors to be accomplished through additional briefing once provided.

Therefore, based upon the argument above and below, the Edgeworths respectfully request that this Court reconsider its positions regarding attorney's fees awarded in both of its Orders do one of the following: (1) award no attorney's fees; (2) award a minimal amount of attorney's fees commensurate with the *Brunzell* factors; or (3) require Simon to provide a full version of the Edgeworths' case file to allow same to be analyzed in the context of the *Brunzell* factors.

a. *The Quality of the Advocate*

The Edgeworths further request reconsideration of the Court's findings because the Court was not presented sufficient evidence to adequately determine the quality of the advocates pursuant to prong 3 of *Brunzell***.** This Court's Order addresses only Simon's quality as an advocate in making its award of attorney's fees based upon billings done by not only Simon, but other attorneys in his firm. *See* Second Amended Order at 18-19. As stated above, the amount of hours billed was wholly excessive and much if not all of the work claimed is not of the character, difficulty or importance required. Therefore, there are questions about what work was actually performed and the reasonableness of the amount of hours billed for work that was completed. Further, the result of that work could be minimal at best, considering that Simon billed $28,517.50 for the period between November 30, 2017 and January 8, 2018. Despite, this, this Court awarded Simon $200,000.00 in quantum meruit for work claimed to be done during this period. No evidence was presented regarding the quality of the advocate with respect to any attorneys other than Simon whose work was billed during this time. Having been presented no evidence to this end, this Court could not make any findings as to the quality of the work provided by Simon's associates or staff.

Specifically, the "Superbill" presented to this Court included time billed for in the subject time period by Ferrell (19.2 hours billed for a total of $5,293.75 in claimed attorney's fees). There was no

finding made upon substantial evidence regarding the quality of Ferrell as an advocate, nor analysis regarding whether Ferrell's claimed hourly rate of $275.00 is supportable. As such, this Court based its award of $200,000.00 in attorney's fees either upon only Simon's claimed work totaling $28,517.50 (for which there is a lack of substantial evidence to support an award of $200,000.00, approximately ***7 times*** the amount of claimed billing) or upon all attorney's claimed billings for the time period in question, for which there is no substantial evidence supporting the quality of advocacy, nor substantial evidence to support the award, which is approximately ***6 times*** the total amount of claimed billing by all attorney's in the Superbill.

Additionally, this Court prevented the Edgeworth's from fully developing the quality of the advocate at the evidentiary hearing when Mr. Vannah began questioning Mr. Simon regarding Mr. Simon's failure to obtain a formal fee agreement from the Edgeworths.[42] Specifically, after Mr. Simon testified that Mr. Kemp would not have been the ***IDIOT*** *I was* in performing work for a client without a fee agreement in place, Mr. Vannah then questioned Mr. Simon about whether Mr. Simon had violated "Bar Rules, Section 1.5" by not doing what the Edgeworths had asked of Mr. Simon regarding the fee agreement.[43] Despite this line of questioning being specifically pertinent to the quality of Mr. Simon as an advocate – as it can be safely assumed that allegedly violating bar rules and the rules of professional conduct would weigh negatively upon an attorney's quality as an advocate – this Court specifically instructed Mr. Simon not to answer that question in case a bar complaint was later filed against Mr. Simon and/or his firm.[44] As such, the Edgeworths were deprived of their due process rights to question Mr. Simon regarding his quality as an advocate due to this Court's stopping of that line of questioning and specifically instructed Mr. Simon not to answer the question at issue regarding violations of Bar Rules.

Further, Simon failed to provide any information regarding the quality of his counsel in his Motion for Attorney's Fees. All that was attached to that Motion were vague billing invoices where James Christensen, Esq., billed at a rate of $400.00 per hour and Pete Christiansen, Esq. billed at the exorbitant

[42] *See* **Exhibit I**, at 132:25-134:9.
[43] *Id*.
[44] *Id*.

rate of ***$850.00 per hour***. While Simon attached the CVs of his counsel to the Reply in Support of his Motion for Attorney's Fees, the only analysis regarding these CVs is the conclusory, five (5) word statement that, allegedly, "[r]etained counsel are highly qualified."[45] Given the amount of fees sought, and especially the exorbitant hourly rate charged by Pete Christiansen, much more was required to demonstrate that awarding $50,000.00 in costs was appropriate. As such, there simply is not substantial evidence to support the awarding of fees to Simon based upon the exorbitant billing rates of both Peter Christiansen and James Christensen, nor to support the fee award of $50,000.00. This lack of evidence is the basis for the foregoing request for reconsideration.

A reasonable hourly rate should reflect the "prevailing market rates in the relevant community," with "community" referring to "the forum in which the district court sits." *Tallman*, 23 F. Supp. 3d at 1257 (quoting *Gonzales v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013) and *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010)). A district court must ensure that an attorney's rate is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Chaudhry v. City of L.A.*, 751 F.3d 1096, 1110 (9th Cir. 2014). The Nevada Supreme Court has previously found that in Nevada, "the hourly rates of $450 and $650 per hour are ***well over*** the range of hourly rates approved in this district." *Gonzalez-Rodriguez v. Mariana's Enters.*, No. 2:15-cv-00152-JCM-PAL, 2016 WL 3869870, at *9 (D. Nev. July 14, 2016) (emphasis added). Further, the Court in *Gonzalez-Rodriguez*, found that these rates could not be justified as counsel's "affidavit does not aver that these rates are usual or customary for this type of work in this locality, only that these rates are what each lawyer typically charges." *Id*.

When an attorney does not actually bill a client, the requested hourly rate and billing entries are more suspect. *See*, *Betancourt v. Giuliani*, 325 F. Supp. 2d 330, 333 (S.D.N.Y. 2004) ("Defendants persuasively argue that those rates far exceed the typical rates at which a civil rights attorney would actually charge a paying client.... [T]he fact that the fees here were not actually charged by [Plaintiff's law firm] to any client suggests that the Court must take a closer look as to whether the hourly rates are

[45] *See* Reply to MTN for Attorney's Fees at 9:6, on-file herein.

reasonable."). A court should take a closer look because, with paying clients, an attorney's bills are generally scrutinized to avoid unreasonable or excessive charges, but such scrutiny does not exist with a client that is not responsible for, and likely even sent, an attorney's billing record. *Cf. Fed. Deposit Ins. Corp. v. Martinez Almodovar*, 674 F. Supp. 401, 402 (D.P.R. 1987) (recognizing that billing entries were reasonable because "such bills were zealously scrutinized by a client who is very cost conscious. Unreasonable or excessive charges would have not been tolerated.").

Here, there are no affidavits of counsel or anyone else regarding the rates charged by Simon's counsel regarding whether the hourly rates of $400.00 and $850.00 per hours are reasonable and customary in this community. *See* Motion and Reply, on-file herein. This is likely because Simon is aware that the hourly rates charged by his counsel are well over the range for hourly rates approved of in this community. Regardless, this Court did not have substantial evidence upon which to base its awarding of fees to Simon's in regard to the hourly rate charged by Simon's counsel and, as such, the finding was erroneous and, if not corrected, will lead to manifest injustice against the Edgeworths who will be forced to pay an exorbitant award of attorney's fees not based upon substantial evidence.

Further, the Superbill is even more suspect here as Simon has admitted the firm did not bill everything to the Edgeworths regularly and had to go back from memory to create billing entries after the fact.[46] Specifically, Ms. Ferrell testified she was not a good biller, she has no billing software to utilize, she had to go back and bill many things from memory, that there were days of billing of some 22 hours on the file, that she assist Mr. Simon in producing timesheets for **HIS** billing on the file and that Mr. Simon despised billing and left post-it notes all over his office which purportedly was his billing.[47] As such, this Court should have required a higher level of evidentiary proof and scrutinized the billing entries at a stricter standard given the admitted practice by Simon of not billing everything at the time it was accomplished on the Edgeworths' file.

[46] *See* Transcript of Evidentiary Hearing Day 3, at 105:21-106:3, attached hereto as **Exhibit R**.
[47] *Id*. at 105:21-106:3, 111:5-15, 112:16-114:8 and 115:10-116:13.

In either case, based upon *Brunzell* and *Logan* as discussed above, this Court's Order awarding Simon $200,00.00 in quantum meruit for attorney's fees for the time period between November 30, 2017 and January 8, 2018, and awarding Simon $50,000.00 in attorneys' fees for his counsel's work on the lawsuit brought by the Edgeworths were misguided as there is simply not substantial evidence to support the amount of the award, nor the quality of the other advocate within Simon's law firm or his counsel's exorbitant hourly rates.

Based on the evidence presented above, the Edgeworths respectfully request reconsideration of this Court's Orders to cure the manifest injustice done to the Edgeworths. This Court was simply not presented sufficient evidence to adequately determine the quality of Ferrell, James Christiansen and Pete Christiansen as advocates, or the amount of the award when analyzed against the actual amount Simon claimed was billed by his firm between November 30, 2017 and January 8, 2018, under the first prong of *Brunzell*.

b. The Character of The Work to be Done

The Edgeworths further request reconsideration of the Court's findings because the Court was not presented sufficient evidence to adequately determine the character of the work done under prong 2 of ***Brunzell.*** As of November 30, 2017, at 5:31 p.m., the settlement terms were finalized and, as such, there was nothing left for Simon to do regarding the Viking settlement other than send an email to opposing counsel with the signed agreement, finalize a stipulation for dismissal of the litigation, receive the settlement drafts and deposit the funds.[48] There was no longer any negotiations regarding language in the settlement agreement, the amount of the settlement had been agreed to and, despite this, Simon continued billing for things such as undefined email chains (with no explanation regarding the subject), analyzing emails regarding mediation, and telephone calls (again, without any context regarding subject).

Even more concerning are Ferrell's entries for things such as 2.5 hours to draft a notice of attorney's lien and then, on that same day, another 0.30 hours to download, review and analyze that same

[48] *See* **Exhibit J**.

notice of attorney lien which she drafted earlier that same day.[49] The Attorney Lien filed by Simon consist of a total of approximately one (1) page of written content, with no legal analysis and a half-page of a declaration from Simon.[50] Thereafter, Ferrell billed another 1.5 hours to draft the Amended Lien, which was the same document with only the amount sought by Simon through the attorney's lien changed.[51]

As such, the character of the work claimed to have been performed by Simon between November 30, 2017 and January 8, 2018, was minimal at best and – regarding the Notices of Liens –not in any way in furtherance of the clients' interest. Despite this, the Superbill demonstrates that this minimal work resulted in highly inflated billing hours which are simply not indicative of the amount of time and work that would actually have been required to complete the tasks which were billed. Additionally, given that the Superbill does not give context or subjects for most of the entries therein, it was impossible for this Court to determine whether the character of the work was such that Simon was entitled to $200,000.00 for 39 total days, including Christmas and New Year's, and Simon was unavailable for 14 of those days.

The Court's awarded of fees is specifically supported by Ferrell's testimony that allegedly Simon has documentation to backup all entries in the Superbill for this period. Simon has continuously refused to provide this alleged supporting documentation to the Edgeworths or this Court so same can be reviewed and evaluated.[52] Further, nothing within the Superbill for this period constituted any difficult work for Simon, as same was simply telephone calls, emails, and the drafting of the, at most, two (2) total pages for the Notice of Attorney's Lien. Again, the Viking settlement agreement had been finalized and there was simply nothing complex, difficult, or important that Simon should have reasonably been doing on behalf of the Edgeworths – who were no longer his clients regarding Viking – beginning on November 30, 2017 and moving forward. Further, the bills from Simon's counsel regarding their defense of the Edgeworth's lawsuit are likewise vague and ambiguous and wholly failed to provide this Court with an understanding of what was actually accomplished and for what purpose. As was the case with the Superbill, many of the entries from Jim Christiansen say nothing other than "[e]mail exchange with

[49] *See* Ferrell Invoice, at SIMONEW0000340, attached hereto as **Exhibit S**.
[50] *See* **Exhibit L**.
[51] *See* **Exhibit M**.
[52] *See* **Exhibit R** at 112:18-20, 23-24 and 116:15-16.

client[,]" "meeting with client[,]" telephone call with client and "[w]ork" on various documents. *See* Exhibit 9 to Motion for attorney's fees. Likewise, the invoices from Pete Christiansen contain exorbitant billed hours for vague entries such as "[a]ssist with findings of fact and conclusions of law; conference with client[,]" for 7.5 hours billed; and "[a]ssist in preparation of reply[.]"[53]

The Court has not required Simon nor his counsel to provide supporting documentation to demonstrate that substantial evidence confirms the tasks billed for and the character, difficulty, and importance of those tasks to Simon's representation of the Edgeworths and Simon's counsels' representation of the firm in the suit brought by the Edgeworths. As such, this Court's findings are in contravention of the Nevada Supreme Court's holdings in *Brunzell* and *Logan*.

Based on the evidence presented above, the Edgeworths respectfully request reconsideration of this Court's Orders to cure the manifest injustice done to the Edgeworths. This Court was simply not presented sufficient evidence to adequately determine the character of the work billed under the second prong of *Brunzell*.

c. The Work Actually Performed by the Advocate

The Edgeworths further request reconsideration of the Court's findings because the Court was not presented sufficient evidence to adequately determine the work actually performed by the advocate under *Brunzell.* Specifically, as stated above, despite Ferrell testifying that allegedly Simon has documentation to backup all entries in the Superbill for this time period, Simon has not, and continues to refuse to, provide claimed supporting documentation to the Edgeworths or this Court so it can be reviewed and evaluated.[54] Further, there are billing entries for items that are inappropriate in the context of the timeline as laid out herein, such as Ferrell billing a full half-hour to review the Viking Settlement Agreement the day **AFTER** the finalized version of that Agreement was provided to the Edgeworths.[55]

Further, the exorbitant amount of time billed by Ferrell to allegedly draft and file the Notice of Attorney's Liens, and then review the filing she had just drafted – a total of 3.8 hours (2.8 hours for the

[53] *See* Exhibit 10 to Simon's Motion for Attorney's Fees, on-file herein.

[54] *See* **Exhibit R**.

[55] *See* **Exhibit S** at SIMONEW0000341.

Original Notice and 1.5 hours for the Amended Notice) – is wholly unreasonable for documents consisting of less than a full page of double-spaced content. This calls into question all of the work Simon claimed to have done following November 30, 2017, as the same is simply not reasonable nor commensurate with the documents which are actually available to review.

Additionally, given that Simon has never provided the documentary evidence demonstrating the many email chains, reviewed email attachments, reviewed documents and drafted documents, this Court's finding regarding the work actually performed is not supported by much evidence at all, let alone ***substantial evidence***. The justification given by this Court regarding the work actually performed is all in regard to work claimed to be performed prior to November 30, 2017.[56] As of November 30, 2107, the settlement with Viking had been agreed upon and the settlement agreement was finalized. As such, the work claimed by Simon actually at issue for this time period does not include any of the claimed efforts which led to the Viking settlement or the reduction of the terms of the Viking settlement to writing within the settlement agreement. Likewise, there are exorbitant amounts of billable hours on the invoices from Simon's counsel. Specifically, Pete Christiansen billed 72.9 hours over the course of seven (7) workdays (10.414 hours per day) to prepare for the evidentiary hearing. *See* Exhibit 10 to Motion for Attorney's Fees. While the Edgeworths appreciate that time would have to be spent to prepare for the hearing, more than 10 hours per day, for seven straight days is simply not conceivable, nor can it be justified given that it would be the Edgeworths assumption that Christiansen did have other cases active at the time of this hearing.[57] Further, Christensen billed 3.8 hours for two (2) entries stating nothing more than "MSC Brief[.]"[58] In this same vein of vagueness, Christensen billed 11 total hours for undefined "work on motion to adjudicate lien[.]" *Id*. These entries require further specification and support in order to comply with *Brunzell*.

Finally, it is concerning that secretarial tasks were billed as attorney time, which wholly inappropriate. Specifically, as an example, Christiansen billed for reviewing a calendar, assisting in

[56] *See* Second Amended Order, at 19:12-21, on-file herein.
[57] In the event Simon is claiming that Pete did not have any other matters active at the time of the evidentiary, the Edgeworths would then argue that this fact goes directly against the quality of the advocate and his exorbitantly charged rate of $850.00.
[58] *See* Exhibit 9 to Motion for Attorney's Fees, on-file herein.

preparing a subpoena and faxing a letter, all which are secretarial tasks for which it was even more inappropriate for Pete to bill at the extraordinarily exorbitant rate of $850.00 per hour.[59]

Based on the evidence presented above, the Edgeworths respectfully request reconsideration of this Court's Orders to cure the manifest injustice done to the Edgeworths. This Court was simply not presented sufficient evidence to adequately determine the work actually performed by the advocates under the third prong of *Brunzell*.

d. The Result of the Work Performed

The Edgeworths further request reconsideration of the Court's findings because the Court was not presented sufficient evidence to adequately determine the result of the work performed under prong 4 of ***Brunzell.*** This Court's Order awarding $200,000.00 in fees to Simon must also be reconsidered regarding the fourth *Brunzell* factor, which concerns the result obtained by the advocate. Based upon the record placed before the Court, there was simply no result achieved by Simon on behalf of the Edgeworths on and following November 30, 2017. Again, the Settlement Agreement had been finalized and all that Simon reasonably had left to do – especially following the constructive discharge regarding the Viking matter – was to exchange the fully executed Settlement Agreement with Viking's counsel, finalize and potentially file a stipulation for dismissal, receive the settlement checks and deposit the settlement checks. As such, the case had concluded other than settlement documents and the sending of emails, receiving of mail, drafting and/or reviewing and/or filing a stipulation to dismiss and notice of entry of the order of dismissal, and depositing of the settlement checks. This is certainly not the type of result which *Brunzell* contemplated would support an award of attorney's fees through the theory of quantum meruit, especially in an amount as exorbitant for such work as $200,000.00.

Further, just as was the case regarding the third *Brunzell* prong discussed above, the Court's findings regarding the fourth *Brunzell* factor were based upon a misapplication of the facts and law, thus requiring reconsideration. Specifically, as of and after November 30, 2017, the result had no connection

[59] *See* Exhibit 10 to Motion for Attorney's Fees, on-file herein.

to the Viking settlement amount or the Viking settlement agreement. As such, neither the final amount for which Viking settled, the statements by the Edgeworths that they were made more than whole as a result of the settlement with Viking itself, nor the testimony of Mr. Kemp regarding the result in the context of the Edgeworths settlement with Viking itself, should have been taken into consideration by this Court when resolving whether Simon was entitled to attorney's fees for the time period between November 17, 2017 and January 8, 2018. This Court's finding in that regard was clearly erroneous as Simon did not provide this Court with the required substantial evidence to support said finding, requiring reconsideration. Further, the fact that Simon may have obtained a result in the Lange lawsuit of an additional $75,000.00 over the course of that same period in no way demonstrates that Simon was entitled to more than twice that amount in attorney's fees for four (4) to five (5) weeks of work.

The Nevada Bar Association previously reprimanded an attorney for seeking an unreasonable fee for two (2) weeks of work.[60] Within the Bar Counsel Report, a Screening Panel of the Southern Nevada Disciplinary Board found that an attorney seeking compensation in the amount of $12,328.44 for two weeks of work was unreasonable and a violation of NRPC 1.5 requiring reprimand. *Id*.

Here, the amount sought by Simon and awarded by this Court for claimed work done over a period 39-days (between four [4] and five [5] weeks) – which, again, included both the Christmas and New Year's holidays and Simon's vacation when he was not working between December 19, 2017 and January 2, 2018 – is disproportionally excessive when compared against the fee which the State Bar determined was unreasonable and required reprimand. Specifically, Simon was awarded $200,000.00 for a period of four (4) or five (5) weeks, while the State Bar determined that less than $12,500.00 was an unreasonable fee for work done by an attorney over the course of two (2) weeks. Extrapolating the bar Counsel's report's unreasonable fee out to the period at issue here, this Court's award is more than ***8 times*** the amount found unreasonable over a four (4) week period ($200,000.00/$24,656.88 = 8.11%) and is nearly ***6.5 times*** the amount found unreasonable over a five (5) week period ($200,000.00/$30,821.10 = 6.49%).

[60] *See*, Bar Counsel Report regarding Crystal L. Eller, dated July 2020, attached hereto **Exhibit T**.

Based on the evidence presented above, the Edgeworths respectfully request reconsideration of this Court's Orders to cure the manifest injustice done to the Edgeworths. This Court was simply not presented sufficient evidence to adequately determine result of the work performed by the advocates under the fourth prong of *Brunzell*.

ii. Reconsideration of All of the Brunzell Factors is Warranted

The Edgeworths respectfully request reconsideration of this Court's orders. Here, all four (4) of the *Brunzell* factors, when evaluated correctly against the context and background of the matter, weigh heavily in favor of the Edgeworths and against Simon being awarded any attorney's fees for himself or his counsel for that time period. Thus, this Court's finding that Simon was entitled to an award of $200,000.00 in attorney's fees for this time was an unfortunate misapplication of the facts and law. If this decision is allowed to stand, it will lead to manifest injustice being done upon the Edgeworths who will be forced to pay $200,000.00 to Simon for 39-days of claimed work after the finalizing of the Viking settlement agreement.[61]

Given the foregoing, the Edgeworths respectfully request that this Court reconsider its Second Amended Order regarding the attorney's fees awarded to Simon for the time period between November 30, 2107 and January 8, 2018, and its Amended Order awarding attorney's fees to Simon for their counsels' representation during the lawsuit brought by the Edgeworths, as same is warranted based upon the misapplication of facts and law which, if not corrected, will directly lead to manifest injustice against the Edgeworths.

V. CONCLUSION

It is for the foregoing reasons that the Edgeworths submit that reconsideration is appropriate, and request that the court act accordingly. First, the Edgeworths request that based on new evidence, this court amend its finding that the conversion claim was not maintained on reasonable grounds because it was an impossibility for Simon to have converted the Edgeworths' property at the time the lawsuit was

[61] *See* Court Order, dated March 16, 2021, at 21-22, on-file herein.

filed. This request is based on newly discovered information that Simon had access to the funds as early as December 12, 2017, well before the suit was filed on January 4, 2018. Second, the Edgeworths request that, based on new evidence, this court amend its finding that James Christensen's services were obtained after the filing of the lawsuit against Simon on January 4, 2018. Christensen's bill, which was not presented at the evidentiary hearing, is in direct controversy with the finding of the court, and the Edgeworths request that the finding be amended to conform to the facts. Finally, the Edgeworths request that, based on new evidence, this court amend its finding that the costs of David Clark were solely for the purpose of defending the lawsuit filed against Simon by the Edgeworths. Billing records indicate that Clark was being consulted as early as December 5, 2017, a month before the Edgeworth complaint was filed on January 4, 2018. The Edgeworths therefore request that the finding is amended to conform to the facts. As to the *Brunzell* factors, the Edgeworths request that the court ***EITHER*** find (1) there was insufficient evidence presented to the Court to establish conformity with the *Brunzell* factors and therefore the Plaintiff is awarded no attorney's fees for failure to comply with Nevada law; OR (2) there was insufficient evidence presented to the Court to establish conformity with the *Brunzell* factors and therefore the Plaintiff must produce the entirety of the case file from the representation of the Edgeworths such that the *Brunzell* factors can be analyzed.

DATED this 30th day of March, 2021.

MESSNER REEVES LLP

/s/ Christine Atwood
Lauren D. Calvert, Esq. #10534
Christine L. Atwood, Esq. #14162
David M. Gould, Esq. #11143
Attorneys for the Edgeworths

CERTIFICATE OF SERVICE

On this 30th day of March, 2021, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANT'S MOTION FOR RECONSIDERATION REGARDING COURT'S AMENDED DECISION AND ORDER GRANTING IN PART AND DENYING IN PART SIMON'S MOTION FOR ATTORNEY'S FEES AND COSTS AND SECOND AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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/s/ Nicholle Pendergraft
Employee of MESSNER REEVES LLP

DECLARATION OF WILL KEMP, ESQ.

I have been asked to clarify my earlier opinion as to the amount and period of time that quantum meruit should apply. I have reviewed the Supreme Court orders dated December 30, 2020. I further understand the relief sought by each party leading to the orders. Edgeworth challenged the amount of quantum meruit in the sum of $200,000 after the date of discharge on November 29, 2017. Simon sought relief that the period of time that quantum meruit applies is for the period of time that outstanding fees are due and owing at the time of discharge.

It seems clear that the Supreme Court is asking the District Court to analyze the value of quantum meruit for the period of time that outstanding fees for services were due when Mr. Simon was discharged forward. The Supreme Court adopted the same basic analysis I used and made clear that the period of time that work was performed and paid by Edgeworth prior to discharge should not be considered in the quantum meruit analysis. (See Order in Docket No. 77678, P. 5). The Supreme Court affirmed the finding of the District Court that Mr. Simon was discharged on November 29, 2017. At the time Mr. Simon was discharged, the last bill paid by Edgeworth was for work performed through September 19, 2017. Therefore, the period of time that outstanding fees were due and owing was from September 19, 2017 thru the end of the case. Simon and his office was working on the case into February, 2018. In my opinion, the quantum meruit value of the services from September 19, 2017 thru the end of the case equals $2,072,393.75. The last bill paid by Edgeworth covered the period of time thru September 19, 2017. Edgeworth paid the total sum of 367,606.25 for the work performed prior to September 19, 2017 and pursuant to the Supreme Court orders, these payments cover the period of time prior September 19, 2017. The work performed during this time is not factored into my present quantum meruit analysis. My opinion only considers the time after September 19, 2017.

In my previous Declaration I opined the total value of quantum meruit was the sum of $2.44M. The basis for my opinion was analyzing all of the Brunzell factors. When analyzing the Brunzell factors, it is clear that the most significant and substantive work leading to the amazing outcome was performed during the period after September 19, 2017 thru the end of the case. The analysis is as follows:

At paragraph 19 of my previous declaration I discussed the 4th Brunzell factor: Result Achieved- no one involved in the case can dispute it is an amazing result. This case involved a single house under construction. Nobody was living there and repairs were completed very quickly. This case did not involve personal injury or death. It concerned property damage to a house nobody was living in and repairs made quickly. I would not have taken this case unless it was a friends and family situation and they would need to be very special friends. The Edgeworth's were lucky that Mr. Simon was willing to get involved. This was a very hard products case and the damages are between 500k to 750k and the result of $6.1 million is phenomenal.

Edgeworth is sophisticated and understood that it would take a trial and an appeal to g, et "Edgeworth's expected result." Instead of taking years of litigation, Simon got an extraordinary result 3 months after the 8/22/17 contingency email sent by Mr. Edgeworth, and Simon's firm secured $6.1M for this complex product liability case where "hard damages" were only 500-750k. Getting millions of dollars in punitive damages in this case is remarkable and therefore, this factor favors a large fee. The bulk of this work was primarily done from September, 2017 thru December, 2017. For example, serious settlement negotiations did not start until after September, 2017: 1) the first mediation was on October 10, 2017; the first significant offer was $1.5 million on October 26, 2017, (3) there was a second mediation on November 10, 2017; and 4) the $6 million was offered on November 15, 2017. This is also supported by the register of actions and the multiple hearings and filings. Mr. Simon was discharged November 29, 2017 and continued to negotiate very valuable terms favoring the Edgeworth's, including the preservation of the valuable Lange Plumbing claim and omitting a confidentiality and non-disparagement clauses. The serious threat of punitive damages did not occur until September 29, 2017, when the motion to strike Vikings Answer was filed by the Simon firm. This serious threat also led to the amazing outcome.

At paragraphs 20-23 of my testimony, I addressed the 2nd & 3rd Brunzell factors: Quality & Quantity of Work- The quality and quantity of the work was exceptional for a Products case against a worldwide manufacturer with highly experienced local and out of state counsel. Simon retained multiple experts, creatively advocated for unique damages, brought a fraud claim and filed a lot of motions other lawyers would not have filed. Simon filed a motion to strike Defendants answer seeking

case terminating sanctions and exclusion of key defense experts. Simon's aggressive representation was a substantial factor in achieving the exceptional results. The amount of work Simon's office performed was impressive given the size of his firm. Simon's office does not typically represent clients on an hourly basis and the fee customarily charged in Vegas for similar legal services is substantial when also considering the work actually performed. Simon's office lost opportunities to work on other cases to get this amazing result. There were a lot of emails, which I went through and substantial pleadings and multiple expert reports for a property damage case. The house stigma damage claim was extremely creative and Mr. Simon secured all evidence to support this claim. The mediator also recommended the 6M settlement based on the expected attorney's fees of 2.4M. In an email to Simon in November, 2017 Mr. Edgeworth suggested 5M as the appropriate value for the proposal by the mediator, yet Simon advocated for 6M and go $6.1 Million (including Lange Plumbing). Negotiating a large claim in a complex case also takes great skill and experience that Mr. Simon exhibited to achieve the great result, as well as the very favorable terms for the benefit of the Edgeworth's.

I also analyzed the novelty and difficulty of the questions presented in the case; the adversarial nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved given the total amount of the settlement compared to the "hard" damages involved. The reasonable value of the services performed in the Edgeworth matter by the Simon firm, in my opinion, would be in the sum of $2,072,393.75 for the period of after September 19, 2017. This evaluation is reasonable under the Brunzell factors. I also considered the Lodestar factors, as well as the NRCP 1.5(a) factors for a reasonable fee. Absent a contract, Simon is entitled to a reasonable fee customarily charged in the community based on services performed. NRS 18.015. The extraordinary and impressive work occurred primarily during the period of September 19, 2017 thru the end of the case. Mr. Simon actually performed the work and achieved a great result.

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The value of quantum meruit is easily supported in the amount of $2,072,393.75 for the period of outstanding services due and owing at the time of discharge.

I make this declaration under the penalty of perjury.

Dated this 12th day of April, 2021.

Will Kemp, Esq.

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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.	Case No.: A-16-738444-C Dept. No.: 10 **OPPOSITION TO MOTION TO RECONSIDER and REQUEST FOR SANCTIONS; COUNTER MOTION TO ADJUDICATE LIEN ON REMAND** Hearing date: 4.15.21 Hearing time: n/a
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.	CONSOLIDATED WITH Case No.: A-18-767242-C Dept. No.: 10 (ORAL ARGUMENT REQUESTED)

OPPOSITION TO THE MOTION FOR RECONSIDERATION

I. Introduction

Over two years ago, this Court adjudicated the Simon lien and sanctioned the Edgeworths for bringing and maintaining their conversion complaint without reasonable grounds. The Supreme Court affirmed in most respects with instructions to revisit the quantum meruit fee award to Simon and the amount of the sanction levied upon the Edgeworths. As such, this Court's affirmed findings, except for the limited matters to be addressed on remand, are now the law of this case.

In the motion for reconsideration the Edgeworths move well beyond the limited remand, ignore the law of the case doctrine, and again challenge this Court's original findings. The Edgeworths target findings made in the sanction order filed February 8, 2019 as if years have not passed and the appeal never happened. Further, the Edgeworths pepper the Court with false statements of fact and innuendo in a continuation of their effort to punish Simon.

There is no legal basis to request reconsideration after remand of findings which were affirmed on appeal and which are now the law of the case; nor is there a basis to provide false statements and baseless

innuendo to the Court. Simon respectfully requests this Court again sanction the Edgeworths.

Finally, to the extent required, the Edgeworths' *Brunzell* arguments are addressed in the counter motion to adjudicate.

II. Relevant procedural summary

This matter is well known. Accordingly, only a few of the relevant procedural events are discussed below.

In August and September of 2018, this Court held an extensive evidentiary hearing which provided foundation upon which to adjudicate the Simon lien and to rule upon the motions to dismiss the Edgeworths' conversion complaint.

On November 19, 2018, the Court issued its findings, conclusions, and orders.

On December 7, 2018, the Edgeworths filed a notice of appeal.

On February 8, 2019, the Court issued its sanction order.

On February 15, 2019, the Edgeworths filed another notice of appeal. The Edgeworths challenged the dismissal of the conversion complaint and the sanction order.

Because the Edgeworths appealed, Simon filed a cross appeal; and on October 17, 2019, Simon filed a writ petition. The writ petition sought relief regarding the quantum meruit fee award.

On December 30, 2020, the Supreme Court issued an appeal order affirming this Court in most respects; and an order finding the writ moot, apparently in light of the instructions on remand to revisit the Simon quantum meruit fee award.

On January 15, 2021, the Edgeworths filed a petition for rehearing. The Edgeworths again challenged the dismissal of the conversion complaint and the sanction order. The petition did not follow the rules and was rejected. Following, the petition was eventually accepted after remand issued. *The order granting leave to file the untimely petition for rehearing was not copied to this Court*.

On March 16, 2021, this Court issued an amended quantum meruit order and an amended sanction order.

On March 18, 2021, rehearing was denied by the Supreme Court. A corrected order denying rehearing followed on March 22.

III. The law of the case doctrine

Analysis of the motion for reconsideration is mostly governed by the law of the case doctrine, an area of the law which the Edgeworths did not brief. Under the doctrine, when an appellate court decides an issue, then the appellate decision controls in all subsequent proceedings. *Hsu v. County of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007). Simply put, a trial court cannot overrule an appellate court.

As with most legal doctrines, an exception exists. If an intervening change in the law has occurred, then "courts of this state may apply that change to do substantial justice". *Id*., at 632, 173 P.3d at 729-730. Another exception may exist if extraordinary circumstances require a contrary decision to avoid manifest injustice. *Ibid*. However, the exceptions are exceedingly rare and a court "should be loath" to depart from the doctrine. *Christianson v. Colt Industries Operating Corp*., 486 US 800, 817 (1988).

The law did not change, nor were grounds presented on which a finding of manifest injustice could be based. Therefore, the law of the case doctrine must guide the Court's decision on the motion.

IV. Rebuttal to the Edgeworths' statement of facts

The Edgeworths' statement of facts is inaccurate, filled with innuendo, and contrary to the Court's affirmed findings. Because the facts are well known, only a brief response follows.

A. The Edgeworths have the case file.

The Edgeworths falsely claim they do not have the case file "in apparent contravention of NRS 7.055". (Mot., at 2:26-3:1.) During the lien adjudication, everything Vannah requested was provided, but Vannah did not request the file. (Ex. 1, Day 4 at 26.) ***In 2020, a different Edgeworth lawyer asked for the file and the file was given directly to Brian Edgeworth as requested*. (Ex. 2, Ex. 3, & Ex. 4.)**

In addition, NRS 7.055 applies to a "discharged attorney". Before admitting to discharge in this motion, the Edgeworths always denied they discharged Simon, for example at the evidentiary hearing:

> MR. VANNAH: Of course, he's never been fired. He's still counsel of record. He's never been fired.

(Ex. 1, Day 4 at 22:1-2.) And before the Supreme Court:

> Neither the facts nor the law supports a finding of any sort of discharge of Simon by Appellants, constructive or otherwise.

(Ex. 5, opening brief excerpt, at 10.)

The Edgeworths wasted time and resources on their frivolous no discharge defense, therefore, new sanctions are warranted based on their admissions of discharge. *Capanna v. Orth*, 134 Nev. 888, 432 P.3d 726 (2018)(sanctions are appropriate when a claim or defense is maintained without reasonable grounds).

B. The November 17 meeting

The Edgeworths description of the November 17 meeting is fanciful and rehashes the same claims made at the evidentiary hearing. The latest version contains factual claims that are not in the findings and are not supported by citation to the record.

The Edgeworths admitted six times in their opening appeal brief that they were not found to be credible. (Ex. 5 at 11,12,15,18, & 28.) Unsupported irrelevant factual claims from a party that admits they are not credible is not appropriate on a limited remand.

C. The privileged Viking email of November 21

The November 21 email was sent between two different lawyers representing Viking; accordingly, Simon did not know its contents. Also, the Edgeworths did not disclose how they obtained a privileged email sent between Viking's lawyers. Nevertheless, the email supports Simon. Simon

agrees that Viking was aware confidentiality was an issue and that the confidentiality term was removed after November 21.

D. The Edgeworth fax firing Simon was sent on November 30.

At the bottom of page 5, the Edgeworths allege the termination fax was sent on November 29. That is incorrect. The fax header indicates the fax was sent the following day on the 30th. This Court found the fax was sent on the 30th in finding of fact #18 of the November 2018 lien adjudication order. The finding is the law of the case.

E. The release terms

The Edgeworths spin a tale about release terms which is not supported by their exhibits. Regardless, the tale is not relevant. Assuming Simon made changes contrary to what the Edgeworths now choose to argue as their interest, then the changes should have been addressed by their lawyers Vannah and Greene when the release was sent to them on December 1, 2017. (Ex. J to the Mot.)

Apparently, Vannah and Greene did not find any harmful terms and advised the Edgeworths to sign the release. It does not appear that Vannah and Greene committed any errors on this point. The release is typical for a product defect case, except that most such releases have confidentiality clauses, and this one does not. The release accurately

states Vannah is the Edgeworths' lawyer and adds Simon's name on the settlement check, which is standard. Also, according to the release, the terms were personally reviewed with counsel by Angela and Brian Edgeworth and both approved the terms when they signed the release.

Further, none of this is new. The drafting and signature of the release was explored by Vannah on Day 4 of the hearing. (*E.g.*, Ex. 1, 76-86.) Any factual inference felt to be beneficial to the Edgeworths' position should have been raised earlier.

V. The law of the case doctrine mandates denial of the motion.

The Edgeworths in effect ask this Court to overturn the Supreme Court and rewrite the February 2019 sanction order on spurious grounds, under the guise of challenging the March 2021 sanction order. First, the Edgeworths argue against the finding that conversion was impossible, which is an argument they lost on appeal and lost on rehearing. Second, the Edgeworths distort the record to accuse Simon and counsel of fraud on this Court. Third, the Edgeworths do likewise with former State Bar Counsel David Clark. The factual premises are all false and would not create an exception to the law of the case doctrine even if true.

Finally, to the extent required, the Edgeworths' *Brunzell* arguments are addressed in the counter motion to adjudicate.

A. The finding that conversion was impossible was affirmed by the Supreme Court and is the law of the case.

The Edgeworths ask this Court to reconsider its finding in the March 2021 sanction order that conversion was impossible. (Mot., at 11:10-15.) While doing so, the Edgeworths ignore the law of the case doctrine, and worse, present false facts and innuendo to the Court. This pattern of abuse is old and clearly sanctionable conduct.

1. The finding of legal impossibility is the law of the case.

The motion targets the March 2021 sanction order finding that conversion was a legal impossibility. (Mot., at 11:10-15.) The Edgeworths do not disclose that the legal impossibility finding first appears in the original February 2019 sanction order. (Ex. 6.)

Simon moved for sanctions because conversion was an impossibility. The Court agreed and the Edgeworths lost on that issue. (Ex. 6.)

The Edgeworths appealed the February 2019 sanction order. The Edgeworths lost. The legal impossibility finding was affirmed:

> Once Simon filed the attorney lien, the Edgeworths were not in exclusive possession of the disputed fees, see NRS 18.015(1), *and, accordingly, it was legally impossible for Simon to commit conversion*…" (Italics added.)

Edgeworth Family Trust v. Simon, 477 P.3d 1129 (table) 2020 WL 7828800 (unpublished)(Nev. 2020).

The Edgeworths petitioned for rehearing, one focus of which was on the impossibility finding. The Edgeworths lost again.

The Edgeworths do not get a fourth bite at the apple. The Supreme Court specifically affirmed the impossibility finding. This issue is over.

The Simon lien was served December 1, 2017, which made conversion impossible as of that date - regardless of what the Edgeworths now falsely allege - according to the Nevada Supreme Court. *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800; *Wantz v. L.V. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958) (dismissal of a conversion claim upheld because the ownership of the allegedly converted personal property was in dispute and the subject of judicial resolution).

Conversion was also impossible because under long standing law, a party cannot allege conversion of an unknown or uncertain sum of money. *PCO, Inc., v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP*, 150 Cal.App.4th 384, 395-397 (2007)(*and cases cited therein*). While the Edgeworths' complaints allege they were due the entire settlement, the Edgeworths and their counsel later admitted that they always knew Simon was due fees and reimbursement of costs. The Edgeworths thus admitted their complaint was untrue, and that they always knew the alleged conversion was impossible. Even worse, Edgeworths', and their lawyers at

the time, entered into an explicit agreement as to how to exercise dominion and control over the disputed funds with all interest going to Edgeworth.

The attempt to overturn the appellate court via a motion for reconsideration in the trial court is the definition of vexatious litigation.

2. The false December 12 allegation

The Edgeworths assert that a December 12, 2017, email by Viking defense counsel Janet Pancoast establishes that Simon had access to settlement funds earlier than stated, that Simon "intentionally withheld" that information from the Edgeworths and their counsel, "concealed [the information] from the Court", deliberately stripped/concealed/buried the stipulation attached to the email, and "did not inform the Edgeworths or Vannah of any of this extremely pertinent information until December 28, 2017." (Mot., at 11:16-12:13.)

There is no polite way to respond to the accusations of fraud. The allegations are not true, and counsel violated their oath by making them.

On December 18, 2017, Simon signed and gave Pancoast the stipulation and picked up the settlement checks. Simon immediately called Greene to inform Greene about the checks. Greene did not answer, so Simon left a message and sent an email. (Ex. 7.) Later the same day, Greene and Simon spoke on the phone and exchanged emails. (Ex. 8.)

On December 18, Greene told Simon the Edgeworths were not available to endorse the settlement checks until after the new year. (Ex. 8.) This led to an extended dialogue over the following days regarding the disposition of the checks which included outlandish accusations that Simon would steal the money (ex. 9), to which Simon responded with a request to work collaboratively to resolve the dispute (ex. 10).

None of this information was hidden. The events were fully disclosed. (*E.g.*, mot., to adjudicate, filed 1.24.2018 at 15-17 & ex., 12-14.)

The stipulation was not concealed, withheld, stripped, or buried. ***In fact, this Court signed the stipulation, the stipulation was filed, and the stipulation was a matter of public record long before the evidentiary hearing.*** **(Ex. 11.)**

As an aside, even if Simon waited 16 days to pick up checks or inform the Edgeworths - which did not occur - conversion is still an impossibility. *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800 (conversion is impossible because a valid lien was served); *PCO, Inc.,*150 Cal.App.4th at 395-397 (conversion is impossible because the amount is unknown); and *Wantz*, 74 Nev. 196, 326 P.2d 413 (conversion is impossible because ownership is subject to judicial determination).

The notion of a material breach by Viking via a tender of noncertified funds is lunacy-the funds cleared. Further, a Viking breach of a non-material term (or material for that matter) has nothing to do with a conversion complaint against Simon.

The assertions made are false to an objective certainty. Zealous advocacy does not excuse misrepresentations of fact or of the record. NRPC 3.3. Sanctions are called for.

B. The false argument about retention of counsel

The Edgeworths argue that the Court found that Simon "retained (counsel) ***after the filing of the lawsuit*** against Simon on January 4, 2018." (Emphasis in original.) (Mot., at 14:9-10.) The Edgeworths then accuse Simon and counsel of fraud on the Court regarding the date of retention.

The argument is a house of cards, and each card is itself a falsehood. First, the order does not discuss the date of retention of counsel, and the Edgeworths omit the next sentence which provides proper context. Second, the targeted language is in the February 2019 order, and was not challenged on appeal. Third, the Edgeworths play a game with the language in the order and the different concept of retention. Fourth, the transcript proves the accusation is false.

Lastly, the date of retention is not material to the sanction order. The March 2021 sanction order clearly states that the Court reviewed the bills and made its own decision on what work was related to the defense of the frivolous conversion complaint, irrespective of a retention date.

1. The sanction orders

The Edgeworths misrepresent the second sentence of the second paragraph of the March 2021 sanction order. The second and third sentences of the second paragraph of the February 2019 and March 2021 sanction orders are identical, except for one word, and state:

> In considering the amount of attorney's fees and costs, the Court finds that the services of Mr. James Christensen Esq. and Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against Mr. Simon, on January 4, 2018. *However, they were also the attorneys in the evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found was primarily for the purpose of adjudicating the lien [asserted/filed] by Mr. Simon.* (Italics added.)

(*Compare*, Ex. 6 & 12.)

The Court did not find that Simon counsel was "retained ***after the filing of the lawsuit*** against Simon on January 4, 2018." (Emphasis in original.) (Mot., at 14:9-10.). The Edgeworth assertion is false on its face.

The Edgeworth assertion is also false by omission. In the third sentence, the Court recognizes that Simon counsel were also working on the lien issue - which arose earlier than January 4. There is no basis to

insinuate that the Court found that Simon first retained counsel after January 4, 2018.

2. The Edgeworths did not appeal the targeted finding.

The targeted finding first appears in the February 2019 sanction order. The billing records were provided via motion practice well prior to the sanction order. The Edgeworths appealed the impossibility finding of the sanction order but did not appeal their made-up retention finding. The opportunity to challenge the finding has long passed. The finding is final.

3. The Edgeworths' semantic game

A client may consult with an attorney before actual retention and/or a client may obtain the services of a lawyer without formal retention. *See, e.g., Restatement Third, The Law Governing Lawyers* §14 & 15. It is not incredible that Simon would talk to a peer who has expertise with legal ethics and attorney liens (ex. 13) when he is being ghosted by a greedy demanding client who has a vengeful streak and who commands enormous resources.

It is just plain wrong to ask for relief premised on the word "retained" when the Court used the more reasoned words "obtained" and "services". There is no issue, and the Edgeworths attempt to create an issue through semantic sleight of hand is sanctionable.

4. The deception accusation

In another shameful argument, the Edgeworths accuse Simon and counsel of intentional deception of this Court regarding the retention of counsel. The accusation is baseless and is proved false by the record. Also, the proffered motive for the deception is itself based on the misrepresentation of the wording of the sanction order as discussed above. This Court was always aware, as stated in the sanction orders, that Simon obtained the services of counsel before the filing date of the frivolous conversion complaint.

According to the Edgeworths, Simon and counsel attempted to mislead the Court about when Simon retained counsel by discussing when the August contingency email was forwarded to Simon counsel. (Mot., 14-15.) At the outset, the motion has the situation backwards; the fact that Simon felt the need to consult his own lawyer only adds weight to the finding that Simon was constructively discharged. Consultation is a good fact for Simon, not a bad one.

The Edgeworths attach pages 164 & 165 of the Day 4 transcript to support their argument. (Mot., at ex. I.) This is inexcusable conduct. At the bottom of 165 and carried over to page 166 of the transcript Simon testified that he spoke with counsel before December 1.

THE COURT: And what was the first day you consulted with Mr. Christensen to represent you? Do you remember?

THE WITNESS: I don't, but it would have been around that time, *or a few days or more, before, when I felt that I wasn't getting appropriate responses from clients that I've had communication with at all hours a day for the last six months, who stopped communicating with me.*

THE COURT: So around that November 30th timeframe?

THE WITNESS: Probably.

(*Italics added*.) (Ex. 1, 164-172 at 165:22-166:5.)

On page 168, Simon testified that he had spoken to counsel on or around November 27, the date of his letter to the Edgeworths.

Q So what you're telling him, I mean, as I'm reading the letter, if I were a client, I'm reading the letter and it says, if you're not agreeable to signing this fee agreement, then I cannot continue to lose money to help you, to me that would say, I can't continue to work on this case because I'm losing money; is that what you're telling him?

A Unless we work something out.

Q And then you say, I will need to consider all options available to me?

A Yeah.

Q One of those is to withdraw from the case, right?

A I don't know. I didn't know what my options were at that time.

Q Well, you talked to Mr. Christensen by then, hadn't you?

A Around that time, I guess, yeah.

Q Okay.

> A Because I needed to learn my options, because I haven't had any communication with them, verbally, since November 25th, and they're promising to meet with me, and they were being cagey about it, and, you know, so I needed to figure out what my options were.

(Italics added.) (Ex. 1 at 168.)

The Edgeworths wasted this Court's time smearing Simon and his lawyer with false allegations and innuendo by omitting portions of the record and misstating the findings when date of retention is meaningless because the Court reviewed the billings for related charges. Sanctions are warranted.

C. David Clark

Simon's counsel knows David Clark personally and respects his expertise and knowledge on legal ethics. Counsel first called Clark to confirm he could serve as an expert if needed; and to prevent his hire by the Edgeworths. Later in December, counsel called Clark on a topic of interest in the dispute. Clark's time spent in December was *gratis*. Clark's first billing date on the file was January 11, 2018. (Ex. 14.)

As it turns out, the retainer was not exhausted. The appropriate amount for Clark fees as costs should be $2,520.00.

VI. Conclusion

The motion for reconsideration is without merit. Simon requests the motion be denied and the Edgeworths sanctioned for their false statements, accusations and arguments made in defiance of the law of the case.

COUNTER MOTION TO ADJUDICATE LIEN ON REMAND

I. Introduction to the counter motion

On December 30, 2020, the Supreme Court issued two orders addressing the Edgeworth appeal and the Simon writ petition. The appeal order affirmed this Court in all but two respects. The appeal order remanded the case with instructions to re-address the quantum meruit award of fees to Simon and to re-address the amount of fees assessed as a sanction against the Edgeworths for pursuit of their frivolous conversion complaint. In the writ order, the Simon petition on the manner of calculation of quantum meruit for outstanding fees due at the time of discharge was denied as moot, apparently in consideration of the instructions on remand contained in the appeal order.

Remand issued 25 days after the appeal and writ orders were filed. In a twist, shortly following remand, the Edgeworths were granted leave to file an untimely petition for rehearing. The Supreme Court order granting

leave had the effect of recalling (or staying) the remand. *However, the order granting leave was not copied to this Court*. (Ex. 15.)

On March 16, 2021, this Court issued its amended orders a few days before the Supreme Court denied the Edgeworths' petition for rehearing.

Simon moves for adjudication of the lien regarding the calculation of the quantum meruit fee award per the remand instructions and addresses the *Brunzell* related arguments raised in the motion. Also, because of the jurisdiction issue, new orders are requested.

II. Quantum meruit

The Court found that Simon worked for the Edgeworths on the sprinkler case on an implied in fact contract; and, that Simon was discharged from the contract on November 29, 2017. (Ex. 16)

The Court found that Simon was paid under the implied contract through September 19, 2017 and was not paid for considerable work that came after September 19. (Ex. 16.)

This Court also concluded that:

> When a lawyer is discharged by the client, the lawyer is no longer compensated under the discharged/breached/repudiated contract, but is paid based on quantum meruit. (Citations omitted.)

(Ex. 16.) The conclusion coincides with NRS 18.015(2) and case law. The conclusion and the findings were affirmed on appeal. *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800.

However, the payment term of the repudiated implied contract was enforced for the time worked from September 19 through November 29, 2017. Retroactive enforcement of the payment term of a discharged or repudiated contract is not consistent with the finding quoted above, NRS 18.015(2) or case law. Simon respectfully submits that the correct path is to use quantum meruit as the measure to compensate Simon for work performed from the date of September 19, 2017 forward.

A. When a fee contract is terminated by the client, the amount of the outstanding fee due the attorney is determined by quantum meruit.

The Edgeworths discharged Simon on November 29, 2017. Thus, the fee contract was repudiated as of that date. The Edgeworths terminated the fee contract before the lien was served and before funds were paid. Therefore, the implied fee contract had been repudiated and was not enforceable when the lien was adjudicated.

When a lawyer is discharged by the client, the lawyer is no longer compensated under the discharged contract but is paid based on *quantum merit*. *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800;

Golightly v. Gassner, 281 P.3d 1176 (Nev. 2009) (unreported) (discharged attorney paid by *quantum merit* rather than by contingency); *citing*, *Gordon v. Stewart*, 324 P.3d 234 (1958) (attorney paid in *quantum merit* after client breach of agreement); and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941)(fees awarded in *quantum merit* when there was no agreement).

This Court cited *Rosenberg* in concluding the Edgeworths fired Simon. *Rosenberg v. Calderon Automation, Inc.*, 1986 Ohio App. LEXIS 5460 (1986). In *Rosenberg*, Calderon stopped all communication with his lawyer, Rosenberg, on the eve of a settlement. Rosenberg sought his fees.

The *Rosenberg* court found that Rosenberg was constructively discharged when Calderon stopped speaking with the lawyer. On the question of compensation, the court found that termination of a contract by a party after part performance of the other party, *entitles the performing party to elect to recover the value of the labor performed irrespective of the contract price*. *Id.*, at *19. In other words, the lawyer is not held to the payment term of the repudiated contract, but rather receives a reasonable fee under quantum meruit.

The Edgeworths did not admit to firing Simon even after they stopped communication and then frivolously sued for conversion. Even as late as the appeal, the Edgeworths denied firing Simon in a transparent gambit to

avoid a reasonable fee under quantum meruit. The law is clear that because Simon was fired, Simon's outstanding fee for the work performed on the sprinkler case after September 19, 2017, is set by quantum meruit, the reasonable value of services rendered as per NRS 18.015(1). Simon respectfully requests this Court to use quantum meruit to reach the attorney fee due Simon for work performed after September 19, instead of retroactively applying the payment term of the discharged fee contract.

B. The quantum meruit award

Will Kemp testified as an expert on product defect litigation, the prevailing market rate for such litigation in the community[1], and the method of determination of a reasonable fee for work performed on a product case in Las Vegas. Mr. Kemp's credentials are well known, and his opinion was beyond question.

The Edgeworths have gone to ridiculous lengths to punish Simon and extend this dispute, such as hiring counsel at $925 an hour and filing a frivolous complaint. Yet even the Edgeworths did not attempt an attack on Mr. Kemp, his opinion was so solid, it stood unrebutted.

[1] The Edgeworths also rely upon the prevailing market rate as a metric for quantum meruit, although they misapply the standard. Mot., at 21:10-21.

Mr. Kemp has provided a declaration in which he reviewed his unrebutted opinion in the light of the Supreme Court orders. (Ex. 17) Mr. Kemp responded to the Supreme Court's instructions and explained how his opinion is in agreement. Mr. Kemp then reviews the *Brunzell* factors and states that a reasonable fee under the prevailing market rate of the community for product liability trial counsel from September 19, 2017, through February of 2018, is $2,072,393.75. (Ex. 17.)

C. *Brunzell* issues raised by the Edgeworths

The Edgeworth motion for reconsideration skips between the sanction fee and the prevailing market rate for Simon which makes addressing the claims challenging. Rebuttals below are not presented in the order raised.

1. The Edgeworths have the file.

The Edgeworths rely upon the false claim that they do not have the file. As demonstrated above, the file was delivered in 2020.

The Edgeworths build on their false statement of fact to make the false assertion that the entire file is needed for an adjudication. That is untrue. Under the lien statute adjudication occurs in five days' time by the trial court - when the "attorney's performance is fresh in its (trial court's) mind." NRS 18.015(6); and *Leventhal v. Black & Lobello*, 305 P.3d 907,

911 (Nev. 2013*); superseded by statute on other grounds as stated in*, *Fredianelli v. Pine Carman Price*, 402 P.3d 1254 (Nev. 2017). (timely adjudication allows the court to determine the fee while "the attorney's performance is fresh in its mind", and before "proceeds are distributed"). The statute relies on the knowledge of the trial court to adjudicate a lien, not review of a file, which might not be available due to a retaining lien.

Lastly, if the file were really needed, the Edgeworths would have requested the file in 2017/2018.

2. Ashley Ferrel and other counsel

The Edgeworths falsely claim, "no evidence was presented regarding the quality of the advocate with respect to any other attorneys other than Simon whose work was billed during this time." (Mot., at 19:23-25.) The claim is false for several reasons.

First, as discussed in *Leventhal*, the trial court is a witness to the work done by the lawyers on cases before it. Far from "no evidence" the Court saw firsthand the ability and competency of the lawyers on the Simon team (including the lien adjudication process).

While direct evidence is enough, testimony at the evidentiary hearing hit this issue as well. For example, on Day 3, Ms. Ferrel testified to over 7 years of experience as a trial lawyer working for the nationally

known, premier Eglet firm, and the less well known, but also premier, Simon firm. (Ex. 18, Day 3 95-96, & Ex. 19 Ferrel CV.) In sum, Ferrel is undervalued at $275 an hour.

3. The Court's evidentiary ruling

The Court made a correct evidentiary ruling when it upheld the objection to a line of questions regarding NRPC 1.5 that was without foundation and was not relevant. (Ex. I to the motion.) Notably, Vannah abandoned the line of questioning at the hearing and then did not raise the evidentiary ruling as an error on appeal. That said, the Edgeworths' appellate briefing harped incessantly on the perceived issue - which did not sway the Supreme Court.

The written contract argument is a red herring. NRS 18.015(2) provides that an attorney can recover a reasonable fee when there is no express contract (written or otherwise). There is no law that says differently. The accusation of an ethical violation is without merit. A written fee agreement is not required to receive a reasonable fee determined by a Nevada district court per NRS 18.015. NRS 18.015(5).

4. Federal district court caselaw

The motion incorrectly attributes a quote from *Gonzalez-Rodriguez v. Mariana's Enterprises et al*., 2016 WL 3869870 (D. Nev. 2016) to the Nevada Supreme Court. Even if correctly attributed, the *Gonzalez* opinion is of passing interest, hourly fees granted in the Eighth Judicial Dis. Court commonly exceed the federal rates. In this case, the Court saw the work and amazing result of the Simon firm's efforts, took testimony, and received the unrebutted expert opination of Will Kemp. The Court was provided with a sound foundation to reach a quantum meruit finding.

5. Brunzell analysis for Christiansen and Christensen

The Court saw the excellent work of Pete Christiansen at the evidentiary hearing. It is understood that attorney Christiansen is also known to the Court from criminal practice. His CV is attached at ex. 20. The rate of $850 is more than reasonable given his ability and experience, and by comparison, is less than what the Edgeworths felt was a reasonable fee for John Greene.

The CV for Christensen is attached at ex. 13. The Court saw counsel's work, and the rate has been previously approved many times in State court, most recently by Judge Denton following trial in *LVNS v. Gandalf*, A-18-773329-C.

III. Conclusion

There is no excuse for the wholesale misstatements of fact and of the record by the Edgeworths, as well as the defiance of the Supreme Court orders. These arguments are not made in good faith and given their pattern of abusive conduct, sanctions are clearly warranted.

Simon respectfully suggests the Court make a reasonable fee award based on the market rate under quantum meruit for the work performed following September 19, 2017, through February of 2018, in accord with the unrefuted opinion of Will Kemp, which is consistent with the Supreme Court's order of remand.

DATED this 13th day of April 2021.

/s/ James R. Christensen

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jim@jchristensenlaw.com
Attorney for Daniel S. Simon

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing Opposition and Request for Sanctions; Countermotion was made by electronic service (via Odyssey) this 13th day of April 2021, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen

an employee of
JAMES R. CHRISTENSEN

R. GISTER 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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Case Type:	**Product Liability**
Date Filed:	**06/14/2016**
Location:	**Department 10**
Cross-Reference Case Number:	**A738444**
Supreme Court No.:	**77678**
	78176
	83258

RELATED CASE INFORMATION

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

04/15/2021 **Minute Order** (3:00 AM) (Judicial Officer Jones, Tierra)

Minutes

04/15/2021 3:00 AM

- Following review of the papers and pleadings on file herein, COURT ORDERED, Defendant s Motion for Reconsideration Regarding Court s Amended Decision and Order Granting in Part and Denying in Part Simon s Motion for Attorney s Fees and Costs and Second Amended Decision and Order on Motion to Adjudicate Lien is DENIED. The COURT FURTHER ORDERED that the Request for Sanctions is DENIED; and the Countermotion to Adjudicate Lien on Remand is GRANTED and that the reasonable fee due to the Law Office of Daniel Simon is $ 556,577.43, which includes outstanding costs. This Court s Order, filed on November 19, 2018, and the order filed on February 8, 2019 were affirmed by the Nevada Supreme Court in most respects. The Nevada Supreme Court ordered a limited remand for the purpose of the quantum meruit fee award imposed by the Court. There was a Petition for Hearing filed by the Edgeworths, in the Nevada Supreme Court, and the petition was accepted after the remand was issued. This Court then issued a Second Amended Decision and Order on Motion to Adjudicate Lien, in compliance with the Nevada Supreme Court remand, on March 16, 2021. The Nevada Supreme Court denied the Edgeworth s Motion for Rehearing on March 18, 2021. The Nevada Supreme Court affirmed this Court s finding that the conversion was impossible. As such, that is the law of the case and will not be disturbed by a Motion to Reconsider absent (1) newly discovered evidence; (2) the court committing clear error on the initial decision and it was manifestly unjust; or (3) there is an intervening change in the controlling law. The COURT FINDS that neither of the three reasons for reconsideration are present in the instant case, making the previous rulings by this Court the law of the case. As such, Defendant s Motion for Reconsideration Regarding Court s Amended Decision and Order Granting in Part and Denying in Part Simon s Motion for Attorney s Fees and Costs and Second Amended Decision and Order on Motion to Adjudicate Lien is DENIED. The Countermotion to Adjudicate Lien on Remand is GRANTED and the COURT FINDS that the reasonable fee due to the Law Office of Daniel Simon is $556,577.43, which includes outstanding costs. The Court will issue a Third Amended Decision and Order on Motion to Adjudicate Lien, to address any jurisdictional issues, in accordance with the remand from the Nevada Supreme Court. Clerk's Note: This Minute Order was electronically served by Courtroom Clerk, Teri Berkshire, to all registered parties for Odyssey File & Serve. /tb

Return to Register of Actions

ELECTRONICALLY SERVED
4/28/2021 12:50 PM

Electronically Filed
04/28/2021 12:50 PM
CLERK OF THE COURT

ORD

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.	CASE NO.: A-18-767242-C DEPT NO.: X **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**THIRD AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

THIRD AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

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

FINDINGS OF FACT

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

2. The case involved a complex products liability issue.

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

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

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

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

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

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

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks. 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

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

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

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

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review 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."

(Def. Exhibit 43).

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

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

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

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

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

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

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

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

26. On November 19, 2018, the Court entered a Decision and Order on Motion to Adjudicate Lien.

27. On December 7, 2018, the Edgeworths filed a Notice of Appeal.

28. On February 8, 2019, the Court entered a Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs.

29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

30. On December 30, 2020, the Supreme Court issued an order affirming this Court's findings in most respects.

31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

32. On March 16, 2021, this Court issued a Second Amended Decision and Order on Motion to Adjudicate Lien.

33. On March 18, 2021, the Nevada Supreme Court denied the Motion for Rehearing.

CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

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

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

Fee Agreement

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

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

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

(Def. Exhibit 27).

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

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

Constructive Discharge

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

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

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

Id.

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

Further, the Edgeworths did not personally speak with Simon after November 25, 2017. Though there were email communications between the Edgeworths and Simon, they did not verbally speak to him and were not seeking legal advice from him. In an email dated December 5, 2017, Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim 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 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim. The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr. Simon never signed off on any of the releases for the Lange settlement.

Further demonstrating a constructive discharge of Simon is the email from Robert Vannah Esq. to James Christensen Esq. dated December 26, 2017, which states: "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." (Def. Exhibit 48). Then on January 4, 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating, LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an

email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that doesn't seem in his best interests." (Def. Exhibit 53).

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

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

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:
   (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.
   (b) In any civil action, upon any file or other property properly left in the possession of the attorney by a client.
   2. A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.

> 3. An attorney perfects a lien described in subsection 1 by serving notice in writing, in person or by certified mail, return receipt requested, upon his or her client and, if applicable, upon the party against whom the client has a cause of action, claiming the lien and stating the amount of the lien.
>
> 4. A lien pursuant to:
>
> (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action; and
>
> (b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including, without limitation, copies of the attorney's file if the original documents 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.

Nev. Rev. Stat. 18.015.

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

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was $550 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was

created with a fee of $275 per hour for the services of Simon's associates. This implied contract was created when invoices were sent to the Edgeworths, and they paid the invoices.

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

Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP 16.1 disclosures and computation of damages; and these amounts include the four invoices that were paid in full and there was never any indication given that anything less than all the fees had been produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law Office retained the payments, indicating an implied contract was formed between the parties. The Court find that the Law Office of Daniel Simon should be paid under the implied contract until the date they were constructively discharged, November 29, 2017.

Amount of Fees Owed Under Implied Contract

The Edgeworths were billed, and paid for services through September 19, 2017. There is some testimony that an invoice was requested for services after that date, but there is no evidence

that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for fees was formed, the Court must now determine what amount of fees and costs are owed from September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted billings, the attached lien, and all other evidence provided regarding the services provided during this time.

At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back and attempted to create a bill for work that had been done over a year before. She testified that they added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every email that was read and responded to. She testified that the dates were not exact, they just used the dates for which the documents were filed, and not necessarily the dates in which the work was performed. Further, there are billed items included in the "super bill" that was not previously billed to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing indicated that there were no phone calls included in the billings that were submitted to the Edgeworths.

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

Simon argues that he has no billing software in his office and that he has never billed a client on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths, in this case, were billed hourly because the Lange contract had a provision for attorney's fees;

however, as the Court previously found, when the Edgeworths paid the invoices it was not made clear to them that the billings were only for the Lange contract and that they did not need to be paid. Also, there was no indication on the invoices that the work was only for the Lange claims, and not the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without emails or calls, understanding that those items may be billed separately; but again the evidence does not demonstrate that this information was relayed to the Edgeworths as the bills were being paid. This argument does not persuade the court of the accuracy of the "super bill".

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

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

The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the services of Daniel Simon Esq. is $72,077.50. The amount of attorney's fees for this period for Ashley Ferrel Esq. is $38,060.00. The amount of costs outstanding for this period is $31,943.70. This amount totals $142,081.20 and is based upon the invoice from July 28, 2017. This amount has been paid by the Edgeworths on August 16, 2017.[3]

The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the services of Daniel Simon Esq. is $119,762.50. The amount of attorney's fees for this period for Ashley Ferrel Esq. is $60,981.25. The amount of attorney's fees for this period for Benjamin Miller

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[2]There are no billing amounts from December 2 to December 4, 2016.

[3] There are no billings from July 28 to July 30, 2017.

Esq. is $2,887.50. The amount of costs outstanding for this period is $71,555.00. This amount totals $255,186.25 and is based upon the invoice from September 19, 2017. This amount has been paid by the Edgeworths on September 25, 2017.

From September 19, 2017 to November 29, 2017, the Court must determine the amount of attorney fees owed to the Law Office of Daniel Simon.[4] For the services of Daniel Simon Esq., the total amount of hours billed are 340.05. At a rate of $550 per hour, the total attorney's fees owed to the Law Office for the work of Daniel Simon Esq. is $187,027.50. For the services of Ashley Ferrel Esq., the total amount of hours billed are 337.15. At a rate of $275 per hour, the total attorney's fees owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November 29, 2017 is $92,716.25.[5] For the services of Benjamin Miller Esq., the total amount of hours billed are 19.05. At a rate of $275 per hour, the total attorney's fees owed to the Law Office for the work of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is $5,238.75.[6]

The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq. or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid by the Edgeworths, so the implied fee agreement applies to their work as well.

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

Costs Owed

The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing, LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought reimbursement for advances costs of $71,594.93. The amount sought for advanced cots was later

[4] There are no billings for October 8th, October 28-29, and November 5th.
[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.
[6] There is no billing from September 19, 2017 to November 5, 2017.

changed to $68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

Quantum Meruit

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

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

The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be

done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the Court notes that the majority of the work in this case was complete before the date of the constructive discharge, and the Court is applying the Brunzell factors for the period commencing after the constructive discharge.

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

1. Quality of the Advocate

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

2. The Character of the Work to be Done

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

3. The Work Actually Performed

Mr. Simon was aggressive in litigating this case. In addition to filing several motions, numerous court appearances, and deposition; his office uncovered several other activations, that

caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the other activations being uncovered and the result that was achieved in this case. Since Mr. Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions and the litigation that allowed this case to develop into a $6 million settlement. All of the work by the Law Office of Daniel Simon led to the ultimate result in this case.

4. *The Result Obtained*

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

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

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
>
> (4) The amount involved and the results obtained;

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

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

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

(8) Whether the fee is fixed or contingent.

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

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after 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;

(3) Whether the client is liable for expenses regardless of outcome;

(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and

(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.

Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for the Edgeworths, the character of the work was complex, the work actually performed was extremely

significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell factors justify a reasonable fee under NRPC 1.5.

However, the Court must also consider the fact that the evidence suggests that the basis or rate of the fee and expenses for which the client will be responsible were never communicated to the client, within a reasonable time after commencing the representation. Further, this is not a contingent fee case, and the Court is not awarding a contingency fee.

Instead, the Court must determine the amount of a reasonable fee. In determining this amount of a reasonable fee, the Court must consider the work that the Law Office continued to provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the Edgeworths were ready to sign and settle the Lange claim for $25,000 but Simon kept working on the case and making changes to the settlement agreement. This resulted in the Edgeworth's recovering an additional $75,000 from Lange plumbing. Further, the Law Office of Daniel Simon continued to work on the Viking settlement until it was finalized in December of 2017, and the checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr. Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year. The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon himself were continuing, even after the constructive discharge. In considering the reasonable value of these services, under quantum meruit, the Court is considering the previous $550 per hour fee from the implied fee agreement, the Brunzell factors, and additional work performed after the constructive discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of $200,000, from November 30, 2017 to the conclusion of this case.

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CONCLUSION

The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of $550 per hour between Mr. Simon and the Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The 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 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied agreement rate of $550 per hour for his services, and $275 per hour for his associates; up and until the last billing of September 19, 2017. For the period from September 19, 2017 to November 29, 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of $550 an hour, and $275 an hour for his associates, for a total amount of $284,982.50. For the period after November 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being constructively discharged, under quantum meruit, in an amount of $200,000. The Court further finds that the Law Office of Daniel Simon is entitled to costs in the amount of $71,594.93.

ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law Office of Daniel Simon is $556,577.43, which includes outstanding costs.

Dated this 28th day of April, 2021

IT IS SO ORDERED.

DISTRICT COURT JUDGE

1F8 440 36C0 D8EC
Tierra Jones
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Edgeworth Family Trust, Plaintiff(s) vs. Lange Plumbing, L.L.C., Defendant(s)	CASE NO: A-16-738444-C DEPT. NO. Department 10

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, v. LANGE PLUMBING, LLC ET AL., Defendants.	Case No: A-16-738444-C Dept. No: X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, v. DANIEL S. SIMON, AT AL., Defendants.	Case No: A-18-767242-C Dept. No. X PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF THIRD-AMENDED DECISION AND ORDER GRANTING IN PART AND DENYING IN PART SIMON'S MOTION FOR ATTORNEYS FEES AND

) COSTS, and MOTION FOR
) RECONSIDERATION OF
) THIRD AMENDED DECISION
) AND ORDER ON MOTION TO
) ADJUDICATE LIEN
)
) HEARING REQUESTED
)

Plaintiffs Edgeworth Family Trust and American Grating, LLC (hereafter collectively referred to as "Edgeworths") respectfully move for reconsideration of this Court's Third Amended Decision and Order on Motion to Adjudicate Lien (hereafter "Third Lien Order"), which does not adhere to the instructions on remand, as more fully described below. The Edgeworths also renew their motion to reconsider the Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs (the "Fees Order") to conform to the actual cost amount.

This matter returns to the Court on remand for a limited purpose. The Supreme Court vacated this Court's prior order "awarding [Simon] $50,000 in attorney's fees and $200,000 in *quantum meruit* and remand[ed] for further findings regarding the basis for the awards." The Supreme Court's remittitur that returned this matter to the Court for further proceedings issued on April 13, 2021. However, the Court *sua sponte,* and without explanation (or jurisdiction), entered a Second Amended Decision and Order on Motion to Adjudicate Lien (hereafter "Second Lien Order") on March 16, 2021. At the same time, the Court also entered an Amended Order on Simon's motion for attorney's fees and costs. These Orders prompted the Edgeworths to file a Motion for Reconsideration on March 30, 2021.

The following day, the clerk of the Court issued a notice of hearing, for April 15, 2021, which deprived the Edgeworths of the right to reply to

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Simon's opposition to reconsideration filed on April 13. Scheduling the hearing was altogether unnecessary and inappropriate because jurisdiction had not been returned to the Court when the incomplete briefing on reconsideration was in progress and the minute order issued from the Court's chambers. Nonetheless, on April 19, 2021, the Court issued a Third Lien Order; the Court has not issued an updated Order on the attorney fee issue since regaining jurisdiction.

For the reasons set out in detail below, reconsideration of both of April 19, 2021 Third Lien Order and the March 16, 2021 Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs (hereafter the "Attorney Fee Order") is appropriate.

This Motion is based on the papers and pleadings on file, the declaration of Rosa Solis-Rainey and exhibits submitted therewith, and any argument the Court may consider, which the Edgeworths respectfully request.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RENEWED MOTION FOR RECONSIDERATION

This case has a long and tortured history that will not be reiterated except as necessary to address the narrow issues presented in this motion. The time and effort expended to obtain a full and fair accounting of the fees and costs claimed by Simon, in whom the Edgeworths misplaced their trust, has been unnecessarily increased due to his failure to keep adequate accurate billing records, and promptly bill the Edgeworths. His omission to keep and produce proper billing records has allowed him to overreach for much more in fees than were agreed to by the Edgeworths.

A. RELEVANT FACTS

The underlying litigation brought by the Edgeworths against Lange Plumbing, LLC, the Viking Corporation, Supply Network Inc., dba Viking

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Supplynet. Daniel Simon represented the Edgeworths. From April 10, 2016 to September 18, 2017, his firm billed the Edgeworths $368,588.70 in attorney's fees, and $114,864.39 in costs. The bills were based on ***Simon's*** requested hourly rate of $550 and $275 for his associates.

Through mediation, the Edgeworths on November 15, 2017 agreed to settle their claims against the Viking parties for $6 million in exchange for full dismissals. With these principal terms agreed-upon, all that remained as to this portion of the case was to memorialize the settlement. Two days later, however, Simon pressed the Edgeworths to renegotiate the basis of his compensation structure from the hourly rates that had been confirmed and paid under the parties' course of conduct, to one with contingent fee features that would yield him more than a $1M bonus. To coerce them into acquiescing to his demands for more money, Simon threatened that the settlement with Viking would fall apart because he claimed there remained ***many terms to still be negotiated***. Simon left for vacation in Peru shortly thereafter, but made numerous calls to the Edgeworths from Peru to pressure them into paying his desired but unagreed fees.

On November 27, 2017, Simon sent the Edgeworths a letter proposing an agreement that would essentially provide him a bonus of over $1M. Ex. HH. Angela Edgeworth responded and asked Simon to provide her a copy of the draft settlement document so that she could have her long-time business lawyer review it. Ex. AA. Simon responded that he had not received it, which was not true. *Id.* at 3:50 p.m. Since the principal terms for settlement had been agreed to at the November 15 mediation and there appeared to be urgency on all sides in finalizing the agreement, Mrs. Edgeworth pressed Simon for the draft agreement. He responded that "Due to the holiday they were probably not able to start on it. I will reach out to lawyers tomorrow and get a status." *Id.* at 4.58 p.m. In his earlier letter, he

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claimed that "*there [wa]s a lot of work left to be done* [to finalize the settlement] and even hinted he might derail the agreement by not signing off on "confidentiality provisions," likely required by Viking, which he suggested "could expose [Simon] to future litigation." Ex HH at 0049. Mrs. Edgeworth *again* pressed for settlement details, but Simon did not respond. Ex. AA at 5:32 p.m.

Notwithstanding his denials to the contrary, the record suggests that Simon had a draft of the settlement agreement by November 21, 2017. Ex. BB (email exchange between counsel for Viking suggesting issues had arisen regarding confidentiality and disparagement provisions; because these are provisions Simon said Viking wanted, such issues could have been raised only by Simon). Because of Simon's coercive tactics with respect to revising his compensation structure and his refusal to provide the draft agreement to Mrs. Edgeworth and his hourly bill, the Edgeworths retained other counsel on November 29, Robert Vannah, to work with Simon to finalize the agreements.[1] Ex. CC.

Simon provided the Edgeworth's with a draft of the settlement agreement, *for the first time*, at 8:39 a.m. on November 30. Ex. DD. Approximately an hour later, Vannah sent Simon a fax notifying him that the Edgeworths had retained him to assist in finalizing the settlement. Ex. CC. About eight hours later (at 5:31 pm) Simon sent a "final" version of the settlement agreement with terms he claimed to have negotiated that day. Ex. EE. In that same email, he also reported that he had re-negotiated the Lange

[1] Without waiver of any rights, the Edgeworths accept that the Court has found that the circumstances leading up to and retaining other counsel were a constructive discharge of Simon, notwithstanding that he remained counsel of record.

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Plumbing settlement amount, and acknowledged receipt of instructions to settle the Lange claim. *Id.*

On November 30, 2017, Simon also filed a Notice of Attorney Lien against the Viking settlement claiming $80,326.86 in outstanding costs. *See* Ex. L to 3/30/21 Mot. for Recon. He filed an Amended Lien on January 2, claiming costs of $76,535.93[2] and attorney fees totaling $2,345,450 less payments received, for a net of $1,977,843.80 due in fees, presumably based on a contingent fee agreement that the Edgeworths had rejected. *See* Ex. M to 3/30/21 Mot. for Recon. The Viking settlement was signed the next day, December 1. Ex. N to 3/30/21 Mot. for Recon. The Edgeworths asked Simon to agree to the Lange terms at the same time. Ex. EE.

On December 12, 2017, Viking notified Simon that it had inadvertently overlooked the *certified check* provision in the settlement agreement, but provided they could obtain the stipulation to dismiss, they had *regular checks* cut and available for exchange that day in order to allow time for the payment to clear by the agreed-upon date. Ex. FF. Simon ***did not*** notify the Edgeworths of this option. On December 18, 2017, Simon notified Vannah, the Edgeworths other counsel, that he had received the checks, but did not disclose the checks were not certified, as required by the settlement agreement. The parties disagreed on how the checks should be handled and ultimately deposited them in an account that required the signatures of both Vannah and Simon. The portion of the Viking money in excess of Simon's claimed lien was paid to the Edgeworths. The settlement agreement with

[2] The Court acknowledged that the Edgeworths promptly paid the outstanding costs claimed by Simon as soon as he provided invoices substantiating costs. *See* Nov. 19, 2018 Decision and Order on Motion to Adjudicate Lien at 17:12-13 ("there are no outstanding costs remaining owed").

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Lange Plumbing was slow-played until February 5, 2018, when it was signed. *See* Ex. O to 3/30/21 Mot. for Recon.

Due to the manner in which the settlement was handled, and the attempted extortion of additional fees from them, the Edgeworths initiated litigation against Simon on January 4, 2018. The Court ultimately dismissed their claim for conversion and awarded fees and costs under NRS 18.010(2)(b) to Simon in the amount of $5,000 for the claimed expert fee to David Clark; and $50,000 in fees for Simon's lawyer for defending the conversion action. In his opposition to the Motion for Reconsideration, Simon acknowledges that David Clark's expert fee was only $2,520. *See* April 13, 2021 Opp'n to Mot to Reconsider at 19:24.

Despite repeatedly claiming to the Edgeworths that a bill for actual time spent would exceed the amount fees claimed in his lien, Simon refused to provide billing records for fees he claimed were outstanding. Instead, he moved to adjudicate the lien, and in support offered a "super bill" alleging that between May 27, 2016 and January 8, 2018, his firm provided a total of 1,650.60 hours in legal services (866.20 hours Simon; 762.60 for Farrell; and 21.80 for Miller) for a grand total of $692,120 in fees. Ex. II Excerpts of "super bill." Included among Simon's hours is a single undated entry for 137.80 hours (or $75,790 in fees) with the line entry explanation of "Review all Emails concerning service of all pleadings (679 emails)." *See* Ex. II at SIMONEH0000240 (last entry before totals).

The Court held an evidentiary hearing with respect to the lien and concluded that the accuracy of the "super bill" provided by Simon could ***not*** be established. *See* Nov. 19, 2018 Decision and Order on Motion to Adjudicate Lien at 14:19-27 (pointing to testimony that the " 'super bill' was not necessarily accurate" because it was created after the fact); at 15:5 – 9 ("The court reviewed the billings of the 'super bill' in comparison to the

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previous bills and determined that it was necessary to discount the items that has not been previously billed for; such as text messages, reviews with the court reporter, and reviewing, downloading, and saving documents because the Court is uncertain of the accuracy of the 'super bill'"); at 15:19 ("This argument does not persuade the court of the accuracy of the 'super bill.'"). The Court determined that for the period from September 19 to November 29, 2017 (which Simon had not billed despite requests from the Edgeworths to do so), Simon was owed $284,982.50. *Id.* at 17:3-4. Notwithstanding that this amount did ***not*** reflect the "discounting" that the Court said was required, or the fact the work was not well substantiated in the invoices, the Edgeworths accepted this finding.

With respect to services performed from after the date the Court determined Simon was constructively discharged, the Court awarded Simon $200,000, without providing any detail to show how that amount was determined. Nov. 19, 2018 Decision and Order on Motion to Adjudicate Lien at 21:18. The Court confirmed that the case was "not a contingent fee case, and the Court is not awarding a contingency fee." *Id.* at 21. In justifying the amount, the basis of which is never explained, the Court discusses the *Brunzell* factors, but does so only in the context of ***pre-constructive discharge work***.

The Edgeworths appealed the amount awarded Simon in *quantum meruit*, as well as the fees and costs awarded under NRS 18.010. Although the Supreme Court affirmed the $5,000 cost award, it did so because it believed that 'the cost award [was] supported by an invoice and memorandum of costs," (Dec. 30, 2020 Nev. Sup. Ct. Order at 9, last sentence) which Simon's recent briefing confirms was inaccurate. David Clark's charged only $2,520 for his work as an expert.

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With respect to the fees awarded, both under NRS and under *quantum meruit*, the Nevada Supreme Court held that the $50,000 attorney fee award "lacks support" because the Order awarding the fees did not demonstrate that the *Brunzell* factors were even considered. *Id.* at 8-9. With respect to the $200,000 award, the Supreme Court held that the Court erred in making the award "without making findings regarding the work Simon performed after the constructive discharge." *Id.* at 4. The Supreme Court emphasized that the proper measure of recovery is the "reasonable value of [the] services." *Id.* at 5 (citations omitted). And the Court went on to say that in determining the reasonable value, the Court must consider the *Brunzell factors. Id.* The Supreme Court said:

> While the district court stated that it was applying the *Brunzell* factors for work performed only after the constructive discharge, much of its analysis focused on Simon's work throughout the litigation. Those findings, referencing ***work performed before the constructive discharge***, for which Simon had already been compensated under the terms of the implied contract, ***cannot form the basis of a quantum meruit award***. . . . Accordingly, we vacate the district court's grant of $200,000 in *quantum meriut* and remand for the district court to make findings regarding the basis of its award.

Id. at 5 (emphasis added). The Court's latest Order does not satisfy the Supreme Court mandate. It merely repeats the same inadequate *Brunzell* analysis. *See* Third Lien Order at 19-20; and compare it with the identical analysis on pages 18-19 of the November 19, 2018 Order that was the subject of the appeal.

The only evidence in the record of work Simon claims to have performed post-discharge is set forth in the "super bill"; the accuracy of which the Court has acknowledged is questionable, at best. *See* Excerpts Showing Post-Discharge Portions of "super bill" Ex. JJ and KK. The work

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described in these billings includes one hearing[3] and several administrative tasks, including over seven hours of Mr. Simon's time post discharge to open the bank account for deposit of the Viking settlement checks. Ex. LL at 3 (entries in green on Jan 2, 3 4, 5 and 8, 2018). Even crediting the time outlined in his "super bill," applying the *Brunzell* factors to that work does not justify the bonus payment the Court awarded him.

B. STANDARD FOR RECONSIDERATION

A party may seek reconsideration within 14 days after service of written notice of the order. E.D.C.R. 2.24. Reconsideration is appropriate when the Court has misapprehended or overlooked important facts when making its decision, *Matter of Ross*, 99 Nev. 657, 659, 668 P.2d 1089, 1091 (1983), when new evidence is presented, or when the decision is "clearly erroneous." *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Here, this motion for reconsideration of the Court's Third Lien Order, entered on April 19, 2021, is timely brought. The Order is clearly erroneous because it does not comply with the mandate returned from the Nevada Supreme Court. The Order also followed briefing that was cut short due to the early hearing setting when the Court lacked jurisdiction.

The Amended Order on the attorney fee issue, was entered on March 16, 2021, nearly one month before the Nevada Supreme Court returned jurisdiction of this case to the district court. It is thus *void ab initio* because it was entered without jurisdiction, but it also warrants reconsideration because the cost award was entered based on an incorrect amount

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[3] A hearing on Viking's Motion for Good Faith Settlement is listed on the "super bill" for December 12, 2017. *See* Ex. JJ at 77. The hearing was necessary only because the Lange settlement was not promptly finalized. *See* Ex. N to 3/30/21 Mot. for Recon. at 2, Section III.D.

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presented, which Defendants now acknowledge in their April 13 opposition to the earlier motion for reconsideration.

C. RECONSIDERATION OF THE COSTS AWARDED IN THE AMENDED ATTORNEY FEES AND COSTS MOTION IS WARRANTED.

This Court entered its Amended Order attorney's fees and costs on March 16, 2021. Jurisdiction was not returned to the district court until April 13, 2021. The Amended Order awarded Simon's counsel some of the attorney fees and costs in claimed to have been incurred in defense of the conversion cause of action. The claimed costs of $5,000 were for expert fees paid to David Clark. The Edgeworths appealed this award on the basis that the costs were not necessarily incurred. Although the Nevada Supreme affirmed the $5,000 cost award, it did so because it believed that "the cost award [was] supported by an invoice and memorandum of costs." Dec. 30, 2020 Nev. Sup. Ct. Order at 9, last sentence. Given the confirmation by Simon that the $5,000 was actually the retainer amount, which was not exhausted, it is appropriate to remit the amount of the cost award to the actual cost ($2,520) incurred.

D. THE BASIS FOR THE *QUANTUM MERUIT* ALLOWED BY THE COURT REMAINS UNSUPPORTED, AND, IN FACT, CANNOT BE SUPPORTED.

The Third Amended Decision on the lien matter suffers from the same defects as those in the prior amended order considered by the Nevada Supreme Court. The Supreme Court found that the district court had not provided an adequate basis to support how it came up with a $200,000 award for Simon's post-constructive termination services, and pointed out that to the extent the *Brunzell* analysis was done, it relied on pre-termination work, ***which has been compensated*** under the contract.

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According to the record and Simon's own testimony, the settlement terms in the underlying dispute with Viking were agreed on by November 15, 2017. By Simon's unequivocal testimony in response to questions from the Court, the Viking Settlement Agreement was finished ***before*** November 30. Ex. GG at 15-17.

Notwithstanding that he finished the settlement agreement negotiations on November, 27, 2017, when Mrs. Edgeworth requested drafts of the agreement that same day, Simon claimed he had not yet seen any drafts of the settlement agreement. And despite his later testimony that he was completely done hammering out the agreement on November 27, 2017, he did not share any versions of the settlement agreement with the Edgeworths until November 30th, ignoring their request for all drafts. The draft he initially presented them (with terms he unequivocally testified he had negotiated out) was sent shortly before he was notified the Edgeworths had hired Vannah to help finalize the agreement. At the close of day on November 30, he sent Vannah the final draft, which he acknowledged to the Court he finished negotiating three days prior yet misrepresented to Vannah and the Edgeworths that he had negotiated it that day. Ex. EE.

Notwithstanding the gamesmanship in sharing the settlement agreement while seeking a new fee arrangement, it is reasonable to conclude that Simon's testimony to the Court is accurate: ***all negotiations were complete by November 27***, and little, if anything, of substance remained to be done ***after*** the claimed notice of termination to obtain the payment and dismiss the Viking claims. This conclusion is supported by the fact the Viking Settlement Agreement was in fact executed the next day, December 1. A review of the billing entries offered by Simon for the post-discharge period confirm that negligible substantive work was performed by him with regard to the Viking claims.

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Likewise, according to Simon's own evidence, the negotiation of the Lange Plumbing settlement terms were done by November 30, 2017, although the agreement memorializing these terms was inexplicably not presented to the Edgeworths for signature until February 5, 2018. The actual agreement eventually signed demonstrates that it was final by early December 2017. *See* Ex O at 1 (on line 2 of page 1, Mr. Edgeworth had to interlineate the earlier date contemplated when he signed the agreement; it said ". . . Agreement . . . is entered on December __, 2017"); (on page 2, at subsections "a." to "c." agreement called for document exchanges by end of December, payment by end of January, and dismissal within 10 days of payment, demonstrating the agreement it was prepared in December). To the extent this agreement was slow-played by Simon to support his contention that much work remained, the fact is that the basic terms were agreed on or before November 30 and ***no substantive work remained*** to finalize it.

Little else of substance remained. And although Simon claims ***never*** to work on an hourly basis, he billed the Edgeworths on an hourly basis, and they paid him as they had agreed. The Court found that they had no reason to believe that was not the fee agreement since Simon had not memorialized the terms of the engagement, as he should have if it were otherwise. He also billed them for the substantial costs, which the Court found they promptly paid. Having so determined the basis for payment to Simon, the best evidence before the Court of the "reasonable value" of the *quantum meruit* services is Simon's own billings, which outline the work performed, albeit inadequately. This would be consistent with the compensation structure confirmed by the parties' course of conduct. Although the Court has consistently called into question the accuracy of the "super bill" Simon created to justify his exorbitant lien, the Court

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nonetheless accepted the "super bill" for purpose of establishing the hours Simon claimed for work between September 19, 2017 through November 29, 2017, and for which she awarded Simon over $284K, without the discounting the Court itself recognized was required. The Edgeworths accepted this determination, and intend to pay that amount from the moneys being held.

There is no reason for the Court to now reject the "super bill" for evaluating the work performed post-discharge. For the period starting November 30 to the end of his lien, Simon's "super bill" lists a total of 71.10 hours (51.85 hours for Simon; and 19.25 for his associate). Using the hourly rates established Simon himself and confirmed by the parties' course of conduct, that number of hours translates to $33,811.25 in fees at his agreed rates. If the work on that listing were justifiable, it would be reasonable under a *Brunzell* analysis, but the Court's award of $200,000 is ***more than six times*** that amount. No reason is given in the Third Lien Order as to how that amount was computed or supported under a *Brunzell* analysis. The Court's decision, in fact, does not specifically discuss the nature of the post-termination work. The Court's ***entire discussion*** of the *Brunzell* factors is based on pre-termination work covered by the prior invoices and the Court's pre-termination computation. This is the same deficiency the Nevada Supreme Court found with the appealed order.

Furthermore, much of the claimed work was not justified as having been done for the benefit of the Edgeworths. It is also not work requiring

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special skill. A rough summary of the post-discharge work "billed" is depicted in the table below:

SUMMARY OF POST-DISCHARGE WORK BILLED BY SIMON LAW	
Admin tasks re Lange Settlement	21.55
Admin tasks re Viking Settlement, including one hearing	26.65
Preparation of Attorney Lien	4.85
Opening Bank Account & Depositing Settlement Checks	7.25
Undetermined - not sufficient description	10.80

None of this work justifies the bonus awarded. A consolidated listing of the hours Simon's firm billed post-termination is attached hereto as Exhibit LL. The descriptions and information in Exhibit LL were taken directly from the "super bill" produced by Simon, the relevant excerpts of which are attached hereto as Exhibits JJ and KK. A substantial portion of Simon's bill for post-termination work does not provide adequate descriptions to enable informed evaluations of work performed. Furthermore, the Edgeworths' ability to challenge the validity of the work Simon claims to have performed is also limited because Simon has refused repeated demands to turn over their entire file to them.[4] While the Court is free to determine the reasonable value of the services provided, it needs to identify the bases on which it is valuing it to show that the amount is reasonable under *Brunzell*. Billing over seven hours to set up a simple local

[4] Simon claims to have turned over the file to the Edgeworths. However, the file he produced does not include drafts of the settlement agreements; is stripped of all email attachments, all emails discussing the Edgeworths settlements with third-parties, expert reports, and email and other communications with experts, opposing counsel. In view of this Court's finding that Simon was discharged, and the affirmance of that determination, it cannot be reasonably disputed that the Edgeworths are fully entitled to their full client file, as set forth in NRS 7.055, and demand is hereby made again for the Edgeworths' ***complete*** file.

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bank account with two signers and deposit two checks, for example, is not facially reasonable under *Brunzell*. *See* Ex. LL, entries coded in green. Likewise, billing the Edgeworths 4.60 hours for the preparation of Simon's own attorney lien was of no benefit to the Edgeworths and therefore not facially reasonable. *Id.,* entries coded in pink. And even if the Court determined the hours were justified, a reasonable rate for that work must be explained.

The Court's basis for the *quantum meruit* award remains deficient, for the same reasons the Supreme Court found it lacking in the first instance. It should be corrected consistent with the mandate. On the basis of the record before the Court, the Court's $200,000 *quantum meruit* award would not be correct.

E. THE COURT INADVERTENTLY INCLUDED PAID COSTS IN THE OUTSTANDING AMOUNT DUE.

The Court's Third Lien Order also contains a scrivener's error to the tune of $71,594.93. Consistent with its prior Orders recognizing that the Edgeworths had paid all outstanding costs, the Court on page 18 of the Third Lien Order acknowledged all costs have been paid. However, on page 23 of the Third Lien Order, the Court inadvertently added the $71,594.93 to the amount due. That error should be corrected, and any judgment entered on the lien claim should exclude any amount for costs because the costs have been paid.

F. CONCLUSION

Because the Court's latest order does not comply with the mandate returned by the Nevada Supreme Court, it should be reconsidered. The basis for the *quantum meruit* award should be fully disclosed, and its reasonableness under the *Brunzell* analysis should be examined in light only of the post-termination work. Taking Simon's own "super bill" for guidance, that would come out to $33,811.25.

The $71,594.93 scrivener error resulting from the inadvertent inclusion of costs already paid should be corrected, and the prior $5,000 awarded on the attorney's fees and costs motion, which was upheld only because it was believed to be the amount incurred, should be remitted to the amount of actual costs incurred, $2,520.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of MORRIS LAW GROUP, and that I caused the following to be served via the Court's mandatory e-filing and service system to those persons designated by the parties in the E-Service Master list for the above-referenced matter: PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF THIRD-AMENDED DECISION AND ORDER GRANTING IN PART AND DENYING IN PART SIMON'S MOTION FOR ATTORNEYS FEES AND COSTS, and MOTION FOR RECONSIDERATION OF THIRD AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

DATED this 3rd day of May, 2021.

By: /s/ TRACI K. BAEZ
An employee of Morris Law Group