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 VI

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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

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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 EDGEWORTHS' MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE HEARING REQUESTED

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Defendants Edgeworth Family Trust and American Grating, LLC (collectively referred to as "Edgeworths") respectfully move this Court for an order releasing the Edgeworths' settlement funds now being held in a Bank of Nevada Account, requiring the signatures of Robert Vannah and Daniel Simon for release, into the Morris Law Group Trust account, and ordering the release of over $1.5M in the account that is not reasonably in dispute. The Edgeworths further move for an Order requiring Simon to produce their complete client file to them or, at a minimum, deposit the complete client file with the Court, as he said he would do nearly a year ago.

This Motion is based on the papers and pleadings on file, the declaration of Rosa Solis-Rainey and any argument the Court may consider on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RELEASE OF FUNDS AND MOTION FOR PRODUCTION OF COMPLETE CLIENT FILE

The Court is aware of the facts of this case; thus, only those facts necessary to address the narrow issues presented by this motion will be summarized.

I. *RELEVANT FACTS*

On November 30, 2017, Daniel Simon filed an attorney charging lien against settlement proceeds due to the Edgeworths for $80,326.86 in costs that were "continuing to accrue." Ex. A. On January 2, 2018, he amended his lien, reducing the costs claimed to be accruing to $76,535.93[1] and attorney fees totaling $2,345,450 less payments received from the Edgeworths, for a net of $1,977,843.80. *See* Ex. B. On January 8, 2018, the Viking settlement

[1] Simon again reduced the cost amount later, and the Edgeworths paid the costs, as the Court acknowledged. *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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proceeds were deposited into a bank account that requires dual signatures for release, Mr. Simon's and Robert Vannah's, whom the Edgeworths had retained to help Simon finish finalizing the settlement. Settlement funds in excess of those that would satisfy Simon's claimed lien were released to the Edgeworths. Today, however, more than $2M remains in that account, of which no more than $537,502.50 would completely satisfy the amount this Court and the Nevada Supreme Court has ruled would pay Simon ***all*** he would be entitled to ***if*** the Edgeworths' pending motion to reconsider this Court's Third Amended Decision and Order is denied. Mr. Vannah has confirmed he will sign to transfer the funds now; Mr. Simon would not agree to the transfer or release of any funds to avoid this motion practice and judicial intervention. *See* Exs. C and D.

With respect to the case file, the Edgeworths requested in 2017 that Simon provide them with all documentation he had regarding the Viking settlement discussions. Ex. E. In response, he provided two settlement drafts on November 30, 2017. Ex. DD and EE to 5/3/21 Mot. for Recon. In 2018, Simon also provided the Edgeworths' "original file," but it was not complete and only included selected portions of the file. Ex. F. When the Edgeworths realized the file was incomplete, their counsel served Simon's counsel with a notice of intent to bring a motion to compel the production of the complete file under NRS 7.055(2). Ex. G. After much back and forth addressing Simon's alleged obstacles to producing the file, his office sent Mr. Edgeworth the file, minus "protected confidential material" and promised to deposit the balance of the file with the Court, which he did not do. Ex. H, May 27, 2020 Exchanges; *see also* Exs. 2 – 4 to Pl.'s Opp'n to Mot.for Recon. The files he did produce were on a portable hard drive; the files were disorganized and often indecipherable, which made review very difficult and time consuming. Solis-Rainey Decl. ¶6.

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Because the file was still not complete, Edgeworths' counsel raised the deficiencies in a telephone call to Simon's counsel, James Christensen. Solis-Rainey Decl. ¶ 9. Mr. Christensen asked that a list of items identified as missing be provided so he could discuss it with Mr. Simon. *Id.* As he requested, a letter outlining the deficiencies noted thus far was sent to Mr. Christensen on May 4, 2021. Ex. I. Among the deficiencies noted in the allegedly "complete" file produced in 2020 was email produced between Simon and opposing counsel or other third parties that had been stripped of the referenced attachments. The file also did not include correspondence, including email, with third parties regarding the settlement of the Viking and Lange Plumbing claims. Also missing were earlier drafts of the settlement agreements with Viking and Lange, complete communications to and from the experts, including expert reports, if any, as well as research memos (and much of the research) prepared on behalf of the Edgeworths. *Id.*

In response to the letter he requested, Mr. Christensen resurrected the same excuses raised by Simon's other counsel in 2020 for not producing the file. Ex. J. These included the claimed retaining lien on the file and alleged confidentiality issues for which he provided no substantiation, both excuses raised and presumably resolved when Simon tendered the allegedly complete, but in fact incomplete, file in 2020. Nevada law requires Mr. Simon, a terminated attorney, to turn over the ***complete*** client file. His prior productions of incomplete files suggest that the excuses offered for failure to produce his complete file show gamesmanship to frustrate the Edgeworths that is indicated by the folder Simon named "Finger for Edgeworth" in the incomplete file he provided in 2020. Ex. K. The record also demonstrates that when seeking to substantiate his "super bill," Simon and his office spent extensive time going through what his associate described as a "huge" client

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file, much of which was in paper form; with extensive email. *See, e.g.,* Ex. L at 106, 108, 109, 111-12. During the August 29, 2018 hearing, in fact, Simon's office claimed that all billed entries describing email "ha[d] all been produced." Ex. L. at 197. Complete email is among the items missing from the file Simon produced. *See* Ex. J.

II. *LEGAL STANDARD*

This Court found that Simon was discharged November 29, 2017, and that he was entitled to the reasonable value of his services after he was discharged, ***from November 30 forward***. That decision has been appealed and affirmed by the Nevada Supreme Court. In its December 30, 2020 Order the Supreme Court said:

> . . . .
>
> [w]e conclude that the district court acted within its sound discretion by finding that the Edgeworths constructively discharged Simon on November 29, 2017.
>
> Although we conclude that the district court correctly found that Simon was entitled to quantum meruit for work done after the constructive discharge . . . we agree with the Edgeworths that the district court abused its discretion by awarding $200,000 in quantum meruit without making findings regarding the work Simon performed after the constructive discharge.

12/30/20 Order, Nev. Sup. Ct. Case Nos. 77678/76176 *rehearing denied*) (emphasis added and citations omitted). Simon challenged the amount awarded to him in a writ proceeding in the Supreme Court, which was consolidated with two other then-pending cases for most of the appellate proceedings. It was deconsolidated for disposition on December 28, and on December 30, 2020, the Supreme Court issued an Order denying the writ petition as moot, because the issues had been adjudicated in the Court's substantive order issued that same day in which this Court's award of $200,000 in *quantum meruit* was vacated and the case remanded for further

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proceedings on the basis for awarding the $200,000. 12/30/20 Order, Nev. Sup. Ct. 79821 (writ).

The Edgeworths did not challenge the roughly $285K in fees the district court awarded for the period of September 19 to November 29, 2017. *Id.* at 2-3, and at n.3. The Supreme Court Order irrevocably establishes the law of the case and now controls in this Court. The law of the case doctrine prevents Simon from rearguing that he is entitled to more than the reasonable value of the limited services he provided ***from November 30, 2017 forward***. *Hsu v. County of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) ("[w]hen an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal.")

With respect to Simon's client file, NRS 7.055 requires that "an attorney who has been discharged . . . upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client." The statute goes on to say that "if there is doubt as to the ownership" of any portions of the file, it may be deposited with the clerk of the court, which Simon said he would do, but did not.

III. *ARGUMENT*

A. The Client's Funds Should be Released to Them.

The Supreme Court remanded this case to this Court for a limited purpose: to explain the basis for the $200K *quantum meruit* award, and its reasonableness.[2] In an effort to avoid this motion, the Edgeworths proposed to Simon that the account at Bank of Nevada be transferred to Morris Law

[2] The remand also required that the Court evaluate the reasonableness of the fees granted under NRS 18.010(2)(b), but that amount is not in issue in this Motion, and the fees will be satisfied from the proceeds once released.

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Group's Trust Account, and that all ***uncontested*** amounts be paid at once to Simon and/or his counsel. The contested amount would be maintained in the Morris Law Group Trust account, and the balance disbursed to the Edgeworths. Simon refused this proposal, taking the position that if the Edgeworths could maintain the *quantum meruit* amount was less than awarded by the Court, he could take the position that he is owed more than $200,000. This position is not credible under the law of the case. Simon was given a full opportunity to adjudicate the amount owed to him; his claim that he is entitled to $2.4M in fees (less payments received) has been considered and rejected by this Court and affirmed by the Supreme Court. He has presented a list of the services performed between November 30 forward, and he cannot now reopen or enlarge the *quantum meruit* amount or period as he wishes to do. With his compensation issues conclusively decided but for the limited post-discharge period, Simon has no legitimate excuse for holding over $2M of the Edgeworths' funds hostage. His belief that he was entitled to nearly $2M that he alleged in his charging lien filed on January 2, 2018 has been conclusively rejected. He cannot, as a matter of law, reasonably maintain that he is entitled to more than the $252,520 for attorney fees, costs, and *quantum meruit* that the Supreme Court directed this Court to justify would be reasonable.

Simon's repeated claims that the money is being held pursuant to orders of this Court are not substantiated by the record. *See* Ex. M, Excerpts of Simon's Opp'n to Edgeworths' Special Mot. to Dismiss in Case No. A-19-807433-C at 11:20-21 (stating that "disputed funds remain held in trust . . . because ***the Court ordered that the money should not be distributed*** pending *appeal*." (emphasis added)); at 27:22-23 ("Following the hearing, Judge Jones ***ordered the funds remain in the account*** after the Edgeworths *appealed* to the Supreme Court." (emphasis added)); *see also* Ex. N Excerpts

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of Simon's Opp'n to Vannah's NRCP 12(b)(5) Mot. to Dismiss at 13:9-10 ("Only the disputed funds remain in the special trust account. ***Simon is following the District Court order*** to keep the disputed funds safe pending appeal."). The Edgeworths' former counsel brought a motion to release the funds, *after* the appeal was noticed but *before* it was heard. Correctly, however, this Court found that "the Court does not have jurisdiction as this case has been appealed . . ." 2/5/19 Min. Order. Though the minute order instructed plaintiff's counsel prepare the order and submit it to opposing counsel for review, and then to the Court, there is no record that instruction was followed. A disposition due to lack of jurisdiction is not an instruction to withhold all of the funds in the account following appeal, as Simon claims. In any event, the appeal has been decided and remand has been issued with regard to not all that is held in trust, but only $252,520 of those funds.

Furthermore, Simon's insistence on unilaterally withholding over $2M from the settlement proceeds was inconsistent with NRS 18.015(1), which permits a charging lien, but only in "the amount of any fee **which has been agreed upon** by the attorney and client." NRS 18.015(1)(b)[3]; *see also, Hoff v. Walters,* 129 Nev. 1122 (2013) (unpublished) (recognizing statute sets the limit on amount of charging lien). Simon knew at the time he asserted the lien that the fees he claimed were disputed, and he knew the time spent on the file, and the hourly rates that had been established for his firm's work. At most, Simon should have asserted a lien only for an amount equal to the hours he billed at the rate that he requested and applied throughout his relationship with the Edgeworths.

[3] NRS 18.015(1)(b) in its entirety says "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."

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Even if Simon legitimately believed that the amount of his lien "was the reasonable fee for the services," once the Court determined that Simon was not entitled to a contingency or flat fee, and that he was entitled to approximately $485,000 in fees, Simon should have immediately released the balance of the settlement proceeds that Simon encumbered to the client. Nothing in NRS 18.015(1)(b) permits a lawyer to withhold more of the client's funds than what was agreed for fees and costs, and certainly not more than the Court determined a lien was worth. This is especially true when the dispute over the amount owed arises because of the attorney's own failure to communicate the basis or rate of his compensation "to the client, preferably in writing, before or within a reasonable time after commencing the representation." RPC 1.5.

The approximately $285K based on the implied contract at the hourly rates he requested for work performed on or prior to November 29, 2017 has been accepted and is not in issue, as the Supreme Court recognized. The $200K in *quantum meruit* for the reasonable value of the limited post-discharge services provided is all that remains in issue.

The Edgeworths have sought reconsideration of the *quantum meruit* award because they do not understand the basis for it, and because it does not comport with the Supreme Court's mandate. Given the finality of the findings that Simon is not entitled to a contingency fee, or a $1M+ flat fee, it is unreasonable for him to maintain that the amount held in trust (more than $2M) should be held as security for what ***at most*** is $200,000 in issue. Please remember that the reasonable value of the services Simon provided, post-discharge, based on his own records, is less than $34,000. He should not be allowed to hold approximately $1.5M hostage.

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B. The Edgeworths are Entitled to Their Complete Client File.

Like he is doing with the trust funds on deposit, Simon continues to hold the Edgeworths' ***complete*** file[4] hostage. The Edgeworths have requested missing portions of their file since 2017. *See* Ex. E. The missing information from the file was requested in 2018 and Simon produced ***portions*** of it. *See* F. Although Simon disputes the earlier request date, he cannot dispute that the Edgeworths made clear and unambiguous demands for their ***complete*** file by May 17, 2020. Ex. G.

Simon previously told this Court that the file had been produced. 4/13/21 Opp'n to Mot. for Reconsid. at 6 (under the heading "The Edgeworths have the case file," they go on to say: "In 2020, a different Edgeworth lawyer asked for the file and the file was given directly to Brian Edgeworth as requested."). This representation to the Court was made in the context of the Edgeworths' contention that they did not have their ***complete file.*** *See* 3/30/21 Mot. for Recon. at 14. Following the 2020 demands for the complete file, Simon again threw up obstacles to its production, claiming the existence of a retaining lien (which he knew was secured many times over by the amount of the settlement funds still tied up due to his refusal to release the account) and demanding that counsel sign a protective order in place in the underlying case. *See* Ex. G (re retaining lien); Ex. H at 3 (re protective order issue). The Edgeworths' counsel properly reminded Simon that the clients were already bound by the protective order and entitled to receive their complete file, without counsel needing to sign the protective

[4] The 2020 exchanges concerning the file acknowledged that "internal emails based on relevancy, work product privilege and proportionality" had been withheld. *See* Ex. P. Without waiving any objections or rights regarding those "internal" emails, that should nonetheless be preserved in light of defamation litigation initiated by Simon, the strictly internal emails are not the subject of this Motion.

order. Ex. H. Ultimately, Simon's counsel agreed to produce the file, sans the "confidential material" from third-parties, and agreed he would deposit "the balance of the file with the Clerk." Ex. H at 3. While an electronic drive with a portion of the file was sent to Mr. Edgeworth, there is no indication in the record that the rest of the file was deposited with the court clerk.

When Edgeworths' counsel again demanded the file pursuant to NRS 7.055, Ex. I, Mr. Christensen claimed it had been previously produced, and when informed that significant gaps remained, he asked for a list of what was believed to be missing. Ex. J. Simon's response to the latest demand for the file confirms that despite his contention that the mostly-complete file had been produced, is simply not true. *Id.* Simon's counsel again raises the false retaining lien and confidentiality issues raised and addressed, and presumably resolved, in 2020. Ex. H.

The retaining lien issue should be a non-starter given that Simon refuses to sign off on releasing the $2M+ funds that he is essentially now controlling (Mr. Vannah has unequivocally agreed to sign off on the transfer of the funds), despite the Edgeworths' offer to settle all undisputed balances owed to him, and maintain the contested portion in trust. Simon is more than adequately secured. He cannot legitimately use that excuse to withhold the file. Simon resurrected contention that confidentiality issues that were resolved nearly one year ago when he produced portions of the file also do not support withholding it. The Edgeworths are bound by the confidentiality terms in the underlying litigation, and they are entitled to their complete client file, especially since Simon has sued them in a separate lawsuit. Simon has offered no legitimate reason for continuing withholding the Edgeworth's complete file; the Court should order it to be produced, at once, consistent with NRS 7.055.

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IV. *CONCLUSION*

For the foregoing reasons, the Edgeworths respectfully ask that the Court issue an order requiring Simon to sign off to transfer the withheld settlement trust funds into the Morris Law Group Trust Account, and thereafter authorize Morris Law Group to hold $537,502.50 in the Trust Account to disburse as set forth below, and to release the remainder of the settlement funds to the Edgeworths:

(1) $284,982.50 to Simon as fees for the period between September 19 and November 29, 2017;

(2) $52,520 to Simon for attorney's fees ($50,000) and costs ($2,520) awarded under NRS 18.010(2)(b);

(3) At least $200,000 to be maintained in Trust pending a final disposition on the amount Simon is due under *quantum meruit*.

The Edgeworths further request pursuant to NRS 7.055, that the Court order Simon to turn over their complete client file to them; understanding they will remain bound by the confidentiality order for the duration stated therein.

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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: **EDGEWORTHS' MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE**

DATED this 13th day of May, 2021.

By: /s/ TRACI K. BAEZ
An employee of Morris Law Group

DECLARATION OF ROSA SOLIS-RAINEY IN SUPPORT OF EDGEWORTHS' MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE

I, Rosa Solis-Rainey, declare as follows:

1. I am an attorney and counsel of record in this matter in this matter and competent to testify as to the following matters.
2. In hopes of avoiding the need for judicial intervention, on May 3, 2021, I spoke with Robert Vannah to confirm he was agreeable to signing off on the transfer of the Edgeworths' settlement funds, and disbursement of the undisputed portion of the funds. He confirmed he is prepared to sign off at any time.
3. That same day, I sent Daniel Simon and Jim Christensen, his lawyer, a request that the funds in the Bank of Nevada account set up to hold the funds claimed under Mr. Simon's lien in 2018 be transferred to my firm's trust account, and agree that undisputed amounts be immediately disbursed to Mr. Simon and/or Mr. Christensen, that disputed amounts continue to be held in our Trust account, and that the rest be disbursed to the Edgeworths. A true and correct copy of that letter is attached hereto as Exhibit C.
4. Mr. Christiansen responded with a letter, a copy of which is attached here as Exhibit D.
5. I am informed and believe that the Edgeworths have still not received their complete client file from Simon, though portions were produced in 2018 and in 2020.
6. I am informed and believe that the portions of the file received were disorganized and often indecipherable, which made review very difficult and time consuming.
7. On May 4, I called Mr. Christiansen to discuss the request to release the

funds, and to clarify I understood my obligation not to discuss matters with represented parties and had not spoken with Simon, but simply emailed my 5/3/21 letter to both of them in the interest of efficiency. With respect to the request to transfer the funds, he confirmed he had no objection to transferring the money into my firm's Trust account, but would confirm that with his client. His response to my proposal was that if the Edgeworths could claim that the amount due under *quantum meruit* was less than the Court ordered, then he could claim it was more, and he therefore considered all the funds to be disputed.

8. We discussed the reasonableness of that position given the Court's decision that Simon was *not* entitled to a contingency or flat fee, and save a couple narrow issues, those findings had been affirmed by the Supreme Court. I pointed out that the only disputed issue remaining were the scrivener errors and the basis and reasonableness of the amount awarded for work performed from November 30 forward. We could not reach agreement, but he said he would respond regarding the transfer of the funds. I have not received a response on that issue.

9. On that same call, I raised the incompleteness of the client file produced to the Edgeworths, and he stated the believed it had all been produced. I described some of the content that was missing, and he asked that I send him a list, which he would review with his client. Exhibit I is a true and correct copy of the letter I sent requesting release of the entire client file.

10. Exhibit J is his response to that request, reiterating the same excuses raised by Simon's team in 2020, which I believed had been resolved since the exchanges say the client file minus documents marked confidential would be produced, and the rest deposited with the court.

11. I sent a follow-up email responding to Mr. Christensen's letter on May 11,

2021, a true and correct copy is attached hereto as Exhibit O.

12. Exhibits A, B, E, G-H, L-N and P are true and correct copies, or excerpts thereof, of documents from the Court record, which I obtained from the court files.

13. I am informed and believe that Exhibit F is a copy of the receipt Simon asked Vannah & Vannah to sign when he produced a portion of the file in 2018.

14. I am informed and believe that Exhibit K is a screen print of the folders in the hard-drive Simon's office provided to Mr. Edgeworth as the client file in 2020.

I declare the foregoing under penalty of perjury under the laws of the State of Nevada.

Dated this 13th day of May, 2021.

Rosa Solis-Rainey

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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 THE SECOND MOTION TO RECONSIDER; COUNTER MOTION TO ADJUDICATE LIEN ON REMAND** Hearing date: 5.27.21 Hearing time: 9:30 a.m.
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

OPPOSITION TO THE SECOND MOTION FOR RECONSIDERATION

I. Relevant Procedural Overview

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. The high court then denied the Edgeworths' bid for rehearing. Procedure relevant to the subject motions follows.

On December 30, 2020, the Supreme Court issued an appeal order affirming this Court in most respects; and an order finding the Simon petition for writ moot, apparently in light of the instructions on remand to revisit the quantum meruit fee award to Simon.

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.

On January 25, 2021, the Supreme Court issued a Notice in Lieu of Remittitur.

On January 26, 2021, the Supreme Court granted leave to the Edgeworths to file an untimely petition for rehearing. *The order granting leave to file the untimely petition was not copied to this Court*.

On March 16, 2021, per the instructions on remand, this Court issued the Amended Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs ("Attorney Fee Order"). This Court also issued an amended order adjudicating the lien.

On March 18, 2021, rehearing was denied by the Supreme Court. A corrected order denying rehearing followed on March 22, 2021.

On March 31, 2021, the Edgeworths filed a motion for reconsideration in district court.

On April 12, 2021, remitter was issued by the Supreme Court.

On April 28, 2021, this Court issued the Third Amended Decision and Order on Motion to Adjudicate Lien ("Third Lien Order").

On May 3, 2021, the Edgeworths filed their second motion for reconsideration.

II. Summary of Arguments

The second Edgeworth motion for reconsideration addresses the Third Lien Order and the Attorney Fee Order. Simon opposes the motion to reconsider the Third Lien Order, acknowledges the Attorney Fee Order must be refiled; and brings a counter motion to adjudicate the lien and/or reconsider the Third Lien Order regarding the quantum meruit fee award to Simon per the remand instructions.

A. The Third Lien Order

The Edgeworths' second motion to reconsider the Third Lien Order is without merit. The Edgeworths do not present adequate grounds for reconsideration.

First, the Edgeworths assert they are due reconsideration because they were deprived of "the right to reply" in support of their first motion for reconsideration. The Edgeworths are incorrect. The Edgeworths do not provide a citation to support the claim that the opportunity to reply is a fundamental right. The Edgeworths did not make an offer of proof regarding the reply, and thus did not establish they suffered undue prejudice. Nor did the Edgeworths provide authority that motion practice is required before the Court acts on the remand instructions. In any event,

the Edgeworths have had ample notice and many opportunities to be heard on lien adjudication. Process does not provide a basis for reconsideration.

Second, the Edgeworths argue for reconsideration by making the claim that a disagreement over the facts underlying the quantum meruit decision amounts to a clear error of law. The argument is poor. A disagreement over facts is not a clear error of law meriting reconsideration. The determination of attorney fees under quantum meruit is within the discretion of the district court. As such, the Edgeworths are effectively foreclosed from relief via promotion of their own factual narrative under the abuse of discretion standard. Further, the Edgeworths' frivolous conversion narrative, which they have morphed into an equally frivolous extortion narrative in the current motion, was solidly rejected by this Court and the Supreme Court. The Edgeworths did not provide the substantially different evidence required for reconsideration, they have merely served up different spin.

Finally, the Edgeworths complain about a scrivener's error regarding costs owed. In doing so, the Edgeworths note but fail to take to heart the "Costs Owed" section of the Third Lien Order which specifically states that costs were paid, and no costs are currently owed. Specific language

controls over general language. Thus, there is no possibility of undue prejudice and no basis to reconsider the Third Lien Order is presented.

B. The Attorney Fee Order

The Attorney Fee Order was issued before remittitur. Accordingly, the order must be refiled. The Edgeworths appear to have abandoned their challenge to the conservative amount of fees awarded. As to Clark's costs, Simon has already informed the Edgeworths that only the amount of the bill ($2,520.00) will be sought. Accordingly, while Simon does not oppose changing the cost number for Clark's fees in the Attorney Fee Order, no prejudice will result to the Edgeworths regardless.

C. Simon's Counter Motion

Whether the counter motion is more properly presented as a motion to adjudicate the lien on remand or as a motion to reconsider, Simon respectfully requests this Court to revisit its quantum meruit decision expressed in the Third Lien Order. Simon requests that the Court abide by the finding affirmed on appeal that the implied contract was discharged and therefore, not enforce the implied payment term for work performed after September 19, 2017. Re-adjudication and/or reconsideration on this point may be had because the use of an implied payment term of a discharged contract as controlling in a fee adjudication is a clear error of law.

Simon's counter motion is well-supported by the uncontested declaration of Will Kemp, whom this Court has already recognized as an expert.

IV. Rebuttal to the Edgeworths' statement of facts and related argument

The Edgeworths' factual arguments are inaccurate 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 continue their false argument regarding the case file. During 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.) As can be seen from the attached correspondence, there were certain matters that were not produced because they were covered by non-disclosure agreements, etc. The privileged items withheld did not present a problem until the Edgeworths filed their second motion for reconsideration when they apparently felt the need for an additional argument.

After the Edgeworths filed their second motion for reconsideration, counsel spoke about the file. Letters were exchanged and are attached. (Ex. 5 & 6.) As can be seen from the Simon response, the allegations of stripping emails, etc., are farfetched. (Ex. 6.)

In addition, NRS 7.055 applies to a "discharged attorney". Before admitting to discharge at a point when the Edgeworths thought the change of course might benefit them, the Edgeworths had consistently denied they had 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. 7, opening brief excerpt, at 10.)

The Edgeworths wasted time and resources on their frivolous no discharge stance; therefore, new sanctions are warranted based on their recent admission that Simon really was discharged. *Capanna v. Orth*, 134 Nev. 888, 432 P.3d 726 (2018) (sanctions are appropriate when a claim or defense is maintained without reasonable grounds). Rebutting the Edgeworths' frivolous no discharge position wasted at least a day of the

evidentiary hearing, and many hours spent briefing the issue at the district court and appellate levels.

B. The November 17 meeting

The Edgeworths' description of the November 17 meeting is fanciful and rehashes claims made at the evidentiary hearing which the Court found wanting. 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. 7 at 11,12,15,18, & 28.) The latest factual claims corroborate the many Edgeworth admissions that they are not credible.

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. The Edgeworths did not disclose how they obtained a privileged email sent between Viking's lawyers. Further, the Edgeworths did not address how they propose the Court could consider this new proffer of evidence years after the evidentiary hearing ended.

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 date of the Viking settlement and release terms

Continuing the lack of credibility theme, the Edgeworths argue: "***all negotiations were complete by November 27***". (Bold and italics in original.) (2nd Mot., at 12:21-22.) Putting aside that the bolded factual assertion is not supported by what the cited record states, there is a larger problem in that the factual claim is contrary to the findings of this Court.

On November 19, 2018, the Court made finding of fact #13:

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

(Ex. 8 at 4:22-24, & Third Lien Order at F.F. #13 at 4:22-24.) A good portion of the second motion for reconsideration dwells on factual claims contrary to the finding (*see, e.g.*, 2nd Mot., at 4:5-6:11), while never mentioning or contrasting finding of fact #13 - which is now the law of the case.

The Edgeworths have taken so many bites at the evidentiary apple that it is down to the core. They do not get another. This issue is over.

E. The Lange settlement

In a new brand-new factual claim, raised years after the evidentiary hearing, the Edgeworths accuse Simon of slow walking the Lange settlement. The accusation is untimely and unfair, resolution of a complex case takes time. Further, Simon had been fired by the clients, was being frivolously sued by his former clients, and was working via replacement counsel who acknowledged in open court he did not know what was going on:

> MR. VANNAH: If you take out the form and content, I don't know anything about the case, and I want – I don't know anything about the case – I mean, we're not involved in a case. You understand that, Teddy?
>
> MR.PARKER: I do.
>
> MR. VANNAH: We – we're not involved a case in any way shape, or form.

(Ex. 9, February 20, 2018 Transcript at 3:22-4:3.)

In the November 19, 2018, Lien Order this Court found that Simon was due recognition for improving the position of his former clients. (*See, e.g.*, Ex. 8 at 19:19-20:1.) This aspect of the Lien Order was not challenged on appeal and is now the law of the case. The finding was repeated in the Third Lien Order. (Third Lien Order at 20:8-17.) The Edgeworth assertions are wholly without merit.

F. This Court took testimony regarding the work performed at the evidentiary hearing.

The Edgeworths proclaim that the "only evidence in the record of work Simon claims to have performed post-discharge is set forth in the "super bill". (2nd Mot., at 9:24-25.) The claim is not true. The Court took days of testimony at the evidentiary hearing regarding work that was done, some of which is cited by the Court in the Third Lien Order. (*See, e.g.*, Third Lien Order at 18-22.)

Finally, the assertion that only simple acts remained to be addressed is belied by Vannah's statements, acts, and emails. Vannah openly admitted he was in deep water and needed Simon to close the case. If Vannah, at $925 dollars an hour, does not feel competent to close out the case, then the work that remained is more than ministerial, just as this Court found.

G. The Viking settlement drafts

The Edgeworths first raised a complaint over the Viking tender of settlement drafts, instead of a certified check, in their first motion for reconsideration, years after the evidentiary hearing. The grievance is repeated in the second motion. (2nd Mot., at 6:12-2.) The picayune criticism would have been better left unraised because it underscores the weakness of the Edgeworths' overall position.

In addition to being untimely, the complaint is nonsensical. Viking tendered settlement drafts in the proper amount which were deposited and cleared. At worst, the Viking drafts can be seen as falling within the ambit of substitute performance - which is normally not a problem at least when the Edgeworths are not involved. The Edgeworths and Vannah did not raise the settlement drafts as an issue years ago, and the settlement drafts should not be an issue to the Edgeworths and their latest counsel today.

IV. Argument

The Edgeworths did not provide an adequate basis for this Court to grant reconsideration of the Third Lien Order. Reconsideration is rarely granted and only when there is considerably different evidence or a clear error. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.3d 486, 489 (1997) (reconsideration may be granted on rare occasion when there is "substantially different evidence … or the decision is clearly erroneous").

The Edgeworths' argument they received inadequate process is unsupported and incorrect. The Edgeworths merely rehash old factual arguments about the inferences to be had from the evidence, they do not present substantially different evidence. Finally, the Edgeworths do not

present a clear error of law in the Third Lien Order. Reconsideration is not warranted.

A. The Edgeworths received due process.

The Edgeworths claim they did not receive due process and are due reconsideration on that basis, because they only had a short time in which to file a reply. (2nd Mot., at 2:27-3:7 & 10:18-19.) The claim is unsupported, and the Edgeworths do not present cogent argument or relevant authority. Hence, the argument can be ignored. *See, Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n.38 (2006). Similarly, the Edgeworths do not provide argument or authority that additional briefing was contemplated or required on remand. (*Ibid.*)

Importantly, the Edgeworths do not present an offer of the reply arguments they were deprived of or explain how a reply would have changed the outcome.

In this case, there were multiple filings and hearings regarding adjudication of the lien. There was a five-day evidentiary hearing and post hearing arguments and motion practice. There was an appeal. The Edgeworths have had more than sufficient notice and a generous opportunity to be heard. *See, e.g., Callie v. Bowling,* 123 Nev. 181, 160

P.3d 878 (2007) (procedural due process is afforded when a party has notice and an opportunity to be heard).

The Edgeworths request for reconsideration based on a lack of due process is without merit.

B. The Edgeworths' latest quantum meruit arguments merely rehash or spin prior arguments and evidence.

The Edgeworths argue they are due reconsideration because the Court made a poor factual decision. The argument does not raise to the level required for a district court to grant reconsideration. *Masonry & Tile Contractors Ass'n of S. Nevada*, 113 Nev. 737, 741, 941 P.3d 486, 489 (reconsideration may be granted on rare occasion when there is "substantially different evidence … or the decision is clearly erroneous").

In support of their request for reconsideration, the Edgeworths argue their latest factual narrative. However, the latest narrative is not based on substantially different evidence, it is based on the latest spin. The Edgeworths do not explain how this Court can ignore its own factual findings which are now law of the case and now find, for example, that Simon "slow walked" the Lange settlement.[1]

[1] At the hearing of 2/20/2018, attorney Teddy Parker explained how adding Vannah to the mix caused some extra steps and delay. (Ex. 9.)

The Edgeworths' arguments are exposed by their return yet again to the use of *ad hominin* attacks against Simon. Just as the claim of conversion against Simon was frivolous, so too is the claim of extortion. An attorney is due a reasonable fee. NRS 18.015. An attorney may file a lien when there is a fee dispute. NRS 18.015. The use of a lien is not an ethical violation. NRS 18.015(5). An attorney can take steps to protect themselves and/or to secure a reasonable fee for their work. NRS 18.015 & NRPC 1.16(b)(6). The only limit is an attorney cannot seek an unreasonable fee. NRCP 1.5. The expert testimony of Will Kemp stands unrebutted, the fee sought by Simon is reasonable under the market approach. The latest frivolous accusation is simply a continuation of the Edgeworths desire to "punish" Simon.

Here, this Court already found that Simon legitimately used a statutory attorney lien to seek a reasonable fee. This Court already found that Simon's work was exceptional, and the result obtained was impressive. Yet, the Edgeworths frivolously sued Simon for conversion claiming Simon was owed nothing - even though they admitted to already receiving more money than the claim was worth, and that Simon was in fact owed fees and costs. The ill placed trust argument is Simons to use, not the Edgeworths.

The Edgeworths did not present substantially different facts, nor did they demonstrate clear error. There is no basis for reconsideration.

C. The cost award

The Edgeworths protest the cost language in the conclusion of the Third Lien Order as grounds for reconsideration. Yet, the Edgeworths acknowledge that the costs are correctly found as paid on page 18 of the same order. In so doing the Edgeworths establish that there is no undue prejudice. The order's specific and detailed language on page 18 controls over the general language in the conclusion.

D. The Attorney Fee Order

The Attorney Fee Order needs to be re-filed. Although Simon will only seek the amount Clark billed in any event, Simon has no objection to the correction of the amount of costs related to Clark's fees, $2,520.00.

VI. Conclusion

The motion for reconsideration is without merit. Simon requests the motion be denied and the Edgeworths sanctioned for needlessly extending this case.

COUNTER MOTION TO ADJUDICATE LIEN ON REMAND/RECONSIDERATION

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.

Simon moves for adjudication of the lien/reconsideration regarding the calculation of the quantum meruit fee award per the remand instructions and the *Brunzell* factors as stated in the attached declaration of Will Kemp.

II. The Court may Reconsider the Quantum Meruit Award on a Claim of Clear Legal Error.

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. (Third Lien Order at 9:1-9 & 12:16-17.)

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. (Third Lien Order at 14:26-15:3.)

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.)

(Third Lien Order at 18:5-6.) 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. The conflict with established law creates clear error

needed under *Masonry & Tile Contractors Ass'n of S. Nevada,* 113 Nev. 737, 741, 941 P.3d 486, 489, for reconsideration. 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, before funds were paid and before Simon was paid for work dating from September 19, 2017. Therefore, the implied fee contract had been repudiated and was not enforceable when the lien was adjudicated, and the amount Simon should be paid from September 19 is not controlled by the repudiated implied contract.

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 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[2], 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.

Mr. Kemp has provided a declaration in which he reviewed his unrebutted opinion in the light of the Supreme Court orders. (Ex. 10) Mr. Kemp responded to the Supreme Court's instructions and explained how

[2] The Edgeworths also rely upon the prevailing market rate as a metric for quantum meruit, although they misapply the standard. 1st Mot., at 21:10-21.

his opinion is in agreement. Mr. Kemp also reviewed the *Brunzell* factors and concluded 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.

III. Conclusion

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 May 2021.

/s/ James R. Christensen

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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 May 2021, to all parties currently shown on the Court's E-Service List.

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

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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 EDGEWORTHS' MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING PRODUCTION OF FILE** Hearing date: 5.27.21 Hearing time: 9:30 a.m.
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

I. Preface

Years ago, the Edgeworths tried to wear the mantle of an aggrieved client. The act has worn thin after the finding that the Edgeworths pursued frivolous litigation against Simon was affirmed, after their courtroom admission that they frivolously sued to punish Simon, and after they received a windfall of $4,000,000.00 from Simon's efforts. Unfortunately, the barrage of baseless rhetoric from the Edgeworths continues as they throw whatever they can think up against the wall in their unending search for a *post hoc* excuse for their sanctioned conduct.

II. Introduction

The Edgeworths seek what they term as the "***complete***" (emphasis in original) file pursuant to NRS 7.055(2). The problem for the Edgeworths is that NRS 7.055 does not apply on its face because Simon has not yet been paid. NRS 7.055(1). That said, in 2020 Simon voluntarily provided as much of the file as could be agreed upon in the face of the binding non-disclosure agreement (NDA), and other practical and legal concerns.

The Edgeworths did not raise the file issue after deliberate and collaborative discussion in 2020 or 2021. Instead, in their rush to create another dispute, new Edgeworth counsel made direct contact with Simon in

an express violation of NRPC 4.2[1] (Mot., at Ex. C,), and insisted on an immediate response to their demands - without any demonstration of what the rush was all about or how undue prejudice could result if their latest demands were not complied with immediately.

Simon is willing to act collaboratively on file transfer, but the Edgeworths need to recognize there are legal and practical issues at play. For example, things might go smoother if the Edgeworths and counsel would sign Exhibit A to the NDA, as requested in 2020, *and* provide a rationale on how disclosure today would comply with the NDA. The fact that they refused to sign in 2020, and now act as if there is no NDA (Mot., at 4:18-19) establishes that Simon was right to be concerned. After all, as things stand now, Simon is on the hook under the NDA if the Edgeworths or their agents violate the NDA.

In their second motion to release funds from the trust account the Edgeworths try to avoid the reality that Simon has filed a counter motion and that the money held in trust continues to be in dispute. The Simon position is not unreasonable, it is supported by the pleadings, sound

[1] NRPC 4.2 does not have an efficiency exception. *Compare*, NRPC 4.2 with Declaration of Solis-Rainey at ¶7.

argument and by expert Will Kemp. Simon's position may not be cavalierly dismissed out of hand.

As to the transfer of the trust account, Simon has already stated that he has no objection to transfer if the Edgeworths state that they will abandon any claim of prejudice that can result from the fact they will no longer earn interest on the money held in trust and that they agree counsel will not release any money that is in dispute. Simon, through counsel, continues to work on this issue, though admittedly not at the speed demanded by new Edgeworth counsel.

III. The File

The Edgeworths ask this court to order Simon to produce the complete file pursuant to NRS 7.055. NRS 7.055(1) states:

> 1. An attorney who has been discharged by his or her client shall, ***upon demand and payment of the fee due from the client***, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client. (Emphasis added.)

In the motion seeking the file, the Edgeworths admit Simon has not been paid and that certain sums continue to be disputed by the Edgeworths. Accordingly NRS 7.055 does not apply on its face.

Even though the law is solidly on Simon's side and Simon can assert a retaining lien over the complete file, Simon has cooperated to the extent possible. For example, Simon provided tangible items to Vannah when asked in 2019. (Mot., at Ex. F.)

In May of 2020 when a different Edgeworth counsel requested the file under NRS 7.055, Simon promptly provided the NDA. (Mot., at G.) Although the NDA was attached to the email found at Exhibit G to the motion, it was not attached as an exhibit to the motion. The NDA is attached hereto at Exhibit 1.

The NDA is quite restrictive. Under §7 of the NDA confidential information may only be viewed by a limited pool of people, for limited reasons. (Ex. 1, at 9-10.) To view confidential information per §7 of the NDA, a person must sign an "Acknowledgement and Agreement to be Bound" attached to the NDA as Exhibit A. (*Ibid*.) Even counsel must sign. (*See, e.g*., Ex. 1, at 10:5-11.) The NDA survives the final disposition of the case per §13 of the NDA. (Ex. 1, at 13-14.)

Instead of simply signing Exhibit A, the Edgeworths cherry pick and highlight selected lines from emails sent in the spring of 2020. For example, Simon agreed to deposit confidential items with the court *if a*

motion was filed per 7.055(3). (*Compare*, Ex. 2 at page 7 of the email string ending May 27, & Mot., at 3:22-24.)

Also, and more importantly, the Edgeworths completely ignore the impact of the limiting language contained in §7 of the NDA which states that the confidential material may only be provided to those:

> "***to whom disclosure is reasonably necessary for this litigation*** and who have signed the "Acknowledgement and Agreement to be Bound" (Exhibit A)." (Ex. 1 at 10.) (Emphasis added.)

The case against Viking and Lange is over, thus there can be no disclosure which is "reasonably necessary for the litigation". The fact the litigation is done which makes disclosure impossible under the NDA. The Edgeworths did not justify their demand considering the limiting language of the NDA.

There is also a practical issue. Seemingly, the Edgeworths are demanding production of every attachment to every email sent, no matter whether the attachment occurs multiple times in a string, if the same attachment was sent multiple times in different emails, or if the attachment was already provided. The request harkens back to the first Edgeworth motion for reconsideration in which the Edgeworths frivolously argued that a stipulation had been intentionally withheld, when in fact the stipulation had been signed by the court, was filed, and was a matter of public record. (1st Mot. Recon., at 11:16-13:13 & Opp., at 12:6-14:9.) Simon does not

believe there is any rule that requires production of multiple copies of file documents, and the Edgeworths did not provide any authority that a document must be copied and produced multiple times. That said, Simon offered to work with new counsel if there was a specific email or area of concern (Mot., at Ex. J), instead of taking a collaborative approach a motion was filed.

The disorganized and indecipherable claim is new. (Declaration of counsel.) Further, the claim is vague and unsupported. Again, if a specific question or area is identified, Simon is willing to work with any reasonable request. At the current time, the Edgeworths have not disclosed with any specificity how they believe the file is not complete (other than the materials covered by the NDA). In fact, the declaration attached to the motion states that the claim of incompleteness is based only on information and belief. (Declaration of Ms. Solis-Rainey at ¶5 & 6.) Simon is willing to work with new counsel, however, Simon is not able to guess at what counsel believes is indecipherable, engage in make work by copying the same document many times, or waste further time and money simply because the Edgeworths are disgruntled with the $4 million dollars they have received to date.

The "Finger for Edgeworth" comment is childish. Finger is another slang term for a drive, just as "thumb" is. In fact, you can buy "finger" drives on Amazon, shaped like index fingers. The finger file contains a list of items on the drive sent to the Edgeworths.

The Edgeworths cannot prevail under NRS 7.055 and their motion must be denied. However, Simon will continue to attempt to work with the Edgeworths and will respond to any reasonable request.

IV. Disputed Funds must be Held in Trust

Disputed funds must be held in trust. NRPC 1.15(e) states:

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

The funds held in trust are in dispute. (Opp. & Countermotion to the 2nd Mot. for Reconsideration.) Simon's position will not be restated here for brevity's sake. It is enough to state that Simon's position is well based under the law, the pleadings, and the opinion of expert Will Kemp. Regardless, Simon will not dispute that the specific amount subject to withholding is the face amount of the lien. If there is an overage it can be withdrawn.

The funds remain in dispute until the dispute ends with a final order after the time to appeal has run. Normally this is not a difficult concept. The Edgeworths have not provided this court with a legal basis upon which it can order disbursal of contested funds. Therefore, the motion must be denied.

It appears the Edgeworths have finally dropped their fight against the sanction imposed upon them for frivolously suing Simon. However, the sanction money is different from the disputed money held in trust and does not impact this motion.

V. Trust Transfer

As Judge Allen Earl used to comment, “the devil is in the details”. Simon does not have an objection in principle to moving the money to movants’ trust account. However, Simon does object to the notion that the Edgeworths have a right to immediately force a reversal of their own trust agreement without some thought and discussion.

The motion must be denied, the Edgeworths have not provided a legal basis upon which this court can order that the agreement between the parties to deposit disputed money into a joint bank account can be set aside on their say so alone. The parties entered into a bilateral agreement

regarding disposition of the trust money, a unilateral demand to end the agreement is not legally enforceable.

VI. Conclusion

NRS 7.055 does not apply thus the motion must be denied. Simon is willing to cooperate on production of the file, but will not violate an NDA, nor will Simon waste time on make work.

Disputed funds must be held in trust. The Edgeworths did not provide authority upon which this court could order early disbursement of funds held in dispute. Further, there is no undue prejudice because the disputed funds are earning interest. Lastly, if the Edgeworths do not file another appeal, then the end of the trust is in sight anyway.

There is no legal ground upon which this court can repudiate the bilateral agreement to hold the disputed money in an interest-bearing account at the bank; therefore, the motion must be denied. Nevertheless, there is no general objection to a transfer of the trust, even if there is no

rational reason to do so. When the details are agreed upon and a new bilateral agreement is reached, the transfer will occur.

DATED this 20th day of May 2021.

/s/ James R. Christensen

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CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing Opposition to Motion for Release of Funds and Production of File was made by electronic service (via Odyssey) this 20th day of May 2021, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen
an employee of

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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 **Hearing Date: 5/27/21** **Hearing Time: 9:30 A.M.**
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, v. DANIEL S. SIMON, AT AL., Defendants.	Case No: A-18-767242-C Dept. No. X **REPLY ISO PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF 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**

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INTRODUCTION

Reconsideration is Appropriate Because the Court did not Follow the Supreme Court's Mandate in Issuing its Third Lien Order.

The Third Lien Order does not adhere to the Supreme Court's mandate on remand and therefore 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). This case was remanded to this Court for the sole purpose of entering "further findings regarding the basis of the [quantum meruit] award." Sup. Ct. Order at 10. This limited purpose is explained on pages 3 - 5 of the Supreme Court's decision. The Supreme Court ***affirmed*** this Court's finding that "the Edgeworths ***constructively discharged Simon on November 29***." *Id.* at 4 (emphasis added). The Supreme Court also affirmed that Simon "was entitled to ***quantum meruit for work done after the constructive discharge***." *id.* (emphasis added), but declared that the Court "failed to make findings" regarding the post-discharge work on or after November 30. The Supreme Court acknowledged that Simon's "super bill" was evidence "that Simon and his associates performed work after the constructive discharge," *id.* at 5, but said the Court erred by not describing how that work was used to come up with a quantum meruit fee of $200,000 or how the fee would be reasonable for work done post-discharge, which at Simon's "court-approved" rate of $550 per hour that he used to bill the Edgeworths *pre*-discharge would amount to less than $34,000.

Rather than address this substantive issue raised in the Edgeworths' motion, Simon has merely cut and pasted the same arguments he previously

made in his April 13 Opposition and Countermotion, which the Court considered and ***rejected*** in issuing its April 19 Third Lien Order.[1]

Simon's discharge on November 29 is established as a matter of law, irrespective of what the parties may have contended prior to the Court establishing this finding, and the Supreme Court' subsequent affirmance The Edgeworths' subjective intent or beliefs imagined by Simon in his opposition are of no consequence and do not bear on this motion for reconsideration. Simon's request for sanctions on the Edgeworths based on a "change of position" that acknowledges and accepts the discharge date as November 29 (Opp'n at 8-9) is therefore frivolous.

Simon's Opposition is Not Faithful to the Supreme Court's Mandate and Addresses False Issues that are Outside the Scope of Remand

A. The Supreme Court Did Not Cause the "Remittitur" Confusion.

Simon mistakenly attempts to apply the "Notice in Lieu of Remittitur" issued in his writ petition case (Case No. 79821), as applicable to the two consolidated appeals that remained pending in the Supreme Court until remittitur issued on April 12, 2021. Opp'n at 2; *compare* Ex. MM, Excerpts of Docket for Writ Petition (NSC 79821) (attached hereto) *with* Ex. NN, Excerpts of Docket for Appeal (NSC 77678); (attached hereto) and Ex. OO, Excerpts of Docket for Appeal (NSC 77176); (attached hereto) *see also* Ex. PP, Notice in Lieu of Remittitur in Writ Petition (attached hereto) in an infirm attempt to reopen and enlarge the *quantum meruit* period this Court has established and the Supreme Court has affirmed.

---

[1] The identical order referenced as the April 19, 2001 Amended Lien Order in the motion and this reply was filed in the consolidated case, A-16-738444-C, on April 28, 2021. For the sake of clarity, this motion is directed to the substance of that Order, entered both on April 19 and April 28, 2021.

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He argues that meritless proposition from the irrelevant fact that the Supreme Court allowed the Edgeworths to petition for rehearing without informing this court that it was doing so. Opp'n at 2. But because jurisdiction of this case had not yet been returned to the District Court, there was no reason for the Supreme Court to inform the Court of its decision to entertain the Edgeworths' petition for rehearing. NRAP 41(a)(1). Thus, this makes Simon's entire timeline on page 3 of his opposition meaningless due to his sleight-of-hand attempt to apply the notice in lieu of remittitur issued in his writ case to the other pending cases (which includes this case) in the Supreme Court. It is uncontroverted that ***in this case***, remittitur issued on April 12, 2021, and was received by the District Court on April 13, 2021. Ex QQ, Remittitur, (attached hereto) *see also* Opp'n at 3. The District Court was therefore without jurisdiction until that date.

B. Simon's Opposition Does not Address the Basis for Reconsideration.

Just as he is mistaken about the jurisdiction issue he argues, Simon is also mistaken about the basis for reconsideration presented by the Edgeworths. Simon concedes the Attorney Fee Order should be reissued and corrected (Opp'n at 6). For this reason, a proposed order is attached hereto as Exhibit SS and will be electronically submitted to the Court.

1. *Cutting Off the Edgeworths' Reply Before the Third Lien Order Was Issued is Not the Basis for Reconsideration of the Third Order.*

The Edgeworths at no time have asserted that "they are due reconsideration because they were deprived of 'the right to reply' in support of their first motion for reconsideration." Opp'n at 4. Nor have the Edgeworths suggested that "motion practice is required before the Court acts on the remand instructions." *Id.* The Edgeworths merely stated a fact, that since briefing was ongoing and no reason to truncate it existed, their right to reply in support of their earlier motion, as the local rules allow, should not have been denied. EDCR 2.20(g).

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2. This Motion for Reconsideration Does Not Seek to Correct Errors of Fact.

Likewise, Simon's contention that reconsideration is being sought based "on a disagreement over the facts" is also wholly mistaken. Opp'n at 5. The Court has discretion to determine the reasonable value of fees awarded under a *quantum meruit* theory but, as the Supreme Court pointed out, that discretion is not unlimited; the Court must explain the basis and reasonableness of the award. The Supreme Court said:

> [w]e agree with the Edgeworths that the district court abused its discretion in awarding $200,000 in quantum meruit without making findings regarding the work Simon performed after the constructive discharge.

Sup. Ct. Order at 4.

Simon does not want to be bound by the work he described in his "super bill" previously submitted to the Court. He wishes to avoid discussion of the work he says he performed after the constructive discharge period. *See, e.g.* Sup. Ct. Order at 5 (recognizing that "[a]lthough there is evidence in the record that Simon and his associates performed work after the constructive discharge, the district court did not explain how it used that evidence to calculate that award.").

3. Scrivner Errors Are Appropriately Addressed on Reconsideration.

Simon faults the Edgeworths' request that the Court correct what they presumed was a clerical error in adding previously paid costs into the final award. Simon acknowledges that the costs were paid, but contends that having them added into a judgment is of no moment, because he *would never seek to collect* on that portion of the judgment. Respectfully, given the nature of this case and the over three years of contentious litigation the Edgeworths have endured to resolve the amount Simon is owed, they cannot be faulted

for seeking clarity from the Court instead of trusting Simon's word about what he will or will not attempt to collect.

C. The Opposition Presents Issues Not Before the Court and Does Not Give Effect to Simon's Testimony to this Court.

Simon's cut-and-paste job in this opposition from his earlier opposition for reconsideration of the Second Lien order is also evident by the fact his brief includes issues not even raised in the pending motion for reconsideration, such as the alleged "description of the November 17 meeting," Opp'n at 9, which the instant motion did not even mention. The November 21 email he brings up was obtained from counsel in the underlying defect litigation and was, in fact, part of the court record in the March 30, 2021 motion for reconsideration. While Simon glibly contends the email supports him because he "agrees that Viking was aware confidentiality was an issue," he conveniently side steps addressing how Viking could have been aware of confidentiality being an issue unless drafts were circulated to Simon **prior to** the November 21 exchange.

The Court should also dismiss as disingenuous the Opposition's attempt to disavow or substantially recharacterize Simon's plain testimony in Court. His plain unqualified testimony establishes that all negotiations with Viking **were complete** on November 27. Mot. at 12:21-22. In response to direct questions from the Court, Simon testified the Viking Settlement Agreement was substantively finished ***before*** November 30:

> SIMON: Yeah . . . I get back on . . . 11/27.
>
> . . . .
>
> COURT: And you got the release on 11/27?
>
> SIMON: Right in that range, yeah. It was – it was before I got the Letter of Direction, and I was out of the case.
>
> . . . .

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> SIMON: . . . So right when I get back there was probably the, you know, proposed release. And so, I went over to the office with Mr. Henriod, who was Viking counsel, and I have a great relationship with him, and we basically just hammered out the terms of the release right there. And then I was done, I was out of it.
>
> THE COURT: Okay, but you hammered out the terms of the release of that final agreement?
>
> SIMON: Before I was fired, yeah.
>
> THE COURT: Okay, so this is before 11-30?
>
> SIMON: Yes.

Ex. GG to 5/3/21 Mot. for Recon. at 15-17.

Simon's testimony on day 3 also confirms beyond reasonable doubt that all terms of the Viking Settlement had been negotiated and were known to him **before** he sent his new fee demand to the Edgeworths on November 27, 2017:

> THE COURT: Yeah, Thanksgiving would have been the 23rd, so that following Monday the 27th.
>
> THE WITNESS: Okay, So when I got back from that, obviously I went – hard to work on all aspects of the Edgeworth case. I was, you know, negotiating that (Confidentiality Clause) out, and **THEN** obviously preparing my letter and the proposed retainer that I sent to them [Edgeworths] attached to the letter.
>
> THE COURT: But when you are negotiating the removal of the confidentiality agreement in the Viking Settlement, you have no—had you been made aware of that point that they [Edgeworths] had spoken with Mr. Vannah's office.
>
> WITNESS: No.
>
> Transcript: 218: 8-13; 219: 4-8

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Ex. TT (Day 3 of Evidentiary Hearing, August 29, 2018). (Attached hereto)

These excerpts of Simon's sworn testimony show that he was untruthful when he sent the Edgeworths his new-fee letter on November 27 **and** represented to them that "[t]here is also a lot of work left to be done." He was done negotiating settlement with Viking at that time.

That Simon now finds this sworn testimony inconvenient because it does not support his claim that he is due $200,000, or more, for his non-substantive work **post** November 29, once he knew that the Edgeworths had retained Vannah, which confirms that his relationship with the Edgeworths had broken down and that Vannah would take over. This is no reason to permit Simon to rewrite history to exclude his testimony. Opp'n at 10. Furthermore, his testimony that all terms were negotiated by November 27, and that the agreement was not ultimately signed until December 1 is consistent with the Edgeworths' contention that Simon was slow-walking the final settlement agreement while he tried to coerce the Edgeworths to sign the fee agreement he prepared seeking a fee much higher than the fee he had negotiated with the Edgeworths and been paid. It is also consistent with Finding of Fact #13,[2] and with the statements in the motion (Mot. at 12).

1. *The Opposition Asks this Court to Disregard Established Facts for Which Simon is Responsible.*

Likewise, the fact the principal terms of the Lange Plumbing settlement were final by November 30 is established by Simon's own hand. Ex. EE to 5/3/21 Mot. for Recon. The only revisionist here is Simon. While

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[2] Simon's opposition misquotes the Court's actual finding, which says "On the evening of November 15, 2017, the Edgeworth's received the first settlement offer for their claims against the Viking Corporation ("Viking") Finding of Fact 13. However, the claims were not settled until ***on or about*** December 1, 2017)" Third Am. Lien order at 4. It does not say "on or after" as Simon says. Opp'n at 10.

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complex litigation may take time, memorializing an agreement reached does not. The fact the Lange agreement signed in February still contains the December dates is proof that **very little** remained to be done after November 30. Furthermore, Simon's contention he "was being frivolously sued by his former clients," Opp'n at 11, ignores the fact the initial suit against him was not even filed until January 8, 2018, long ***after*** the Lange settlement agreement should have been finalized.

Simon would also have the District Court disregard the "super bill" he painstakingly created in 2018 from his own records; which demonstrate that little, if any, substantive work remained for him to do, especially since he acknowledges it was Vannah and not Simon that advised the clients on the settlements after November 29. *See* Ex. JJ, KK, and LL to 5/3/21 Mot. for Recon.; *see also* Ex. RR, *(attached hereto)* Excerpt 08-27-17 Hrg. Tr. at 75-76.

The Supreme Court recognized Simon submitted this evidence of work performed after the discharge period, but found that valuing it at $200,000 was an abuse of discretion because the District Court "did not explain how it used that evidence to calculate its [quantum meruit] award." Nev. Sup. Ct. Order at 5.

Interestingly, though Simon now disputes that the "super bill" is the only evidence in the record of the work that was done post-discharge, and supports that contention by saying testimony regarding the post-discharge work performed was presented at the evidentiary hearing,[3] he does not point to a single example of work performed beyond that outlined in his "super bill." This calculated omission is likely meant to discourage focus on the extremely limited nature of his post-discharge work.

---

[3] Simon's contention that Vannah did "not feel competent to close out the case" is unsupported, and should not be considered, as is his reference to a finding on that point that he attributes to the Court, but which is not in the Court's order. Opp'n at 12:15-18.

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Likewise, Simon's criticism about the certified checks issue misses the point. The Edgeworths raised this issue as an example of how Simon slow-walked the settlements and confirms that he was offered uncertified checks by Viking on December 12 in time for the checks to clear by the agreed payment date, a fact he did not share with the Edgeworths. Simon cannot (legitimately) now complain that the Edgeworths did not raise this issue earlier. Indeed, had Simon produced the complete case file the Edgeworths requested—instead of stripping the attachments from the December 12, 2017, email he produced to the Edgeworths—they would had have an opportunity to raise the issue earlier.

As to the Lange Plumbing settlement, Simon's reliance on the finding that he "improv[ed] the position of his former clients" misses the point: even if that were true, his work necessarily took place before November 30, when he announced the result of his efforts. Ex. EE to 5/3/21 Mot. for Recon. The District Court made a factual finding that the Edgeworths signed the consent to settle the Lange claim for $100,000 on December 7, 2017. Nov. 19, 2018 Order on NRCP 12(b)(5) Mot. to Dismiss at 5, Finding of Fact #23.

Against the backdrop of these facts, Simon ***now*** wishes to revise and enlarge his role in the finalizing settlements after November 29. Opp'n at 10. But remember, however, when establishing the circumstances of his termination, Simon went to great lengths to show that it was Vannah, not Simon, who was advising the Edgeworths on the Viking and Lange settlements after November 29, 2017. *See e.g.*, Ex. RR at 75-76.

2. *The Record Before the Court Does Not Support Awarding Simon $200,000 for Post-Discharge Work.*

Although Simon would prefer that this Court not distinguish between or closely examine his *pre-* and *post*-discharge work because doing so would expose the lack of substance behind his efforts to exaggerate the value of his post-discharge work, the Supreme Court's mandate requires exactly that.

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The Supreme Court specifically held that the value of Simon's *quantum meruit* award has to be ***reasonable based only on his post-discharge work,*** because he has already been compensated for pre-discharge work under the implied contract found by the District Court. Nev. Sup. Ct. Order at 5 (recognizing the district court failed to "describe the work Simon performed after the constructive discharge" and questioning the District Court's application of the *Brunzell* factors because, "although it stated that it was applying the *Brunzell* factors for work performed only after the constructive discharge, much of the Court's analysis focused on Simon's work throughout the entire litigation."). Any of Simon's negotiations or other efforts that led to an improved position in settling the Lange Plumbing claims necessarily took place before November 30; they cannot be considered when evaluating the reasonableness of his *quantum meruit* award for services **on or after November 30.** *Id.* (stating that the District Court 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." (emphasis added)).

Simon had ample opportunity to memorialize his efforts in his billing, and he elicited exhaustive testimony as to the great lengths his office went to capture all of the time expended into his "super bill," which now is the only evidence in the record of his post-discharge work. Ex. L to 5/13/21 Mot. to Release Funds and Produce Complete Client File. The Court should not now permit Simon to modify and embellish that record with work he failed to memorialize in the billing he offered to the Court. As detailed in the instant motion at 13:16 – 16:12, the nature of the work performed post-discharge is not complex and did not require specialized skills; **at most**, the reasonable value of that work is $34,000.

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D. Simon's Efforts to Enlarge the Quantum Meruit Period Are Contrary to the Supreme Court's Mandate.

Although Simon inappropriately turns to the law of the case doctrine to avoid having the Court consider uncontested evidence that he now deems unhelpful and wishes to jettison, including his own testimony that ***all negotiations on the Viking settlement were complete by November 27,*** Simon now asks the Court to ***disregard*** the law of the case to enlarge the *quantum meruit* period back to September 19, 2017.

That issue, however, has been decided and affirmed by the Supreme Court and is binding on Simon and this Court. Absent an extraordinary showing that following the law of the case and honoring the Supreme Court's mandate would result in a catastrophic manifest injustice, the issues raised by Simon cannot be relitigated. *Hsu v. County of Clark*, 123 Nev. 625, 631, 173 P.3d 724, 729 (2007).

Here, Simon offers no legally sound basis for this Court to indulge him to revise history to serve only himself. His argument is based only on the same revised opinion of Will Kemp submitted with his April 13, 2021 opposition, which the Court has already considered and rejected in issuing its Third Lien Order. The Supreme Court's decision conclusively sets the boundaries for the *quantum meruit* period. It affirmed the District Court's finding that Simon was discharged on November 29, 2017, and that he was entitled to the reasonable value of his services from November 30 forward. Nev. Sup. Ct. Order at 3-4. The *quantum meruit* period has been conclusively decided and is now closed.

E. Conclusion

For the foregoing reasons, as well as those set forth in the Motion, the Edgeworths respectfully ask that the Court reconsider its Third Lien Order and, consistent with the Supreme Court's mandate, describe the work Simon performed *post*-discharge that is the basis for its award, and analyze how

$200,000 could be considered reasonable under the *Brunzell* factors or otherwise, given that Simon's own testimony shows he was not truthful in describing when and what he did to the Edgeworths, in a self-serving effort to put pressure on them for more money. Under these circumstances, the Edgeworths respectfully submit that Simon's own valuation of his *quantum meruit* time at $34,000 would be more than generous for his minimal *post*-discharge services.

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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: REPLY ISO PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF 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 20th day of May, 2021.

By: /s/ TRACI K. BAEZ
An employee of Morris Law Group

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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 HEARING DATE: 5/27/21 HEARING TIME: 9:30 AM
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, v. DANIEL S. SIMON, AT AL., Defendants.	Case No: A-18-767242-C Dept. No. X **EDGEWORTHS' REPLY IN SUPPORT OF MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE** **HEARING REQUESTED**

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INTRODUCTION

Simon's Tactics to Delay and Increase the Burden and Expense of Litigation

Simon's Opposition gives with one hand what it takes with the other. On the one hand, Simon acknowledges he "agreed" to transfer the funds into the Morris Law Group Trust Account yet has done nothing to effectuate it. Now, he questions even the Court's authority to change the "bilateral" agreement for deposit of the subject funds that Simon strong-armed his clients into, despite previously telling another district court (former Judge Jim Crockett) that the funds were being held ***on order of the Court*** (*see* Ex. M to Motion for Order to Release Funds/File. Rather than address the unreasonableness of maintaining that position given the changed nature of the dispute and the completed appellate proceedings, Simon relies on the obsolete initial dispute, without offering any authority to support not transferring the funds in trust, as he recently agreed to do.

With respect to the Edgeworths' case file, Simon again obfuscates rather than offer a solution, which is simple: produce the Edgeworths' file as Nevada law requires since adequate security is in place. Ordering production of the file is well within this Court's authority. Given Simon's tactics of avoiding his legal obligations, it is no wonder this litigation is now going into its fourth year.

A. THE CLIENTS' FUNDS SHOULD NOT BE IN SIMON'S CONTROL

It is ironic that Simon now questions the Court's authority to permit the transfer of funds because transfer would change what Simon calls the "bilateral agreement" between the parties. Opp'n at 9:22-26. This is especially true since Simon has been reporting to another district court that "***the Court ordered that the money should not be distributed*** pending *appeal*."

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See Ex. M to Motion, Excerpts of Simon's Opp'n to Edgeworths' Special Mot. to Dismiss in Case No. A-19-807433-C at 11:20-21 (emphasis added); *id* at 27:22-23 (". . . Judge Jones ***ordered the funds remain in the account***" (emphasis added)); *see also* Ex. N, Excerpts of Simon's Opp'n to Vannah's NRCP 12(b)(5) Mot. to Dismiss at 13:9-10 ("***Simon is following the District Court order*** to keep the disputed funds safe . . ."). The "bilateral" agreement that Simon is presumably referring to is the joint Special Trust Account established when he fought to have some control over the "disputed funds." Simon does not have a duty to "protect funds" as he thoughtlessly claims: the "disputed funds" would have been just as secure in Vannah's Trust Account, and Simon's interests would have been adequately protected, but he would not agree to that, and the Special Trust Account was established to disburse funds that are in excess of the amount needed to secure his lien.

Despite expressing a willingness to work "collaboratively," Simon has declined to work with the Edgeworths' counsel, as demonstrated below:

May 3	Request to transfer funds and release uncontested portions.	Ex. C to Motion to Release Funds/File.
May 4	Telephone discussion, explained "rush" was to get the matter before the court if agreement still could not be reached.	Solis-Rainey Decl. ISO Motion at ¶ 7
May 4	Edgeworths' counsel agreed to wait till end of week for response	*See* Ex. Q
May 11	Follow-up request sent to counsel.	Ex. O to Motion
May 13	Edgeworths' Motion re Release of Funds/File filed	
May 13	***After*** motion filed, letter from Simon's counsel received saying "he did not see a fundamental problem with moving contested	Attached hereto as Ex. Q.

	funds . . . " and would "contact [Edgeworths' counsel] next week on the issue."	
May 13	Response to Simon, confirming all bank needed for transfer was signed letter authorizing it.	Attached hereto as Ex. R
May 18	Follow-up email sent to Simon's counsel with sample letter that would satisfy bank	Attached hereto as Ex. S

To date, nearly three weeks after Morris Law Group's initial request, Simon has not responded with the letter that would enable transfer of the trust funds. And although he flippantly says "if there is an overage it can be withdrawn," (Opp'n at 8:26-27) the reality is that given his delays and positing a false issue about the Court's authority over the account, it is unlikely anything can be done with the account until the Court orders him to transfer it so disputed funds can be maintained in the Morris Law Group Trust Account. The rest can be disbursed to the Edgeworths. This is not an issue of protecting funds for his lien security: rather, Simon is just trying to force the Edgeworths to pay him what he wants and give up their appeal rights in this case **and** in the pending defamation case Simon filed that is not before this Court. The Court should not permit him to hold the Edgeworths' funds hostage any longer.

Simon's suggestion that the Court is without authority to resolve a dispute about the "bilateral" agreement is meritless. Opp'n at 9:22-26. Courts resolve such disputes daily; they are often required to adjudicate competing claims about the meaning and scope of "bilateral agreements."

B. THE ENTIRE CLIENT FILE MUST BE RELEASED

1. Simon's "Retaining Lien" Does Not Immunize Him From Producing the Edgeworths' Complete Case File.

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Judicial intervention is needed now to stop Simon's ever-increasing gamesmanship with the Edgeworths' client file. Having presumably abandoned his earlier claim that NRS 7.055 did not apply because he was not a "discharged" lawyer, Simon is back to contending it does not apply because he hasn't been paid. But Simon is more than adequately secured, and that is all Nevada law requires. *Morse v. Eighth Judicial District Court*, 65 Nev. 275, 291, 195 P.2d 199, 206–07 (1948) (recognizing that "a district court should have no trouble in fixing a proper amount for bond or other security and in passing on the sufficiency thereof.") ; *Figliuzzi v. Eighth Judicial Dist.*, 111 Nev. 338, 343, 890 P.2d 798, 801 (1995) (recognizing "substitute payment or security" satisfies statute (citing *Morse*)).

2. The Non-Disclosure Agreement Does Not Excuse Production of the File.

Simon should not be permitted to wield the non-disclosure agreement (NDA) as a sword. The protective order, which has the NDA, as is typical, was an agreement between "Plaintiffs on the one hand, and Viking Defendants and Lange . . . to prevent the unnecessary disclosure or dissemination of such confidential, proprietary, or trade secret information." NDA at 3. The Edgeworth entities are the "Parties" referenced, and are bound by it. That issue was raised by Simon's counsel in 2020 and resolved. Simon signed the NDA only as counsel to the Edgeworths. NDA at 14. The NDA itself contemplates that a Court may be called upon for documents subject to the NDA, and provides for notice to the other parties, which Simon has given. *See* Ex. 2, 5/22/20 at 9:40 a.m. Email from K. Works to Patricia Lee.

Another evasive shift in Simon's NDA argument: in 2020 Simon claimed that the "confidential" documents had **not** been destroyed as provided in the NDA because issues remained open and thus the file was

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not closed. Ex. 2; 5/27/20 12:57 p.m. Email from P. Christiansen to P. Lee. Now, in this Opposition he nonsensically suggests that portions of the file could never be turned over because "case against Viking and Lange is over, ***thus there can be no disclosure . . .***" Opp'n at 6:11-12. More importantly, this shifting line of argument is an excuse for acting irresponsibly, as is evident from the fact the Edgeworths confirmed to Simon's counsel that they were not looking for confidential Viking or Lange Plumbing data. Motion Ex. O, at 1 ("the Edgeworths are not seeking tax returns or proprietary company information from Viking or Lange, though I do believe it should be preserved"). The NDA and the concept of confidentiality simply do not provide immunity for Simon to avoid the full production required by NRS 7.055.

3. The Alleged Burden of Production is of Simon's Own Making and Does Not Excuse his Legal Duty to Produce the File.

The "burden" excuse offered by Simon should be rejected. Simon claimed that he had already produced all email in the case for which his firm billed. Mot. to Release Funds/File at 5; Ex. O to same at 197. And as pointed out in the exchanges with his counsel, producing complete emails is much easier than attempting to de-duplicate them manually. Since Simon has already gone through all the emails, all he has to do is place the remaining .pst files onto a hard drive. NRS 7.055 does not allow a lawyer to choose which portions of the file he must produce merely because the file was maintained in a way that now makes it inconvenient for the lawyer to produce it.

4. Simon's Other Excuses are also Wrong

As to his other excuses, Simon is flat wrong. Simon says that beyond the NDA issue, the Edgeworths "have not disclosed with any specificity how they believe the file is not complete." Opp'n at 13; *but see*, Ex. I to Mot. to

Release Funds/File (providing a non-exhaustive list of missing items); and Ex. O (providing the clarification requested by Simon's counsel as to the file).

Simon's attempt to analogize the "Finger for Edgeworth" folder to a thumb drive is interesting, but unhelpful because the file was not produced on a thumb drive, or a "finger drive," but rather on a portable hard drive. The content of that folder is also ***not*** included on the "list of items on the drive sent to the Edgeworths." See Ex. T (snapshot of "Finger for Edgeworth" folder content).

Simon's opposition now says that "Simon agreed to deposit confidential items with the court *if* a motion was filed per 7.055(3)." Opp'n at 5 – 6. In support of that statement, Simon relies on an older portion of an email thread where one of Pete Christiansen's colleagues said that, instead of the later email in the thread where Mr. Christiansen abandons that limitation. *Compare* 5/22/20 9:40 a.m. email from K. Works to P. Lee; to 5/27/20 2:37 p.m. email from P. Christiansen to P. Lee, both found in Exhibit 2 to Plaintiff's Opposition *(not presented in chronological order).* The May 27 exchanges between Mr. Christiansen and Ms. Lee were the last in that thread and reflected the final agreement, as evidenced by the fact that a portion of the file was produced soon after. *Id.* Simon's claim that emails were cherry-picked is likewise false (Opp'n at 5:34); the email threads concerning the back-and-forth in 2020 were excerpted from his own emails; and Simon's entire exhibits on that point (in the order he offered them previously) were also cited. *See* Mot. to Release Funds/File at 3:23. In fact, Exhibit 2 to Simon's Opposition has the exact emails cited in the Motion, just combined into one exhibit instead of three as Simon presented them previously. The exhibits regarding this issue are also a good example of how

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the files were disorganized and often indecipherable, as the Edgeworths point out in the Motion.

C. CONCLUSION

Simon acknowledges that the Special Trust Account balance is well in excess of his exorbitant lien. That balance cannot be reasonably maintained today in view of the law of the case. He is not entitled to be over-secured. For the reasons set forth in the Motion and in this Reply, the Edgeworths respectfully ask that the Court enter an order requiring the transfer of the disputed settlement funds to the Morris Law Group trust account, to be held pending further order of the Court concerning distribution. Simon has not presented any credible reason as to why he should be permitted to hold funds that are in excess of what is necessary to secure his lien until the Court rules on the amount of the lien, as the Supreme Court has mandated.

The file requested by his former clients, who have been asking for the complete file since November 2017, should be produced now.

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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: **EDGEWORTHS' REPLY IN SUPPORT OF MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE**

DATED this 21st day of May, 2021.

By: /s/ TRACI K. BAEZ
An employee of Morris Law Group

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Attorney for Plaintiff
Edgeworth Family Trust and
American Grating, LLC

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 1through 5; and ROE entities 6 through 10,

Defendants

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

SECOND AMENDED DECISION AND ORDER GRANTING IN PART AND DENYING IN PART, SIMON'S MOTION FOR ATTORNEY'S FEES AND COSTS

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 MENDED 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

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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 .

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. . .

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fees is GRANTED in the amount of $50,000.00 and costs are GRANTED in the amount of $2,520.00.

Dated this 24th day of May, 2021

IT IS SO ORDERED this _____ day of May, 2021.

DISTRICT COURT JUDGE

5AB 94F 90B4 23DA
Tierra Jones
District Court Judge

Approved as to Form:

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
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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 Decision and 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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Eighth Judicial District Court
District of 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

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

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 Number: A-16-738444-C

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

This matter came on for hearing on May 27, 2021, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, James Christensen, Esq. and Peter Christiansen, Esq.; and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Morris Law Group, Steve Morris, Esq. and Rosa Solis-Rainey, Esq. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS** after review:

The Edgeworths' Renewed Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien is DENIED.

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Simon's Countermotion to Adjudicate the Lien on Remand is DENIED.

Dated this 17th day of June, 2021

IT IS SO ORDERED.

DISTRICT COURT JUDGE

478 B49 725D 8E26
Tierra Jones
District Court Judge

Submitted By:

JAMES R. CHRISTENSEN PC

/s/ James R. Christensen
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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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Eighth Judicial District Court
District of 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

DECISION AND ORDER DENYING EDGEWORTH'S MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING PRODUCTION OF COMPLETE FILE

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 Number: A-18-767242-C

DECISION AND ORDER DENYING EDGEWORTH'S MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING PRODUCTION OF COMPLETE FILE

This matter came on for hearing on May 27, 2021, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, James Christensen, Esq. and Peter Christiansen, Esq.; and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Morris Law Group, Steve Morris, Esq. and Rosa Solis-Rainey, Esq. 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 Order Releasing Client funds and Requiring Production of Complete file is DENIED.

The Court finds that the Motion is premature regarding the releasing of client funds, as the litigation in this case is still ongoing at this time because the Court has not issued a final order in this matter and the time for appeal has not run.

The Court further finds and orders that there is a bilateral agreement to hold the disputed funds in an interest-bearing account at the bank and until new details are agreed upon to invalidate said agreement and a new agreement is reached, the

bilateral agreement is controlling and the disputed funds will remain in accordance with the agreement.

The Court further finds that the issue of requiring the production of the complete file is prevented by the Non-Disclosure Agreement (NDA) and the request is DENIED.

IT IS SO ORDERED.

Dated this 17th day of June, 2021

DISTRICT COURT JUDGE

D0B 497 4775 23BB
Tierra Jones
District Court Judge

Submitted By:

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DISTRICT COURT
CLARK COUNTY, NEVADA

Edgeworth Family Trust, Plaintiff(s) vs. Daniel Simon, Defendant(s)	CASE NO: A-18-767242-C DEPT. NO. Department 10

AUTOMATED CERTIFICATE OF SERVICE

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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 EDGEWORTHS' MOTION FOR RECONSIDERATION OF ORDER ON MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, v. DANIEL S. SIMON, AT AL., Defendants.	AND MOTION TO STAY EXECUTION OF JUDGMENTS PENDING APPEAL Case No: A-18-767242-C Dept. No. X HEARING REQUESTED

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Defendants Edgeworth Family Trust and American Grating, LLC (collectively referred to as "Edgeworths") respectfully move this Court for an reconsideration of its order filed on June 17, 2021, notice of entry filed on June 18, 2021, on the Edgeworths' motion for release of funds and for an order requiring production of the Edgeworths' complete client file.

The Edgeworths also move for an order staying execution of the Second Amended Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, entered on May 24, 2021 and the Order Denying Plaintiff's Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien, entered on June 18, 2021. These Motions are based on the papers and pleadings on file, the exhibits referenced herein, and any argument the Court may permit.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER ON MOTION FOR RELEASE OF FUNDS AND MOTION FOR PRODUCTION OF COMPLETE CLIENT FILE AND ENTRY OF ORDER STAYING ENFORCEMENT OF JUDGMENTS PENDING APPEAL

The Court is aware of the facts of this case; thus, they will not be set forth herein, but are incorporated from the underlying motions.

A. LEGAL STANDARDS

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, the Court's Order denying the Edgeworths' request to maintain an amount equal to the full judgment in the undersigned's IOLTA account, disburse uncontested amounts, and release funds in excess of the judgment amounts

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is clearly erroneous, and based on a misapprehension of the facts presented. The Court's Order denying the release of the client's file is also clearly erroneous and should be reconsidered.

In addition, and pursuant to Nev. R. Civ. P. 62, the Edgeworths seek an order expressly staying the judgments entered by the Court in its Second Amended Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, entered on May 24, 2021, resulting in a judgment of $52,520, as well as staying the Order Denying Plaintiff's Renewed Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien, entered on June 18, 2021, resulting in a judgment of $484,982.50 (reconsideration denied June 18, 2021).[1]

B. THE COURT HAS ADJUDICATED THE LIEN AMOUNT AND HAS NO AUTHORITY TO ENCUMBER MORE THAN THE JUDGMENT AMOUNT.

NRS 18.015(6) provides that "a court shall, after 5 days' notice to all interested parties, adjudicate the rights of the attorney, client, or other parties and enforce the lien." This Court has adjudicated Simon's lien, and determined he is entitled to $484,982.50 in attorney fees for the work claimed under the lien. Of this amount, the Court determined $284,982.50 is due under the implied contract, and $200,000 in quantum meruit. There is no legal justification to encumber the Edgeworths' account for amounts in excess of the Court's judgment "because the Court has not issued a final order in this matter and the time for appeal has not run." Order at 2. As

[1] The Third Amended Lien Order, filed on April 19, 2021 (in Case No. A-18-767242-C) and again on April 28, 2021 (in Case No. A-16-738444-C) resulted in a judgment of $556,577.43; however, Simon and the Court have both acknowledged that the costs included in the total ($71,594.93) were paid in 2018 and are no longer owed. *See* Third Am. Lien Order at 18 (Court finds that there are no outstanding costs remaining owed); Nov. 19, 2018 Decision and Order on Motion to Adjudicate Lien at 17:12-13 (*same*). The Court's entry of a judgment for amounts admittedly paid also exceeds its jurisdiction.

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another court recognized in addressing a lien question under NRS 18.015, "adjudication of the lien has obviously happened here. To wit, [the party's] motion to foreclose on the lien has been resolved, judgment on fees has been entered, and collection remedies are available for that judgment." *Guerrero v. Wharton*, Case No. 2:16-cv-01667-GMN-NJK, 2019 WL 4346571 at *2 (Sept. 12, 2019) (Slip Copy).

The same is true in this case. The Court has adjudicated the parties' rights under the lien, and the full judgment amount is secured. There remains nothing more for this Court to do. Should the Edgeworths wish to appeal, enforcement of the judgment can continue unless the Court stays enforcement. Nev. R. Civ. P. 62 provides a stay as a matter of right if a supersedeas bond in the full judgment amount is posted, unless the Court makes findings that a lesser amount is appropriate under the circumstances. *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005). The very purpose of a supersedeas bond is "to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay" pending appeal. *Id.* at 835, 122 P.3d at 1254. Here, Simon is adequately secured. The Court has no authority to require security of nearly four times the judgment amount.

The Court's June 17, 2021 Order gave two reasons for requiring this excessive security: (1) "the Motion is premature"; and (2) "there is a bilateral agreement to hold the disputed funds in an interest-bearing account at the bank . . .". Neither of these reasons is supported by the law.

With respect to the prematurity issue, once the Court adjudicated the lien, which it did in 2018, and again in 2021, the Court's work was complete. *See* Ex. A, Excerpts of Court's Dockets, reflecting judgments totalling

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$609,097.40;[2] *see also Guerrero*, *supra*; NRCP 62 (providing for post-judgment security).

To the extent that the Court's order was based on accepting Simon's argument that the "a bilateral agreement to hold the disputed funds in an interest-bearing account at the bank" controlled by Simon and Vannah, the Edgeworths' former counsel, the Court's order is clearly erroneous, and premised on misapprehended facts. The funds were placed in an interest-bearing account at a bank because of the very lien dispute that the Court has since adjudicated. The account was established because the Edgeworths disputed Simon's claim on the funds under the liens he filed in 2017 and 2018, which the Court has since rejected. The purpose of the account was to secure the funds pending adjudication of the lien, which the Court has done. Since the lien has been adjudicated for a fraction of the amount Simon claimed, there is no legal justification for withholding funds in excess of the adjudicated lien amount. The excess funds should be immediately released to the Edgeworths to use as they wish, including to satisfy the undisputed portions of the judgment ($52,520 on the attorney's fees and costs order) and the undisputed $284,982.50 awarded in the lien order, which this Court entered and the Supreme Court affirmed. The "bilateral agreement" thus has no application to the Court's decision, nor does it justify requiring securing Simon for nearly four times the amount of the judgment simply because his full lien amount has been wrongfully secured for nearly three years.

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[2] The Court may take judicial notice of its docket upon request, or *sua sponte*. *See* NRS 47.150(1) (providing that a court may take judicial notice); *see also,* NRS 47.130(2)(b) (providing that a judicially-noticed fact must be "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned").

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C. THE COURT'S REFUSAL TO COMPEL SIMON TO PRODUCE THE EDGEWORTHS' COMPLETE CLIENT FILE, OR DEPOSIT DISPUTED PORTIONS, IS CLEARLY ERRONEOUS

As to the Court's refusal to compel Simon's production of the Edgeworths file, the Court's decision is erroneous. The Court's role in adjudicating a common law retaining lien claim is to ensure that the lawyer's fees are secured. *Figliuzzi v. Eighth Judicial Dist. Ct.*, 111 Nev. 338, 890 P.2d 798 (1995); *Fredianelli v. Fine Carman Price*, 133 Nev. 586, 589, 402 P.3d 1254, 1256 (2017) (recognizing that pre-2013 cases remain good law with respect to common law retaining liens). Even if the Court believes that the non-disclosure agreement ("NDA") has application at this point, the Edgeworths are parties to the NDA and are bound by it. Thus they, not Simon, would be responsible if they made any unauthorized disclosures. Furthermore, to the extent the Court is denying the Edgeworths the "complete" file because of the NDA (Order at 3), the legislature built the remedy right into the statute. NRS 7.055 provides that if the right to a portion of the file is disputed, that portion should be deposited with the Court. Since adequate security has been in place since 2018, there was no legal basis for the Court to refuse to compel Simon to produce the Edgeworths' complete file or require him to deposit any disputed portions of the file with the Court.

D. MOTION TO STAY ENFORCEMENT OF JUDGMENTS PENDING APPEAL

Pursuant to Nev. R. Civ. P. 62, the Edgeworths move for an order to stay the judgments for $52,520 on the Court's Second Amended Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, entered on May 24, 2021, and for $556,577.43 on its Third Amended Decision and Order on Motion to Adjudicate Lien, entered on June 18, 2021.

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Rule 62(d)(2) provides that "a party is entitled to a stay by providing bond or other security." Judgment was entered by the Court on the two foregoing orders for a total of $609,097.40 (of which Simon and the Court acknowledge only $537,502.50 remains outstanding). The Edgeworths do not dispute the $52,520 award or $284,982.50 of the lien award and have asked the Court to allow them to satisfy these amounts from the settlement funds. Should the Court refuse to reconsider permitting them to pay these undisputed portions from their settlements funds, staying enforcement of the orders pending appeal of that order is appropriate. The purpose of the security is to maintain the status quo, and secure the judgment creditor, Simon, for payment of the judgment if the judgment is affirmed. *Nelson,* 121 Nev. at 835, 122 P.3d at 1254.

The Edgeworths respectfully ask that the Court enter a stay and either (1) allow the Edgeworths to pay the undisputed portions of the judgments, $52,520 on the attorney's fees and costs order and $284,982.50 on the lien order from the settlement proceeds currently on deposit in Morris Law Group's IOLTA account, and deposit of $200,000 with the Court; or (2) deposit of the entire $537,502.50 unpaid judgment amount from the settlement monies currently on deposit in Morris Law Group's IOLTA Account while appeal is pending.

E. CONCLUSION

For the foregoing reasons, the Edgeworths respectfully ask that the Court reconsider its Order compelling the Edgeworths to over-secure Simon and order that security for the Court's judgment be provided, either by:

(1) depositing $537,502.50 from the undisbursed settlement funds into the Court; or

(2) authorizing the Edgeworths to permit Morris Law Group to disburse the undisputed $337,502.50 as described in this

Motion and depositing $200,000 with the Court from the undisbursed settlement proceeds,

and release the Edgeworths' excess funds. The Edgeworths further request that the Court reconsider its order refusing to compel Simon to produce the Edgeworths' entire client file or produce the complete undisputed portion of the file and deposit the claimed "confidential" portions with the Court pursuant to NRS 7.055.

Finally, the Edgeworths request an order staying execution of the judgments pending appeal upon deposit with the Court of the full judgment amount, unless disbursement is permitted as described above.

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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: 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

DATED this 1st day of July, 2021.

By: /s/ CATHY SIMICICH
An employee of Morris Law Group

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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 THE THIRD MOTION TO RECONSIDER** Hearing date: 7.29.21 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

I. Introduction

> The United States Supreme Court has stated repeatedly that fee disputes should not become a "second major litigation." *E.g*., *Kirtsaeng v. John Wiley & Sons, Inc*., ___ U.S. ___, 136 S.Ct. 1979, 1988 (2016) (quoting *Flight Attendants v. Zipes*, 491 U.S. 754, 766 (1989) and *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)).

Guerrero v. Wharton, 2019 WL 4346571 (D. Nev. 9.12.2019). (Attached at Ex. 1.)

On December 30, 2020, the Nevada Supreme Court issued an order of partial affirmance and remand. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129, 2020 WL 7828800 (unpublished)(Nev. 2020). The Edgeworths' are now on their *third* motion for reconsideration following the Supreme Court's order (it is the *fourth* motion for reconsideration if the Edgeworths' petition for rehearing is added to the count). Simon submits the United States Supreme Court is right, three motions for reconsideration are at least two too many.

The Edgeworths' third motion for reconsideration confuses the type of lien at issue, distorts the record, and does not demonstrate an issue on which the court made a clear error of law or other ground for reconsideration. Simon respectfully requests the motion be denied.

The motion for stay of execution may be denied as premature. Simon has not reduced an order to a judgment, thus there is no judgment to stay.

II. Reconsideration Standard

The Edgeworths again seek reconsideration. Reconsideration is not a favored remedy. *See, e.g.*, *Moore v. City of Las Vegas*, 92 Nev. 402, 551 P.2d 244 (1976). Reconsideration by the court should be rare and should occur only when substantially new facts or law are presented. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth*, Ltd., 113 Nev. 737, 741, 941 P.3d 486, 489 (1997) (reconsideration may be granted on rare occasion when there is "substantially different evidence … or the decision is clearly erroneous").

The Edgeworths do not clearly state if they are moving for reconsideration based upon an issue of new fact or an error of law. Instead, the Edgeworths jump directly to the conclusion that the court's order is clearly erroneous. (Mot., at 2:20-3:3.) Regardless, the Edgeworths do not present grounds for reconsideration by introduction of substantially different evidence or by demonstration of a clear error of law.

A. Reconsideration based on an error of law

Examination of the limits of reconsideration based on an alleged error of law reveal that the Edgeworths do not qualify for relief. Reconsideration of a clear error of law is not established by citation to additional case law in support of a previously known legal proposition. *Moore*, 92 Nev. at 405, 551 P.2d 246. Nor is reconsideration a proper vehicle to present a legal proposition that was overlooked by a party which was available when the issue was first considered. *See, e.g., Little Earth of the United Tribes, Inc*., 807 F.2d 1433 (8th Cir. 1986). The standard is higher.

In *Masonry*, reconsideration on a matter of law was found to be proper when a clarification of law occurred after the first decision was made. *Masonry,* 113 Nev. at 741, 941 P.3d at 489. This is consistent with the standards for such related issues as the law of the case and permissible grounds for a petition for rehearing. A clear error of law can also be found when there is a contrary statute. For example, in *Bliss v. Las Vegas Metropolitan Police Dept*., 476 P.3d 860, 2020 WL 6939644 (2020)(unpublished), the court reconsidered an order to return a vehicle with an altered VIN to a purported owner, because NRS 482.542(4)(b) stated the vehicle had to be destroyed.

The Edgeworths do not demonstrate an intervening change in the law, a contrary statute, or other clear error, instead the third motion simply repeats past arguments. The Edgeworths do not meet the threshold for reconsideration based on an alleged error of law.

B. Reconsideration based on new facts

A party must subsequently introduce "substantially different evidence" for a court to reconsider a prior decision based on new facts. *Masonry*, 113 Nev. at 741, 941 P.3d at 489. Merely rearguing the same factual record is not enough. *Gaines v. State*, 130 Nev. 1178, 2014 WL 2466316 (2014) (unpublished)(denial of a motion for reconsideration was affirmed in a criminal case because, "Gaines did not introduce new evidence, instead he pointed to the same set of facts discussed in his original motion to suppress" *Id*., at *3.)

The Edgeworths did not subsequently introduce substantially different evidence, therefore, they do not meet the minimum threshold for reconsideration.

III. There is No Basis to Reconsider the Funds Order

At the last hearing, this Court asked counsel for the Edgeworths about their intent to appeal the adjudication order. The question went to the heart of the (second) request to order release of the disputed funds

held in trust and why the motion to release funds was premature. The direct question did not receive a direct answer.

If there is an appeal, then the Edgeworths will presumably challenge the amount of fees as too high, and Simon may reply with a writ challenging the amount as too low. If so, then the amount of the funds to be disputed, which requires retention of the disputed funds in a trust account. Retention of disputed funds in a trust account is required by NRPC 1.15(e):

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

A fee can be disputed on appeal or on a writ. This case is an example. The motion to disburse is pre-mature and contrary to NRPC 1.15(e).

The third motion for reconsideration essentially argues that as a matter of law the word “adjudication” means the same as “resolution”. The semantic argument fails. The history of this case is a real-life example that adjudication of a lien does not mean a fee dispute has reached resolution.

What is more, the motion for reconsideration is based on a frivolous argument. At page 5 line 22 of the motion, the Edgeworths repeat the falsehood that the lien was wrongfully asserted. The Edgeworths lost on

this argument on adjudication, on appeal, on the petition for rehearing, and on the prior motions for reconsideration. There is no excuse to again rely upon a false, negated argument. Knowingly promoting a negated fact or legal argument is sanctionable.

A. The excessive security argument does not apply.

The Edgeworths argue that Simon has a judgment and that the disputed fee held in trust is an excessive security of that judgment. In so doing, the Edgeworths misstate the record and confuse a retaining lien and a charging lien.

Simon does not have a judgment. The adjudication order is not the same as a judgment. For example, Simon cannot use the adjudication order to levy on the Edgeworths' bank accounts. In making the argument, the Edgeworths again distort the record to suit their perceived needs for the current motion. An attempt to establish a false fact, or by extension a false record, in order to gain advantage in a civil litigation is wrong and is sanctionable. *Estate of Adams by and through Adams v. Fallini*, 132 Nev. 814, 386 P.3d 621 (2016).

Simon asserted a charging lien. A charging lien attaches to the money recovered in the matter placed "in the attorney's hands". NRS 18.015 (1)(a) & 4(a). Simon moved to adjudicate the charging lien that

attaches to the disputed money held in trust. However, while the lien was adjudicated, there is still a continuing dispute over the amount of the adjudication, as evidenced by the post appeal motions and counter motions before this Court - and the potential for an appeal or a writ.

The Edgeworths cite *Guerrero v. Wharton*, 2019 WL 4346571 (D. Nev. 9.12.2019) in support of their argument of an excessive security. The story of *Guerrero* calls for denial of the third motion for reconsideration. Guerrero sued Vince Neal Wharton (the on and off lead vocalist for Motley Crue) for assault. While the action was ongoing, Wharton's first defense attorneys withdrew and asserted a retaining lien over the defense file. The withdrawing defense lawyers then moved to adjudicate their retaining lien and to reduce the retaining lien to judgment. *Ibid*. Following motion practice, the court adjudicated the lien and issued an actual judgment. (Ex. 2.) Following issuance of the money judgment, the court ordered the defense file be turned over to replacement counsel, so the action could proceed.

This case is very different from *Guerrero*. In this case there is an ongoing dispute over the amount of fees owed under a charging lien, a retaining lien was not adjudicated, the underlying case has resolved and there is no judgment. The excessive security argument does not apply and

cannot serve as a basis for reconsideration because the argument was available to the Edgeworths before their first appeal.

B. There is no basis to reconsider the bilateral agreement finding.

The Edgeworths first argue that the factual finding of a bilateral agreement is an error of law in their motion at 4:21-24. On the following page the Edgeworths argue that the court's order is "premised on misapprehended facts". (Mot., at 5:3-7.) Thus, it can be inferred that the Edgeworths acknowledge that the court made a finding of fact regarding the bilateral agreement. However, the Edgeworths did not subsequently introduce substantially different evidence which runs contrary to the factual finding. For that matter, the Edgeworths discussion of what the misapprehended facts are and how the court misapprehended them is vague and conclusory. As such, there is no basis to reconsider the finding.

Regardless, this Court's finding of a bilateral agreement is based on substantial evidence and should not be reconsidered (and further cannot be overturned on appeal). The evidence relied upon was that the trust account was set up by mutual agreement of the parties (*e.g.*, Ex. 3.), and that the Edgeworths' counsel confirmed that disputed funds were to be kept

until “resolution”. (Ex. 4.) In fact, the Edgeworth legal team admitted to the bilateral agreement in statements to the court. (*E.g.*, Ex. 5.)

Also, this Court made a finding on the nature of the agreement and existence of the account in its Order of November 19, 2018, when it dismissed the conversion claim brought against Simon. (11.19.2018. 12(b)(5) Order at 7:6-19.) The Edgeworths did not appeal the court’s factual finding, nor this Court’s denial of their first motion to release funds. Because the Edgeworths did not appeal the finding of a bilateral agreement, they cannot attack the finding now.

It is improper for the Edgeworths to now argue against the existence of the bilateral agreement when the agreement was evidenced by substantial evidence and the statements of Edgeworths counsel, and then found as an undisputed fact in the court’s order. The attempt to rewrite the history of this case is vexatious and calls for a sanction because the attempt improperly extends this litigation and “hinder[s] the timely resolution” of the case. NRS 7.085.

Finally, the request to deposit money with the court is perplexing. In 2017, the Edgeworths rejected a Simon suggestion that money be deposited with the court. (Ex. 3.) Instead, the Edgeworths proposed the interest-bearing trust account at Bank of Nevada, to which Simon

immediately agreed-and the bilateral agreement was formed. No rationale is given for the change of heart, thus, no grounds for reconsideration are presented.

IV. There is No Basis to Reconsider the File Order.

The Edgeworths did not subsequently introduce substantially different evidence regarding the file, nor do the Edgeworths identify a clear error of law. Rather the Edgeworths rely on conclusory statements and their past arguments. The Edgeworths did not clear the high bar for reconsideration.

In fact, the Edgeworths have the case file, excepting documents withheld as previously noted. The Simon office spent a great deal of time pulling the very large file together for production. The declaration of Ashley Ferrel is attached. (Ex. 6.) In the declaration Attorney Ferrel describes the file production process.

Simon will continue to work with the Edgeworths on file production if specific problems with the earlier production are identified. For example, this Court may recall an earlier claim that the file produced is indecipherable. While Simon disagrees, Simon asked for specifics so the claimed issue could be resolved. The Edgeworths did not provide any details. When and if they do, Simon will respond accordingly.

The Edgeworths again ask this Court to order the deposit of portions of the file with the court in reliance on NRS 7.095. The argument has already been rejected. The Edgeworths cannot rely upon NRS 7.095, because Simon has not been paid. Thus, the request that portions of the file be deposited with the court does not have a legal basis. The Edgeworths do not introduce any new evidence or different law on this issue, they merely repeat prior rejected arguments. There is nothing to reconsider. This is pointless, time wasting motion practice by the Edgeworths. Sanctions are called for. NRS 7.085.

The Edgeworths confuse adjudication of the Simon charging lien with cases regarding adjudication and reduction to judgment of a retaining lien in an ongoing case where there is a plain need for the case file. The retaining lien argument does not apply to the case at hand. In this case, most of the file has been produced, there is a non-disclosure agreement, the underlying claim is resolved, and a retaining lien has not been reduced to judgment.

The Edgeworths still offer only conclusory statements about the non-disclosure agreement. For example, the Edgeworths continue to ignore that the plain language of the NDA is highly restrictive concerning post-resolution disclosure. Again, the Edgeworths simply repeat prior rejected

arguments. That is not enough and is improper. The Edgeworths did not carry the heavy burden to establish that reconsideration is warranted.

V. The Motion to Stay Execution is Premature.

Simon does not have a judgment! Therefore, the motion to stay execution of a (non-existent) judgment is premature.

There is no judgment for sanctions. If the Edgeworths do not appeal the sanction order a second time, then it is hoped that the Edgeworths will pay the ordered sanction without further ado. If not, then the Edgeworths can move for a stay of execution on appeal when and if Simon reduces the sanction order to a judgment.

As an aside, the fees due under the lien and the sanctions due for frivolous litigation are different issues. Disputed money held in trust for fees per the charging lien is separate and distinct from the sanction order. Disputed fees held in trust cannot serve as security for an appeal of a judgment of the sanctions order, should the Edgeworths decide to pursue another appeal and the sanctions order is reduced to judgment.

There is no judgment for the fees owed. The Simon charging lien attaches to the disputed funds held in trust. If funds are held in trust, and/or there is no judgment, there is no need for a stay. The motion for a stay of execution is premature.

VI. Conclusion

The third motion for reconsideration does not meaningfully present a discussion of a clear error of law and does not subsequently introduce substantially different evidence. The Edgeworths did not give this Court anything to reconsider. The motion should be denied.

There are no judgments. As such, the motion for stay of execution of judgment is premature and should be denied.

Simon respectfully requests this Court to consider issuing a sanction against the Edgeworths for unreasonably and vexatiously extending this case. NRS 7.085(1)(b). For example, there is no reasonable basis to attack the bilateral agreement. The agreement finding is law of the case and is supported by substantial evidence and the statements of Edgeworths' counsel. There is no reasonable basis to request enforcement of NRS 7.095 when the statute's predicate has not been met; Simon has not been paid. Finally, there is no reasonable basis to request a stay of a judgment that does not exist. It appears the only method to

prevent a fourth motion for reconsideration is to sanction the Edgeworths for filing the third.

DATED this 15th day of July 2021.

/s/ James R. Christensen

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CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing Opposition Third Motion for Reconsideration was made by electronic service (via Odyssey) this 15th day of July 2021, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen

an employee of
JAMES R. CHRISTENSEN

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American Grating, LLC

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 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
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, v. DANIEL S. SIMON, AT AL., Defendants.	Case No: A-18-767242-C Dept. No. X HEARING REQUESTED

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In an effort to further confuse and misdirect the record, Simon claims that this is the Fourth Motion for Reconsideration when in fact this is the the Edgeworths' ***first*** motion for reconsideration of the Court's Order denying their motion for release of funds and for an order requiring the production of the Edgeworths' complete client file, which the Court entered on June 18, 2021.

In opposition, Simon contends that the Edgeworths mistake a charging lien and a retaining lien but that contention is not only incorrect, it is irrelevant. Opp'n at 2. Simon filed a charging lien against the Edgeworths' settlement proceeds and the Court adjudicated that lien at his request, but determined that the nearly $2M he claimed was not reasonable, and that he was only entitled to $484,982.50 in fees. The Court made an error of law in failing to recognize that the lien was valid only for the adjudicated amount. NRS 18.015 ("On motion filed by an attorney . . . . 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**." Liened funds in excess of the adjudicated amount should have been immediately released to the client in 2018. Permitting an attorney to hold hostage more than $1.5M of his client's money after adjudicating the attorney's lien is an error of law.[1]

Simon ignores or misapprehends the purpose for which *Guerrero v. Wharton* was offered, which simply was to support the Edgworth's contention that "adjudication" of Simon's lien has taken place in this case, like in *Guerrero*, because "the motion to foreclose on the lien has been resolved, judgement on the fees has been entered, and collection remedies are available." 2:16-cv-01667-GMN-NJK, 2019 WL 4346571 at *2. This untenable position that he is entitled to tie up funds due to the Edgeworths

[1] Simon's effort to lean on NRPC 1.15(e) to support his effort to tie-up all monies claimed, however unreasonable, is also unavailing, since a lawyer is ethically bound to lien only for reasonable amounts.

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in excess of the amount of his judgment until he gets around to collecting the lesser amount, is contrary to *Guerrero*.

In Nevada, a "judgment" is defined as a decree and any order from which an appeal lies." NRCP 54(a). As demonstrated in Exhibit A to the Motion, the Court's own records reflect the judgments entered by the Court. The request for a stay execution of the judgment by posting a bond for the full judgment amount is not premature, as Simon contends.

The Court erroneously accepted Simon's contention that releasing the funds was premature and contrary to a bilateral agreement, which Simon now claims is the law of the case, but does not identify any order or decision establishing that "law of the case." The emails and correspondence Simon offers in his opposition are his argument. Arguments are not the law of the case, and here, they do not even establish any agreement to hold an amount beyond what can now be reasonably disputed.

Simon also attempts to distort the record by misstating it. Although the Edgeworths certainly maintain Simon's lien amount was wrongful, and the Court agreed, the Edgeworths' motion does not say the lien was "wrongfully asserted" as Simon says in his opposition (Opp'n at 6 citing Edgeworths' Mot. at 5:22), it says the full lien amount has been *wrongfully secured* for nearly three years. Mot at 5:22.

As to the Court's refusal to compel Simon's production of the Edgeworths file, the Court's decision is contrary to law. With respect to the file, Simon claims a common law retaining lien, which is passive. The Court's only role in responding to a client's motion to release the client file is to ensure that the lawyer's fees are secured. And the fees in question here are fully secured.

Not surprisingly, Simon's current opposition contradicts the position taken in his April 13, 2021 opposition to the Edgeworth's Motion for

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Reconsideration, in which he claimed that "Vannah did not request the file." 4/13/21 Opp'n at 6:12. In support of that contention, Simon pointed to his own testimony at the evidentiary hearing for the lien adjudication. *Id.* The recent Declaration of Ashley Ferrel, dated July 14, 2021, unequivocally declares that she "was asked to compile the file for the Edgeworths based upon a request from the Edgeworths' attorneys . . . and [she] did so" and produced it. Ex. 6 to Simon's Opp'n to Edgeworth's Mot. for Reconsideration re Funds and File at 1:26 – 27. Ms. Ferrel goes on to declare that in May 2020 she "was instructed to make a copy of the Edgeworth's electronic file . . . and copied the Edgeworth's electronic file directly from the [firm's] server." *Id.* at 2:3-8. "At that time," presumably meaning May 2020, Ferrell declares she was instructed to remove all documents that contained documents or references that were covered by the protective order and put them in a separate folder." *Id.* at 2:9-12.

Ms. Ferrel's declaration not only confirms that there was a request for the file in 2019, it also establishes that email was ***omitted*** despite the absence of an instruction at that time to omit allegedly protected documents. *See* Ex. B, Receipt for File Produced to Vannah & Vannah in 2019 (listing documents and items produced). To the extent that the Court determined that Simon's clients were not entitled to documents marked as confidential pursuant to the Non-Disclosure Agreement ("NDA"), notwithstanding the fact they are parties to the NDA, the motion asked that the documents be deposited with the Court, as provided in NRS 7.055(2), something the Court did not address.

Ms. Ferrell's declaration also raises questions as to why emails she testified during the 2018 proceedings had been provided to the Edgeworths nevertheless remain withheld. Nor does she explain why documents and email attachments that are not covered by the NDA, and that were expressly

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requested, were not provided. *See, e.g.,* 5/3/21 Edgeworths' Mot. re Third Lien Order at 15 n.4 (requesting all drafts of settlement agreements, all email by and among counsel regarding settlement discussions, emails with experts, opposing counsel, etc.). NRS 7.055 recognizes that the client is entitled to the client file. No reason for a client's request for his/her file is required and provided the lawyer has been paid or adequately secured, the statute says the file must be turned over. In this case, the Edgeworths requested but did not receive documents concerning the drafting of the settlement agreement at the time it was being negotiated. Unresolved questions remain about who requested the inclusion or omission of certain settlement provisions, and how and when experts were retained. In at least one instance, the client was billed for expert fees incurred for the benefit of another of Simon's client's. Even if the Court believes the NDA covers substantive discussions in expert reports, the Edgeworths are entitled to all non confidential documents and email concerning the case.

The file Ms. Ferrell prepared indeed has 40 folders, but it is far from "organized." For example, the folder entitled "Edgeworth Email" contains 5543 pages of email, but the email attachments appear to have been selectively stripped from nearly all of the emails. *See* Ex. C (LODS014686-835). Exhibit C includes the first 150 emails in the production ranging in date from November 1 to December 18, 2017 – the time period during which the settlement was negotiated and the agreement finalized, yet no emails to or from defense counsel concerning the settlement are included. *Id.*; *see* Ex. D (LODS017583—86, sample email with corresponding attachment included). In few cases, a different version of email attachment was located elsewhere, but the actual attachments could not be located anywhere in the production. *See e.g.,* Ex. E (12/12/17 Email Received from the Sender with the attachments as sent) and *compare to* Ex. F (Same 12/12/17 email from file

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produced by Simon with Bates No. LODS017566, and different version of attachments located elsewhere in production LOD031032-36 and LODS038159-60); Ex. G (screen shot of where the check attachments to the 12/12/17 email in Ex. F were located); *compare also* Ex. H (11/16/17 Email from sender with attachment) *with* Ex. I (11/16/17 Email in file without attachment and out of date order). In the 2018 proceedings, Simon testified he retained all experts after August 2017, but the stripped emails paint a different picture, and exchanges thereto would provide a complete picture as to how and when they were retained, and the scope of the work they did, for which they billed and the Edgeworths paid. Ex. J (Sample Emails re Expert Retention).

Furthermore, and as only one example, the 5543 page email folder was not chronologically organized and appears far from complete. For example, the first email in the Edgeworth Email folder is Bates No. LODS014686 and dated December 18, 2017; the last email in that folder is numbered LODS020228 and is dated June 22, 2017. In between the first and last email are emails with dates between 2016 to 2018, without any semblance of organization. Large gaps exist where no email was produced despite the case being active. And, as shown in the reconstituted Exhibit F, a different version of the email attachment was in some cases produced separate from and without reference to the transmitting email, with file names that differ from the file name under which they referenced in the email. NRS 7.055 does not support the Court's refusal to order Simon to produce the Edgeworths' complete client file. Simon is using the NDA as an excuse to withhold the file, as demonstrated by the fact the file produces in fact includes some documents with confidential information. Ex. K (Sample emails with third-party information). Even if the NDA justified withholding any portion of the

file from the Edgeworths, there is no legal basis to refuse depositing the disputed portion of the file with the Court.

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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: 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.

DATED this 17th day of July, 2021.

By: /s/ GABRIELA MERCADO
An employee of Morris Law Group

Register of Actions
Case No. A-16-738444-C

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

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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

07/29/2021 **Motion For Reconsideration** (3:00 AM) (Judicial Officer Jones, Tierra)
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

Minutes

07/29/2021 3:00 AM

- Following review of the papers and pleadings on file herein, COURT ORDERED, Edgeworth s Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring Production of Complete Client File and Motion to Stay Execution is DENIED. The COURT FINDS that the Edgeworth s have failed to demonstrate any error of law or any new facts, as required for reconsideration. The COURT FURTHER FINDS that there is no basis to reconsider the funds order. The COURT FURTHER FINDS that the excessive security agreement does not apply to the instant case. The COURT FURTHER FINDS that there is no basis to reconsider the bilateral agreement finding. The COURT FURTHER FINDS that there is no basis to reconsider the order regarding the client file. The COURT FURTHER FINDS that the Motion to Stay Execution is premature. As such, the Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring Production of Complete Client File and Motion to Stay Execution is DENIED. Counsel for Defendant is to prepare an Order consistent with this Court s order and submit it to the Court for signature within ten (10) days of the date of this order. 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