

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC

Petitioners,

vs.

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

Respondents.

Supreme Court Case No. 83258
Consolidated with 83260
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Clerk of Supreme Court
(District Court A-18-767242-C
Consolidated with
A-16-738444-C)

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1 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the
2 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to
3 defendants in the LITIGATION, and the amounts set forth in the computation of damages that
4 SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON
5 for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep
6 and review, or the reasons.

7
8 17. A reason given by SIMON to modify the fee agreement was that he claims he
9 under billed us on the four invoices previously sent and paid, and that he wanted to go through his
10 invoices and create, or submit, additional billing entries. We were again stunned to learn of
11 SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in
12 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work
13 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON
14 prepared a proposed settlement breakdown with his new numbers and presented it to us for our
15 signatures. This, too, came with a high-pressure approach by SIMON. This new approach also
16 came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly
17 \$500,000 from us. He said that "any judge" and "the bar" would give him the contingency
18 agreement that he now wanted, that he was now demanding he get, and the fee that he said he was
19 now entitled to receive.
20

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

4 19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific
5 questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the
6 amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what
7 transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question
8 was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the
9 LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been
10 disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both
11 of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page
12 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been
13 updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be
14 billing more hours that he hadn't yet written down, or that additional invoices for fees or costs
15 would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS
16 before he could determine the amount of his fee. At that time, I felt I had reason to believe
17 SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the
18 LITIGATION.
19
20

21 20. Despite SIMON'S requests and demands on us for the payment of more in fees, we
22 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the
23 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement
24 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
25 time that he'd never previously produced to us and that never saw the light of day in the
26 LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was
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28

1 nothing short of stealing what was ours.

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

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

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

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

24
25 25. I also feel that it's remarkable and so wrong that an attorney can agree to receive
26 an hourly rate of \$550 an hour, get paid \$550 an hour to the tune of nearly \$500,000 for a period
27 of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless
28

1 we agree to pay him a bonus that ranges between \$692,000 to \$1.9 million dollars.

2 26. SIMON in his motion, and in open court, made claims that he was effectively fired
3 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with
4 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to
5 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false
6 accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club
7 Director at a non-profit for children we founded and funded. In an email string, SIMON chooses
8 his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if
9 it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is
10 responsible for making contact about absences (that had already been outlined at the mandatory
11 start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls.
12 SIMON sent the follow-up email, again carefully worded, with the clear accusation that
13 SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths.
14 His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable
15 position of confronting me about it. I read the email, and was forced to have a phone
16 conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell
17 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars
18 from me. I emphasized that SIMON'S accusation was without substance and there was nothing
19 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the
20 paperwork for another background check by USA Volleyball even though I have no coaching or
21 any contact with any of the athletes for the club. My involvement is limited to sitting on the
22 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two
23 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.
24 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit
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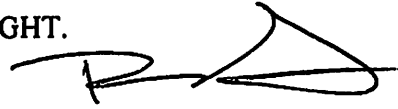
1 from the charity are minors, an accusation of this severity. from someone he assumed I was
2 friends with and further from my own attorney could not be ignored. While I was embarrassed
3 and furious that someone who was actively retained as my attorney and was billing me would
4 attempt to damage my reputation at a charity my wife and I founded and have poured millions of
5 dollars into. I politely sent SIMON an email on December 5, 2017, telling him that I had not
6 received his voicemail he referenced in an email and directed SIMON to call John Greene if he
7 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a
8 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied
9 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told
10 him to not send anything like that again. Simon claimed he did not intend the meaning
11 interpreted. I think it speaks volumes to Simon's character that after being caught trying to
12 damage our reputation and trying to smear our names with accusations that are impossible to
13 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera
14 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon
15 further attempts to bill us hundreds of thousands of dollars for “representing” us during this
16 period. In short, we never fired SIMON, though we asked him to communicate to us through an
17 intermediary. Rather, we wanted and want him to finish the work that he started and billed us
18 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the
19 LITIGATION.
20
21

22 27. We did not cause the Complaint or the Amended Complaint to be filed against
23 SIMON or his business entities to prevent him from participating in any public forum. We also
24 didn't bring a lawsuit to prevent SIMON from being paid what we agreed that he should be paid
25 under the CONTRACT.
26

27 28. I ask this Court to deny SIMON'S anti-SLAPP Motion and give us the right to
28

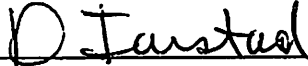
1 present our claims against SIMON before a jury.

2 FURTHER AFFIANT SAYETH NAUGHT.

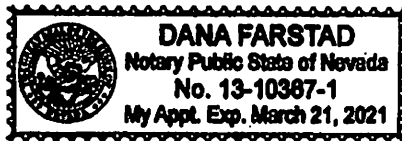
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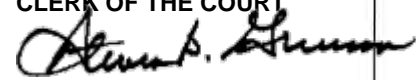
4 BRIAN EDGEWORTH

5 Subscribed and Sworn to before me
6 this 15 day of March 2018_x by BRIAN EDGEWORTH.

7 

8 Notary Public in and for said County and State





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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

24 Defendants.

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

Consolidated with

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

AMENDED COMPLAINT

25 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC
26 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.
27 GREENE, ESQ., of **VANNAH & VANNAH**, and for their causes of action against Defendants,
28 complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL are referred to as PLAINTIFFS.

2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic professional corporation licensed and doing business in Clark County, Nevada. At times, Defendants shall be referred to as SIMON.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

[e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

7. ROE CORPORATIONS I through V are entities or other business entities that participated in SIMON'S breach of the oral contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the trial date.

9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were never reduced to writing.

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of

1 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to
2 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever
3 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees
4 and costs to the mandated computation of damages.

5
6 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay
7 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by
8 PLAINTIFFS accrued interest.

9 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall
10 of 2017, and thereafter blossomed from one of mere property damage to one of significant and
11 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the
12 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the
13 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,
14 neither PLAINTIFFS nor SIMON agreed on any terms.

15
16 13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth
17 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he
18 wanted to be paid in light of a favorable settlement that was reached with the defendants in the
19 LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that PLAINTIFFS
20 had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented
21 to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set
22 forth in the computation of damages disclosed by SIMON in the LITIGATION.

23
24 14. A reason given by SIMON to modify the CONTRACT was that he purportedly
25 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go
26 through his invoices and create, or submit, additional billing entries. According to SIMON, he
27 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason
28 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that

1 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement
2 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

3 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
4 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
5 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following
6 the flooding event.
7

8 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP
9 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS
10 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS
11 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect
12 fees and costs other than those contained in his invoices that were presented to and paid by
13 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
14 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let
15 alone those in excess of \$1,000,000.00.
16

17 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
18 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
19 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
20 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
21 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
22 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
23 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
24 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
25 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
26 they've been updated as of last week."
27
28

18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted pursuant to the CONTRACT.

25. SIMON'S demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.

26. SIMON'S refusal to agree to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the CONTRACT.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred compensatory and/or expectation damages, in an amount in excess of \$15,000.00.

29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.

30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

31. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 30, as set forth herein.

32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, \$550.00 per hour for SIMON'S legal services performed in the LITIGATION.

1 33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour
2 for a total of \$486,453.09, for SIMON'S services in the LITIGATION.

3
4 34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or
5 amend any of the terms of the CONTRACT.

6 35. The only evidence that SIMON produced in the LITIGATION concerning his fees
7 are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which
8 PLAINTIFFS paid in full.

9
10 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in
11 the LITIGATION was produced in updated form on or before September 27, 2017. The full
12 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to
13 PLAINTIFFS and that PLAINTIFFS paid in full.

14
15 37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the
16 CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and
17 PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON
18 admitted that all of the bills for his services were produced in the LITIGATION; and, since the
19 CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to
20 declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the
21 CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the
22 CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

23
24 **THIRD CLAIM FOR RELIEF**

25 **(Conversion)**

26 38. PLAINTIFFS repeat and reallege each allegation and statement set forth in
27 Paragraphs 1 through 37, as set forth herein.
28

1 39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his
2 services, nothing more.

3 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or
4 before September 27, 2017, had already been produced to the defendants.

5 41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable
6 sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

7 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his
8 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay
9 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd
10 produced all of his billings through September of 2017, SIMON has refused to agree to either
11 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed
12 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

13 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a
14 conscious disregard of, and contempt for, PLAINTIFFS' property rights.

15 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises
16 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to
17 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount
18 in excess of \$15,000.00.

19 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,
20 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,
21 PLAINTIFFS are entitled to recover attorneys' fees and costs.

22 ///

23 ///

FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling \$486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is \$692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be

1 determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,
2 SIMON breached the implied covenant of good faith and fair dealing.

3 53. When SIMON executed his secret plan and went back and added substantial time to
4 his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good
5 faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and
6 fair dealing.
7

8 54. When SIMON demanded a bonus based upon the amount of the settlement with the
9 Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,
10 SIMON breached the implied covenant of good faith and fair dealing.
11

12 55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an
13 amount that was far in excess of any amount of fees that he had billed from the date of the
14 previously paid invoice to the date of the service of the lien, that he could bill for the work
15 performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing
16 so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON
17 breached the implied covenant of good faith and fair dealing.
18

19 56. As a result of SIMON'S breach of the implied covenant of good faith and fair
20 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access
21 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,
22 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the
23 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.
24

25 57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a
26 conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or
27 malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are
28 therefore entitled to punitive damages, in an amount in excess of \$15,000.00.

50. PLAINTIFFS have been compelled to retain an attorney to represent their interests in this matter. As a result, PLAINTIFFS are entitled to an award of reasonable attorneys fees and costs.


PRAYER FOR RELIEF

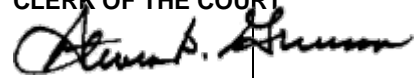
Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

1. Compensatory and/or expectation damages in an amount in excess of \$15,000;
2. Consequential and/or incidental damages, including attorney fees, in an amount in excess of \$15,000;
3. Punitive damages in an amount in excess of \$15,000;
4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;
5. Costs of suit; and,
6. For such other and further relief as the Court may deem appropriate.

DATED this 15 day of March, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ. /sn
(4279)



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Attorney for SIMON

Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

CASE NO.: A-16-738444-C
DEPT NO.: 10

Consolidated with

CASE NO.: A-18-767242-C
DEPT NO.: 26

Plaintiffs,

vs.

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

Defendants.

MOTION TO DISMISS
PLAINTIFFS' AMENDED
COMPLAINT PURSUANT TO
NRCP 12(b)(5)

Date of Hearing: N/A
Time of Hearing: N/A

COMES NOW Daniel S. Simon, by and through their attorney, JAMES R.
CHRISTENSEN, Esq. and hereby moves to Dismiss Plaintiffs' Amended
Complaint pursuant to NRCP 12(b)(5).

1 This motion is made and based upon the papers and pleadings on file
2 herein, exhibits attached, the points and authorities set forth herein, all other
3 evidence that the Court deems just and proper, as well as the arguments of
4 counsel at the time of the hearing hereon.

5 Dated this 9th day of April 2018.
6

7
8 /s/ James R. Christensen
9 **JAMES CHRISTENSEN, ESQ.**
10 Nevada Bar No. 003861
11 601 S. 6th Street
12 Las Vegas, NV 89101
13 Phone: (702) 272-0406
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16 *Attorney for Daniel S. Simon*
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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

You, and each of you, will please take notice that the undersigned will bring on for hearing, the MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO 12(b)(5) before the above- entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the 15th day of MAY, 2018, at 9:30 AM a.m./p.m. in Department 10.

DATED this 9th day of April 2018.

/s/ James R. Christensen
JAMES CHRISTENSEN, ESQ.
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Attorney for Daniel S. Simon

I. INTRODUCTION

Plaintiffs filed the amended complaint to attack their lawyer because of a fee dispute. The attack is pointless. The fee dispute will be resolved by this Court pursuant to NRS 18.015 via an evidentiary hearing on May 29, 30 & 31, 2018.

The Law Office of Daniel S. Simon, A Professional Corporation, (“Law Office”) performed exemplary service for Plaintiffs. The Law Office recovered over Six Million Dollars on a half million-dollar property loss claim. Despite the incredible result, Plaintiffs do not want to pay their lawyer a reasonable fee. Instead, when the Law Office sought its statutory right to a reasonable fee under NRS 18.015, Plaintiffs sued the Law Office and Mr. Simon.

The amended complaint refers to the Law Office and Mr. Simon interchangeably. (A.C., at para. #2.) This is an error. Contract claims against a law firm/lawyer are governed by contract law. The contract was with the Law Office; as such, Mr. Simon is not a proper defendant under corporate law. Mr. Simon should be dismissed from the First, Second and Fourth Causes of Action.

The Third Cause of Action is for conversion. Plaintiffs allege they have a right of possession of money based on a “CONTRACT”. (A.C. at para. #39.) As a matter of law, a conversion claim cannot be brought on a right of possession grounded on a contract. The Conversion claim does not state a claim under the law and must be dismissed.

1 In addition, the disputed funds are in a separate account, safekept pursuant to
2 NRPC 1.15, until this Court resolves the fee dispute pursuant to NRS 18.015. No
3 money was taken or “converted” by the Law Office or by Mr. Simon. Plaintiffs
4 did not plead wrongful dominion, and cannot establish a *prima facie* case of
5 conversion.
6

7 The Amended Complaint added a Fourth Cause of Action for breach of the
8 implied duty of good faith and fair dealing. The Law Office asked this Court to
9 resolve a fee dispute pursuant to statute and the rules of ethics - which does not
10 breach a duty. NRS 18.015(5). As a matter of law, asking a court to resolve a fee
11 dispute does not violate the spirit of an alleged fee agreement.
12

13 **II. STATEMENT OF RELEVANT FACTS**

14 **A. The timeline.**

15 Brian Edgworth decided to build a house as an investment. The build was
16 funded by Edgworth family businesses and/or trusts. Plaintiffs made the decision
17 to build without builders risk/course of construction insurance.
18

19 On April 10, 2016, during construction, a Viking fire sprinkler caused a
20 flood which damaged the unfinished house.
21

22 In May of 2016, Mr. Simon of the Law Office agreed to “send a few letters”.
23

24 In June of 2016, the Viking case was filed.
25

1 In December of 2016, a certificate of occupancy was issued for the
2 investment house. Following, the house was listed for sale for \$5.5M. The house
3 is currently off the market.

4 In December of 2016, the Law Office sent a bill for some fees and costs to
5 Plaintiffs.
6

7 In August of 2017, Brian Edgeworth and Daniel Simon discussed fees. Mr.
8 Edgeworth admitted in an e-mail that they had not had a “structured discussion” on
9 fees and ran over some fee options. (Exhibit A.)
10

11 The Viking case was heavily litigated. Through extensive legal work, the
12 Law Office was prepared to establish that the fire sprinkler flood was one of many,
13 caused by a defect known to Viking, which Viking had failed to warn of or repair.
14

15 By the fall of 2017, the Law Office had motions on file to strike the Viking
16 answer, to strike the Viking product expert, and had positioned the case for an
17 excellent trial result.

18 In November/December of 2017, Viking offered \$6M to settle.
19

20 In late November, the reasonable fee due the Law Office was again raised.
21 Although the clients promised to discuss the issue, they soon refused to speak to
22 their lawyers. On November 30, 2017, Plaintiffs retained the Vannah law firm.
23 The Vannah firm instructed the Law Office to stop communication with its clients.
24
25

1 On December 1, 2017, the Law Office served a charging lien pursuant to
2 NRS 18.015.

3 On December 18, 2017, settlement checks from Viking, totaling \$6M, were
4 picked up by the Law Office. The Law Office immediately contacted the Vannah
5 firm to arrange endorsement. The Vannah firm declined. Eventually, the Vannah
6 firm relayed an allegation that the checks would not be endorsed because Mr.
7 Simon would steal the money. The baseless accusation was made to support the
8 false narrative that the current dispute is something more than a fee dispute - which
9 can be easily and timely resolved by lien adjudication.
10
11

12 On January 2, 2018, the Law Office served an amended lien.

13 On January 4, 2018, Plaintiffs sued their lawyers. (Who they have not
14 fired.)
15

16 In early January, an interest-bearing account, with interest going to Mr.
17 Edgeworth, was opened at Bank of Nevada. Disbursal requires the signatures of
18 both Mr. Vannah and Mr. Simon.
19

20 On January 8, 2018, the Viking settlement checks were endorsed and
21 deposited.

22 On January 9, 2018, the complaint was served.

23 On January 18, 2018, the bank hold lifted and Brian Edgeworth got a check
24 for the undisputed amount of \$3,950,561.27.
25

B. The Law Office of Daniel S. Simon, A Professional Corporation.

Plaintiffs named Defendant “Daniel S. Simon dba Simon Law”, alleging Breach of Contract, Declaratory Relief and Conversion. *See* Complaint, attached hereto as Exhibit “B.” All allegations against Daniel Simon individually are without basis as a matter of law and should be dismissed. Plaintiffs contend that Daniel S. Simon was doing business as Simon Law. *See id.*, ¶ 2. This contention is incorrect as Daniel S. Simon did not do business with the Edgeworth’s and did not provide any services in his individual capacity. Any legal services provided to Plaintiffs were done by The Law Office of Daniel S. Simon, P.C., a domestic professional corporation. *See* Nevada Secretary of State Business License Record for Law Office of Daniel S. Simon, P.C., attached hereto as Exhibit “C.”

Simon Law is not an entity that can be sued. At most it is a fictitious name owned by The Law Office of Daniel S. Simon, P.C. *See* Clark County Fictitious Firm Name Record for Simon Law, attached hereto as Exhibit “D.” This is not a surprise to Plaintiffs, they directed partial payments for legal services to The Law Office of Daniel S. Simon, P.C. *See* check payment by Angela and Brian Edgeworth to The Law Office of Daniel S. Simon, P.C., attached hereto as Exhibit “E.” Consequently, Plaintiffs have no viable claims against Daniel S. Simon as an individual and Defendant is entitled to dismissal of the entire complaint as a matter of law.

III. ARGUMENT

A. Defendant Daniel S. Simon Is Not a Proper Party and Should Be Dismissed from the First, Second and Fourth Causes of Action.

Nevada Rule of Civil Procedure 12(b)(5) allows dismissal of causes of action when a pleading fails to state a claim upon which relief can be granted.

"This court's task is to determine whether ... the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief." *Vacation Vill.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (quoting *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1988) (emphasis added). Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief. *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008). This Court should not assume the truth of legal conclusions, merely because they are cast in the form of factual allegations. *Crockett & Myers, Ltd. V. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184, 1190 (D. Nev. 2006).

Plaintiffs allege that there is a contract between them and Defendant Daniel S. Simon. However, this assertion is incorrect and improper. Taking the allegation as true, the agreement was not between Plaintiffs and Daniel S. Simon. Mr. Simon does not contract in an individual capacity; and, Mr. Simon does not do business individually. *See* Exhibits "C" and "D."

1 The Law Office is a licensed domestic professional corporation in the State
2 of Nevada. *See* Exhibit “C.” Simon Law is a fictitious firm name owned by the
3 Law Office. *See* Exhibit “D.” Any alleged agreement for legal services provided
4 for Plaintiffs would be through the professional corporation.

5
6 As a matter of law, contract claims against a law firm or a lawyer are
7 governed by contract law, which necessarily includes corporate law:

8 “A lawyer is subject to liability to a client for injury caused by breach of
9 contract in the circumstances and to the extent provided by contract law.”

10 Restatement Third, The Law Governing Lawyers §55(1).

11 The first, second and fourth causes of action all seek relief under the alleged
12 contract. Under contract law and Nevada corporate law, Mr. Simon is not a proper
13 defendant. Mr. Simon is an officer and stockholder of the corporation, Mr. Simon
14 may not be named individually in a contract action. Plaintiffs’ Complaint fails to
15 state a claim pursuant to NRCP 12(b)(5); and, Defendant Daniel S. Simon should
16 be dismissed.
17
18

19 **B. Plaintiffs’ Conversion Action Should Be Dismissed.**

20 Plaintiffs’ Conversion Cause of Action fails to state a claim and should be
21 dismissed.
22
23
24
25

1 For a conversion claim, Plaintiffs must prove that a Defendant:

2 1) committed a distinct act of dominion wrongfully exerted over
3 Plaintiffs' personal property; and,

4 2) the act was in denial of, or inconsistent with, Plaintiffs' title or rights
5 therein; or,

6 3) the act was in derogation, exclusion, or defiance of Plaintiffs' title or
7 rights in the personal property.

8 *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000); *Ferriera*
9 *v. P.C.H. Inc.*, 105 Nev. 305, 774 P.2d 1041 (1989); *Wantz v. Redfield*, 74 Nev.
10 196, 326 P.2d 413 (1958). Plaintiffs cannot establish conversion as a matter of
11 law.

12
13 1. Plaintiffs did not plead a right to possession sufficient to allege
14 conversion.

15 In *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*,
16 193 P.3d 536, 543 (2008), citing California law, the Nevada Supreme Court
17 recognized the need to establish the right to "exclusivity" of the chattel or property
18 alleged to be converted (*M.C. Multi-Family* addressed alleged conversion of
19 intangible property). Plaintiffs claim they are due money via a settlement contract,
20 and that they have compensated Defendant in full for legal services provided
21 pursuant to a contract. *See* Exhibit "B," ¶ 19. Thus, Plaintiffs have pled a right to
22 payment based upon contract.
23
24
25

1 An alleged contract right to possession is not exclusive enough, without
2 more, to support a conversion claim:

3 “A mere contractual right of payment, without more, will not suffice” to
4 bring a conversion claim.

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

7 Nevada law expressly allows an attorney to recover fees via a charging lien,
8 and expressly states such an effort is not a breach of duty. NRS 18.015(5). Thus,
9 as a matter of law, asserting a charging lien, or expressing a desire to be paid,
10 cannot serve to change a lien claim into conversion.
11

12
13 2. A charging lien is allowed by statute.

14 NRS 18.015 allows an attorney to file a charging lien. The Law Office
15 followed the law. Following the law is not *wrongful*. Thus, as a matter of law,
16 Plaintiffs cannot satisfy the *wrongful* dominion element.
17

18 3. The money was placed into a trust account, per agreement of the
19 parties.

20 The Law Office acted properly pursuant to Nevada Rule of Professional
21 Conduct 1.15 “Safekeeping Property”. The Rule states in relevant part:

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

1 The Law Office followed the exact course mandated by the Rules of
2 Professional Conduct. The Law Office followed the law and placed the settlement
3 money into a separate account-which requires the signature of Mr. Vannah to
4 disburse funds. *See* Bank of Nevada letter establishing joint trust account for
5 settlement proceeds, attached as Exhibit "F." Plaintiffs' have control over the
6 funds and interest goes to Brian Edgeworth. No funds were taken, nor can any
7 funds be taken.
8
9

10 Plaintiffs' conversion Cause of Action fails as a matter of law. No money
11 has been taken. Plaintiffs have joint control over the money. Even more telling is
12 the letter drafted by Plaintiffs and presented to the Bank consenting to the handling
13 of the funds. *See*, Letter from Vannah and Vannah to the Bank of Nevada attached
14 as Exhibit "F." How can you wrongfully convert funds when the complaining
15 party agrees to where the funds should be placed and when Mr. Simon fully
16 complied with the Plaintiffs' direction and placed the funds in a protected account?
17
18

19 4. The complaint is not ripe.

20 It is axiomatic that a person not in possession cannot convert. Restatement
21 (Second) of Torts §237 (1965), comment f. Plaintiffs sued Defendant for
22 conversion before checks were endorsed or deposited. Likewise, the demands of
23 Plaintiffs preceded the date funds were deposited and available and cannot serve as
24 a predicate for a conversion claim.
25

1 Deposit of funds into a trust account is not an act of dominion contrary to
2 any stakeholder interest. In fact, it is the opposite. The Nevada Supreme Court
3 has ruled that holding disputed funds in an attorney trust account is the same as the
4 Court holding the funds in an interpleader action. *Golightly & Vannah, PLLC v TJ*
5 *Allen LLC*, 373 P.3d 103 (Nev. 2016). A conversion claim cannot be ripe as a
6 matter of law, until funds are removed from trust without legal basis. Which is
7 impossible in this case, because Mr. Vannah is a signer on the account.
8

9 An attorney is allowed by statute and the rules of ethics to resolve a fee
10 dispute via a charging lien. Assertion of a lien right provided by statute is not
11 conversion. *See*, Restatement (Second) of Torts §240 (1965). The undisputed
12 money was provided to the client promptly upon funds becoming available. Thus,
13 no conversion.
14

15
16 **C. The Fourth Cause of Action should be dismissed.**

17 The Fourth Cause of Action seeks damages for breach of an implied
18 covenant in the alleged fee contract. The cause of action fails to state a claim as a
19 matter of law. The covenant prohibits arbitrary or unfair acts. *Nelson v. Herr*, 163
20 P.3d 420 (Nev. 2007). The Nevada Supreme Court has held that acting in accord
21 with statutory law is not arbitrary or unfair. *Ibid*.
22

23 The covenant provides recovery in “rare and exceptional cases” for
24 “grievous and perfidious misconduct”. *Great American Insurance v. General*
25

1 *Builders*, 924 P.2d 257, 263 (Nev. 1997) (internal citations omitted). Plaintiffs
2 admit this is a fee dispute. Use of the statute specifically created by the Legislature
3 to resolve a fee dispute is not perfidious, or rare.

4 **D. Plaintiffs' Punitive Damages Claims Should Be Dismissed.**

5 The allegations of fraud or malice to support a punitive damages claim is
6 equally false without any basis in law or fact. Plaintiffs have not alleged facts
7 sufficient to establish that Defendant committed any type of fraudulent conduct.
8 Fraud must be pled with particularity, and Plaintiffs must meet the higher clear and
9 convincing burden of proof. Plaintiffs' complaint is not pled with particularity,
10 and the conversion claim cannot be brought on the conduct described as a matter of
11 law.
12

13 Plaintiffs try to further their claims for fraud and punitive damages by
14 manufacturing causes of action that have no basis in the law based upon the facts.
15

16 Plaintiffs' allegations against Defendant do not rise to the level of a plausible
17 or cognizable claim for relief for conversion and equally, the claims for punitive
18 damages are so lacking that they should be dismissed. In fact, the Law Office did
19 everything required by the rules of ethics and the Nevada Revised Statutes. *See*,
20 Declaration of David Clark, Esq. attached as Exhibit "G" outlining the duties, the
21 law and proper procedure for an attorney lien.
22
23
24
25

1 Nevada has long recognized that "a plaintiff is never entitled to punitive
2 damages as a matter of right." *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev.
3 372, 380, 989 P.2d 882, 887 (1999) (quoting *Ramada Inns v. Sharp*, 101 Nev. 824,
4 826, 711 P.2d 1, 2 (1985)). Tort liability alone is insufficient to support an award
5 of punitive damages. *Wichinsky v. Mosa*, 109 Nev. 84, 89, 847 P.2d 727 (1993).
6 The punitive damage statutes in Nevada require conduct exceeding recklessness or
7 gross negligence. *Wyeth v. Rowatt*, 244 P.3d 765, 126 Nev. Adv. Rep. 44 (2010);
8 *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243,
9 255 (2008). Plaintiffs' Complaint is interspersed with terms such as "willful,
10 malicious and oppressive and in a conscious disregard" in their accusations against
11 Defendants. However, the causes of action and the facts alleged therein do not rise
12 to an action of fraud, intentional misrepresentation, deceit, concealment, willful or
13 malicious conduct; because, there is not a scintilla of evidence, and the allegations
14 contained in the complaint are false and contrary to the facts of the settlement. All
15 information suggests that Defendants did everything possible to protect the clients,
16 there cannot be a basis for punitive damages in the complaint.
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1 **IV. CONCLUSION**

2 Defendants respectfully request the motion to dismiss the second amended
3 complaint be GRANTED.

4 Dated this 9th day of April, 2018.

6 /s/ James R. Christensen
7 **JAMES R. CHRISTENSEN, ESQ.**
8 Nevada Bar No. 003861
9 601 S. 6th Street
10 Las Vegas, NV 89101
11 Phone: (702) 272-0406
12 Facsimile: (702) 272-0415
13 Email: jim@christensenlaw.com
14 *Attorney for Daniel Simon*

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

EXHIBIT A

FW: Contingency

Daniel Simon <dan@simonlawlv.com>

Fri 12/1/2017 10:22 AM

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

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

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

To: Daniel Simon <dan@simonlawlv.com>

Subject: Contingency

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

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

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

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

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

EXHIBIT B

Steven D. Grierson

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

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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 **Plaintiffs,**

18 **vs.**

19 **DANIEL S. SIMON, d/b/a SIMON LAW; DOES**
20 **I through X, inclusive, and ROE**
21 **CORPORATIONS I through X, inclusive,**

22 **Defendants.**

CASE NO.:
DEPT NO.:

A-18-767242-C
Department 14

COMPLAINT

23 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC
24 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.
25 GREENE, ESQ., of VANNAH & VANNAH, and for their causes of action against Defendants,
26 complain and allege as follows:

27 1. At all times relevant to the events in this action, EFT is a legal entity organized
28 under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a
domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL
are referred to as PLAINTIFFS.

1 2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S.
2 SIMON (SIMON) is an attorney licensed to practice law in the State of Nevada and doing business
3 as SIMON LAW.

4 3. The true names of DOES I through X, their citizenship and capacities, whether
5 individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who
6 therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and
7 thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally
8 responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein
9 alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true
10 names and capacities of such Defendants, when the same have been ascertained, and to join them
11 in this action, together with the proper charges and allegations.

12 4. That the true names and capacities of Defendants named herein as ROE
13 CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said
14 Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that
15 each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for
16 the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged
17 herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and
18 capacities of ROE CORPORATIONS I through X, inclusive, when the same have been
19 ascertained, and to join such Defendants in this action.

20 5. DOES I through V are Defendants and/or employers of Defendants who may be
21 liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

22 [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person
23 shall suffer personal injury by wrongful act, neglect or default of another,
24 the person causing the injury is liable to the person injured for damages;
25 and where the person causing the injury is employed by another person or
26 corporation responsible for his conduct, that person or corporation so
27 responsible is liable to the person injured for damages.
28

1 6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and
2 is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for
3 services and the conversion of PLAINTIFFS personal property, as herein alleged.

4 7. ROE CORPORATIONS I through V are entities or other business entities that
5 participated in SIMON'S breach of the oral contract for services and the conversion of
6 PLAINTIFFS personal property, as herein alleged.

8 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

9 8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests
10 following a flood that occurred on April 10, 2016, in a home under construction that was owned by
11 PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case
12 Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in
13 favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the
14 trial date.

15 9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally
16 agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs
17 would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were
18 never reduced to writing.

19 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December
20 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs
21 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to
22 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of
23 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to
24 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever
25 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees
26 and costs to the mandated computation of damages.
27
28

1 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay
2 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by
3 PLAINTIFFS accrued interest.

4 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall
5 of 2017, and thereafter blossomed from one of mere property damage to one of significant and
6 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the
7 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the
8 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,
9 neither PLAINTIFFS nor SIMON agreed on any terms.

10 13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth
11 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he
12 wanted to be paid in light of a favorable settlement that was reached with the defendants in the
13 LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that PLAINTIFFS
14 had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented
15 to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set
16 forth in the computation of damages disclosed by SIMON in the LITIGATION.

17 14. A reason given by SIMON to modify the CONTRACT was that he purportedly
18 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go
19 through his invoices and create, or submit, additional billing entries. According to SIMON, he
20 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason
21 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that
22 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement
23 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

24 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
25 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
26
27
28

1 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following
2 the flooding event.

3 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRC
4 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS
5 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS
6 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect
7 fees and costs other than those contained in his invoices that were presented to and paid by
8 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
9 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let
10 alone those in excess of \$1,000,000.00.

11
12 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
13 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
14 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
15 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
16 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
17 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
18 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
19 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
20 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
21 they've been updated as of last week."

22
23 18. Despite SIMON'S requests and demands for the payment of more in fees,
24 PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

25
26 19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT,
27 SIMON refused, and continues to refuse, to agree to release the full amount of the settlement
28 proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide

1 PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds
2 that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can
3 receive either the undisputed number or their proceeds.

4 20. PLAINTIFFS have made several demands to SIMON to comply with the
5 CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the
6 settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To
7 date, SIMON has refused.

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Contract)**

11 21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through
12 20 of this Complaint, as though the same were fully set forth herein.

13 22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the
14 CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An
15 additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S
16 invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed,
17 and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS
18 best interests.

19 23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that
20 SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

21 24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted
22 pursuant to the CONTRACT.

23 25. SIMON'S demand for additional compensation other than what was agreed to in the
24 CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for
25 PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.
26
27
28

1 26. SIMON'S refusal to agree to release all of the settlement proceeds from the
2 LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the
3 CONTRACT.

4 27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the
5 undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a
6 definite timeline as to when PLAINTIFFS can receive either the undisputed number or their
7 proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

8 28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS
9 incurred compensatory and/or expectation damages, in an amount in excess of \$15,000.00.

10 29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS
11 incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.

12 30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have
13 been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are
14 entitled to recover attorneys' fees and costs.

15
16
17 **SECOND CLAIM FOR RELIEF**

18 **(Declaratory Relief)**

19 31. PLAINTIFFS repeat and reallege each allegation and statement set forth in
20 Paragraphs 1 through 30, as set forth herein.

21 32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, \$550.00
22 per hour for SIMON'S legal services performed in the LITIGATION.

23 33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour
24 for a total of \$486,453.09, for SIMON'S services in the LITIGATION.

25 34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or
26 amend any of the terms of the CONTRACT.
27
28

1 35. The only evidence that SIMON produced in the LITIGATION concerning his fees
2 are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which
3 PLAINTIFFS paid in full.

4
5 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in
6 the LITIGATION was produced in updated form on or before September 27, 2017. The full
7 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to
8 PLAINTIFFS and that PLAINTIFFS paid in full.

9
10 37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the
11 CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and
12 PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON
13 admitted that all of the bills for his services were produced in the LITIGATION; and, since the
14 CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to
15 declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the
16 CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the
17 CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

18
19 **THIRD CLAIM FOR RELIEF**

20 **(Conversion)**

21 38. PLAINTIFFS repeat and reallege each allegation and statement set forth in
22 Paragraphs 1 through 37, as set forth herein.

23
24 39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his
25 services, nothing more.

26 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or
27 before September 27, 2017, had already been produced to the defendants.
28

1 41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable
2 sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

3
4 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his
5 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay
6 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd
7 produced all of his billings through September of 2017, SIMON has refused to agree to either
8 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed
9 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

10
11 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a
12 conscious disregard of, and contempt for, PLAINTIFFS' property rights.

13 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises
14 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to
15 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount
16 in excess of \$15,000.00.

17
18 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,
19 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,
20 PLAINTIFFS are entitled to recover attorneys' fees and costs.

21
22 **PRAYER FOR RELIEF**

23 Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

- 24 1. Compensatory and/or expectation damages in an amount in excess of \$15,000;
25 2. Consequential and/or incidental damages, including attorney fees, in an amount in
26 excess of \$15,000;
27 3. Punitive damages in an amount in excess of \$15,000;
28 4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;

1 5. Costs of suit; and,

2 6. For such other and further relief as the Court may deem appropriate.

3 DATED this 3 day of January, 2018.

4 VANNAH & VANNAH

5
6  (4272)
7 ROBERT D. VANNAH, ESQ.
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EXHIBIT C

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION

Business Entity Information			
Status:	Active	File Date:	12/11/1995
Type:	Domestic Professional Corporation	Entity Number:	C21756-1995
Qualifying State:	NV	List of Officers Due:	12/31/2018
Managed By:		Expiration Date:	
NV Business ID:	NV19951165575	Business License Exp:	12/31/2018

Registered Agent Information			
Name:	DANIEL S. SIMON	Address 1:	810 S CASINO CENTER BLVD
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89101
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information			
No Par Share Count:	25,000.00	Capital Amount:	\$ 0
No stock records found for this company			

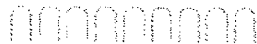
-	Officers	<input type="checkbox"/> Include Inactive Officers	
President - DANIEL S SIMON			
Address 1:	810 S CASINO CENTER BLVD	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	
Secretary - DANIEL S SIMON			
Address 1:	810 S CASINO CENTER BLVD	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	
Treasurer - DANIEL S SIMON			
Address 1:	810 S CASINO CENTER BLVD	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	

Status:	Active	Email:	
Director - DANIEL S SIMON			
Address 1:	810 S CASINO CENTER BLVD	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	

- Actions\Amendments			
Action Type:	Articles of Incorporation		
Document Number:	C21756-1995-001	# of Pages:	6
File Date:	12/11/1995	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-008	# of Pages:	1
File Date:	11/23/1998	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Address Change		
Document Number:	C21756-1995-003	# of Pages:	1
File Date:	12/29/1998	Effective Date:	
DANIEL S. SIMON SUITE 283			
3900 PARADISE ROAD LAS VEGAS NV 89109 MJM			
Action Type:	Annual List		
Document Number:	C21756-1995-009	# of Pages:	1
File Date:	11/4/1999	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-007	# of Pages:	1
File Date:	11/27/2000	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-006	# of Pages:	1
File Date:	12/7/2001	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-004	# of Pages:	1
File Date:	11/8/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-005	# of Pages:	1
File Date:	11/5/2003	Effective Date:	
(No notes for this action)			

EXHIBIT D

20120827100118990

 HELP

Instrument Number: 20120827100118990

Search Results

Record Date: 8/27/2012

Book Type: FFN - FICTITIOUS FIRM NAMES

Instrument #: 20120827100118990

Number of Pages: 1

Doc Type: FFN - FFN
CERTIFICATE

Business Name: SIMON LAW GROUP

Mailing Addr 1: 810 S. CASINO
CENTER BLVD

Mailing City: LAS VEGAS

Mailing State: NV

Mailing Zip: 89101

Owner Name: LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION

Expiration Date: 8/30/2017

EXHIBIT E

ANGELA EDGEWORTH
BRIAN EDGEWORTH
637 SAINT CROIX STREET
HENDERSON, NV 89012
310-985-0105

3571

18-24/1220-4470
9524763578

DEC 16 2016

Pay to the
Order of

LAW OFFICE OF DANIEL

\$ 42,564⁹⁵

forty two thousand five hundred sixty four Dollars



Wells Fargo Bank, N.A.
California
wellsfargo.com



Wells Fargo Bank, N.A.
California
wellsfargo.com

For 455 CROWN LEGAL BILLS

TR

EXHIBIT F

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

January 4, 2018

VIA EMAIL: sguindy@bankofnevada.com

Sarah Guindy
Executive Vice President,
Corporate Banking Manager
BANK OF NEVADA
2700 W. Sahara Avenue
Las Vegas, NV 89102

Re: Joint Trust Account

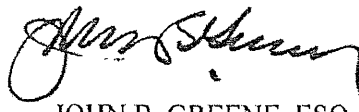
Dear Ms. Guindy:

As requested, please let this letter serve as the written basis for the creation of the subject Joint Trust Account (the Account). A litigated matter was recently settled for a considerable amount of money and Daniel S. Simon, Esq., has asserted an attorneys' lien to a portion of the proceeds. Thereafter, Brian Edgeworth retained Robert D. Vannah, Esq., as his personal counsel and Mr. Simon retained James R. Christensen, Esq., as his personal counsel. The parties and their counsel have agreed that the subject proceeds shall be deposited in the Account pending the resolution this matter. It's the desire of the parties that the account be created, named, and administered as discussed and that the proceeds accrue interest pending the resolution.

If you have any questions, please contact me directly at (702) 853-4338.

Sincerely,

VANNAH & VANNAH



JOHN B. GREENE. ESQ.

JBG/jr
Cc James R. Christensen, Esq. (via email)
Robert D. Vannah, Esq. (via email)

EXHIBIT G

DECLARATION AND EXPERT REPORT OF DAVID A. CLARK

This Report sets forth my expert opinion on issues in the above-referenced matter involving Nevada law and the Nevada Rules of Professional Conduct¹ as are intended within the meaning of NRS 50.275, *et seq.* I was retained by Defendant, Daniel S. Simon, in the above litigation. The following summary is based on my review of materials provided to me, case law, and secondary sources cited below which I have reviewed.

I have personal knowledge of the facts set forth below based on my review of materials referenced below. I am competent to testify as to all the opinions expressed below. I have been a practicing attorney in California (inactive) and Nevada since 1990. For 15 years I was a prosecutor with the Office of Bar Counsel, State Bar of Nevada, culminating in five years as Bar Counsel. I left the State Bar in July 2015 and reentered private practice. I have testified once before in deposition and at trial as a designated expert in a civil case. I was also retained and produced a report in another civil case. My professional background is attached as Exhibit 1.

SCOPE OF REPRESENTATION.

I was retained to render an opinion regarding the professional conduct of attorney Daniel S. Simon, arising out of his asserting an attorney's lien and the handling of settlement funds in his representation of Plaintiffs in *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C.

SUMMARY OPINION.

It is my opinion to a reasonable degree of probability that Mr. Simon's conduct is lawful, ethical and does not constitute a breach of contract or conversion as those claims are pled in *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018, in the Eighth Judicial District Court.

BACKGROUND FACTS.

In May 2016, Mr. Simon agreed to assist Plaintiffs in efforts to recover for damages resulting from flooding to Plaintiffs' home. Eventually, Mr. Simon filed suit in June 2016. The case was styled *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C and was litigated in the Eighth Judicial District Court, Clark County, Nevada.

As alleged in the Complaint (*Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018), the parties initially agreed that Mr. Simon would charge \$550.00 per hour for the representation. There was no written fee agreement. Complaint, ¶ 9. Toward the end of discovery, and on the eve of trial, the matter settled for \$6 million, an amount characterized in the Complaint as having "blossomed from one of mere property damage to one of significant and additional value." Complaint, ¶ 12.

On or about November 27, 2017, Mr. Simon sent a letter to Plaintiffs, setting forth

¹ The Nevada Rules of Professional Conduct ("RPC") did not enact the preamble and comments to the ABA Model Rules of Professional Conduct. However, Rule 1.0A provides in part that preamble and comments to the ABA Model Rules of Professional Conduct may be consulted for guidance in interpreting and applying the NRPC, unless there is a conflict between the Nevada Rules and the preamble or comments.

additional fees in an amount in excess of \$1 million. Complaint, ¶ 13. Thereafter, Mr. Simon was notified that the clients had retained Robert Vannah to represent them, as well. On December 18, 2017, Mr. Simon received two (2) checks from Zurich American Insurance Company, totaling \$6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon."

That same morning, Mr. Simon immediately called and then sent an email to the clients' counsel requesting that the clients endorse the checks so they could be deposited into Mr. Simon's trust account. According to the email thread, in a follow up telephone call between Mr. Simon and Mr. Greene, Mr. Greene informed that the clients were unavailable to sign the checks until after the New Year. Mr. Simon informed Mr. Greene that he was available the rest of the week but was leaving town Friday, December 22, 2017, for a family vacation and not returning until the New Year.

In a reply email, Mr. Greene stated that he would "be in touch regarding when the checks can be endorsed." Mr. Greene acknowledged that Mr. Simon mentioned a dispute regarding the fee and requested that Mr. Simon provide the exact amount to be kept in the trust account until the dispute is resolved. Mr. Greene asked that this information be provided "either directly or indirectly" through Mr. Simon's counsel.

On December 19, 2017, Mr. Simon's counsel, James Christensen, sent an email indicating that Mr. Simon was working on the final bill but that the process might take a week or two, depending on holiday staffing. However, since the clients were unavailable until after the New Year, this discussion was likely moot.

On Saturday evening, December 23, 2017, Plaintiff's counsel, Robert Vannah, replied by email asking if the parties would agree to placing the settlement monies into an escrow account instead of Mr. Simon's attorney trust account. Mr. Vannah indicated that he needed to know "right after Christmas." Mr. Christensen replied on December 26, 2017, reiterating that Mr. Simon is out of town through the New Year and was informed the clients are, as well.

Mr. Vannah then replied the same day indicating that the clients are available before the end of the year, and that they will not sign the checks to be deposited into Mr. Simon's trust account. Mr. Vannah again suggested an interest-bearing escrow account. By letter dated December 27, 2017, Mr. Christensen replied in detail to Mr. Vannah's email, discussing problems with using an escrow account as opposed to an attorney's trust account.

I am informed that following the email and letter exchange, Mr. Simon provided an amended attorneys' lien dated January 2, 2018, for a net sum of \$1,977,843.80 as the reasonable value for his services. Thereafter, the parties opened a joint trust account for the benefit of the clients on January 8, 2018. The clients endorsed the settlement checks for deposit. Due to the size of the checks, there was a hold of 7 business days, resulting the monies being available around January 18, 2018.

On January 4, 2018, Plaintiffs filed a Complaint in District Court, styled *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C (Complaint). The Complaint asserts claims for relief against Mr. Simon: breach of contract, declaratory relief, and conversion.

The breach of contract claim states:

25. SIMON's demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds

is a material breach of the CONTRACT.

26. SIMON'S refusal to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the contract.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definitive timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

As to the third claim for relief for conversion, the Complaint states:

43. SIMON'S retention of PLAINTIFF'S property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFF'S property rights.

ANALYSIS AND OPINIONS.

Breach of Contract

All attorneys' fees that are contracted for, charged, and collected, must be reasonable.² An attorney may also face disciplinary investigation and sanction pursuant to the inherent authority of the courts for violating RPC 1.5 (Fees).³ As such, all attorney fees and fee agreements are subject to judicial review.

Nevada law grants to an attorney a lien for the attorney's fees even without a fee agreement,

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.*

NRS 18.015(2) (emphasis added).⁴ This statute provides for the mechanism to perfect the lien and for the court to adjudicate the rights and amount of the fee. The Rules of Professional Conduct direct the ethical attorney to comply with such procedures. "Law may prescribe a procedure for determining a lawyer's fee. . . . The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure." Model R. Prof. Conduct 1.5 cmt 9 (ABA 2015).

² RPC 1.5(a) ("A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."); *see, also* Restatement (Third) of the Law Governing Lawyers §34 (2000) ("a lawyer may not charge a fee larger than is reasonable in the circumstances or that is prohibited by law.").

³ SCR 99, 101; *see, also* Restatement (Third) of the Law Governing Lawyers §42, cmt b(v) (2000) ("A court in which a case is pending may, in its discretion, resolve disputes between a lawyer and client concerning fees for services in that case. . . . Ancillary jurisdiction derives historically from the authority of the courts to regulate lawyers who appear before them.").

⁴ *See, also* Restatement (Third) of the Law Governing Lawyers §39 (2000) ("If a client and a lawyer have not made a valid contract providing for another measure of compensation, a client owes a lawyer who has performed legal services for the client the fair value of the lawyer's services").

In this instance, the fact that Mr. Simon has availed himself of his statutory lien right under Nevada law, a lien that attaches to every attorney-client relationship, regardless of agreement, cannot be a breach of contract. Mr. Simon is simply submitting his claim for services to judicial review, as the law not only allows, but requires.

In Nevada, “the plaintiff in a breach of contract action [must] show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach.”⁵ Here, there is neither breach nor damages arising from Mr. Simon’s actions. The parties cannot contract for fees beyond the review of the courts. Mr. Simon cannot even contract for an unreasonable fee, much less charge or collect one. Likewise, Plaintiff has an obligation to compensate Mr. Simon the fair value of his services.

By operation of law, NRS 18.015, and this court’s review, is an inherent term of the attorney-client fee arrangement, both with and without an express agreement. And, asserting his rights under the law, as encouraged by the Rules of Professional Conduct (“should comply with the prescribed procedure”) does not constitute a breach of contract. Moreover, as discussed below, under these facts, Plaintiffs cannot establish damages and the cause of action fails.

RPC 1.15 requires that the undisputed sum should be promptly disbursed. Based upon the facts as I know them, Mr. Simon has promptly secured the money in a trust account and promptly conveyed the amount of his claimed additional compensation on January 2, 2018, which is prior to the filing of the Complaint and prior to the funds becoming available for disbursement. Thus, Mr. Simon has complied with the requirements of RPC 1.15 and his actions do not support a claimed breach of contract on the alleged basis of delay in paragraphs 26 and 27 of the Complaint.

Conversion

RPC 1.15 (Safekeeping Property) addresses a lawyer’s duties when safekeeping property for clients or third-parties. It provides in pertinent part:

(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person.

.

(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.

⁵*Saini v. Int’l Game Tech.*, 434 F.Supp.2d 913, 919–20 (D.Nev.2006) (citing *Richardson v. Jones*, 1 Nev. 405, 408 (1865)).

Normally, client settlement funds are placed in the attorney's IOLTA trust account (Interest On Lawyer's Trust Account) with the interest payable to the Nevada Bar Foundation to fund legal services. Supreme Court Rules (SCR) 216-221. However, these accounts are for "clients' funds which are nominal in amount or to be held for a short period of time." SCR 78.5(9).

In our case, the settlement amount is substantial and the parties have agreed to place the sums into a separate trust account with interest accruing to the clients. This action comports entirely with Supreme Court Rules:

SCR 219. Availability of earnings to client. Upon request of a client, when economically feasible, earnings shall be made available to the client on deposited trust funds which are neither nominal in amount nor to be held for a short period of time.

SCR 220. Availability of earnings to attorney. No earnings from clients' funds may be made available to a member of the state bar or the member's law firm except as disbursed through the designated Bar Foundation for services rendered.

Therefore, Plaintiff's settlement monies are both segregated from Mr. Simon's own funds in a designated trust account, interest accruing to the client, and, by Supreme Court rule, Mr. Simon cannot obtain any earnings.

Conversion has been defined as "a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights."⁶

At the time of the filing of the complaint, Mr. Simon had already provided the clients with the amount of his claimed charging lien. Further, at the time of the filing of the Complaint, the clients had not endorsed nor deposited the settlement checks. Even if the funds had cleared the account when the complaint was filed, the monies are still segregated from Mr. Simon's ownership and benefit. He has followed the established rules of the Supreme Court governing the safekeeping of such funds when there is a dispute regarding possession. There is neither conversion of these funds (either in principal or interest) nor damages to Plaintiffs.

Based upon the foregoing, it is my opinion that Mr. Simon's conduct in this matter fails to constitute a breach of contract or conversion of property belonging to Plaintiffs.

AMENDMENT AND SUPPLEMENTATION.

Each of the opinions set forth herein is based upon my personal review and analysis. This report is based on information provided to me in connection with the underlying case as reported herein. Discovery is on-going. I reserve the right to amend or supplement my opinions if further compelling information is provided to me to clarify or modify the factual basis of my opinions.

⁶ *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536, 542-43 (Nev. 2008).

INFORMATION CONSIDERED IN REVIEWING UNDERLYING FACTS AND IN RENDERING OPINIONS.

In reviewing this matter, and rendering these opinions, I relied on and/or reviewed the authorities cited throughout this report and the following materials:

Doc No.	Document Description	Date
1.	Complaint – (A-18-767242-C) <i>Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law</i>	1/4/2018
2.	Letter from James R. Christensen to Robert D. Vannah, consisting of four (4) pages and referenced Exhibits 1 and 2, consisting of two (2) and four (4) pages, respectively.	12/27/2017
3.	Exhibit 1 to letter - Copies of two (2) checks from Zurich American Insurance Company, totaling \$6 million, and payable to “Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon	12/18/2017
4.	Exhibit 2 to letter - Email thread between and among Daniel Simon, John Greene, James R. Christensen, and Robert D. Vannah, consisting of four (4) pages	12/18/201– 12/26/2017
5.	Notice of Amended Attorneys Lien, filed and served in the case of <i>Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.</i> , Case No. A738444-C	1/2/2018
6.	Deposition Transcript of Brian J. Edgeworth, in the case of <i>Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.</i> , Case No. A738444-C	9/29/2017

BIOGRAPHICAL SUMMARY/QUALIFICATIONS.

Please see the attached curriculum vitae as Exhibit 1. Except as noted, I have no other publications within the past ten years.

OTHER CASES.

- I was engaged and testified as an expert in:

Renown Health, et al. v. Holland & Hart, Anderson
Second Judicial District Court Case No. CV14-02049
Reno, Nevada

Report April 2016; Rebuttal Report June 2016

Deposition Testimony August 2016; Trial testimony October 2016

- I was engaged and prepared a report in:

Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chld.
Case No. A-16-737889-C

Report December 2016.

COMPENSATION.

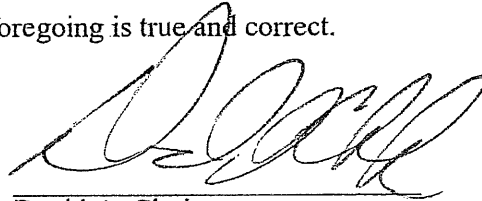
For this report, I charged an hourly rate is \$350.00.

DECLARATION

I am over the age of 18 and competent to testify to the opinions stated herein. I have personal knowledge of the facts herein based on my review of the materials referenced herein. I am competent to testify to my opinions expressed in this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 18, 2018

A handwritten signature in black ink, appearing to read 'David A. Clark', written over a horizontal line.

David A. Clark

David A. Clark

Lipson | Neilson

9900 Covington Cove Drive, Suite 120

Las Vegas, Nevada 89144-7052 (702) 382-1500 – office

(702) 382-1512 – fax

(702) 561-8445 – cell

dclark@lisponeilson.com

Biographical Summary

For 15 years, Mr. Clark was a prosecutor in the Office of Bar Counsel, culminating in five years as Bar Counsel. Mr. Clark prosecuted personally more than a thousand attorney grievances from investigation through trial and appeal, along with direct petitions to the Supreme Court for emergency suspensions and reciprocal discipline. Two of his cases resulted in reported decisions, *In re Discipline of Droz*, 123 Nev. 163, 160 P.3d 881 (2007) and *In re Discipline of Lerner*, 124 Nev. 1232, 197 P.3d 1067 (2008).

Mr. Clark established the training regimen and content for members of the Disciplinary Boards, which hears discipline prosecutions. He proposed and obtained numerous rule changes to Nevada Rules of Professional Conduct and the Supreme Court Rules governing attorney discipline. He drafted the first-ever Discipline Rules of Procedure that were adopted by a task force and the Board of Governors in July 2014.

Mr. Clark has presented countless CLE-accredited seminars on all aspects of attorney ethics for the State Bar of Nevada, the Clark County Bar Assn., the National Organization of Bar Counsel (NOBC), the National Assn. of Bar Executives (NABE), and the Association of Professional Responsibility Lawyers (APRL). He has spoken on ethics and attorney discipline before chapters of paralegal groups and SIU fraud investigators, as well as in-house for the Nevada Attorney General's office and the Clark County District Attorney.

Mr. Clark received his Juris Doctor from Loyola Law School of Los Angeles following a B.S. in Political Science from Claremont McKenna College. He is admitted in Nevada and California (inactive), the District of Nevada, the Central District of California, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

Work Experience

August 2015 - present

Lipson | Neilson

9900 Covington Cove Drive, Suite 120

Las Vegas, Nevada 89144-7052

Partner

November 2000 – July, 2015	Office of Bar Counsel State Bar of Nevada
January 2011 - July 2015	Bar Counsel
May 2007 - December 2010	Deputy Bar Counsel/ General Counsel to Board of Governors
April 2010 - September 2010	Acting Director of Admissions
January 2007 - May 2007	Acting Bar Counsel
November 2000 - December 2006	Assistant Bar Counsel
May 1997 – October 2000	Stephenson & Dickinson <i>Litigation Associate Attorney</i>
November 1996 - May 1997	Earley & Dickinson <i>Litigation Associate Attorney</i>
April 1995 - August 1996	Thorndal, Backus, Armstrong & Balkenbush <i>Litigation Associate Attorney</i>
May 1992 - March 1995	Brown & Brown <i>Associate Attorney</i>
September 1990 -	Gold, Marks, Ring & Pepper (California) March 1992 <i>Litigation Associate Attorney</i>
Education	
1987 - 1990	Loyola of Los Angeles Law School <i>Juris Doctor</i>
1980 – 1985	Claremont McKenna College (CA) <i>B.S., Political Science</i>

Expert Retention and Testimony

1. *Renown Health, et al. v. Holland & Hart, Anderson*
Second Judicial District Court Case No. CV14-02049
Reno, Nevada

Report April 2016; Rebuttal Report June 2016
Deposition Testimony August 2016; Trial testimony October 2016

2. *Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.*
Case No. A-16-737889-C

Report December 2016.

Reported Decisions

In re Discipline of Droz, 123 Nev. 163, 160 P.3d 881 (2007) (Authority of Supreme Court to discipline non-Nevada licensed attorney).

In re Discipline of Lerner, 124 Nev. 1232, 197 P.3d 1067 (2008) (Only third Nevada case defining practice of law).

Recent Continuing Legal Education Taught

Office of Bar Counsel 2011 – 2015	Training of New Discipline Board members (twice yearly)
2011 SBN Family Law Conf. March 2011	Ethics and Malpractice
2011 State Bar Annual Meeting June 2011	Breach or No Breach: Questions in Ethics
Nevada Paralegal Assn./SBN April 2012	Crossing the UPL Line: What Attorneys Should Not Delegate to Assistants
2012 State Bar Annual Meeting July 2012	Lawyers and Loan Modifications: Perfect Storm or Perfect Solution
State Bar Ethics Year in Review December 2012	How Not to Leave a Firm
State Bar of Nevada June 2013	Ethics in Discovery
2013 State Bar Annual Meeting July 2013	Practice like an Attorney, not a Respondent

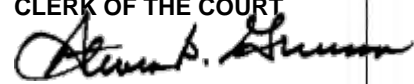
	Ethical Issues in Law Practice Promotion (Advertising)
	Going Solo: Building and Marketing Your Firm
Nevada Attorney General December 2013	Civility and Professionalism
Clark County Bar Assn. June 2014	Legal Ethics: Current Trends
UNLV Boyd School of Law July 2014	Discipline Process
2014 NV Prosecutors Conf. September 2014	Unauthorized Practice of Law
State Bar of Nevada November 2014	Let's Be Blunt: Ethics of Medical Marijuana
State Bar Ethics Year in Review December 2014	Ethics, civility, discipline process
LV Valley Paralegal Assn. Annual Meeting, April 2015	Paralegal Ethics
UNLV Boyd SOL May 2015	Navigating the Potholes: Attorney Ethics of Medical Marijuana
Assn. of Professional Responsibility Lawyers (APRL) February 2016 Mid-Year Mtg.	Patently different? Duty of Disclosure under USPTO and State Law (Panel member)
The Seminar Group July 2017	Medical & Recreational Marijuana in Nevada
State Bar of Nevada SMOLO Institute October 2017	Attorney-Client Confidentiality

Press Appearances

May 8, 2014 Channel 3 (Las Vegas)	Ralston Report. Ethics of attorneys owning medical marijuana businesses.
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Practice Areas

Insurance and Commercial Litigation, Legal Malpractice, Ethics, Discipline Defense.



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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

24 Defendants.

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

Consolidated with

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

**PLAINTIFFS OPPOSITION TO
DEFENDANT'S (THIRD) MOTION TO
DISMISS**

Date of Hearing: May 15, 2018
Time of Hearing: 9:30 a.m.

25 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC
26 (PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN
27 B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby files this Opposition to the
28 (Third) Motion of DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION (SIMON) to Dismiss (the Motion).

///

///

This Opposition is based upon the attached Memorandum of Points and Authorities, NRCP 8(a), the Nevada Rules of Professional Conduct (NRPC), the pleadings and papers on file herein, PLAINTIFFS Points and Authorities raised in Opposition to SIMON'S Motions to Adjudicate and Consolidate, PLAINTIFFS Points and Authorities raised in Opposition to SIMON'S (First) Motion to Dismiss and to SIMON'S Special (Second) Motion to Dismiss, the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far, all of which PLAINTIFFS adopt and incorporate by this reference, and any oral argument this Court may wish to entertain.

DATED this 24 day of April, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

I.

MEMORANDUM OF POINTS AND AUTHORITIES

On or about May 27, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.) The damage from the flood caused in excess of \$500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants not long before the trial date.

1 At the outset of the attorney-client relationship, PLAINTIFFS and SIMON the person
2 orally agreed that SIMON the person and the lawyer would be paid for his services by the hour and
3 at an hourly rate of \$550. (Id.). No other form or method of compensation such as a contingency
4 fee was ever brought up at that time, let alone agreed to. (Id.) Despite SIMON serving as the
5 attorney in this business relationship, and the one with the requisite legal expertise, SIMON never
6 reduced the terms of the CONTRACT to writing in the form of a Fee Agreement. However, that
7 formality didn't matter to the parties as they each recognized what the terms of the CONTRACT
8 were and performed them accordingly with exactness. (Id.)

10 For example, SIMON sent invoices to PLAINTIFFS that were dated December 16, 2016,
11 May 3, 2017, August 16, 2017, and September 25, 2017. (SIMON'S invoices that were actually
12 sent to PLAINTIFFS are attached to SIMON'S Motion to Adjudicate as Exhibit 20.) The amount
13 of fees and costs SIMON billed PLAINTIFFS in those invoices totaled \$486,453.09. Simple
14 reading and math shows that SIMON billed for his time at the hourly rate of \$550 per hour.
15 PLAINTIFFS paid the invoices in full to SIMON. (Id.)

17 SIMON also submitted an invoice to PLAINTIFFS on November 10, 2017, in the amount
18 of approximately \$72,000. (Please see the Affidavits of Brian Edgeworth attached to his
19 Oppositions to SIMON'S numerous Motions filed thus far.) However, SIMON withdrew the
20 invoice and failed to resubmit the invoice to PLAINTIFFS, despite an email request from Brian
21 Edgeworth to do so. (Id.) It is unknown to PLAINTIFFS whether SIMON ever disclosed that
22 "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to
23 the mandated computation of damages.

25 From the beginning of his representation of PLAINTIFFS, SIMON was aware that
26 PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION.
27 SIMON was also aware that the loans secured by PLAINTIFFS accrued interest. Rather, SIMON
28

1 knew that PLAINTIFFS could not get traditional loans to pay SIMON'S fees and costs. (Id.) Plus,
2 SIMON didn't express an interest in taking what amounted to a property damage claim with a
3 value of \$500,000 on a contingency basis. Easy math shows that 40% of \$500,000 is \$200,000;
4 SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. In
5 reality, SIMON only wanted what amounts to a bonus after he'd received \$500,000 in fees and
6 costs and after the risk of loss was gone.
7

8 As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017,
9 after the value of the case blossomed from one of property damage of approximately \$500,000 to
10 one of significant and additional value due to the conduct of one of the defendants, and after a
11 significant sum of money was offered to PLAINTIFFS from defendants, SIMON became
12 determined to get more, so he started asking PLAINTIFFS to modify the CONTRACT. (Id.)
13 Thereafter, Mr. Edgeworth sent an email labeled "Contingency." (See Exhibit 4 to the Motion to
14 Adjudicate.) (Remarkably, SIMON misleads the Court in his Motion at page 11 by using this email
15 from August of 2017 that discusses modifying the original terms of fee agreement) to support his
16 unsupportable and untenable position that the parties didn't have a "structured discussion" in 2016
17 on fees.) The sole purpose of that email was to make it clear to SIMON that PLAINTIFFS never
18 had a structured conversation about modifying the existing fee agreement from an hourly agreement
19 to a contingency agreement. (Please see the Affidavits of Brian Edgeworth attached to his
20 Oppositions to SIMON'S numerous Motions filed thus far.)
21

22
23 SIMON scheduled an appointment for PLAINTIFFS to come to his office to discuss the
24 LITIGATION. (Id.) Instead, his only agenda item was to pressure PLAINTIFFS into modifying
25 the terms of the CONTRACT. (Id.) SIMON told PLAINTIFFS that he wanted to be paid far more
26 than \$550.00 per hour and the \$486,453.09 he'd received from PLAINTIFFS for the preceding
27 eighteen (18) months. (Id.)
28

1 The timing of SIMON'S request for the CONTRACT to be modified was deeply troubling
2 to PLAINTIFFS, for it came at the time when the risk of loss in the LITIGATION had been nearly
3 extinguished and the appearance of a large gain from a settlement offer had suddenly been
4 recognized. SIMON put on a full court press for PLAINTIFFS to agree to his proposed
5 modifications to the CONTRACT. In essence, PLAINTIFFS felt that they were being blackmailed
6 by SIMON, who was basically saying "agree to this or else." (Id.)
7

8 On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees
9 in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be
10 paid in light of a favorable settlement that was reached with the defendants in the LITIGATION.
11 (Id.) At that time, these additional "fees" were not based upon invoices submitted to PLAINTIFFS
12 or detailed work performed by SIMON. The proposed fees and costs were in addition to the
13 \$486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the
14 invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the
15 LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in
16 the LITIGATION.
17

18 One reason given by SIMON to modify the CONTACT was he claimed he was losing
19 money on the LITIGATION. Another reason given by SIMON to modify the CONTRACT was
20 that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and
21 that he wanted to go through his invoices and create, or submit, additional billing entries. (Id.)
22 According to SIMON, he under billed in the LITIGATION in an amount in excess of
23 \$1,000,000.00. SIMON doubled down on that position of under billing in a letter to co-counsel for
24 PLAINTIFFS dated December 7, 2017, where SIMON claimed that the worked performed by him
25 from the outset that has not been billed "may well exceed \$1.5M." (Please see Exhibit 9 to
26 SIMON'S Motion to Adjudicate.)
27
28

1 We've now learned through SIMON'S latest invoices (attached to his Motion to Adjudicate
2 as Exhibit 19) that he actually allegedly under-billed by \$692,120, not the \$1.5M set forth in the
3 letter of December 7, 2017. On the one hand, it's odd for SIMON to assert that he's losing money
4 then, on the other hand, have SIMON admit that he under-billed PLAINTIFFS to the tune of
5 \$692,120 to \$1.5M. But, that's the essence of the oddity to SIMON'S conduct with PLAINTIFFS
6 since the settlement offers in the LITIGATION began to roll in.
7

8 Yet an additional reason given then by SIMON was that he felt his work now had greater
9 value than the \$550.00 per hour that was agreed to and paid for pursuant to the CONTRACT.
10 SIMON prepared a proposed settlement breakdown with his new numbers and presented it to
11 PLAINTIFFS for their signatures. They refused to bow to SIMON'S pressure or demands.
12 (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous
13 Motions filed thus far.)
14

15 Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
16 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
17 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following
18 the flooding event. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to
19 NRCP 16.1, SIMON was required to present prior to trial a computation of damages that
20 PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that
21 PLAINTIFFS paid.
22

23 There is nothing in the computation of damages signed by and served by SIMON to reflect
24 fees and costs other than those contained in his invoices that were presented to and paid in full by
25 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
26 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let
27 alone those in excess of \$692,120 of his invoices from January of 2018, or \$1.5M set forth in his
28

1 letter of December 7, 2017, or the exorbitant figure set forth in SIMON'S amended lien of
2 \$1,977,843.80, dated January 2, 2018.

3
4 Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
5 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
6 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
7 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
8 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
9 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
10 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
11 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
12 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
13 they've been updated as of last week." (Excerpts of the Deposition are attached as Exhibit 2 to
14 PLAINTIFFS Opposition to SIMON'S Motion to Adjudicate.)
15

16 Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS
17 refused to alter or amend the terms of the CONTRACT. (Please see the Affidavits of Brian
18 Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.) When
19 PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused to agree to
20 release the full amount of the settlement proceeds to PLAINTIFFS. (Id.) Instead, he served two
21 attorneys liens and reformulated his billings to add entries and time that never saw the light of day
22 in the LITIGATION. (Id.) Even when he finally submitted his new billings on January 24, 2018,
23 the invoice totaled \$692,120 for his "additional" services, and billed them at the agreed to rate of
24 \$550 (for SIMON'S time). Yet, SIMON wrongfully continued to lay claim to nearly \$1,977,843
25 of PLAINTIFFS property (Please see Amended Lien attached as Exhibit 15 to SIMON'S Motion
26 to Adjudicate.) and he refused to release PLAINTIFFS' funds.
27
28

1 When SIMON refused to release the full amount of the settlement proceeds to PLAINTIFFS,
2 litigation was filed and served. (A copy of PLAINTIFFS' original Complaint is attached as Exhibit
3 A to SIMON'S First Motion to Dismiss.) Thereafter, the "undisputed funds" were deposited in a
4 bank account and can only be released on agreement by SIMON the person and counsel for
5 PLAINTIFFS. The present claims of PLAINTIFFS against SIMON are for Breach of Contract,
6 Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith and Fair
7 Dealing, and they are set forth in an AMENDED COMPLAINT that has been filed and served.
8

9 As set forth in NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires "a
10 short and plain statement of the claim showing that the pleader is entitled to relief." PLAINTIFFS
11 have easily met that requirement with each of their claims. PLAINTIFFS' claims against SIMON
12 personally are properly raised, too. NRPC 1(c) defines the work of a law firm as the work of a
13 lawyer. In fact, nearly every Rule speaks to that effect. It's undisputed that SIMON the person did
14 the work. Therefore, the claims against him personally are proper in fact and by Rule.
15

16 PLAINTIFFS' claims for conversion, for breach of the implied covenant of good faith and
17 fair dealing, and for punitive damages, are also perfectly proper and timely. These claims are based
18 on a very simple premise that is accentuated by SIMON'S words and deeds. SIMON has converted
19 (misappropriated; taken; etc.) PLAINTIFFS' property by intentionally and wrongfully formulating a
20 plan that's visible through agreements, letters, and the like to take PLAINTIFFS property. It's also a
21 plan that flies in the face of the CONTRACT of the parties and the Rules governing lawyers.
22

23 That plan was perfected by asserting a lien and by refusing to release PLAINTIFFS property
24 to them upon demand. While the balance of PLAINTIFFS property (settlement proceeds) is
25 presently parked in a bank account, they don't want it to be there. PLAINTIFFS wanted and want
26 their property then and now. Demands to SIMON went unheeded. (Please see the Affidavits of
27 Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.)
28

Pursuant to NRCP 8(a)(1), a plain reading of PLAINTIFFS complaint clearly sets forth simple facts sufficient to maintain all of their claims, including the intentional tort of conversion, and its remedy of punitive damages, against SIMON.

II.

ARGUMENTS

A. PLAINTIFFS HAVE CLEARLY MET THE TWO-PART STANDARD OF PLEADING SUFFICIENT FACTS TO MAINTAIN CLAIMS AGAINST SIMON FOR BREACH OF CONTRACT, DECLARATORY RELIEF, CONVERSION, AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, AS WELL AS THE REMEDIES RELATED TO THESE CLAIMS.

Nevada is a notice-pleading jurisdiction with two simple steps for PLAINTIFFS to take to assert and maintain their claims for relief against SIMON. First, NRCP 8(a)(1) merely requires PLAINTIFFS to include in their pleading “a short and plain statement of the claim showing that the pleader is entitled to relief...” PLAINTIFFS have included twenty (20) detailed paragraphs in their AMENDED COMPLAINT outlining SIMON’S words and deeds that support their claims for relief. They leave no doubt as to the basis for their claims, who and what they’re against, and why they are making them. Certainly, there can be no reasonable dispute that PLAINTIFFS have met that minimum standard. If this Court or a jury accepts PLAINTIFFS assertions, and there are facts to back them up, relief against SIMON will likely be granted. See NRCP 12.

Likewise, NRCP 8(a)(2) merely requires PLAINTIFFS to include “a demand for judgment for the relief the pleader seeks.” The jurisdictional amount, per the Rule, is \$15,000 “without further specification of amount.” The amount in the Prayer for Relief portion of PLAINTIFFS AMENDED COMPLAINT, six (6) demands are made for judgment against SIMON. They leave no doubt that PLAINTIFFS are seeking judgment and they meet the jurisdictional minimum. Since PLAINTIFFS have met each of the minimum standards of NRCP 8 to maintain their claims against SIMON, SIMON’S Motion to Dismiss must be denied.

B. PLAINTIFFS' CLAIMS AGAINST SIMON, BOTH PERSONALLY AND PROFESSIONALLY, ARE SOUNDLY BASED IN FACT AND LAW.

SIMON'S words and deeds from day one through the present date, paints a clear picture that a CONTRACT existed between the parties. Here's some of the evidence. First, there are the affidavits of Brian Edgeworth that he's presented in support of PLAINTIFFS Oppositions to SIMON'S numerous Motions that he's filed thus far, where he states time and again that he and SIMON agreed that SIMON'S fee would be \$550 per hour for his services. The discussion between SIMON and PLAINTIFFS was structured enough for the parties to agree that SIMON would be retained as PLAINTIFFS attorney and be paid \$550 per hour for his services, and reimbursed for his costs. That's the essence of a fee agreement. It's not a complicated business relationship that requires anything more for the contracting parties to know and to understand where they stand with the agreement. That's what happened here. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.)

Second, all of the invoices presented by SIMON and paid in full by PLAINTIFFS in the LITIGATION are for an hourly rate of \$550 per hour for SIMON'S services. (See Exhibit 20 to SIMON'S Motion to Adjudicate.) There are hundreds of entries for hundreds of thousands of dollars, all billed by SIMON at his agreed to hourly rate. (His associate is billed at a lesser rate of \$275 per hour.) SIMON'S new invoices that he produced on January 24 of this year—invoices that contain thousands of entries and \$692,120 in new billings—are billed by SIMON at \$550 per hour, too. (Please see Exhibit 19 to SIMON'S Motion to Adjudicate.) See the pattern?

Third, there are the admissions by SIMON in the deposition of Mr. Edgeworth. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been

1 disclosed to you long ago.” Finally, at page 272, lines 2-3, SIMON further admitted concerning his
2 fees and costs: “And they’ve been updated as of last week.” (Please see Exhibit 2 to PLAINTIFFS
3 Opposition to SIMON’S Motion to Adjudicate.)

4 These are the same invoices that contain the agreed to hourly rate of \$550 per hour, which
5 were all paid in full by PLAINTIFFS. The \$550 question is: how much more consistent
6 performance by the parties to the terms of an agreement does it take to convince even the most
7 intransigent litigant that there is a CONTRACT that he has to abide by? It’s been the same since the
8 beginning. A jury may agree. Fourth, there are the calculations of damages in the LITIGATION
9 that SIMON was obligated to submit and serve on PLAINTIFFS behalf and in accordance with
10 NRCP 11(b) and NRCP 16.1. The calculations of damages submitted by and signed by SIMON set
11 forth damages, including attorneys’ fees, based on his hourly rate of \$550 and paid in full by
12 PLAINTIFFS.
13

14 Last, in a letter to co-counsel for PLAINTIFFS dated December 7, 2017 (attached to
15 SIMON’S Motion to Adjudicate as Exhibit 9), SIMON states “Simon Law is reviewing the case file
16 and work performed from the outset that has not been billed (including such things as obtaining the
17 forensic copy of case related e-mails and phone records) to provide a comprehensive hourly bill.”
18 (Emphasis added.) This letter from SIMON goes on to state “It is reasonably expected at this time
19 that the hourly bill may well exceed a total of \$1.5M....” (Emphasis added.) His hourly bill
20 produced on January 24, 2018, was actually for an additional \$692,120 in fees.
21

22 Thus we see that all of the conduct by SIMON in the LITIGATION from the beginning to
23 the end refutes his newfound position that there was no agreement to pay an hourly fee. To the
24 contrary, it instead supports a finding that the terms of the CONTRACT contain the agreement of
25 the parties on the amount of the fee between SIMON and PLAINTIFFS, which is as hourly rate of
26 \$550.
27
28

1 As PLAINTIFFS have argued throughout this surreal journey, the only pathway for SIMON
2 to prevail on his Motion is to convince a trier of fact that the CONTRACT isn't a contract and that it
3 didn't contain the agreement of the parties on the amount of SIMON'S fee that everyone abided by
4 with exactness for over eighteen (18) months. The CONTRACT contains every element of a valid
5 and enforceable contract. PLAINTIFFS asked SIMON the person to represent them in the
6 LITIGATION in exchange for an hourly fee of \$550, plus the reimbursement of costs incurred (the
7 offer). SIMON the person agreed to serve as PLAINTIFFS attorney and to be paid the hourly rate of
8 \$550 for his services (the acceptance). PLAINTIFFS agreed to pay, and SIMON the person agreed
9 to receive, \$550 per hour for SIMON'S time, plus the reimbursement of costs (the consideration).

11 Thereafter, SIMON billed PLAINTIFFS for his time at a rate of \$550 per hour, plus incurred
12 costs, and PLAINTIFFS paid each invoice presented by SIMON in full (the performance), but for
13 the latest "invoice", which they will review and pay what is fair and reasonable. There isn't a
14 question of capacity or intent. Therefore, that's a contract, which is the CONTRACT. For SIMON
15 to argue or assert otherwise in this litigation is belied by every reasonable measure of his words and
16 deeds, including his letter of December 2, 2017, and his latest billings produced on January 24,
17 2018.

19 SIMON now wants the equivalent of a contingency fee from PLAINTIFFS without a written
20 contingency fee agreement, ironically one that he never wanted or would have agreed to in the first
21 place. SIMON also seems to want a bonus for his efforts, though the parties never agreed to one.
22 When SIMON didn't get what he wanted, he placed a fugitive lien in a baseless amount on
23 PLAINTIFFS property for \$1,977,843.80. (Please see Exhibit 15 to SIMON'S Motion to
24 Adjudicate.) He did so despite the prior knowledge and admission that "...it is reasonably expected
25 at this time that the hourly bill may well exceed a total of \$1.5M...." (Please see Exhibit 9 to
26 SIMON'S Motion to Adjudicate.)
27
28

1 Even today, SIMON the person maintains dominion and control over the balance of
2 PLAINTIFFS settlement proceeds despite the foregoing facts AND the despite the fact that his
3 actual hourly bill for his services after his “comprehensive” review are “only” \$692,120. (Please
4 see SIMON’S billings attached as Exhibit 19 to the Motion to Adjudicate.) Simple math again
5 reveals that SIMON the person has willfully converted at least \$1,285,723.80 of PLAINTIFFS
6 property. Those are sufficient facts under any standard for PLAINTIFFS to maintain a claim for
7 breach of the CONTRACT, conversion, breach of the implied covenant of good faith and fair
8 dealing, and the remedy of punitive damages against SIMON the person.
9

10 SIMON also continues to seek refuge in his wrongfully asserted charging lien in its
11 unsupportable amount. As argued in other pleadings, SIMON had no basis to assert that lien in its
12 stated amount. Each invoice he’s presented to PLAINTIFFS in the LITIGATION had been paid in
13 full. Also, there is nothing in fact or at law to support any argument that SIMON’S fee was
14 dependant in any way on the existence of, or the amount of, the settlement reached with the
15 defendants in the LITIGATION. Rather, this Court or a jury could find that SIMON asserted one
16 because he wanted to and because his law licensed cloaked him with the ability to do so. That
17 finding could trigger a valid remedy of punitive damages.
18

19 As for the amount of, and the ongoing existence of, the charging lien, there’s no basis for
20 either. As discussed above, SIMON’S amended lien is far more than provided for under the
21 CONTRACT and his “comprehensive” billings. Again, at least **\$1,285,723.80** of SIMON’S
22 charging lien (in the amount of \$1,977,843.80) has no basis in fact or in law. (PLAINTIFFS have
23 also seen glaring issues with SIMON’S new billing invoice, including duplicate entries and a huge
24 block billing entry for over 135 hours for reviewing emails.) And SIMON won’t release
25 PLAINTIFFS property, despite knowing that his consent is required to do so. That’s not consent for
26 PLAINTIFFS, but it is conversion at the hands of SIMON.
27
28

1 PLAINTIFFS' claims against SIMON personally are properly raised, too. SIMON seeks to
2 shield himself behind the façade of his firm to avoid personal responsibility for PLAINTIFFS'
3 claims. Not so fast. The things that lawyers do and don't do, including their interactions with
4 clients, are governed by the NRPC. PLAINTIFFS assert, and have claimed, that SIMON'S actions
5 are in fact SIMON'S actions, personally and professionally. NRPC 1(c) is on point and on all fours
6 with PLAINTIFFS' claims. This Rule states that a "Firm or law firm denotes a lawyer or
7 lawyers...." As a result, when SIMON argues that any agreement with PLAINTIFFS was reached
8 with his firm, the Rules instead determine that the CONTRACT was made with the lawyer, who is
9 SIMON the person. See NRPC 1(c) and NRPC 1.5.

11 In fact, nearly every Rule in the NRPC uses similar language and speaks directly to lawyers.
12 For example, the Rules dealing with competence (1.1), scope of representation (1.2), diligence (1.3),
13 communication (1.4), fees (1.5), confidentiality (1.6), conflicts (1.7 & 1.8), duties to former clients
14 (1.9), advisor (2.1), and candor to the tribunal (3.3), all begin with, or have in prominent display, "A
15 lawyer shall...." (Emphasis added.) By definition and via common sense, these Rules in general,
16 and Rule 1.5 in particular, preclude SIMON from making any successful argument as to who the
17 CONTRACT is with and who PLAINTIFFS claims can gain traction against. In short, his argument
18 to shield himself is belied by the Rule and the law. But there's more.

19 Here, it is undisputed that SIMON the person spoke with PLAINTIFFS about the terms of
20 the CONTRACT. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to
21 SIMON'S numerous Motions filed thus far.) It's undisputed that SIMON the person did the work
22 that resulted in the lions share of the \$486,453.09 in invoices that were billed and paid to date in the
23 LITIGATION. (See Exhibits 19 and 20 to SIMON'S Motion to Adjudicate). It's undisputed that
24 SIMON the person performed the "comprehensive" review that resulted in \$692,120 in additional
25 hourly billings. (See Exhibit 9 to SIMON'S Motion to Adjudicate.) It's not reasonably disputed
26 that SIMON the person formulated the plan to get paid more in fees than he agreed to under the
27
28

1 CONTRACT. It's undisputed that SIMON the person prepared and sent the charging lien that
2 perfected his plan to get a bonus for his work. Finally, it's undisputed that SIMON the person
3 controls whether PLAINTIFFS personal property gets released and paid to them, as the account
4 requires his signature and consent.

5
6 Of utmost importance here, SIMON the person doesn't really dispute that SIMON the
7 person is the real-party-in-interest here. We know this by simply reading what he wrote in his
8 Motion to Adjudicate Attorney Lien, which was his first Motion to this Court, when all of this was
9 most fresh in his mind and before he had time to contemplate other conflicting legal theories. At
10 page 5, lines 3-8, SIMON the person began the story by letting us know that "Danny and Eleyna
11 Simon were close family friends with Brian and Angela Edgeworth for many years." SIMON the
12 person continues by telling us, "In May of 2016, Mr. Simon agreed to help his friend with the flood
13 claim. Because they were friends, Mr. Simon worked without an express fee agreement."
14 (Emphasis added.)
15

16 At pages 9 of his Motion to Adjudicate, SIMON the person continues the human interest
17 aspect of the facts by reiterating that, "the families (Simons and Edgeworths) became close," and
18 that "they helped each other during difficult times." At page 10, SIMON the person stated, "Mr.
19 Simon was comfortable waiting until the end of the case to be paid in full." Finally, at page 11,
20 SIMON the person admitted, "Mr. Edgeworth asked his friend (Danny Simon) for help" and that,
21 "Mr. Simon agreed to lend a helping hand, and send a few letters." Several other references are
22 made in that Motion of Danny Simon the person saying this and Mr. Simon the person doing that.
23 SIMON'S subsequent iterations of these facts in later Motions shift to the law firm doing this and
24 saying that, but the story had already been written and embraced by SIMON the person, as common
25 sense and the law say it should be.
26

27 PLAINTIFFS' claims against SIMON the person as the lawyer are proper in fact, by Rule,
28 and at law. SIMON the person is the one who was practicing law for PLAINTIFFS, not his

1 corporation. It provides no refuge for him here on these facts and with his admissions. Thus, there
2 are sufficient facts plead under the Rules for PLAINTIFFS claims against SIMON the person as the
3 lawyer to go forward. Therefore, there's no basis in fact or at law for SIMON to be allowed to
4 shield himself from personal liability or to request that PLAINTIFFS AMENDED COMPLAINT be
5 dismissed.
6

7 **C. PLAINTIFFS HAVE PROPERLY SET FORTH THEIR CLAIMS FOR RELIEF FOR**
8 **CONVERSION AND FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**
9 **AND FAIR DEALING. AS INTENTIONAL TORTS, AND WITH THESE FACTS,**
10 **PLAINTIFFS ARE ENTITLED TO THE REMEDY THEY SEEK, WHICH ARE PUNITIVE**
11 **DAMAGES.**

12 In bringing a claim against SIMON for conversion and for breach of the implied covenant of
13 good faith and fair dealing—intentional torts—PLAINTIFFS have properly asserted claims against
14 SIMON where the remedies are punitive damages. In his Motion, SIMON improperly argues that
15 PLAINTIFFS can't prove their claims. That's a bold and a false assertion in light of the facts and
16 that no discovery has taken place. PLAINTIFFS assert that their AMENDED COMPLAINT
17 contains far more than "a short and plain statement of the claim" for conversion, and that SIMON
18 did so with the clear knowledge and the intent to harm, in that he was not entitled to any portion of
19 PLAINTIFFS property.

20 A jury may very well find that the CONTRACT governed how much SIMON the lawyer
21 could charge in fees. That same jury may also find that SIMON the person wanted more than what
22 he'd agreed to receive, and that he formulated a plan to get it done. The jury could also find that
23 SIMON'S clear knowledge and intent to wrongfully convert PLAINTIFFS property was crystallized
24 when he: 1.) Sent his letter of December 7, 2017, prophesying an additional \$1.5M in billings; 2.)
25 Asserted two liens, namely an amended lien on January 2, 2018, for \$1,977,843.80 in fees; and, 3.)
26 Submitted additional billings on January 24, 2018, for \$692,120 in billings that followed his
27 "comprehensive" review of all the work he'd performed to date.
28

1 They may also find that while the amount of SIMON'S conversion has been a moving target
2 (thus far it's been "in excess of a million dollars," \$1.5M, \$1,977,843.80, and/or \$692,120!), it was
3 still done with the knowledge that it's wrong, that it was done with intent to harm and oppress, that
4 it's in direct violation of the property rights of PLAINTIFFS, and that it was done with the intent to
5 benefit himself and the expense of and harm to PLAINTIFFS.
6

7 Finally, a trier-of-fact may also find sufficient evidence exists to show that SIMON'S
8 conduct of: failing to reduce the CONTRACT to writing; later claiming ambiguities in the
9 CONTRACT; demanding a bonus from PLAINTIFFS; creating a super bill after the LITIGATION
10 had settled, including a block bill of over 135 hours; harboring a plan to merely submit partial
11 invoices without consulting PLAINTIFFS of this plan so they could evaluate whether SIMON
12 should continue as counsel; executing his secret plan by going back and adding substantial time to
13 his invoices that had already been billed and paid in full; and, but not limited to, asserting a lien on
14 PLAINTIFFS' property, knowingly doing so in an amount that was far in excess of any amount of
15 fees that he had billed from the date of the previously paid invoice to the date of the service of the
16 lien, that he could bill for the work performed, that he actually billed, or that he could possible claim
17 under the CONTRACT, that SIMON failed to deal fairly and in good faith with PLAINTIFFS and
18 thus breached the implied covenant of good faith and fair dealing.
19
20

21 In summary, PLAINTIFFS have met their burden under NRCP 8 and NRCP 12 to allege
22 sufficient facts to support their claims for Breach of Contract, for Declaratory Relief, for Conversion
23 and its remedy of punitive damages, and for Breach of the Implied Covenant of Good Faith and Fair
24 Dealing, with all of its remedies. If this Court needs a more definite statement in PLAINTIFFS
25 AMENDED COMPLAINT, they can provide that. However, PLAINTIFFS believe that SIMON'S
26 conduct has been sufficiently set forth in their AMENDED COMPLAINT. As a result, they
27 respectfully request that SIMON'S (Third) Motion to Dismiss be denied.
28

III.

CONCLUSION

Based on the foregoing, PLAINTIFFS respectfully request the Court deny SIMON'S (Third) Motion to Dismiss and instead allow PLAINTIFFS to present their claims for damages against SIMON before a jury, as provided by Nevada Constitutional, statutory, and case law.

DATED this 24 day of April, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

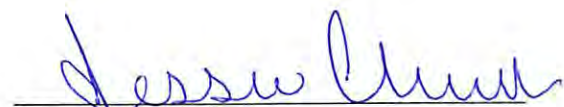
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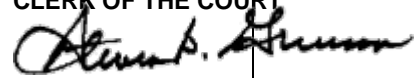
James Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

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

Traditional Manner:
None

DATED this 24th day of April, 2018.


An employee of the Law Office of
Vannah & Vannah



MTD

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

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**SPECIAL MOTION TO DISMISS
THE AMENDED COMPLAINT:
ANTI-SLAPP**

Date of Hearing:

Time of Hearing:

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 26

1 The LAW OFFICE OF DANIEL S. SIMON, P.C. moves the Court for an
2 Order dismissing the amended complaint pursuant to the Nevada Anti-SLAPP law.

3 DATED this 10th day of May, 2018.

4 /s/ James R. Christensen

5 James R. Christensen Esq.
6 Nevada Bar No. 3861
7 601 S. Sixth Street
8 Las Vegas NV 89101
9 (702) 272-0406
10 (702) 272-0415 fax
11 jim@jchristensenlaw.com
12 Attorney for SIMON

13 **NOTICE OF MOTION**

14 **TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD**

15 You, and each of you, will please take notice that the undersigned will bring
16 on for hearing, the SPECIAL MOTION TO DISMISS THE AMENDED
17 COMPLAINT: ANTI-SLAPP before the above- entitled Court located at the
18 Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the
19 14th day of JUNE, 2018, at 9:30 A a.m./p.m. in Department
20 10.

21 DATED this 10th day of May 2018.

22 /s/ James R. Christensen

23 **JAMES CHRISTENSEN, ESQ.**
24 Nevada Bar No. 3861
25 601 S. 6th Street
Las Vegas, NV 89101
Phone: (702) 272-0406
jim@jchristensenlaw.com
Attorney for Daniel S. Simon

POINTS AND AUTHORITIES

I. ANTI-SLAPP

Anti-SLAPP statutes protect those who exercise their right to free speech, petition their government on an issue of concern, or try to resolve a conflict through use of the judiciary. The right to “petition the government for a redress of grievances” is a right guaranteed by the First Amendment (“the petition clause”).¹

In the 1980s, two law professors coined the phrase “Strategic Lawsuit Against Public Participation” or “SLAPP” to describe a growing trend of bringing a civil suit in response to an exercise of free speech or the right to petition.² Anti-SLAPP statutes arose to combat the growing trend. An Anti-SLAPP statute typically provides for early judicial intervention and dismissal of a SLAPP lawsuit.

The Law Office of Daniel S. Simon P.C. (“law office”), filed an attorney charging lien and asked the Court to resolve a client fee dispute. When the law office requested help from the Courts, the law office followed the attorney lien statute, passed by the Nevada Legislature and signed into law by the Governor. In

¹ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Constitution of the United States of America 1789 (rev. 1992) Amendment I.

² See, George W. Pring and Penelope Canan, SLAPPS: Getting Sued for Speaking Out (Temple University Press 1996). Canan and Pring coined the term SLAPP. The book contains a SLAPP summary, reviews legislation and suggests a model bill.

1 response, the clients sued the law office and made allegations premised upon the
2 use of the judicial remedy by the law office.

3 The statute calls for lien adjudication within five days. The statute provides
4 for quick resolution so a client or an attorney will not suffer prejudice from waiting
5 for their money. In this case, the clients have done their utmost to delay prompt
6 adjudication; while, simultaneously claiming money damages from delay.
7

8 The clients' suit was brought in response to the legal use of the charging
9 lien. The clients' amended complaint ("ACOM") is a SLAPP and must be
10 dismissed under Nevada's Anti-SLAPP law.
11

12 **II. INTRODUCTION**

13 The Nevada Anti-SLAPP statute shields those who make a protected
14 communication. NRS 41.635-41.670. The act of filing and seeking relief by an
15 attorney lien is a protected communication under the statute. Thus, when a law
16 office is sued for asking the Court to promptly resolve a fee dispute, the law office
17 can file a special motion to dismiss under the Anti-SLAPP statute.
18

19 In *Shapiro v. Welt*, 389 P.3d 262 (Nev. 2017), the Nevada Supreme Court
20 adopted California law interpreting California's similar Anti-SLAPP statute.
21 California courts grant Anti-SLAPP special motions in favor of attorneys who ask
22 the Court to resolve a fee dispute with their client. *Beheshti v. Bartley*, 2009 WL
23 5149862 (Calif, 1st Dist, C.A. 2009); *Transamerica Life Insurance Co., v. Rabaldi*,
24
25

1 2016 WL 2885858 (D.C. Calif. 2016); *Kattuah v. Linde Law Firm*, 2017 WL
2 3033763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished); *Becerra v. Jones, Bell,*
3 *Abbott, Fleming & Fitzgerald LLP*, 2015 WL 881588 (C.A. 2nd Dist. Div. 8 Calif
4 2015) (unpublished); and, *Roth v. Badener*, 2016 WL 6947006 (C.A. 2nd Dist. Div
5 2 Calif 2016) (reversing a denial of an Anti-SLAPP motion)(unpublished). This
6 Court is respectfully requested to grant the special motion to dismiss.
7

8 **III. FACTS**

9
10 Danny and Eleya Simon were close family friends with Brian and Angela
11 Edgeworth for many years. On April 10, 2016, a house Brian Edgeworth was
12 building suffered a flood. In May of 2016, Mr. Simon agreed to help his friend
13 with the flood claim. Because they were friends, Mr. Simon worked without a fee
14 agreement.
15

16 The families knew the others background from their close relationship.
17 Danny Simon knew that Brian Edgeworth went to Harvard Business School; that
18 the Edgeworths founded Pediped Footwear, a successful shoe company with
19 production sites in Nevada and China and a worldwide retail presence; that the
20 Edgeworths' company, American Grating LLC, was a global manufacturer of
21
22
23
24
25

1 “fiberglass reinforced plastic” products used in settings from offshore oil to
2 pedestrian walkways; and, that Brian Edgeworth was involved in construction,
3 including speculation houses.³

4 Brian Edgeworth knew that Danny Simon was a successful Las Vegas
5 attorney. Mr. Edgeworth understood that Mr. Simon almost exclusively took cases
6 on a contingency fee basis, and that Mr. Simon was comfortable waiting until the
7 end of a case to be paid in full, unlike the intellectual property and business
8 attorneys Mr. Edgeworth commonly used.
9

10 In 2016, the plumber’s work caused a flood in a speculation home being
11 built by Mr. Edgeworth. The plumber blamed a fire sprinkler and refused to pay
12 for or repair the flood damage. On June 16, 2016, a complaint was filed against
13 the plumber and fire sprinkler manufacturer. The original cost of construction of
14 the house was about \$3M. In late 2017, early 2018, the case settled for \$6.1M⁴.
15

16 A dispute arose over the reasonable fee due the law office. The law office
17 petitioned the Court to promptly resolve the fee dispute as allowed by Nevada law,
18 NRS 18.015. Before any money was available, the client sued the law office for
19 conversion, alleged damages from delay while trying to block lien adjudication,
20 and sought damages for filing the lien.
21
22
23

24 ³ The flooded house started as a speculation project.

25 ⁴ Brian Edgeworth did not pay \$24,117.50 owed to the plumber. The settlement
was for \$6,075,882.50; \$6.1M less \$24,117.50.

A. The Flood

The house is in McDonald Ranch at 645 St. Croix. Brian Edgeworth built the house as an investment. The general contractor on the build was Giberti Construction LLC, who had built other speculation houses for Mr. Edgeworth. Brian Edgeworth funded the build through his plastics company, American Grating. The total cost of the build was about \$3.3M. The house was listed for sale at \$5.5M. The house is not currently on the market.

Viking fire sprinklers were installed in the house by plumbing sub-contractor Lange Plumbing & Fire Control, per their contract.

On April 10, 2016, during the build, a Viking fire sprinkler(s) malfunctioned, which caused a destructive flood.

Before the build began, Mr. Edgeworth decided to go without builder's risk/course of construction insurance. Without insurance, Mr. Edgeworth looked to Lange for repairs based on contract. Lange breached the contract and did not pay or repair, so Mr. Edgeworth asked his friend, Danny Simon, for help.

Brian Edgeworth spoke with other attorneys, but wanted Danny Simon to help him. In May of 2016, Mr. Simon agreed to lend a hand, and “send a few letters”.⁵

⁵ See, e.g., Exhibit 1; 5.27.2016 email string.

1 Danny Simon did not have a structured discussion with Brian Edgeworth
2 about the fee for the case.⁶ Mr. Simon began work without a written agreement or
3 an express agreement on attorney fees.

4 On June 14, 2016, a complaint was filed against Lange and Viking.

5 Brian Edgeworth paid the cost of repair for the house, around \$500k; and, in
6 December of 2016, a certificate of occupancy was issued for the house.

7
8 B. The Case

9 Viking was sued for a product defect in their fire sprinkler and Lange was
10 sued on the contract. There was a clear route to recover attorney fees against
11 Lange based on the contract. There was no easy road for fees against Viking.

12 The case became complex with multiple parties, cross and counter-claims.
13 In short order, the case went from a friends and family matter to a major litigation,
14 which soon dominated time at the law office; and, involved the advancement of
15 about \$200,000.00 in total costs.

16 In December of 2016, the law office started sending bills on the file. The
17 bills enabled the clients to demonstrate damages, while allowing the law office to
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19
20
21
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23
24 ⁶ See, e.g., Exhibit 2; 8.22.2017 email from Brian Edgeworth, "Subject:
25 Contingency"- "We never really had a structured discussion about how this might
be done." Mr. Edgeworth mentioned a hybrid or greater hourly payments as fee
options.

1 recover some costs advanced, and to defray some of the business loss caused by
2 being unable to devote time to other contingency cases.

3 The bills submitted to Brian Edgeworth do not cover all the time spent on
4 the case. The law office does not take hourly cases. The firm does not have hourly
5 billing software, nor experienced time keepers. Also, Mr. Simon understood that
6 Brian Edgeworth had decided to finance his share of the litigation through high
7 interest loans⁷ (presumably, based on a solid business rationale). Mr. Simon knew
8 the case might not generate a return beyond the cost of repair, and he did not fully
9 bill the case. Mr. Simon was willing to wait until the end of the case to final the
10 bill considering the money obtained; that was his normal practice.

13 C. The Fee Dispute

14 The case was aggressively pursued, well over 100,000 pages of documents
15 were disclosed. The law office established that the fire sprinkler defect was known
16 to Viking; had caused other floods; and, that Viking had done nothing to fix, or
17 warn of, the defect.
18
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23

24 ⁷ The high interest loans were contested by defendants. The loans were from the
25 mother-in-law of Brian Edgeworth and a close friend of Mr. Edgeworth. The
interest rate was 33%, well above market rate.

1 In the late summer of 2017⁸, and into the fall, there were talks with the
2 clients about the fee; but, no agreement was reached. Danny Simon was occupied
3 with the case and Brian Edgeworth was content to leave the issue alone.

4 By the fall of 2017, the case was positioned for an excellent trial result with
5 a strong chance of a finding against Viking for punitive damages; with motions
6 pending to strike the main defense expert, and to strike the defendants' answers.
7

8 In November of 2017, Viking offered \$6M to settle. To place the offer in
9 context, the cost basis for the entire house was \$3.3M. The high offer was a direct
10 result of the extraordinary effort and skill of Mr. Simon in preparing the case for a
11 great trial outcome.
12

13 In mid to late November of 2017, while the details of the Viking settlement
14 were being worked on by Mr. Simon, Mr. Edgeworth became difficult to reach.
15 Previously, Brian Edgeworth frequently called and e-mailed Mr. Simon.
16 Communication came to an end when Mr. Simon tried to resolve the fee.
17

18 On November 27, 2018, Mr. Simon wrote to the clients about the fee.
19

20 On November 30, 2017, the clients sent Mr. Simon a fax stating that the
21 Vannah firm had been retained.⁹
22
23
24

25 ⁸ See, fn. 6.

⁹ Exhibit 3.

1 On December 1, 2017, the law office issued a charging lien pursuant to NRS
2 18.015.¹⁰ On December 4, 2017, the clients were served by certified mail return
3 receipt requested.¹¹

4 In December of 2017, Lange made a settlement offer, \$100,000.00 less the
5 money Brian Edgeworth had refused to pay.
6

7 On December 7, 2017, Mr. Simon, his counsel, and Mr. Vannah held a
8 conference call. Mr. Vannah told Mr. Simon not to contact the clients. Mr.
9 Vannah was told the clients could seek attorney fees from Lange based on contract,
10 and that the law office was working on a bill that would include all previously
11 unbilled events. Mr. Vannah was told that the fee and cost claim against Lange
12 might be in the \$1.5M range. Mr. Vannah did not tell Mr. Simon to cease work or
13 to transfer the file. Mr. Simon documented the call.¹²
14
15

16 On December 7, 2017, the clients signed a “Consent to Settle” prepared by
17 Mr. Vannah. In the Consent, the clients knowingly abandoned the attorney fee
18 claim against Lange and directed Mr. Simon to settle the Lange claim for \$100,000
19 minus the unpaid bill, based upon advice from Mr. Vannah. Mr. Simon was not
20 told to cease work or to transfer the file.¹³
21
22

23 ¹⁰ Exhibit 4.

24 ¹¹ Exhibit 5.

25 ¹² Exhibit 6.

¹³ Exhibit 7.

1 In December of 2017, Mr. Simon finalized the details of the Viking
2 settlement, which were approved by the Vannah office.

3 On Monday, December 18, 2017, two checks with an aggregate value of
4 \$6M for the Viking settlement were picked up.

5
6 On Monday, December 18, 2017, Mr. Simon called the Vannah office to
7 arrange check endorsement. Mr. Simon left a message.¹⁴

8 On Monday, December 18, 2017, Mr. Greene of the Vannah office called
9 and spoke to Mr. Simon. Mr. Simon said he was leaving on a holiday trip starting
10 Friday, December 22, 2017, until after the new year. Mr. Simon asked that the
11 clients endorse the checks prior to December 22nd. Mr. Greene told Mr. Simon that
12 the clients were not available to endorse until after the New Year. Mr. Greene
13 stated that he would contact the law office about scheduling endorsement.¹⁵
14
15

16 On Friday, December 22, 2017, the Simon family went on their holiday trip.

17 On Saturday, December 23, 2017, at 10:45 p.m., Mr. Vannah sent an email
18 which stated:
19

20 Are you agreeable to putting this into an escrow account? The client does
21 not want this money placed into Danny Simon's account. How much money
22 could be immediately released? \$4,500,000? Waiting for any longer is not
23 acceptable. I need to know right after Christmas.¹⁶

24 ¹⁴ Exhibit 8.

25 ¹⁵ Exhibit 8.

¹⁶ Exhibit 8.

1 On Tuesday, December 26, 2017, counsel for Mr. Simon sent a reply
2 indicating that endorsement could be arranged after the new year when everyone
3 was available.

4 Mr. Vannah responded the same day. He began:

5 The clients are available until Saturday.¹⁷ However, they have lost all faith
6 and trust in Mr. Simon. Therefore, they will not sign the checks to be
7 deposited into his trust account. Quite frankly, they are fearful that he will
8 steal the money.¹⁸

9 Mr. Simon was not fired or told to transfer the file.

10 On December 27, 2017, a response was sent to Mr. Vannah. In sum, Mr.
11 Vannah was asked to act collaboratively and to avoid hyperbole.¹⁹

12 On December 28, 2017, Mr. Vannah wrote he did not believe Mr. Simon
13 would steal money, he was simply “relaying his clients’ statements to me”. Mr.
14 Vannah proposed opening a single client trust account.²⁰

15 The same day, Mr. Simon agreed to open a single client non-IOLTA trust
16 account at Bank of Nevada, with all interest going to the clients.²¹
17
18
19
20

21
22 ¹⁷ On December 18, 2017, Mr. Greene indicated the clients were out of town until
23 after the new year. (Exhibit 8.) It appears the clients became available to
24 endorse checks the day after Mr. Simon left town.

25 ¹⁸ Exhibit 8.

¹⁹ Exhibit 9.

²⁰ Exhibit 10.

²¹ Exhibit 10.

1 On January 2, 2018, an amended lien was filed.²² On January 4, 2018, the
2 lien was served.²³

3 On January 4, 2018, collaborative efforts continued to set up the trust
4 account.

5 On January 4, 2018, the clients sued the law office for use of an attorney
6 lien.²⁴

7 On January 8, 2017, a meeting occurred at Bank of Nevada. Account forms
8 were signed, the checks were endorsed and deposited, and the \$6M deposit was
9 placed on a large item hold.
10

11 The morning of January 9, 2017, the complaint was served. At the same
12 moment as the acceptance of service was being signed, Mr. Greene sent an email
13 asking for an update on the Lange settlement.²⁵
14

15 Later in the day, Mr. Vannah confirmed that the law office had not been
16 fired, despite being sued for conversion.²⁶ Mr. Vannah stated if Mr. Simon
17 withdrew, the damages sought would go up.²⁷
18
19
20

21 ²² Exhibit 11.

22 ²³ Exhibit 12.

23 ²⁴ Exhibit 13 - the Complaint.

24 ²⁵ Exhibit 14.

25 ²⁶ The clients are walking a tightrope. Mr. Simon was sued for conversion to
create an argument against lien adjudication, but firing Mr. Simon would moot
the alleged contract claim. The clients are left in the odd, contrary position of
keeping an attorney they have accused of converting millions of dollars.

1 On February 6, 2018, Mr. Vannah acknowledged in open court that this was
2 a fee dispute case. To quote Mr. Vannah: “This is a fee dispute.”²⁸ The law office
3 agrees. Adjudication of the attorney lien is the Legislature approved method to
4 resolve a fee dispute. The law office cannot be sued for following the law.

6 **IV. Argument**

7 The Nevada Anti-SLAPP statute allows a defendant to file a special motion
8 to dismiss claims based on protected communication; such as, asking this Court to
9 resolve a fee dispute by lien adjudication.

10 A special motion to dismiss first requires the defendant to establish by
11 preponderance of the evidence that the plaintiffs’ claim is based on a protected
12 communication. NRS 41.665. If yes, then the burden shifts, and the plaintiff must
13 establish, by clear and convincing evidence, a likelihood of prevailing. NRS
14 41.665. If the plaintiff does not establish a likelihood of prevailing, then the
15 special motion to dismiss must be granted.
16
17
18
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21

22 ²⁷ On January 9, 2018, at 10:24 a.m., Mr. Greene from the Vannah office wrote,
23 “He settled the case, but we’re just waiting on a release and the check.” The
24 same day at 3:32 p.m., Mr. Vannah wrote, “I’m pretty sure that you see what
25 would happen if our client has to spend lots more money to bring someone else
up to speed.” Exhibit 14.

²⁸ Exhibit 15, transcript at page 35 line 24.

1 A plaintiff cannot establish a likelihood of prevailing if the claim is based
2 upon a protected communication to a court, because the litigation privilege
3 provides absolute immunity, even for otherwise tortious or untrue claims.
4 *Greenberg Taurig v. Frias Holding Co.*, 331 P.3d 901, 902 (Nev. 2014); and,
5 *Blaurock v. Mattice Law Offices* 2015 WL 3540903 (Nev. App. 2015).
6 Submission of an attorney lien to a court for adjudication is a protected
7 communication. The law office cannot be sued for following the law and making a
8 protected communication to the court.
9

10
11 A. The Edgeworth ACOM is based on a protected communication made
12 by the law office.

13 Using an attorney charging lien pursuant to the statute is a petition to the
14 judiciary for relief. *Beheshti*, 2009 WL 5149862; and, *Transamerica Life*
15 *Insurance Co.*, WL 2885858. As such, an attorney lien qualifies as a protected
16 communication pursuant to NRS 41.637(3), which states:
17

18 “Good faith communication in furtherance of the right to petition or the right
19 to free speech in direct connection with an issue of public concern” means
20 any:

21 ...

22 ...

23 3. Written or oral statement made in direct connection with an issue
24 under consideration by a legislative, executive or judicial body, or any other
25 official proceeding authorized by law; or,

...

1 The Edgeworth AC describes the use of the attorney charging lien to resolve
2 the fee dispute as the grounds for each of its three causes of action. For example,
3 paragraphs 18-20, which are common to all claims, state as follows:

4 18. Despite SIMON’S requests and demands for the payment of more in
5 fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the
6 terms of the CONTRACT.

7 19. When PLAINTIFFS refused to alter or amend the terms of the
8 CONTRACT, SIMON refused, and continues to refuse, to agree to release
9 the full amount of the settlement proceeds to PLAINTIFFS. Additionally,
10 SIMON refused, and continues to refuse, to provide PLAINTIFFS with
11 either a number that reflects the undisputed amount of the settlement
12 proceeds that plaintiffs are entitled to receive or a definite timeline as to
13 when PLAINTIFFS can receive either the undisputed number or their
14 proceeds.

15 20. PLAINTIFFS have made several demands to SIMON to comply with
16 the contract, to provide PLAINTIFFS with a number that reflects the
17 undisputed amount of the settlement proceeds and/or to agree to provide
18 PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

19 The Edgeworth ACOM describes, without using the words “attorney lien”,
20 every act undertaken by the law office pursuant to the attorney lien statute. For
21 example, the refusal to disburse contested funds complained of in para. 19, was
22 done pursuant to the attorney lien statute and the Rules of Professional Ethics.

23 As another example, Edgeworth complains, “SIMON’S retention of
24 PLAINTIFFS’ property is done intentionally with a conscious disregard of, and
25 contempt for, PLAINTIFFS property rights.” (ACOM at para. 43.) However, the
money is being safekept in a separate, segregated account set up by agreement of

1 the parties, and pursuant to the rules of ethics and the attorney lien statute. Simon
2 is being sued for following the law.

3 As another example, Edgeworth directly ties breach of the duty of good faith
4 and resultant damages to the use of the attorney lien in para. 55 of the amended
5 complaint, “When Simon asserted a lien on PLAINTIFFS’ property...”. The
6 Edgeworth(s) complaint is based upon Simon’s use of the attorney lien statute,
7 which is a protected communication.
8

9 The answer to the question of whether the ACOM is based on a protected
10 communication is not subject to debate or inference. The Edgeworth ACOM states
11 that it was filed because of the attorney lien. The Edgeworth ACOM describes a
12 fee dispute and seeks damages from the law office for seeking to resolve the fee
13 dispute by use of the attorney lien statute.
14
15

16 The parties clearly have a fee dispute. Use of an attorney lien is not only a
17 good faith resolution to a fee dispute, it is allowed by statute and encouraged by
18 the rules of ethics. The use of an attorney’s lien by the law office is a protected
19 communication under NRS 41.637, and the use of the attorney’s lien serves as the
20 basis for the Edgeworth ACOM. Thus, the law office has satisfied its burden
21 under NRS 41.660 & 41.665.
22

23 Nevada looks to California for guidance on Anti-SLAPP law. *Shapiro*, 389
24 P.3d 262. Courts in California have repeatedly examined this issue, and resolved
25

1 the question in favor of law offices seeking Anti-SLAPP protection. *Beheshti v.*
2 *Bartley*, 2009 WL 5149862 (Calif, 1st Dist, C.A. 2009); *Transamerica Life*
3 *Insurance Co., v. Rabaldi*, 2016 WL 2885858 (D.C. Calif. 2016); *Kattuah v. Linde*
4 *Law Firm*, 2017 WL 3033763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished);
5 *Becerra v. Jones, Bell, Abbott, Fleming & Fitzgerald LLP*, 2015 WL 881588 (C.A.
6 2nd Dist. Div. 8 Calif 2015) (unpublished); and, *Roth v. Badener*, 2016 WL
7 6947006 (C.A. 2nd Dist. Div 2 Calif 2016) (reversing a denial of an Anti-SLAPP
8 motion) (unpublished).
9
10

11 The California cases cited above all hold that suing a lawyer for filing a lien
12 is subject to Anti-SLAPP dismissal. In other words, a lawyer (or a client) gets to
13 resolve a fee dispute by court adjudication of a lien, without getting sued.
14

15 The opposite side of the coin was examined in *Drell v. Cohen*, 232
16 Cal.App.4th 24 (2014). *Drell* involved a lien dispute between two lawyers. One
17 lawyer asked the Court to resolve the lien dispute, and the other filed a special
18 motion to dismiss the lien adjudication. The court denied the motion, because
19 court adjudication of the lien was the legal method to resolve the fee dispute. (No
20 one was sued for conversion in *Drell*.)
21

22 As background, the California Legislature has not provided attorneys with a
23 statutory process to adjudicate an attorney lien, as the Nevada Legislature has
24 done. See, e.g., *Carroll v. Interstate Brands*, 99 Cal. App. 4th 1168 (2002) (the
25

1 *Carroll* Court called on the California Legislature to create a statutory procedure
2 for expeditious lien adjudication). In California, a lien must be litigated in a new
3 action. *Id.*, at 1177 (“Rather we raise a concern, as a matter of policy, that the
4 interest of the client and of the attorney-claimant merit a more expeditious
5 resolution than is currently afforded by the practice of filing a notice of lien that
6 must then be litigated in a new action.”). In *Drell*, suit was not brought against an
7 attorney for use of a lien, rather suit was brought to resolve the lien; in effect, to
8 adjudicate the lien; and, the motion to dismiss was brought to stop adjudication.
9

10
11 The holding in *Drell* supports the actions of the law office. Use of an
12 attorney lien and prompt adjudication is the legal way to resolve a fee dispute.
13 And, you can’t be sued for following the law.

14
15 B. The plaintiffs do not have a likelihood of prevailing.

16 The use of the attorney’s lien is a protected communication under NRS
17 41.637. Accordingly, the burden shifts to plaintiffs to establish, by clear and
18 convincing evidence, a likelihood of prevailing. NRS 41.665.

19
20 The ACOM seeks relief from the use of an attorney lien by the law office.
21 Use of an attorney lien is protected by the litigation privilege. NRS 41.650;
22 *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist, C.A. 2009); *Transamerica*
23 *Life Insurance Co., v. Rabaldi*, 2016 WL 2885858 (D.C. Calif. 2016); *Kattuah v.*
24 *Linde Law Firm*, 2017 WL 3033763 (C.A. 2nd Dist. Div. 1 Calif. 2017)
25

1 (unpublished); *Becerra v. Jones, Bell, Abbott, Fleming & Fitzgerald LLP*, 2015
2 WL 881588 (C.A. 2nd Dist. Div. 8 Calif 2015) (unpublished); and, *Roth v.*
3 *Badener*, 2016 WL 6947006 (C.A. 2nd Dist. Div 2 Calif 2016) (reversing a denial
4 of an Anti-SLAPP motion) (unpublished). Thus, the law office is immune, and the
5 Edgeworths cannot carry their heightened burden.
6

7 The litigation privilege is absolute and applies to any communication uttered
8 or published in a judicial proceeding. *Greenberg*, 331 P.3d at 902.²⁹ Further:
9

10 The privilege, which even protects an individual from liability for statements
11 made with knowledge of falsity and malice, applies “so long as [the
12 statements] are in some way pertinent to the subject of
13 controversy.” *Id.* Moreover, the statements “need not be relevant in the
14 traditional evidentiary sense, but need have only ‘some relation to the
15 proceeding; so long as the material has some bearing on the subject matter of
16 the proceeding, it is absolutely privileged.” (Internal citations omitted.)

17 *Blaurock*, 2015 WL 3540903.
18

19 Use of an attorney lien when there is a fee dispute is protected
20 communication and is absolutely privileged. As a matter of law, the law office is
21 immune, and the Edgeworths cannot prevail.
22
23
24

25 ²⁹ The sole recognized exception is in the context of a legal malpractice claim,
which is not presented here.

1 **V. CONCLUSION**

2 Nevada follows California Anti-SLAPP law. *Shapiro*, 389 P.3d 262. Courts
3 in California have held that an attorney's use of a lien is protected communication
4 and have granted special motions to dismiss brought by an attorney. This Court is
5 respectfully requested to rule the same.
6

7 DATED this 10th day of May, 2018.

8 /s/ James R. Christensen

9 James R. Christensen Esq.
10 Nevada Bar No. 3861
11 James R. Christensen PC
12 601 S. 6th Street
13 Las Vegas NV 89101
14 (702) 272-0406
15 (702) 272-0415 fax
16 jim@jchristensenlaw.com
17 Attorney for SIMON

18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of the foregoing SPECIAL MOTION TO DISMISS
20 THE AMENDED COMPLAINT: ANTI-SLAPP was made by electronic service
21 (via Odyssey) this 10th day of May, 2018, to all parties currently shown on the
22 Court's E-Service List.
23

24 /s/ Dawn Christensen

25 an employee of JAMES R. CHRISTENSEN

Exhibit 1

Daniel Simon

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

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

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

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

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

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

>

> Hey Danny;

>

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

> you

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

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

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

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

>

> --

>

>

> Brian Edgeworth

> pediped Footwear

> 1191 Center Point Drive

> Henderson, NV

> 89074

>

> 702 352-2580

Exhibit 2

FW: Contingency

Daniel Simon <dan@simonlawlv.com>

Fri 12/1/2017 10:22 AM

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

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

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

To: Daniel Simon <dan@simonlawlv.com>

Subject: Contingency

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

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

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

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

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

Exhibit 3

FAX**Date:** 11/30/2017**Pages including cover sheet:** 2

To:	
Phone	
Fax Number	(702) 364-1655

From:	Jessie Romero
	Vannah & Vannah
	400 S. 7th Street
	Las Vegas
	NV 89101
Phone	(702) 369-4161 * 302
Fax Number	(702) 369-0104

NOTE:

November 29, 2017

VIA FACSIMILE: (702) 364-1655

Daniel S. Simon, Esq.
LAW OFFICE OF DANIEL S. SIMON
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101

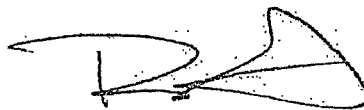
RE: Letter of Direction

Dear Mr. Simon:

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

Thank you for your understanding and compliance with the terms of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Edgeworth', with a stylized, looping flourish at the end.

Brian Edgeworth

Exhibit 4

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

1 ATLN
DANIEL S. SIMON, ESQ.
2 Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
3 Nevada Bar No. 12207
810 S. Casino Center Blvd.
4 Las Vegas, Nevada 89101
Telephone (702) 364-1650
5 lawyers@simonlawlv.com
Attorneys for Plaintiffs
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 EDGEWORTH FAMILY TRUST; and)
AMERICAN GRATING, LLC.;)

10 Plaintiffs,)
11)

12 vs.)

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

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

16 Defendants.)
17)

18 NOTICE OF ATTORNEY'S LIEN

19 NOTICE IS HEREBY GIVEN that the Law Office of Daniel S. Simon, a Professional
20 Corporation, rendered legal services to EDGEWORTH FAMILY TRUST and AMERICAN
21 GRATING, LLC., for the period of May 1, 2016, to the present, in connection with the above-entitled
22 matter resulting from the April 10, 2016, sprinkler failure and massive flood that caused substantial
23 damage to the Edgeworth residence located at 645 Saint Croix Street, Henderson, Nevada 89012.

24 That the undersigned claims a lien, pursuant to N.R.S. 18.015, to any verdict, judgment, or
25 decree entered and to any money which is recovered by settlement or otherwise and/or on account of
26 the suit filed, or any other action, from the time of service of this notice. This lien arises from the
27 services which the Law Office of Daniel S. Simon has rendered for the client, along with court costs
28 and out-of-pocket costs advanced by the Law Office of Daniel S. Simon in an amount to be

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

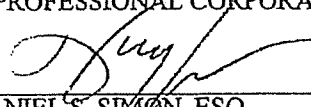
1 determined.

2 The Law Office of Daniel S. Simon claims a lien for a reasonable fee for the services rendered
3 by the Law Office of Daniel S. Simon on any settlement funds, plus outstanding court costs and out-
4 of-pocket costs currently in the amount of \$80,326.86 and which are continuing to accrue, as
5 advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution.
6 The above amount remains due, owing and unpaid, for which amount, plus interest at the legal rate,
7 lien is claimed.

8 This lien, pursuant to N.R.S. 18.015(3), attaches to any verdict, judgment, or decree entered
9 and to any money which is recovered by settlement or otherwise and/or on account of the suit filed,
10 or any other action, from the time of service of this notice.

11 Dated this 30th day of November, 2017.

12
13 THE LAW OFFICE OF DANIEL S. SIMON,
A PROFESSIONAL CORPORATION

14 
15 DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
16 ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
17 SIMON LAW
810 South Casino Center Blvd.
18 Las Vegas, Nevada 89101
19
20
21
22
23
24
25
26
27
28

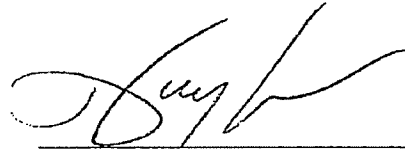
SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF CLARK)

4 DANIEL S. SIMON, being first duly sworn, deposes and says:

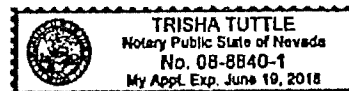
5 That he is the attorney who has at all times represented EDGEWORTH FAMILY TRUST and
6 AMERICAN GRATING, LLC., as counsel from May 1, 2016, until present, in its claims for damages
7 resulting from the April 16, 2016, sprinkler failure that caused substantial damage to the Edgeworth
8 residence located at 645 Saint Croix Street, Henderson, Nevada.

9 That he is owed for attorney's fees for a reasonable fee for the services which have been
10 rendered for the client, plus outstanding court costs and out-of-pocket costs, currently in the amount
11 of \$80,326.86, and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon
12 in an amount to be determined upon final resolution of any verdict, judgment, or decree entered and
13 to any money which is recovered by settlement or otherwise and/or on account of the suit filed, or any
14 other action, from the time of service of this notice. That he has read the foregoing Notice of
15 Attorney's Lien; knows the contents thereof, and that the same is true of his own knowledge, except
16 as to those matters therein stated on information and belief, and as to those matters, he believes them
17 to be true.

18
19
20 
21 DANIEL S. SIMON
22

23 SUBSCRIBED AND SWORN
24 before me this 30 day of November, 2017

25
26 
27 Notary Public
28



SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF E-SERVICE & U.S. MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 30th day of November, 2017, I served the foregoing **NOTICE OF ATTORNEY'S LIEN** on the following parties by electronic transmission through the Wiznet system and also via Certified Mail- Return

Receipt Requested:

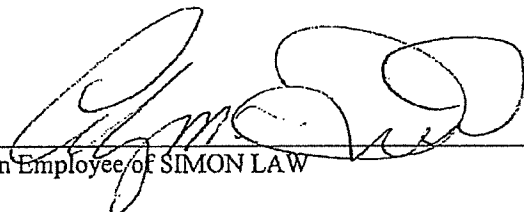
Theodore Parker, III, Esq.
PARKER NELSON & ASSOCIATES
2460 Professional Court, Ste. 200
Las Vegas, NV 89128
Attorney for Defendant
Lange Plumbing, LLC

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
350 S. Rampart Blvd., Ste. 320
Las Vegas, NV 89145
Attorney for Third Party Defendant
Giberti Construction, LLC

Janet C. Pancoast, Esq.
CISNEROS & MARIAS
1160 N. Town Center Dr., Suite 130
Las Vegas, NV 89144
Attorney for Defendant
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

Randolph P. Sinnott, Esq.
SINNOTT, PUEBLA, CAMPAGNE
& CURET, APLC
550 S. Hope Street, Ste. 2350
Los Angeles, CA 90071
Attorney for Zurich American Insurance Co.

Angela Bullock
Kinsale Insurance Company
2221 Edward Holland Drive, Ste. 600
Richmond, VA 23230
Senior Claims Examiner for
Kinsale Insurance Company

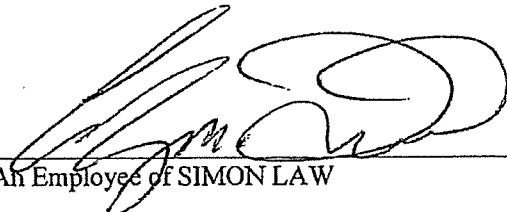

An Employee of SIMON LAW

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF MAIL

I hereby certify that on this 1st day of December, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing NOTICE OF ATTORNEY'S LIEN on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Brian and Angela Edgeworth
645 Saint Croix Street
Henderson, Nevada 89012


An Employee of SIMON LAW

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF MAIL

I hereby certify that on this 15th day of December, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing NOTICE OF ATTORNEY'S LIEN on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Bob Paine
Zurich North American Insurance Company
10 S. Riverside Plz.
Chicago, IL 60606
Claims Adjustor for
Zurich North American Insurance Company

Daniel Polsenberg, Esq.
Joel Henriod, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

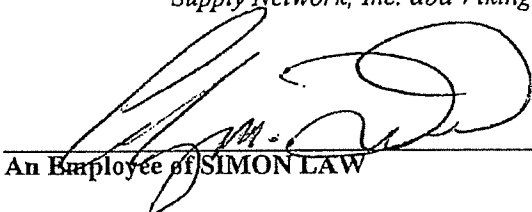

An Employee of SIMON LAW

Exhibit 5

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 Brian & Angela Edgeworth
 645 Saint Croix St.
 Henderson, NV. 89012

1. Article Addressed to:
 Brian & Angela Edgeworth
 645 Saint Croix St.
 Henderson, NV. 89012

2. Article Number (Transfer from service label)
 9590 9402 2854 7069 0886 85
 7005 1160 0003 6591 2385

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Address
 B. Received by (Printed Name) C. Date of Delivery
 Edgeworth 12-4-17
 D. Is delivery address different from item 1? ☒ Yes
 If YES, enter delivery address below: ☒ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☒ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 American Grating
 1191 Center Point Drive
 Ste. A.
 Henderson, NV 89074

1. Article Addressed to:
 American Grating
 1191 Center Point Drive
 Ste. A.
 Henderson, NV 89074

2. Article Number (Transfer from service label)
 9590 9402 2854 7069 0892 93
 7008 3230 0001 1011 3509

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Address
 B. Received by (Printed Name) C. Date of Delivery
 Barry Robinson 12-4-17
 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☒ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 Edgeworth Family Trust
 645 Saint Croix St.
 Henderson, NV 89012

1. Article Addressed to:
 Edgeworth Family Trust
 645 Saint Croix St.
 Henderson, NV 89012

2. Article Number (Transfer from service label)
 9590 9402 2854 7069 0893 09
 115 1520 0001 4968 1730

Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Address
 B. Received by (Printed Name) C. Date of Delivery
 Edgeworth 12-6-17
 D. Is delivery address different from item 1? ☒ Yes
 If YES, enter delivery address below: ☒ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☒ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.
 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 Joel Henrich, Esq.
 Lewis Roca Rothgerber
 Christie
 3993 Howard Hughes Pkwy
 Ste. 6000
 Las Vegas, NV. 89169

1. Article Addressed to:
 Joel Henrich, Esq.
 Lewis Roca Rothgerber
 Christie
 3993 Howard Hughes Pkwy
 Ste. 6000
 Las Vegas, NV. 89169

2. Article Number (Transfer from service label)
 9590 9402 2854 7069 0893 23
 005 1160 0003 6591 2392

Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☐ Address
 B. Received by (Printed Name) C. Date of Delivery
 F. Kosini 12-4-17
 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☒ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3.</p> <p>Print your name and address on the reverse so that we can return the card to you.</p> <p>Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p>Angela Bullock Hinsale Insurance Comp. 221 Edward Holland Dr. Ste 600 Richmond VA 23230</p> <p>9590 9402 2854 7069 0893 54</p> <p>Article Number (Transfer from service label)</p> <p>7015 1520 0001 4968 140</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p>C. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p>Service Type</p> <p>Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p>Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p>Certified Mail® <input checked="" type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™</p> <p>Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3.</p> <p>Print your name and address on the reverse so that we can return the card to you.</p> <p>Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p>Heodore Parker, III, Esq. Arther Nelson & Associates 4100 Professional Court Ste 200 Las Vegas NV 89128</p> <p>9590 9402 2854 7069 0886 78</p> <p>Article Number (Transfer from service label)</p> <p>7005 1160 0003 6591 2361</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p>C. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p>Service Type</p> <p>Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p>Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p>Certified Mail® <input checked="" type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™</p> <p>Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)</p>	

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janet C. Pancoast, Esq.
Cisneros & Marias
1160 N. Town Center Dr. Ste. 130
Las Vegas NV 89144



9590 9402 2854 7069 0886 54

2. Article Number (transfer from service label)

7005 1160 0003 6591 2354

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [Signature] C. Date of Delivery 1-2-2015

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
- ☐ Adult Signature Restricted Delivery
 - ☐ Adult Signature Registered Mail™
 - ☒ Certified Mail®
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Insured Mail
 - ☐ Insured Mail Restricted Delivery (over \$500)
 - ☐ Priority Mail Express®
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☒ Return Receipt for Merchandise
 - ☐ Signature Confirmation®
 - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Exhibit 6

SIMON LAW
A PROFESSIONAL CORPORATION
810 SOUTH CASINO CENTER BOULEVARD
LAS VEGAS, NEVADA 89101

TELEPHONE (702) 364-1650

FACSIMILE (702) 364-1655

December 7, 2017

Robert Vannah, Esq.
John Greene, Esq.
400 South 7th Street, Suite 400
Las Vegas, Nevada 89101

RE: Edgeworth v. Viking, et al.

Dear Mr. Vannah,

It was a pleasure speaking with you today. Pursuant to your direction, based on the wishes of the client, all client communication will be directed to your office.

Thank you for confirming that the pending evidentiary hearing concerning Viking, may be taken off calendar. There are pending motions on the enforceability of the Lange contract which need to be addressed in the very near term. We have moved to enforce the contract; and, Lange has asked the Court to find the contract void. The Lange brief to void the contract is attached. Because of the motion briefing schedule, the decision to take the pending motions off calendar should be made on or before Monday, December 11, 2017.

An issue of concern is the current settlement proposal from Lange. The offer is \$100,000.00 with an offset of approximately \$22,000.00 for a net offer of about \$78,000.00. The \$78k would be "new" money in addition to the \$6M offered by Viking. If the Lange offer is accepted it would end the case and no other recovery for the subject incident would be possible. If the Lange offer is not accepted, then Viking will need to file a motion for Good Faith settlement. See attached motion. If the motion is granted, then the \$6M settlement will be paid. If denied, then the \$6M payment will be delayed an indeterminate time.

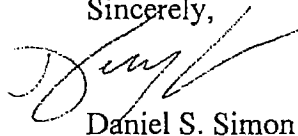
The Lange offer is good as far as the property damage claims are concerned. However, there is a potential for recovery of attorney fees and costs from Lange

based upon the Lange contract with American Grating LLC. If the current Lange offer is accepted the potential recovery of attorney fees and costs pursuant to the contract will be waived. If the Lange motion to void the contract is granted, then the claim against Lange for attorney fees and costs will be destroyed (unless there is a successful appeal).

Simon Law is reviewing the case file and work performed from the outset that has not been billed (including such things as obtaining a forensic copy of case related e-mails and phone records) to provide a comprehensive hourly bill. It is reasonably expected at this time that the hourly bill may well exceed a total of \$1.5M and the costs currently are approximately \$200,000. The size of the billing and costs incurred should be considered in the decision to accept the current Lange offer or to continue to pursue Lange under the contract.

Thank you for your assistance in this matter. I have discussed the above with the client previously, but the situation requires a review. If there are any questions, or if any additional information is needed, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Simon', with a stylized flourish extending from the end.

Daniel S. Simon

Exhibit 7

VANNAH & VANNAH
AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

December 7, 2017

CONSENT TO SETTLE

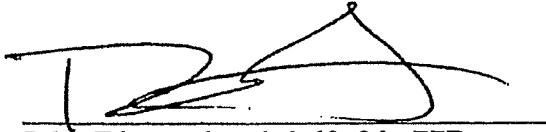
RE: EFT & AMERICAN GRATING v. LANGE

WE, Brian Edgeworth and Angela Edgeworth, on behalf of the Edgeworth Family Trust (EFT) and American Grating, consent to settle all claims against LANGE for the gross amount of \$100,000, minus sums owed to LANGE pursuant to the Contract. We acknowledge that our attorneys have advised us that by settling the outstanding claims with LANGE, we will be waiving all claims for attorneys' fees, including any contingency fee that a court may award to the Law Office of Daniel S. Simon. By settling our claims with LANGE, we understand that LANGE will also agree to dismiss all claims against VIKING entities, including claims for contribution and indemnity. Also, we understand that no party to the litigation will oppose any motion for Good Faith Settlement. We understand and agree that by settling our claims against LANGE and VIKING, all aspects and claims related to the litigation will be resolved and dismissed with prejudice.

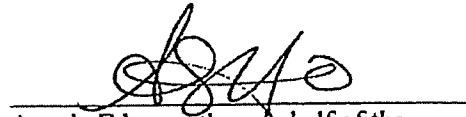
We acknowledge that Mr. Vannah has also explained to us that to continue to litigate with LANGE is economically speculative, as we've already been made more than whole with the settlement with the VIKING entities, and LANGE may be legally entitled to an offset for the amount of the settlement paid to us by VIKING. We also understand that to continue to litigate with LANGE over the payment of attorneys fees is also not only speculative, but is akin to throwing good money after bad by spending considerably more money on attorneys fees in an effort to recover attorneys fees.

Rather, we acknowledge that Mr. Vannah has advised us to settle with LANGE for the negotiated amount of \$100,000 and we consent to settle.

DATED this 7th day of December, 2017.



Brian Edgeworth on behalf of the EFT
and American Grating



Angela Edgeworth on behalf of the
EFT and American Grating

Exhibit 8

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Tue 12/26/2017 12:18 PM

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

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

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

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Bob,

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

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

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

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.

AA00886

Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? \$4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Folks,

Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.

The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.

If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.

Any concerns, please let me know.

Happy Holidays!

Jim

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

From: John Greene <jgreene@vannahlaw.com>
Sent: Monday, December 18, 2017 1:59:02 PM
To: James R. Christensen
Subject: Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

----- Forwarded message -----

From: John Greene <jgreene@vannahlaw.com>

Date: Mon, Dec 18, 2017 at 1:56 PM

Subject: Re: Edgeworth v. Viking

To: Daniel Simon <dan@simonlawlv.com>

Cc: Robert Vannah <rvannah@vannahlaw.com>, jim@christensenlaw.com

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <dan@simonlawlv.com> wrote:

Thanks for returning my call. You advised that the clients were unable to execute the settlement checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!

<image001.jpg>

--

John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

--

John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

From: Daniel Simon
Sent: Monday, December 18, 2017 11:03 AM
To: John Greene <jgreene@vannahlaw.com>
Cc: Daniel Simon <dan@simonlawlv.com>
Subject: Edgeworth v. Viking

I have received the settlement checks. Please have the client's come in to my office to sign so I can promptly put them in my trust account. Thanks!!


DANIEL S. SIMON
ATTORNEY AT LAW
 SIMON LAW
810 South Casino Center Blvd.
Las Vegas, NV 89101
(P) 702.564.1630
(F) 702.564.1635
DAN@SIMONLAWLV.COM

Exhibit 9

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

December 27, 2017

Via E-Mail

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

Re: Edgeworth v. Viking

Dear Bob:

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

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

Please consider the following time line:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

JAMES R. CHRISTENSEN

JRC/dmc

cc: Daniel Simon

enclosures

Exhibit 10

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Thu 12/28/2017 3:21 PM

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

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

Sarah called me back. Apparently Danny is a bank client also. That works out well. The way she would do this is to make it a "locked" account. I wasn't very familiar with that concept, but since there will only be a few checks that is fine. Any disbursements will require both his and my signature. She asked me to give her the name of the account: it should probably read something like "Danny Simon and Robert Vannah in trust for..." Another issue that she raised is that they need a Social Security number or something like that because it is an interest-bearing account. Should it be the clients' Social Security or corporate ID number, or should it be Danny's? Obviously, at the end of the year the IRS will have to be notified as to who the real party in interest is. Just some thoughts. Since Danny is back in the office on January 4, why don't we set the account up then?

Sent from my iPad

On Dec 28, 2017, at 3:08 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Bob,

I am available tomorrow for a call.

Jim

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

From: Robert Vannah <rvannah@vannahlaw.com>

Sent: Thursday, December 28, 2017 3:07:06 PM

To: James R. Christensen

Cc: John Greene; Daniel Simon

Subject: Re: Edgeworth v. Viking

I took the liberty of calling Bank Of Nevada and left a message for Sarah Guindy, asking her if we can do exactly what we seem to be agreeing to. I left her my phone number, and am expecting a call back. If she thinks we can do that, we can set up a conference call between you and me and work out the details with her. This seems to be the best way to get this money distributed to Danny and to the clients.

Sent from my iPad

On Dec 28, 2017, at 2:03 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Bob,

A separate trust account is a good idea. Agreed to you and Danny being co-signers, with both needed. I suggest a non-IOLTA account. The interest can inure to the clients.

How about Bank of Nevada?

Jim

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

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Thursday, December 28, 2017 4:17:36 AM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

I'm not suggesting I have concerns over Danny stealing the money, I'm simply relaying his clients' statements to me. I have an idea. Why don't we set up a separate trust account dedicated to these clients. Any disbursement requires 2 signatures, Danny's and mine. Have Danny, expeditiously, determine exactly what his lien claim is going to be. We recognize that there will be an undisputed amount for his incurred costs and time since the last invoice. We also recognize that the clients are entitled to all the funds immediately after the checks clear, exclusive of Danny's undisputed final billing for fees and costs, since the last statement, and his claimed lien. We were under the impression that the 2 checks totaling \$6,000,000 were cashiers checks. We were wrong apparently; we got that impression from the settlement agreement. In any event, I recognize that it takes time to clear the checks. The damage to the clients in delaying this disbursement is the high interest loans made by the clients to fund the underlying litigation. The pressing concern here is to get the clients, and Danny, their funds which are not in dispute. Agreed? I'm not commenting on the merits of Danny's claim. I just want to get the majority of the money distributed to both Danny and the clients. There is a fiduciary duty to get that done expeditiously. The "disputed lien" funds will be adequately segregated and protected. We are not going to allow this case to be decided in a summary interpleader action. Whatever bank we use is fine with me, I just want it done ASAP.

Sent from my iPad

On Dec 27, 2017, at 1:14 PM, James R. Christensen <jjim@jchristensenlaw.com> wrote:

Please see attached

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Tuesday, December 26, 2017 12:18:41 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

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

Sent from my iPad

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Bob,

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

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

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

Jim

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

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? \$4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

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<jim@jchristensenlaw.com> wrote:

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That process may take a week or two,
depending on holiday staffing, etc.

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deposited into trust before or after the
final bill is generated-the only impact
might be on the time horizon regarding
when funds are available for
disbursement.

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Any concerns, please let me know.

Happy Holidays!

Jim

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

From: John Greene
<jgreene@vannahlaw.com>
Sent: Monday, December 18, 2017 1:59:02 PM
To: James R. Christensen
Subject: Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

----- Forwarded message -----

From: John Greene <jgreene@vannahlaw.com>
Date: Mon, Dec 18, 2017 at 1:56 PM
Subject: Re: Edgeworth v. Viking
To: Daniel Simon <dan@simonlawlv.com>
Cc: Robert Vannah <rvannah@vannahlaw.com>, jim@christensenlaw.com

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <dan@simonlawlv.com> wrote:

Thanks for returning my call. You advised that the clients were unable to execute the settlement

checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!

<image001.jpg>

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John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

<Ltr to Mr. Vannah.pdf>

<Zurich_Check[1].pdf>

<Zurich_Check[1].pdf>

<Email string.pdf>

Exhibit 11

Steven D. Grierson

1 ATLN
2 DANIEL S. SIMON, ESQ.
3 Nevada Bar No. 4750
4 ASHLEY M. FERREL, ESQ.
5 Nevada Bar No. 12207
6 810 S. Casino Center Blvd.
7 Las Vegas, Nevada 89101
8 Telephone (702) 364-1650
9 lawyers@simonlawlv.com
10 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

9 EDGEWORTH FAMILY TRUST; and)
10 AMERICAN GRATING, LLC.;)
11 Plaintiffs,)
12 vs.)
13 LANGE PLUMBING, L.L.C.;)
14 THE VIKING CORPORATION,)
15 a Michigan corporation;)
16 SUPPLY NETWORK, INC., dba VIKING)
17 SUPPLYNET, a Michigan corporation;)
18 and DOES I through V and ROE)
19 CORPORATIONS VI through X, inclusive,)
20 Defendants.)

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

NOTICE OF AMENDED ATTORNEY'S LIEN

21 NOTICE IS HEREBY GIVEN that the Law Office of Daniel S. Simon, a Professional
22 Corporation, rendered legal services to EDGEWORTH FAMILY TRUST and AMERICAN
23 GRATING, LLC., for the period of May 1, 2016, to the present, in connection with the above-entitled
24 matter resulting from the April 10, 2016, sprinkler failure and massive flood that caused substantial
25 damage to the Edgeworth residence located at 645 Saint Croix Street, Henderson, Nevada 89012.

26 That the undersigned claims a total lien, in the amount of \$2,345,450.00, less payments made
27 in the sum of \$367,606.25 for a final lien for attorney's fees in the sum of \$1,977,843.80, pursuant
28 to N.R.S. 18.015, to any verdict, judgment, or decree entered and to any money which is recovered
by settlement or otherwise and/or on account of the suit filed, or any other action, from the time of
service of this notice. This lien arises from the services which the Law Office of Daniel S. Simon has

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

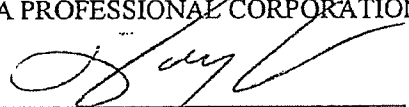
1 rendered for the client, along with court costs and out-of-pocket costs advanced by the Law Office
2 of Daniel S. Simon in the sum of \$76,535.93, which remains outstanding.

3 The Law Office of Daniel S. Simon claims a lien in the above amount, which is a reasonable
4 fee for the services rendered by the Law Office of Daniel S. Simon on any settlement funds, plus
5 outstanding court costs and out-of-pocket costs currently in the amount of \$76,535.93, and which are
6 continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be
7 determined upon final resolution. The above amount remains due, owing and unpaid, for which
8 amount, plus interest at the legal rate, lien is claimed.

9 This lien, pursuant to N.R.S. 18.015(3), attaches to any verdict, judgment, or decree entered
10 and to any money which is recovered by settlement or otherwise and/or on account of the suit filed,
11 or any other action, from the time of service of this notice.

12 Dated this 2nd day of January, 2018.

13 THE LAW OFFICE OF DANIEL S. SIMON,
14 A PROFESSIONAL CORPORATION

15 
16 DANIEL S. SIMON, ESQ.
17 Nevada Bar No. 4750
18 ASHLEY M. FERREL, ESQ.
19 Nevada Bar No. 12207
20 810 South Casino Center Blvd.
21 Las Vegas, Nevada 89101
22
23
24
25
26
27
28

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF E-SERVICE & U.S. MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 22nd day of January, 2018, I served the foregoing **NOTICE OF AMENDED ATTORNEY'S LIEN** on the following parties by electronic transmission through the Wiznet system and also via Certified Mail- Return

Receipt Requested:


Theodore Parker, III, Esq.
PARKER NELSON & ASSOCIATES
2460 Professional Court, Ste. 200
Las Vegas, NV 89128
Attorney for Defendant
Lange Plumbing, LLC

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
350 S. Rampart Blvd., Ste. 320
Las Vegas, NV 89145
Attorney for Third Party Defendant
Giberti Construction, LLC

Janet C. Pancoast, Esq.
CISNEROS & MARIAS
1160 N. Town Center Dr., Suite 130
Las Vegas, NV 89144
Attorney for Defendant
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

Randolph P. Sinnott, Esq.
SINNOTT, PUEBLA, CAMPAGNE
& CURET, APLC
550 S. Hope Street, Ste. 2350
Los Angeles, CA 90071
Attorney for Zurich American Insurance Co.

Angela Bullock
Kinsale Insurance Company
2221 Edward Holland Drive, Ste. 600
Richmond, VA 23230
Senior Claims Examiner for
Kinsale Insurance Company


An Employee of SIMON LAW

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF U.S. MAIL

I hereby certify that on this 2nd day of January, 2018, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing **NOTICE OF AMENDED ATTORNEY'S LIEN** on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Brian and Angela Edgeworth
645 Saint Croix Street
Henderson, Nevada 89012

American Grating
1191 Center point Drive, Ste. A
Henderson, NV 89074

Edgeworth Family Trust
645 Saint Croix Street
Henderson, Nevada 89012

Robert Vannah, Esq.
VANNAH & VANNAH
400 South Seventh Street, Ste. 400
Las Vegas, NV 89101

Bob Paine
Zurich North American Insurance Company
10 S. Riverside Plz.
Chicago, IL 60606
Claims Adjustor for
Zurich North American Insurance Company

Joel Henriod, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

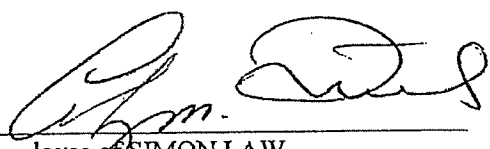

An Employee of SIMON LAW

Exhibit 12

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY		SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY			
<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p>American Grating 1191 Center Point Dr. Ste. A Henderson, NV 89074</p> <p>9590 9402 2854 7069 0807 57</p> <p>Article Number (Transfer from service label)</p> <p>7017 1450 0001 0575 6328</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>A. Signature <i>[Signature]</i></p> <p>B. Received by (Printed Name) <i>[Signature]</i></p> <p>C. Date of Delivery <i>1-4-18</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>		<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p>Brian & Angela Edgeworth 645 Saint Croix St. Henderson, NV 89012</p> <p>9590 9402 2854 7069 0807 33</p> <p>Article Number (Transfer from service label)</p> <p>7017 1450 0001 0575 6342</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>A. Signature <i>[Signature]</i></p> <p>B. Received by (Printed Name) <i>[Signature]</i></p> <p>C. Date of Delivery <i>1-4-18</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	

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<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>Domestic Return Receipt</p>		<p>Domestic Return Receipt</p>	

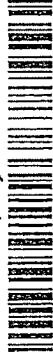
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<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>Domestic Return Receipt</p>		<p>Domestic Return Receipt</p>	

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- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janet Bancroft, Esq.
Cisneros & Marias
1160 N. Town Center Dr.
Ste. 130
Las Vegas, NV 89144



9590 9402 2854 7069 0807 95

2. Article Number (Transfer from service label)

7017 1450 0001 0575 6298

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [Signature] C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

☐ Adult Signature ☐ Priority Mail Express®

☐ Adult Signature Restricted Delivery ☐ Registered Mail™

☐ Certified Mail® ☐ Registered Mail Restricted Delivery

☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise

☐ Collect on Delivery ☐ Signature Confirmation™

☐ Insured Mail ☐ Signature Confirmation Restricted Delivery

☐ Insured Mail Restricted Delivery (over \$500)

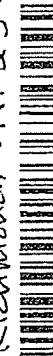
Domestic Return Receipt

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- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Angela Bullock
Kinsale Insurance Co.
2221 Edward Holland Dr.
Ste. 600
Richmond, VA 23230



9590 9402 2854 7069 0892 79

2. Article Number (Transfer from service label)

7017 1450 0001 0575 6274

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [Signature] C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

☐ Adult Signature ☐ Priority Mail Express®

☐ Adult Signature Restricted Delivery ☐ Registered Mail™

☒ Certified Mail® ☐ Registered Mail Restricted Delivery

☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise

☐ Collect on Delivery ☐ Signature Confirmation™

☐ Insured Mail ☐ Signature Confirmation Restricted Delivery

☐ Insured Mail Restricted Delivery (over \$500)

Domestic Return Receipt

Exhibit 13

Electronically Filed
1/4/2018 11:56 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

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

12 *Attorneys for Plaintiffs*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON, d/b/a SIMON LAW; DOES
20 I through X, inclusive, and ROE
21 CORPORATIONS I through X, inclusive,

22 Defendants.

CASE NO.:
DEPT NO.:

A-18-767242-C
Department 14

COMPLAINT

23 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC
24 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.
25 GREENE, ESQ., of VANNAH & VANNAH, and for their causes of action against Defendants,
26 complain and allege as follows:

27 1. At all times relevant to the events in this action, EFT is a legal entity organized
28 under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a
domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL
are referred to as PLAINTIFFS.

2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON (SIMON) is an attorney licensed to practice law in the State of Nevada and doing business as SIMON LAW.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

[e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

1 6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and
2 is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for
3 services and the conversion of PLAINTIFFS personal property, as herein alleged.

4 7. ROE CORPORATIONS I through V are entities or other business entities that
5 participated in SIMON'S breach of the oral contract for services and the conversion of
6 PLAINTIFFS personal property, as herein alleged.

7 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

8
9 8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests
10 following a flood that occurred on April 10, 2016, in a home under construction that was owned by
11 PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case
12 Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in
13 favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the
14 trial date.

15
16 9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally
17 agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs
18 would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were
19 never reduced to writing.

20 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December
21 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs
22 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to
23 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of
24 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to
25 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever
26 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees
27 and costs to the mandated computation of damages.
28

1 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay
2 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by
3 PLAINTIFFS accrued interest.

4 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall
5 of 2017, and thereafter blossomed from one of mere property damage to one of significant and
6 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the
7 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the
8 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,
9 neither PLAINTIFFS nor SIMON agreed on any terms.

10 13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth
11 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he
12 wanted to be paid in light of a favorable settlement that was reached with the defendants in the
13 LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that PLAINTIFFS
14 had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented
15 to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set
16 forth in the computation of damages disclosed by SIMON in the LITIGATION.

17 14. A reason given by SIMON to modify the CONTRACT was that he purportedly
18 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go
19 through his invoices and create, or submit, additional billing entries. According to SIMON, he
20 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason
21 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that
22 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement
23 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

24 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
25 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
26
27
28

1 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following
2 the flooding event.

3 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP
4 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS
5 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS
6 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect
7 fees and costs other than those contained in his invoices that were presented to and paid by
8 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
9 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let
10 alone those in excess of \$1,000,000.00.
11

12 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
13 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
14 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
15 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
16 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
17 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
18 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
19 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
20 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
21 they've been updated as of last week."
22

23 18. Despite SIMON'S requests and demands for the payment of more in fees,
24 PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.
25

26 19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT,
27 SIMON refused, and continues to refuse, to agree to release the full amount of the settlement
28 proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide

1 PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds
2 that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can
3 receive either the undisputed number or their proceeds.

4 20. PLAINTIFFS have made several demands to SIMON to comply with the
5 CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the
6 settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To
7 date, SIMON has refused.

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Contract)**

11 21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through
12 20 of this Complaint, as though the same were fully set forth herein.

13 22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the
14 CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An
15 additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S
16 invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed,
17 and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS
18 best interests.
19

20 23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that
21 SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.
22

23 24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted
24 pursuant to the CONTRACT.

25 25. SIMON'S demand for additional compensation other than what was agreed to in the
26 CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for
27 PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.
28

1 26. SIMON'S refusal to agree to release all of the settlement proceeds from the
2 LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the
3 CONTRACT.

4 27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the
5 undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a
6 definite timeline as to when PLAINTIFFS can receive either the undisputed number or their
7 proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

8 28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS
9 incurred compensatory and/or expectation damages, in an amount in excess of \$15,000.00.

10 29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS
11 incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.

12 30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have
13 been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are
14 entitled to recover attorneys' fees and costs.

15 **SECOND CLAIM FOR RELIEF**

16 **(Declaratory Relief)**

17 31. PLAINTIFFS repeat and reallege each allegation and statement set forth in
18 Paragraphs 1 through 30, as set forth herein.

19 32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, \$550.00
20 per hour for SIMON'S legal services performed in the LITIGATION.

21 33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour
22 for a total of \$486,453.09, for SIMON'S services in the LITIGATION.

23 34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or
24 amend any of the terms of the CONTRACT.

1 35. The only evidence that SIMON produced in the LITIGATION concerning his fees
2 are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which
3 PLAINTIFFS paid in full.

4
5 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in
6 the LITIGATION was produced in updated form on or before September 27, 2017. The full
7 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to
8 PLAINTIFFS and that PLAINTIFFS paid in full.

9
10 37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the
11 CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and
12 PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON
13 admitted that all of the bills for his services were produced in the LITIGATION; and, since the
14 CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to
15 declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the
16 CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the
17 CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

18
19 **THIRD CLAIM FOR RELIEF**

20 **(Conversion)**

21 38. PLAINTIFFS repeat and reallege each allegation and statement set forth in
22 Paragraphs 1 through 37, as set forth herein.

23
24 39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his
25 services, nothing more.

26 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or
27 before September 27, 2017, had already been produced to the defendants.
28

1 41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable
2 sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

3 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his
4 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay
5 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd
6 produced all of his billings through September of 2017, SIMON has refused to agree to either
7 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed
8 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.
9

10 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a
11 conscious disregard of, and contempt for, PLAINTIFFS' property rights.
12

13 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises
14 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to
15 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount
16 in excess of \$15,000.00.
17

18 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,
19 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,
20 PLAINTIFFS are entitled to recover attorneys' fees and costs.
21

22 **PRAYER FOR RELIEF**

23 Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

- 24 1. Compensatory and/or expectation damages in an amount in excess of \$15,000;
25 2. Consequential and/or incidental damages, including attorney fees, in an amount in
26 excess of \$15,000;
27 3. Punitive damages in an amount in excess of \$15,000;
28 4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;

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

1 5. Costs of suit; and,

2 6. For such other and further relief as the Court may deem appropriate.

3 DATED this 3 day of January, 2018.

4 VANNAH & VANNAH

5
6 
7 ROBERT D. VANNAH, ESQ. (4272)
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Exhibit 14

Fwd: Edgeworth

James R. Christensen

Tue 1/9/2018 4:30 PM

Sent Items

To: Daniel Simon <dan@danielsimonlaw.com>;

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Robert Vannah <rvannah@vannahlaw.com>

Date: 1/9/18 3:32 PM (GMT-08:00)

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

Cc: John Greene <jgreene@vannahlaw.com>

Subject: Re: Edgeworth

I guess he could move to withdraw. However, that doesn't seem in his best interests. I'm pretty sure that you see what would happen if our client has to spend lots more money bringing someone else up to speed. So, it's up to him. Our client hasn't terminated him. We want this fee matter resolved by a Judge and jury.

Sent from my iPad

On Jan 9, 2018, at 3:21 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

John,

That is factually correct. However, Mr. Simon was served today. You must have understood that act could have impact.

The Lange status is that Mr. Simon made changes to the proposed closing documents last week. The ball is currently in defense attorney's court.

Jim

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

AA00923

From: John Greene <jgreene@vannahlaw.com>
Sent: Tuesday, January 9, 2018 10:23:56 AM
To: James R. Christensen
Cc: rvannah@vannahlaw.com
Subject: Re: Edgeworth

Jim:

I believe that Danny is still the attorney of record in that litigation. He settled the case, but we're just waiting on a release and the check.

John

On Tue, Jan 9, 2018 at 9:57 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

John,

I need to look into the propriety of Danny wrapping up Lange-after he has been sued and served. I will need to read the complaint.

I have a full schedule today and tomorrow, but will try to get to this as soon as I can.

Jim

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

From: John Greene <jgreene@vannahlaw.com>
Sent: Tuesday, January 9, 2018 9:50:49 AM
To: James R. Christensen
Cc: rvannah@vannahlaw.com
Subject: Re: Edgeworth

Jim:

Is there an update that Danny can provide on the Lange settlement? The clients would like to get everything wrapped up as soon as possible. Thank you.

John

On Tue, Jan 9, 2018 at 9:12 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

John,

Thanks for the call. I am authorized to accept service.

As I mentioned during the call, I anticipate an hourly bill will be completed next week prior to funds clearing. I suggest you wait until receipt & review of the hourly bill. We may be able to avoid unnecessary litigation costs and expenses.

Jim

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

--

John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
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Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

--

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Las Vegas, Nevada 89101
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Fax: (702) 369-0104
jgreene@vannahlaw.com

Exhibit 15

1 **RTRAN**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 EDGEWORTH FAMILY TRUST,

6 Plaintiff,

7 vs.

8 LANGE PLUMBING, LLC,

9 Defendant.

CASE NO. A-116-738444-C

DEPT. X

10 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

11 TUESDAY, FEBRUARY 06, 2018

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

14
15 **APPEARANCES:**

16 For the Plaintiff:

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

17
18 For the Defendant:

THEODORE PARKER, ESQ.
(Via telephone)

19 For Daniel Simon:

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

20
21 For the Viking Entities:

JANET C. PANCOAST, ESQ.

22 Also Present:

DANIEL SIMON, ESQ.

23
24 RECORDED BY: VICTORIA BOYD, COURT RECORDER

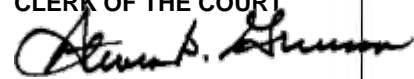
25 TRANSCRIBED BY: MANGELSON TRANSCRIBING

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

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

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

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



OPPS

ROBERT D. VANNAH, ESQ.

Nevada Bar. No. 002503

JOHN B. GREENE, ESQ.

Nevada Bar No. 004279

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Facsimile: (702) 369-0104

jgreene@vannahlaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN
GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON, d/b/a SIMON LAW; DOES
I through X, inclusive, and ROE
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: XIV

Consolidated with

CASE NO.: A-16-738444-C

DEPT. NO.: X

**PLAINTIFFS OPPOSITION TO
DEFENDANTS SECOND SPECIAL
MOTION TO DISMISS: ANTI-SLAPP**

Date of Hearing: June 14, 2018

Time of Hearing: 9:30 a.m.

Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC
(PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN
B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby files this Opposition to
Defendants SECOND Special Motion to Dismiss: Anti-SLAPP, the first of which was DENIED by
this Court on April 3, 2018.

///

///

///

This Opposition is based upon the attached Memorandum of Points and Authorities, NRS 41.660(3)(b), NRS 41.665(2), Cal. Code Civ. Proc 425.16(b)(3), *Drell v. Cohen*, 232 Cal.App. 4th 24, 181 Cal.Rptr. 3d 191 (2014), *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901 (Nev. 2014), the pleadings and papers on file herein, PLAINTIFFS Points and Authorities (and Exhibits) raised in Opposition to SIMON'S previously-filed Motions, including the Opposition to SIMON'S previously-filed and DENIED Special Motion to Dismiss: Anti-SLAPP, the affidavits of Brian Edgeworth to the prior Opposition, the attached Exhibits, and any oral argument this Court may wish to entertain.

DATED this 22 day of May, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

I.

MEMORANDUM OF POINTS AND AUTHORITIES

On or about May 27, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. (Please see Affidavit of Brian Edgeworth attached to this Opposition as Exhibit 1.) The damage from the flood caused in excess of \$500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of early 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants not long before the trial date.

1 At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed
2 that SIMON would be paid for his services by the hour and at an hourly rate of \$550. (Id.). No
3 other form or method of compensation such as a contingency fee was ever brought up at that time,
4 let alone agreed to. (Id.) Despite SIMON serving as the attorney in this business relationship, and
5 the one with the requisite legal expertise, SIMON never reduced the terms of the CONTRACT to
6 writing in the form of a Fee Agreement. However, that formality didn't matter to the parties as
7 they each recognized what the terms of the CONTRACT were and performed them accordingly
8 with exactness through September of 2017. (Id.)

10 For example, SIMON sent invoices to PLAINTIFFS that were dated December 16, 2016,
11 May 3, 2017, August 16, 2017, and September 25, 2017 (the Invoices). (The Invoices are attached
12 as Exhibit 2.) The amount of fees and costs SIMON billed PLAINTIFFS in the Invoices totaled
13 \$486,453.09. Simple reading and math shows that SIMON billed for his time at the hourly rate of
14 \$550 per hour. PLAINTIFFS paid the Invoices in full to SIMON. (Id.)

16 SIMON also submitted an invoice to PLAINTIFFS on November 10, 2017, in the amount
17 of approximately \$72,000. (Id.) However, SIMON withdrew the invoice and failed to resubmit
18 the invoice to PLAINTIFFS, despite an email request from Brian Edgeworth to do so. (Please see
19 Exhibit 1.) It is unknown to PLAINTIFFS whether SIMON ever disclosed that "final" invoice to
20 the defendants in the LITIGATION or whether he added those fees and costs to the mandated
21 computation of damages.

23 From the beginning of his representation of PLAINTIFFS, SIMON was aware that
24 PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION.
25 SIMON was also aware that the loans secured by PLAINTIFFS accrued interest. SIMON knew
26 that PLAINTIFFS could not get traditional loans to pay SIMON'S fees and costs. (Id.) Plus,
27 SIMON didn't express an interest in taking what amounted to a property damage claim with a
28

1 value of \$500,000 on a contingency basis. Easy math shows that 40% of \$500,000 is \$200,000;
2 SIMON billed over twice that in fees in the Invoices that he disclosed in the LITIGATION. In
3 reality, SIMON only wanted what amounts to a bonus after he'd received nearly \$500,000 in fees
4 and costs and after the risk of loss was gone.

5
6 As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017,
7 after the value of the case blossomed from one of property damage of approximately \$500,000 to
8 one of significant and additional value due to the conduct of one of the defendants, and after a
9 significant sum of money was offered to PLAINTIFFS from defendants, SIMON became
10 determined to get more, so he started asking PLAINTIFFS to modify the CONTRACT. (Id.)
11 Thereafter, Mr. Edgeworth sent an email labeled "Contingency." (See Exhibit 4 to the Motion to
12 Adjudicate.) The sole purpose of that email was to make it clear to SIMON that PLAINTIFFS
13 never had a structured conversation about modifying the existing fee agreement from an hourly
14 agreement to a contingency agreement. (Id.)

15
16 SIMON scheduled an appointment for PLAINTIFFS to come to his office to discuss the
17 LITIGATION. (Id.) Instead, his only agenda item was to pressure PLAINTIFFS into modifying
18 the terms of the CONTRACT. (Id.) SIMON told PLAINTIFFS that he wanted to be paid far more
19 than \$550.00 per hour and the \$486,453.09 he'd received from PLAINTIFFS for the preceding
20 eighteen (18) months. (Id.) SIMON portrays himself in his papers and pleadings as a close family
21 friend who performed an act of charity by representing PLAINTIFFS by "sending a few letters."
22 (See SIMON'S latest iteration at page 6, lines 9.5-15.5; and page 8, lines 19.5-20.5.) "Close"
23 family "friends" don't take or lay claim to the property of their friends, and billing and accepting
24 nearly \$500,000 in fees and costs can hardly be deemed a favor, a charitable act, or a mere letter
25 writing campaign under any definition.
26
27
28

1 The timing of SIMON'S request for the CONTRACT to be modified was deeply troubling
2 to PLAINTIFFS, for it came at the time when the risk of loss in the LITIGATION had been nearly
3 extinguished and the appearance of a large gain from a settlement offer had suddenly been
4 recognized. SIMON put on a full court press for PLAINTIFFS to agree to his proposed
5 modifications to the CONTRACT. In essence, PLAINTIFFS felt that they were being blackmailed
6 by SIMON, who was basically saying "agree to this or else." (Id.)
7

8 On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees
9 in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be
10 paid in light of a favorable settlement that was reached with the defendants in the LITIGATION.
11 (Id.) (Please also see a copy of SIMON'S 11/27/17 letter, plus his letter of 12/7/17, attached as
12 Exhibit 3.) At that time, these additional "fees" were not based upon invoices submitted to
13 PLAINTIFFS or detailed work performed by SIMON. The proposed fees and costs were in
14 addition to the \$486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the
15 CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence produced to
16 defendants in the LITIGATION, and the amounts set forth in the computation of damages
17 disclosed by SIMON in the LITIGATION. The proposed fees were also far in excess of the
18 amount set forth in the invoice dated November 10, 2017, that SIMON had presented to
19 PLAINTIFFS, then withdrew. (Please see Exhibit 1.)
20
21

22 One reason given by SIMON to modify the CONTRACT was he claimed he was losing
23 money on the LITIGATION. Another reason given by SIMON to modify the CONTRACT was
24 that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and
25 that he wanted to go through his invoices and create, or submit, additional billing entries. (Id.)
26 According to SIMON, he under billed in the LITIGATION in an amount in excess of
27 \$1,000,000.00. SIMON doubled down on that position of under billing in a letter to co-counsel for
28

1 PLAINTIFFS dated December 7, 2017, where SIMON claimed that the worked performed by him
2 from the outset that has not been billed “may well exceed \$1.5M.” (Please see Exhibit 3.)

3
4 We’ve now learned through SIMON’S latest invoices (attached as Exhibit 4) that he
5 actually allegedly under-billed by \$692,120, not the \$1.5M set forth in the letter of December 7,
6 2017. On the one hand, it’s odd for SIMON to assert that he’s losing money then, on the other
7 hand, have SIMON admit that he under-billed PLAINTIFFS to the tune of \$692,120 to \$1.5M.
8 But, that’s the essence of the oddity to SIMON’S conduct with PLAINTIFFS since the settlement
9 offers in the LITIGATION began to roll in.

10
11 Yet an additional reason given then by SIMON was that he felt his work now had greater
12 value than the \$550.00 per hour that was agreed to and paid for pursuant to the CONTRACT.
13 SIMON prepared a proposed settlement breakdown with his new numbers and presented it to
14 PLAINTIFFS for their signatures. They refused to bow to SIMON’S pressure or demands.
15 (Please see Exhibit 1.)

16
17 Some of PLAINTIFFS’ claims in the LITIGATION were for breach of contract and
18 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
19 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following
20 the flooding event. In support of PLAINTIFFS’ claims in the LITIGATION, and pursuant to
21 NRCP 16.1, SIMON was required to present prior to trial a computation of damages that
22 PLAINTIFFS suffered and incurred, which included the amount of SIMON’S fees and costs that
23 PLAINTIFFS paid.

24
25 There is nothing in the computation of damages signed by and served by SIMON to reflect
26 fees and costs other than those contained in his invoices that were presented to and paid in full by
27 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
28 in the LITIGATION to support any additional attorneys’ fees generated by or billed by SIMON, let

1 alone those in excess of \$692,120 of his invoices from January of 2018, or \$1.5M set forth in his
2 letter of December 7, 2017, or the exorbitant figure set forth in SIMON'S amended lien of
3 \$1,977,843.80, dated January 2, 2108.

4
5 Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
6 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
7 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
8 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
9 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
10 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
11 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
12 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
13 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
14 they've been updated as of last week." (Excerpts of the Deposition are attached as Exhibit 2 to
15 PLAINTIFFS Opposition to SIMON'S Motion to Adjudicate.)
16

17
18 Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS
19 refused to alter or amend the terms of the CONTRACT. (Please see Exhibit 1.) When
20 PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused to agree to
21 release the full amount of the settlement proceeds to PLAINTIFFS. (Id.) Instead, he served two
22 attorneys liens and reformulated his billings to add entries and time that never saw the light of day
23 in the LITIGATION. (Id.) (Please also see SIMON'S liens attached as Exhibit 5.)
24

25 Even when SIMON finally submitted his "new" invoice on January 24, 2018, the invoice
26 totaled \$692,120 for his "additional" services, and billed them at the CONTRACT rate of \$550 per
27 hour (for SIMON'S time). Yet, despite the CONTRACT, course of dealing, and the amount of his
28

1 “new” invoice (\$692,120), SIMON wrongfully continued to lay claim to nearly \$1,977,843 of
2 PLAINTIFFS property (Please see Exhibit 5.) and he refused to release PLAINTIFFS’ funds.

3
4 When SIMON refused to release the full amount of the settlement proceeds to PLAINTIFFS,
5 litigation was filed and served. (An Amended Complaint has also been filed and served. The claims
6 of PLAINTIFFS against SIMON are for Breach of Contract, Declaratory Relief, Conversion, and
7 Breach of the Implied Covenant of Good Faith and Fair Dealing.)

8 Finally, on April 3, 2018, this Court heard extensive arguments on SIMON’S previously
9 filed Special Motion to Dismiss: Anti-SLAPP. At the conclusion of that hearing, this Court denied
10 SIMON’S “Special” Motion. Then, on May 10, 2018, SIMON filed yet another “Special” Motion to
11 Dismiss: Anti-SLAPP. (Of note, this marks the fourth Motion to Dismiss that SIMON has filed.)
12 With this fourth Motion to Dismiss coming so soon on the heels of its predecessor that was denied,
13 we’re to the point that the motives need to be examined. Even if this Court does not choose to
14 examine motives at this time, the fate of this identical Motion should be the same as its identical
15 twin: denial.
16

17 For the purposes of this Opposition, PLAINTIFFS adopt all of their arguments raised, and
18 exhibits so attached, to their Opposition to SIMON’S first “Special” Motion to Dismiss: Anti-
19 SLAPP.
20

21 SIMON’S SECOND “SPECIAL” MOTION

22 To encapsulate, SIMON’S Second Special Motion is without merit. First, SIMON has
23 incorrectly described the law concerning protected communications. Second, he’s also misstated the
24 standard of proof under NRS 41.665 that may apply to PLAINTIFFS concerning communications
25 that may be deemed protected, though they shouldn’t. Third, SIMON’S lien is not a protected
26 communication under NRS 41.660, or pursuant to *Drell v. Cohen*, 232 Cal.App. 4th 24, 181
27 Cal.Rptr. 3d 191 (2014), or under *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901 (Nev.
28 2014). Fourth, SIMON has misstated the purpose for PLAINTIFFS need in the first place to resort

1 to litigation to protect their rights and their property. Last, PLAINTIFFS have shown ample *prima*
2 *facie* evidence, if necessary, to demonstrate to this Court that they have a likelihood of success on
3 the merits of each of their claims.

4
5 **II.**

6 **ARGUMENTS**

7 **A. SIMON’S LIEN IS NOT A PROTECTED COMMUNICATION UNDER ANY**
8 **DEFINITION AND STANDARD RECOGNIZED BY LAW. THEREFORE, SIMON CAN’T**
9 **MEET HIS BURDEN UNDER NRS 41.660(3)(a). AS A RESULT, SIMON’S SPECIAL**
10 **MOTION MUST BE DENIED.**

11 There is no controlling authority cited by SIMON to demonstrate to this Court that his lien is
12 a protected communication under Nevada law. He’s also failed to cite any controlling authority
13 from California, in which Nevada seems to lean upon in its application of so called anti-SLAPP
14 issues. See NRS 41.665(2). Instead, SIMON leans on *Beheshti v. Bartley*, 2009 WL 5149862, an
15 unpublished opinion from 2009 that is “not to be published in Official Reports” and *Transamerica*
16 *Life Insurance Co.*, 2016 WL 2885858, a federal district court case from California that conflicts
17 with clear California law as set forth in *Drell v. Cohen*, 232 Cal.App. 4th 24, 181 Cal.Rptr. 3d 191
18 (2014). Why would SIMON refer to or rely upon cases that are “not to be published” or that conflict
19 with the law of the state where a federal court resides, when the law is otherwise clear? Because
20 *Drell* stops SIMON’S Special Motion in its tracks.

21 In *Drell*, the Cohen firm represented a personal injury plaintiff on a contingency fee basis.
22 (It’s not specifically mentioned in the decision whether Cohen had a written fee agreement, though
23 he’d need one in Nevada.) Cohen later withdrew as counsel and asserted a lien, as he’d not yet been
24 paid pursuant to his contingency fee agreement. The Drell law firm then took over as counsel for
25 plaintiff and negotiated a settlement with the insurance company. Thereafter, the insurer made the
26 settlement check out to plaintiff and both firms. Drell filed a complaint against Cohen, and Cohen
27
28

1 filed an anti-SLAPP motion, claiming that Drell's complaint against Cohen arose from an alleged
2 protected activity of asserting a lien for fees. The trial court denied Cohen's motion.

3 In upholding the district court's decision, the *Drell* court agreed that the lawsuit did not arise
4 from a protected activity and held that: "...a complaint is not a SLAPP suit unless the gravamen of
5 the complaint is that defendant acted wrongfully by engaging in the protected activity." *Id.*, at p.
6 194. PLAINTIFFS' claims do not seek to prevent SIMON from doing what the law allows. Rather,
7 some of PLAINTIFFS' claims are about SIMON'S conduct that could lead to the imposition of
8 damages. The claim for Declaratory Relief seeks to confirm the terms of the CONTRACT, which,
9 in turn, will govern the amount of additional fees that SIMON is entitled to receive, either through
10 his liens or via his "new" invoice.
11

12 It wasn't the mere existence of the lien (or the amended lien) that was at issue, or that
13 PLAINTIFFS denied that additional fees and costs were likely owed to SIMON pursuant to the
14 CONTRACT. (*Id.*) In fact, PLAINTIFFS had asked, and continued to ask, for SIMON to re-present
15 the invoice from September of 2017 that he had withdrawn. Rather, PLAINTIFFS protested that
16 SIMON demanded a bonus, an after-the-fact contingency fee agreement, and thereafter served a lien
17 in an amount that had no grounds under the CONTRACT, or in Nevada law (or even with the beefy
18 amount of SIMON'S "new" invoice later submitted in January of 2018.)
19

20 Thus we see that the gravamen of PLAINTIFFS complaint wasn't and isn't about the
21 existence of a lien. SIMON has a right to assert one in order to get paid his fee, and PLAINTIFFS
22 acknowledge that SIMON is owed an additional fee. (*Id.*) It's also not about keeping SIMON from
23 getting paid for his hourly work, provided the amount is reasonable, which it's not. (See Exhibit 4,
24 with SIMON'S block billing entry for over 135 hours.) Regrettably, in a proverbial sense, SIMON
25 intentionally knocked some things over on his way through, causing damages to PLAINTIFFS. As
26 such, in addition to determining the respective rights of the parties through declaratory relief,
27 PLAINTIFFS are entitled to be made whole from the damages that SIMON caused.
28

1 The *Drell* court stated further that: “None of the purposes of the anti-SLAPP statute would
2 be served by elevating a fee dispute to the constitutional arena....” Id. (Emphasis added.) The
3 holding and the rationale of *Drell* is right on point to the case at hand. To take SIMON at his word,
4 and as set forth in all of his papers and pleadings to this Court to date, this is a fee dispute. (See
5 SIMON’S latest iteration at page 5, lines 21-23 of SIMON’S Special Motion.) As directed by *Drell*,
6 none of the purposes of an anti-SLAPP statute are served by elevating to the constitutional arena
7 what SIMON has admittedly described as a fee dispute. Since SIMON’S lien is not a protected
8 communication by law, he cannot meet his burden under NRS 41.660(3)(b). Therefore, his Special
9 Motion must be denied.

11 SIMON’S backdoor attempt to create a protected communication through some litigation
12 privilege must also fail, as *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901 (Nev. 2014),
13 throws shade on their position. First, contrary to the assertion in SIMON’S Special Motion at page
14 17, lines 14.5-15.5, the litigation privilege neither applies to SIMON’S conduct here nor does it
15 provide absolute immunity. Rather, the *Greenberg* court holds that the litigation privilege only
16 protects words and deeds of an attorney done in furtherance of the clients’ benefit/interests/justice
17 and clearly adopts the legal-malpractice exception, thus eliminating anything absolute about the
18 privilege.

20 In discussing the purpose of the litigation privilege, the *Greenberg* court states, “... the
21 litigation privilege applies to attorneys primarily *for the clients benefit*.” (Emphasis added.) Id. The
22 privilege is also “contingent on the attorney’s representation of his or her client because the privilege
23 is designed to ensure that attorneys have the utmost freedom to engage in zealous advocacy and are
24 not constrained in their quest to pursue the interests of, and obtain justice for, their clients.”
25 (Emphasis added.) Id.

27 As it must be abundantly clear by now (as set forth in this Opposition, the Opposition to
28 SIMON’S previously filed Special Motion to Dismiss, and in PLAINTIFFS Oppositions to

1 SIMON'S Motions to Adjudicate and to Dismiss), the manner in which SIMON dealt with
2 PLAINTIFFS and their property in this matter that lead to the filing of their complaint has nothing to
3 do with SIMON'S pursuit of PLAINTIFFS benefit, interests, or to obtain justice for them. To the
4 contrary, this has been all about SIMON and his demand for more money, regardless of the amount
5 or the means. Even after submitting a "new" invoice in January of 2018 for \$692,120, SIMON has
6 failed to amend his lien from \$1,977,843.80 to \$692,120. He's also refused to release funds to
7 PLAINTIFFS amounting to the difference between his amended lien and his "new" invoice. As a
8 result, the litigation privilege doesn't and shouldn't extend to SIMON on these facts.

9
10 Similarly, even if SIMON could get the benefit of the litigation privilege despite acting for
11 his sole benefit and at the expense of the interests of PLAINTIFFS—his clients—the rationale
12 behind the legal malpractice exception applies to the facts of this case. As discussed in *Greenberg*,
13 "In contrast, while allowing attorneys to breach their professional duties to their clients with
14 impunity and then assert the privilege against the clients' legal malpractice action might benefit the
15 attorney, this impairs the attorney-client relationship, hinders the client, and runs afoul of the
16 privilege's underlying policy of assisting the attorney in pursuing the client's interests." *Id.*
17 (Emphasis added.)

18
19 There is nothing in the litigation privilege, or in its rationale, that should provide either
20 protection to, or solace to, SIMON. It simply doesn't apply to SIMON under these facts, as all he
21 has done as alleged in PLAINTIFFS Amended Complaint is to act for his own interests and benefit
22 and in direct contravention of PLAINTIFFS. Again, Since SIMON'S lien is not a protected
23 communication by the law governing privileges, he cannot meet his burden under NRS 41.665(3)(b).
24 Therefore, his Special Motion must be denied.

25
26 ///

27 ///

28 ///

1 **B. IN THE ALTERNATIVE, SHOULD THE COURT NOW DETERMINE THAT**
2 **SIMON HAS MET HIS INITIAL BURDEN TO SHOW THAT HIS LIEN IS A PROTECTED**
3 **COMMUNICATION, PLAINTIFFS HAVE MET THEIR BURDEN BY DEMONSTRATING**
4 **PRIMA FACIE EVIDENCE THAT THEY CAN PREVAIL ON ALL OF THEIR CLAIMS**
5 **AGAINST SIMON, BOTH PERSONALLY AND PROFESSIONALLY.**

6 Should this Court now determine that SIMON has somehow met his initial burden to show
7 that his self-interested assertion of a lien in the amount presently asserted is a protected
8 communication, the burden shifts to PLAINTIFFS to show “with prima facie evidence a probability
9 of prevailing on the claim.” *Shapiro v. Welt*, 389 P.3d 262 (Nev. 2017), citing NRS 41.660(3)(b).
10 For reasons that are unclear, SIMON stated in this Special Motion that PLAINTIFFS burden was of
11 a clear and convincing standard, a higher standard of proof than prima facie. (See SIMON’S Special
12 Motion at page 19, lines 20-21.) SIMON’S assertion is wrong as it conflicts with a plain Nevada
13 statute, clear case law, and it does not comport with Cal. Code Civ. Proc 425.16(b)(3), which is
14 referenced in NRS 41.665(2).

15 SIMON’S words and deeds from day one through the present date paint a clear picture that a
16 CONTRACT existed between the parties. Again, here’s some of the evidence. First, there’s the
17 affidavit of Brian Edgeworth, where he states that he and SIMON agreed that SIMON’S fee would
18 be \$550 per hour for his services. The discussion between SIMON and PLAINTIFFS was structured
19 enough for the parties to agree that SIMON would be retained as PLAINTIFFS attorney and be paid
20 \$550 per hour for his services, and reimbursed for his costs. That’s the essence of a fee agreement.
21 It’s not a complicated business relationship that requires anything more for the contracting parties to
22 know to clearly understand where they stand with the agreement. Mr. Edgeworth also details a
23 portion of the malice shown to them by SIMON. (Id.)

24
25 Second, the Invoices presented by SIMON and paid in full by PLAINTIFFS in the
26 LITIGATION are for an hourly rate of \$550 per hour for SIMON’S services. (See Exhibit 2.)
27 There are hundreds of entries for hundreds of thousands of dollars, all billed by SIMON at his
28 agreed to hourly rate. (His associate is billed at a lesser rate of \$275 per hour.) This also represents

1 over 18 months of course and dealing between SIMON and PLAINTIFFS. SIMON'S "new"
2 invoice that he produced on January 24 of this year—an invoice that contain thousands of entries
3 and \$692,120 in new billings—are billed by SIMON at \$550 per hour, too. (Please see Exhibit 4.)
4 See the pattern? It's been there since Day 1.

5
6 Third, there are the admissions by SIMON in the deposition of Mr. Edgeworth. At page 271
7 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that
8 PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19,
9 SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated:
10 "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been
11 disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his
12 fees and costs: "And they've been updated as of last week." (Please see Exhibit 2 to PLAINTIFFS
13 Opposition to SIMON'S Motion to Adjudicate.)
14

15 These are the Invoices that contain the agreed to hourly rate of \$550 per hour, which were all
16 paid in full by PLAINTIFFS. The \$550 per hour question is: how much more consistent
17 performance by the parties to the terms of an agreement does it take to convince even the most
18 intransigent litigant that there is a CONTRACT that he must respect? It's been the same since the
19 beginning. A jury should agree. Fourth, there are the calculations of damages in the LITIGATION
20 that SIMON was obligated to submit and serve on PLAINTIFFS behalf and in accordance with
21 NRCP 11(b) and NRCP 16.1. The calculations of damages submitted by and signed by SIMON set
22 forth damages, including attorneys' fees, based on his hourly rate of \$550 and paid in full by
23 PLAINTIFFS.
24

25 Last, in a letter to co-counsel for PLAINTIFFS dated December 7, 2017 (Please see Exhibit
26 3.), SIMON states "Simon Law is reviewing the case file and work performed from the outset that
27 has not been billed (including such things as obtaining the forensic copy of case related e-mails and
28 phone records) to provide a comprehensive hourly bill." (Emphasis added.) This letter from

1 SIMON goes on to state “It is reasonably expected at this time that the hourly bill may well exceed
2 a total of \$1.5M....” (Emphasis added.) His hourly bill produced on January 24, 2018, was actually
3 for an additional \$692,120 in fees.

4 Thus we see that all of the conduct by SIMON in the LITIGATION from the beginning to
5 the end refutes his newfound position that there was no agreement to pay an hourly fee. To the
6 contrary, it instead supports a finding that the terms of the CONTRACT contain the agreement of
7 the parties on the amount of the fee between SIMON and PLAINTIFFS, which is as hourly rate of
8 \$550.

9
10 As PLAINTIFFS have argued throughout this surreal journey, the only pathway for SIMON
11 to prevail on his Special Motion is to convince a trier of fact that the CONTRACT isn’t a contract
12 and that it didn’t contain the agreement of the parties on the amount of SIMON’S fee that everyone
13 abided by with exactness for over eighteen (18) months. The CONTRACT contains every element
14 of a valid and enforceable contract. PLAINTIFFS asked SIMON to represent them in the
15 LITIGATION in exchange for an hourly fee of \$550, plus the reimbursement of costs incurred (the
16 offer)(See Exhibit 1.). SIMON agreed to serve as PLAINTIFFS attorney and to be paid the hourly
17 rate of \$550 for his services (the acceptance)(See Exhibits 1 and 2.). PLAINTIFFS agreed to pay,
18 and SIMON agreed to receive, \$550 per hour for SIMON’S time, plus the reimbursement of costs
19 (the consideration)(Id.).
20

21
22 Thereafter, SIMON billed PLAINTIFFS for his time at a rate of \$550 per hour, plus incurred
23 costs, and PLAINTIFFS paid each invoice presented by SIMON in full (the performance), but for
24 the latest “invoice”, which they will review and pay what is fair and reasonable. (Id.,; plus, see
25 Exhibit 4.) There isn’t a question of capacity or intent. Therefore, that’s a contract, which is the
26 CONTRACT. For SIMON to argue or assert otherwise in this litigation is belied by every
27 reasonable measure of his words and deeds, including his letter of December 2, 2017, and his latest
28 billings produced on January 24, 2018.

1 SIMON now wants a contingency fee from PLAINTIFFS without a written contingency fee
2 agreement, ironically one that he never wanted or would have agreed to in the first place. SIMON
3 also seems to want a bonus for his efforts, though the parties never agreed to one. When SIMON
4 didn't get what he wanted, he placed a lien on PLAINTIFFS property for \$1,977,843.80. (Please see
5 Exhibit 5.) He did so despite the prior knowledge and admission that "...it is reasonably expected at
6 this time that the hourly bill may well exceed a total of \$1.5M...." (Please see Exhibit 3.) It's
7 undisputed that his "hourly bill" was for far less, though still not reasonable.
8

9 Even today, SIMON maintains dominion and control over the balance of PLAINTIFFS
10 settlement proceeds despite the foregoing facts AND the despite the fact that his actual hourly bill
11 for his services after his "comprehensive" review are "only" \$692,120. (Please see Exhibit 4.)
12 Simple math again reveals that SIMON has willfully converted at least \$1,285,723.80 of
13 PLAINTIFFS property. Those are sufficient facts under any standard for PLAINTIFFS to maintain
14 a claim for breach of the CONTRACT, conversion, and a remedy of punitive damages against
15 SIMON.
16

17 SIMON also continues to seek refuge in the amount of, and the timing of, his charging lien.
18 As argued in other pleadings, SIMON had no basis to assert that lien in that amount when he did so.
19 Each invoice he's presented to PLAINTIFFS in the LITIGATION had been paid in full. Also, there
20 is nothing in fact or at law to support any argument that SIMON'S fee was dependant in any way on
21 the existence of, or the amount of, the settlement reached with the defendants in the LITIGATION.
22 Rather, a jury could find that SIMON asserted one because he wanted to and because his law license
23 cloaked him with the ability to do so. That finding could trigger a valid remedy of punitive
24 damages.
25

26 As for the initial amount, and the ongoing amount of the charging lien, there's no basis for it,
27 either. As discussed above, SIMON'S amended lien is far more than provided for under the
28 CONTRACT and his "comprehensive" billings. Again, at least **\$1,285,723.80** of SIMON'S

1 charging lien (in the amount of \$1,977,843.80) has no basis in fact or in law. (PLAINTIFFS have
2 also seen glaring issues with SIMON'S new billing invoice, including duplicate entries and a huge
3 block billing entry for over 135 hours for reviewing emails.) And SIMON won't release the revised
4 amount of PLAINTIFFS preceeds, despite knowing that his consent is required to do so. That's not
5 consent for PLAINTIFFS, but it is conversion at the hands of SIMON.

6
7 PLAINTIFFS' claims against SIMON personally are properly raised, too. SIMON seeks to
8 shield himself behind the façade of his firm to avoid personal responsibility for PLAINTIFFS'
9 claims. Not so fast. The things that lawyers do and don't do, including their interactions with
10 clients, are governed by the NRPC. PLAINTIFFS assert, and have claimed, that SIMON'S actions
11 are in fact SIMON'S actions, personally and professionally. NRPC 1(c) is on point and on all fours
12 with PLAINTIFFS' claims. This Rule states that a "Firm or law firm denotes a lawyer or
13 lawyers...." As a result, when SIMON argues at pages 10-11 of his Motion that any agreement with
14 PLAINTIFFS was reached with his firm, the Rules instead determine that the CONTRACT was
15 made with the lawyer, who is SIMON the person. See NRPC 1(c) and NRPC 1.5.

16
17 In fact, nearly every Rule in the NRPC uses similar language and speaks directly to lawyers.
18 For example, the Rules dealing with competence (1.1), scope of representation (1.2), diligence (1.3),
19 communication (1.4), fees (1.5), confidentiality (1.6), conflicts (1.7 & 1.8), duties to former clients
20 (1.9), advisor (2.1), and candor to the tribunal (3.3), all begin with, or have in prominent display, "A
21 lawyer shall...." (Emphasis added.) By definition and via common sense, these Rules in general,
22 and Rule 1.5 in particular, preclude SIMON from making any successful argument as to who the
23 CONTRACT is with and who PLAINTIFFS claims can gain traction against. In short, his argument
24 to shield himself is belied by the Rule and the law.

25
26 Here, it is undisputed that SIMON the person spoke with PLAINTIFFS about the terms of
27 the CONTRACT. (See Exhibit 1.) It's undisputed that SIMON the person did the work that
28 resulted in the \$486,453.09 in invoices that were billed and paid to date in the LITIGATION. (See

1 Exhibits 19 and 20 to SIMON'S Motion to Adjudicate). It's undisputed that SIMON the person
2 performed the "comprehensive" review that resulted in \$692,120 in additional hourly billings. (See
3 Exhibit 3.) It's not reasonably disputed that SIMON the person formulated the plan to get paid more
4 in fees than he agreed to under the CONTRACT. It's undisputed that SIMON the person prepared
5 and sent the charging lien that perfected his plan to get a bonus for his work. Finally, it's undisputed
6 that SIMON the person controls whether PLAINTIFFS personal property gets released and paid to
7 them, as the account requires his signature and consent.
8

9 PLAINTIFFS' claims against SIMON the person as the lawyer are proper in fact, by Rule,
10 and at law. Thus, there are sufficient facts plead under the Rules for PLAINTIFFS claims against
11 SIMON the lawyer to go forward. As a result, SIMON'S Special Motion should be denied.
12

13 In bringing a claim against SIMON for conversion—an intentional tort—PLAINTIFFS have
14 properly asserted a claim against SIMON where the remedy is punitive damages. In his Special
15 Motion, SIMON improperly argues that PLAINTIFFS can't prove their claims here, either. That's a
16 bold and a false assertion in light of the facts and that no discovery has taken place. PLAINTIFFS
17 assert that their COMPLAINT and Amended Complaint contain far more than "a short and plain
18 statement of the claim" for conversion, and that SIMON did so with the clear knowledge and the
19 intent to harm, in that he was not entitled to any portion of PLAINTIFFS property.
20

21 A jury may very well find that the CONTRACT governed how much SIMON could charge
22 in fees. That same jury may also find that SIMON wanted more than what he'd agreed to receive,
23 and that he formulated a plan to get it done. The jury could also find that SIMON'S clear
24 knowledge and intent to wrongfully convert PLAINTIFFS property was crystallized when he: 1.)
25 Sent his letter of December 7, 2017, prophesying an additional \$1.5M in billings; 2.) Asserted two
26 liens, namely an amended lien on January 2, 2018, for \$1,977,843.80 in fees; and, 3.) Submitted
27 additional billings on January 24, 2018, for \$692,120 in billings that followed his "comprehensive"
28 review of all the work he'd performed to date.

1 They may also find that while the amount of SIMON'S conversion has been a moving target
2 (\$1.5M, or \$1,977,843.80, or \$692,120?), it was still done with the knowledge that it's wrong, that it
3 was done with intent to harm and oppress, that it's in direct violation of the property rights of
4 PLAINTIFFS, and that it was done with the intent to benefit himself and the expense of and harm to
5 PLAINTIFFS.

6
7 They may also find sufficient evidence exists to show that SIMON'S conduct of: failing to
8 reduce the CONTRACT to writing; later claiming ambiguities in the CONTRACT; demanding a
9 bonus from PLAINTIFFS; creating a super bill after the LITIGATION had settled, including a block
10 bill of over 135 hours; harboring a plan to merely submit partial invoices without consulting
11 PLAINTIFFS of this plan so they could evaluate whether SIMON should continue as counsel;
12 executing his secret plan by going back and adding substantial time to his invoices that had already
13 been billed and paid in full; and, but not limited to, asserting a lien on PLAINTIFFS property,
14 knowingly doing so in an amount that was far in excess of any amount of fees that he had billed
15 from the date of the previously paid invoice to the date of the service of the lien, that he could bill
16 for the work performed, that he actually billed, or that he could possible claim under the
17 CONTRACT, that SIMON failed to deal fairly and in good faith with PLAINTIFFS and thus
18 breached the implied covenant of good faith and fair dealing.
19

20
21 This is prima facie evidence that PLAINTIFFS can prevail on all the claims they've made.
22 *Shapiro v. Welt*, 389 P.3d 262 (Nev. 2017). Therefore, PLAINTIFFS have done all they're required
23 to do to defeat SIMON'S Special Motion. As a result, it must be denied.

24 III.

25 CONCLUSION

26 Based on the foregoing, PLAINTIFFS respectfully request the Court again deny SIMON'S
27 SECOND Special Motion to Dismiss: Anti-SLAPP. SIMON still has failed to meet his burden that
28 his lien is a protected communication under the law. In the alternative, should the Court find that he

1 did somehow meet his burden in the five weeks since his previously filed "Special" Motion was
2 denied, PLAINTIFFS have demonstrated prima facie evidence of a probability of prevailing on their
3 claims. Therefore, SIMON'S Second Special Motion must be denied.

4 DATED this 22 day of May, 2018.

5 VANNAH & VANNAH

6
7
8 
9 ROBERT D. VANNAH, ESQ.

10
11
12
13 **CERTIFICATE OF SERVICE**

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

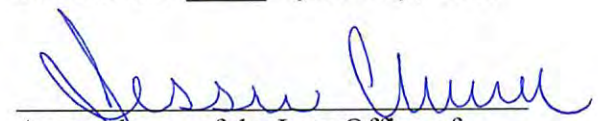
15 Electronically:

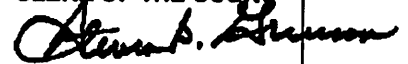
16 James R. Christensen, Esq.
17 **JAMES R. CHRISTENSEN, PC**
18 601 S. Third Street
19 Las Vegas, Nevada 89101

20 Peter S. Christiansen, Esq.
21 **CHRISTIANSSEN LAW OFFICES**
22 810 S. Casino Center Blvd., Ste. 104
23 Las Vegas, Nevada 89101

24 Traditional Manner:
25 *None*

26 DATED this 23 day of May, 2018.

27 
28 An employee of the Law Office of
Vannah & Vannah



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 MONDAY, AUGUST 27, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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Las Vegas, Nevada, Monday, August 27, 2018

[Case called at 10:44 a.m.]

THE COURT: -- Family Trust, American Grating, LLC v. Daniel Simon Law, Daniel Simon, d/b/a Simon Law. Okay.

So, this is the date and time set for an evidentiary hearing. Can we have everyone's appearances for the record?

MR. VANNAH: Yes. Robert Vannah and John Greene on behalf of the Edgeworth Trust and the Edgeworth family.

Mr. CHRISTENSEN: Jim Christensen on behalf of Mr. Simon and his law firm.

MR. CHRISTIANSEN: Peter Christiansen as well, Your Honor.

THE COURT: Okay. So, this is the date and time set for the evidentiary hearing in regards to the lien that was filed in this case, but I also have Mr. Simon's Law Office filed a trial brief regarding the admissibility of a fee agreement. Did you guys get that?

MR. VANNAH: Yes, Your Honor.

THE COURT: Okay. Are you guys prepared to respond to that or --

MR. VANNAH: We are, Your Honor.

THE COURT: Okay. And I have had an opportunity to review it while we were waiting.

Mr. Christensen, do you have anything you want to add?

Mr. CHRISTENSEN: Just a couple of thoughts, Your Honor. Last week, we requested that Mr. Vannah voluntarily produce the fee

1 agreement. He declined to do so. So, late last week a subpoena was
2 served duces tecum. The trial brief lays out the reasons why that fee
3 agreement is relevant and also lays out the law on why, in this situation,
4 it's not privileged, and it can be introduced.

5 To the extent that there were any particular attorney-client
6 communications made to Mr. Vannah, which were memorialized in some
7 fashion in the fee agreement, like he wrote in the margins or something,
8 those could, of course, be redacted. So, I don't think there's any true
9 defense to the subpoena. Constructive discharge is an issue, and part of
10 the evidence of construction discharge is the fact the clients went to a
11 new lawyer while the underlying litigation was still pending.

12 THE COURT: And correct me if I'm wrong, but I remember --
13 and correct me because this was a few hearings ago. I remember there
14 was a discussion in regards to -- at some point, was there a discussion
15 between Mr. Vannah and Mr. Simon that Mr. Vannah told Mr. Simon that
16 he was still counsel of record?

17 MR. VANNAH: Correct.

18 Mr. CHRISTENSEN: There was several --

19 THE COURT: Okay. I vaguely remember that, so can
20 somebody just enlighten me as to the status of that, because I remember
21 that about two to three hearings ago --

22 Mr. CHRISTENSEN: There were --

23 THE COURT: -- there being a discussion about that.

24 Mr. CHRISTENSEN: There were several evolving
25 discussions, and it's important to keep the timeline in your mind. At

1 approximately November 30th or so, there was a communication from
2 the clients to Mr. Simon saying Mr. Vannah is now my lawyer -- or it
3 might have come from Mr. Vannah's office, saying Mr. Vannah is now
4 my lawyer, do not communicate directly.

5 THE COURT: Okay.

6 Mr. CHRISTENSEN: That led to the following day. That was
7 -- the first lien was filed to protect Mr. Simon's and his law office's
8 interest.

9 Subsequent to that, there were email communications
10 mainly between Mr. Vannah and myself, some letter communications, in
11 which, for example, I raised the issue of constructive discharge and the
12 fact that Mr. Simon is no longer able to talk to his clients, and we had the
13 important issue, the pending contract claim for recovery of attorney's
14 fees expended against Lange Plumbing.

15 THE COURT: Right.

16 Mr. CHRISTENSEN: That led to a conference call between
17 the parties, and then we had a consent to settle provided to Mr. Simon
18 that was signed by both clients and said, upon the advice of Mr. Vannah,
19 you know, blah, blah, blah, we're not going to pursue this claim.

20 At one point, I sent an email on over there and I said, look,
21 you know, we got to make a decision whether Mr. Simon is still going to
22 be counsel of record here. He can't talk to the clients. They're not
23 following his advice. He's not able to explain to them the importance
24 and the significance of that contract claim against Lange Plumbing that's
25 not subject to offset or any other reduction because of monies recovered

1 by -- from Viking. And that fell on deaf ears, and I said, well, we're going
2 to have to think about this next step.

3 And then there was a back and forth on an email or two that
4 said something to the extent of, if you withdraw, that's going to increase
5 our damages. So, in other words, there was a constructive discharge of
6 Mr. Simon, and then there was either a direct or indirect threat,
7 depending on how you want to read it, that if he actually withdrew,
8 because of the constructive discharge, that would increase the claims
9 against him. So, that put Mr. Simon in kind of, you know, darned if you
10 do, darned if you don't situation, where he couldn't talk to the clients, but
11 he was being threatened that if he withdrew, bad things would happen
12 to him.

13 Then, of course, they sued him for conversion before he had
14 any funds to convert and now we're here today.

15 At the current day, there has not been a motion to withdraw.
16 It would have been filed before Your Honor.

17 THE COURT: Right.

18 Mr. CHRISTENSEN: However, the underlying case has been
19 wrapped up based upon the advice from Mr. Vannah to settle that lien
20 claim for 100,000. So, to a certain extent, that -- there's no longer an
21 underlying case for Mr. Simon to represent them in; however, for our
22 purpose here today, the issue of constructive discharge is important.

23 We have a difference of opinion on whether there was an
24 expressed contract and whether there was a meeting of minds on the
25 payment term.

1 THE COURT: Right.

2 Mr. CHRISTENSEN: We also -- secondarily, we also have a
3 difference of opinion on whether the conduct of the parties could
4 establish an implied agreement on payment terms. We say it's clear, it's
5 not. And we think as you hear the evidence, you're going to understand
6 why we're saying that.

7 But even if a payment term is determined expressly or
8 impliedly, it doesn't matter if there is constructive discharge, because if
9 there's constructive discharge, then there's no contract. And under the
10 law in the State of Nevada, Mr. Simon gets a quantum meruit recovery
11 or a reasonable fee.

12 So, in fact, you could almost reverse the analysis and just
13 take a look at whether there was constructive discharge first because if
14 there is, it really doesn't matter if there is a meeting of the minds or not
15 on a payment term because the contract has been blown up. So, then
16 you go to QM, quantum meruit.

17 So, that's kind of why the fee agreement is important,
18 because it shows that, while Mr. Simon was involved in active litigation
19 in the underlying case, and although, there's a seven-figure claim against
20 Lange pending, and when there's still details to be worked out on the \$6
21 million Viking settlement, the clients have gone to another lawyer, hired
22 another lawyer, taken advice from that other lawyer, and told Mr. Simon
23 not to talk to them.

24 So, we think the fee agreement is going to be another piece
25 of substantial evidence that would lead this Court to find a constructive

1 discharge. So, we'd like to see it and see what it says.

2 THE COURT: Okay. Mr. Vannah, Mr. Greene.

3 MR. VANNAH: Thank you, Your Honor. Sort of a revision of
4 his history. Here's what happened. The case had settled. The big case
5 has settled for 600,000, everybody agreed on that. Mr. Simon had a
6 meeting in mid-November and told the clients he wanted a larger fee
7 than what they were going to pay. He then said to the clients, you need
8 to go out and get independent counsel to look at this for you, which is
9 what he had to do anyway. He just wants them -- he had a new fee
10 agreement for them to sign or a fee agreement, and then told them you
11 need to get independent counsel to look at it and told them that. He said
12 that's -- that was the --

13 THE COURT: To look at the fee agreement?

14 MR. VANNAH: Yeah, to look at the whole thing.

15 THE COURT: Okay.

16 MR. VANNAH: I mean, he comes up with the fee agreement
17 and -- after the case settled and has a fee agreement prepared for them,
18 gives it to them, said here's the fee agreement, I want you to sign in mid-
19 November 2017, after the \$600,000 settlement took place.

20 And the fee agreement he wanted them to sign said,
21 basically --

22 THE COURT: And this is the \$6 million settlement that you're
23 talking about?

24 MR. VANNAH: Yes, that had already happened.

25 THE COURT: Right, but you keep saying 600,000, so I'm just

1 making sure --

2 MR. VANNAH: You know what? It's hard to spit the big
3 numbers out.

4 THE COURT: It's all right, but you're talking about the \$6
5 million settlement?

6 MR. VANNAH: I am, and I --

7 THE COURT: Okay.

8 MR. VANNAH: So, the \$6 million settlement had occurred,
9 was over with. Mr. Simon had the clients, both Mr. and Mrs. Edgeworth,
10 come to his office, and he had prepared a fee agreement saying, look, I
11 want to be fair about this to myself and this is what I want you guys to
12 sign. I want you to sign this fee agreement that gives me basically a \$2
13 million bonus. And he showed it to them, and then he said -- they said,
14 well, you know, we're not prepared to -- for you to bring us in out of the
15 blue and show us this. And we're not at all happy about it, but having
16 said that, he said, well, then you need to get independent counsel.
17 That's me. I'm the independent counsel.

18 So, they obviously retained me, and I did a get written fee
19 agreement. Of all cases, this is the one I'm going to get a written fee
20 agreement on. I have a written fee agreement. There's nothing in the
21 margins, but in the subpoena, it said to bring everything with me, which
22 would have included my notes that day. Those are attorney-client notes.
23 He's, obviously -- he's not entitled to even that, but it's his fee agreement
24 where I got retained.

25 I don't -- there's no constructive discharge. So, the only

1 thing left in the case, at that point, was to do the releases. They looked
2 at the release and signed them, the case was settled, so I --

3 THE COURT: But this is prior to the Lange settlement, but
4 this is the settlement with --

5 MR. VANNAH: But there was an offer --

6 THE COURT: -- Viking?

7 MR. VANNAH: -- there was an offer on the table in Lange.

8 THE COURT: Okay. So, the offer was still pending, but
9 Lange had -- Lange hadn't settled?

10 MR. VANNAH: It hadn't settled.

11 THE COURT: Okay.

12 MR. VANNAH: It was on the table, and there was an offer.
13 The clients asked me to look at it. Mr. Simon gave me the information.
14 We talked. I looked at it and I concluded that the best interests in the
15 clients, in my opinion, was -- my advice to them was, you know what, if I
16 were you, rather than to continue with Danny on this case and bring in
17 somebody else, just take the settlement; accept it. That was it, that was
18 my advice, accept the settlement. They wanted me to put that in writing,
19 I put it in writing, and I explained it to the client and, based on everything
20 we're looking at, they wanted to accept it; please accept the settlement.

21 The communication had broken down really badly between
22 the clients, you know, the client and the other lawyer. So, I said, look,
23 you know, it doesn't seem to me a great idea for you guys to be having
24 meetings and stuff. My clients don't want to meet with you anymore,
25 but you are counsel of record, go ahead and finish it up, do the releases,

1 and sign whatever you have to do to get the Lange settlement done.
2 Just accept it. Accept it and whatever you have to do, that's it. Do what
3 you have to do with the Judge, and you do that.

4 I'm not -- I'm not substituting in as counsel. I'm not
5 associating as counsel. I made that very clear. You guys are counsel of
6 record. If you want to withdraw -- if that's your threat, you're going to
7 withdraw from the case, you can withdraw, but if you withdraw from the
8 case at the last minute, and I have to come into the case because you
9 withdraw and spend 40, 50 hours bringing myself up to speed, you
10 know, I -- the client is not going to be very happy about that. And I'm not
11 even sure Your Honor would allow them to withdraw with that going on.
12 The case was over. I mean, the \$600,000 settlement had been made. It
13 was over, signed and gone --

14 THE COURT: Six million, Mr. Vannah? Six million?

15 MR. VANNAH: Six million, I'm sorry. And the settlement for
16 the 100- was on the table, and my sole part in that was to say my clients
17 want to accept it, do whatever you got to do to accept it, which is his
18 obligation. And he did, accepted it, and then we came to court because
19 you wanted me to be in court when this thing went down to just express
20 our opinions that we're happy with that. We had that settlement
21 agreement with Teddy Parker who was hearing everybody, and then I
22 wasn't going to say anything, but I asked to say that -- stand up and say
23 that's what the client wants to do, and I said, yeah, I'm communicating,
24 they're here too, but that's what they want to do. They want to settle the
25 case. Now that's it.

1 So, my fee agreement it's -- there's no relevance to it. It's --
2 I'm -- it's just a fee agreement with a client, and it's a fee agreement I had
3 that Mr. Simon suggested that they do, to go out and hire somebody to
4 be independent counsel and to -- you know, he's trying to get them to
5 sign some fee agreement they don't want to sign, and they want to know
6 what their rights are. So, he said get independent counsel. They did,
7 and here I am, and that's how they got to where they got to. So, I don't
8 see any relevance whatsoever to this fee agreement between me and the
9 Edgeworths. That's the bottom line.

10 THE COURT: Okay. Well, I mean, this issue of constructive
11 discharge, the issue that's hanging there, and I agree with Mr.
12 Christensen's legal analysis of, if there is constructive discharge, then we
13 have a whole completely different discussion in regards to the contract.
14 So, based upon this Court having to make that determination, Mr.
15 Vannah, I believe that the fee agreement is relevant, but only the fee
16 agreement itself. No notes, no notes you took that day, no
17 conversations, just the fee agreement itself. So, I'm going to order you
18 to provide a copy of that to Mr. Christensen. Can you --

19 MR. VANNAH: I got it right now.

20 THE COURT: Okay. I was going to say; I know you have
21 people at your office who work there --

22 MR. VANNAH: No, no, we brought it.

23 THE COURT: -- you can -- okay. So --

24 MR. CHRISTENSEN: Have his people do it.

25 THE COURT: Okay. So, can you just make sure he has that

1 by the -- is that going to become relevant to someone's testimony today?

2 MR. VANNAH: I'll have it to him right now. It's just going to
3 take a second. I have it.

4 THE COURT: Okay.

5 MR. VANNAH: So, we can get that over with and --

6 THE COURT: And then we'll be ready.

7 MR. VANNAH: I think it's one page, right?

8 THE COURT: Because it's just the agreement. It's no notes
9 or anything --

10 MR. VANNAH: No, no, no, just a one-page agreement. So,
11 when they hired me, they paid me so much dollars per hour, and that's
12 it.

13 THE COURT: Okay.

14 MR. VANNAH: Simple as that.

15 THE COURT: Okay. So, this is the motion to -- in regards to
16 adjudicating the lien. The motion was filed by you Mr. Christensen. Are
17 you ready to call your first witness?

18 MR. CHRISTENSEN: Your Honor, if you could just -- I'm not
19 quite as fast a reader as I used to be.

20 THE COURT: It's okay. Me either.

21 [Pause]

22 MR. CHRISTENSEN: Okay. We do have an opening
23 PowerPoint --

24 THE COURT: Okay.

25 MR. CHRISTENSEN: -- that we'd like to go through --

1 THE COURT: Okay.

2 MR. CHRISTENSEN: -- if that's acceptable to the Court?

3 THE COURT: Sure. Any objection, Mr. Vannah?

4 MR. VANNAH: I don't care.

5 THE COURT: Okay. And I was wondering if this was a
6 PowerPoint or if this was going to be demonstrative to like share photos.

7 MR. CHRISTENSEN: Right.

8 THE COURT: I wasn't sure.

9 MR. CHRISTENSEN: Okay. Okay.

10 DEFENDANT'S OPENING STATEMENT

11 BY MR. CHRISTENSEN:

12 Your Honor, we believe that the theme of this case is no
13 good deed goes unpunished. What you see is, this is a --

14 MR. VANNAH: I'm not sure whether that's evidence, Your
15 Honor, so are we going to have evidence like an opening statement or
16 are we going to have argument? I mean --

17 THE COURT: Counsel?

18 MR. VANNAH: -- this is clearly argument; no good deed goes
19 unpunished. That's -- is this going to be an opening argument or is this
20 an opening statement, I guess?

21 THE COURT: Well, it's going to be an opening statement and
22 we're going to get to what they -- what the evidence is going to show.

23 Mr. Christensen?

24 MR. CHRISTENSEN: Your Honor, we believe the evidence
25 will show that no good deed goes unpunished. What you see here is a

1 street-side picture of the house where the flood occurred. This is
2 available on the internet. This is one of those pictures that was made
3 available when the house was being marketed for sale.

4 THE COURT: And this is 2017, so this is after the flood, right?

5 MR. CHRISTENSEN: Correct, that's a post-flood picture.
6 That's after the certificate of occupancy has been issued. All original
7 construction and any repair and remediation after the fire sprinkler flood
8 has already been taken of.

9 That's a picture of the interior. That's essentially the area
10 where the flood occurred. Of course, water goes where water goes, so.
11 There was also damage in the kitchen area. The cabinets in that area are
12 quite expensive. They're several hundred thousand dollars, and they
13 sustained some damage in the flood. This is another picture, another
14 angle of that same general area of the home. The costs to repair, for the
15 flood, as you can see, it's quite a nice home with very nice finishes, was
16 approximately in the ballpark of a half a million dollars.

17 So as things developed, Mr. Edgeworth tried to handle the
18 claim on his own, didn't reach much success. He probably should have
19 been able to, truth be told, be able to handle it on his own, but he was
20 dealing with a plumber that was being rather recalcitrant and he -- Viking
21 wasn't stepping up. He didn't have course of construction coverage. He
22 didn't have any other route of recovery, so he first asked Mr. Simon to
23 give him some suggestions as to attorneys who could help him out.
24 Those attorneys all quoted very high numbers to him. He didn't want to
25 lay out \$50,000 for a retainer or something of that sort.

1 So, there was a meeting at Starbucks and in connection with
2 that, Mr. Simon agreed to send a few letters. I think that's actually the
3 quote from the email. And that was in May of 2016. And from then on,
4 the case progressed until it was filed in June, and then when it became
5 active really in late 2016 through 2017 before Your Honor.

6 So, we are here because, of course, there was a very large
7 settlement. Mr. Simon got a result, and there's a dispute over the fees.
8 So, the first question we have is whether there was an expressed
9 contract to the fees or expressed contract regarding the retention. We all
10 know, and we all agree, there was no expressed written contract. It
11 started off as a friends and family matter. Mr. Simon probably wasn't
12 even going to send them a bill if he could have triggered adjusters
13 coming in and adjusting the loss early on, after sending a letter or two.

14 So, the claim of Mr. Edgeworth is that, in the -- as stated in
15 the complaint, is that there was an expressed oral contract formed in
16 May of 2016 to pay Mr. Simon \$550 per hour. So, a meeting of the
17 minds exist when the parties have agreed upon the contract's essential
18 terms.

19 MR. VANNAH: I'm sorry, Your Honor, this isn't facts
20 anymore. Now, we're arguing the law. We're getting beyond what -- I
21 mean, I thought this was going to be a fact -- opening statement is
22 supposed to be the factual presentation. This is an argument of the law.
23 If we're going to do that, that's fine, I guess, but I don't think it's proper.

24 THE COURT: Mr. Christensen?

25 MR. CHRISTENSEN: Your Honor, the evidence is going to

1 show that there was no meeting of the minds in May of 2016, that the
2 parties agree that Mr. Simon was going to work on this friends and
3 family matter for 550 an hour.

4 MR. VANNAH: That's not what --

5 MR. CHRISTENSEN: The evidence is going to show
6 otherwise, that there was no expressed payment term reached in May of
7 2016, or at any time.

8 MR. VANNAH: Again, here's my problem. I mean, the
9 evidence isn't going to show citations, and this is a statement of law,
10 citations. I mean, he wouldn't do this in front of a jury, he wouldn't do
11 this in a bench trial. This is argument, pure and simple. Now, we're
12 even arguing what the law is in the case. I thought this was going to be
13 a factual presentation of what the facts were going to show. We're way
14 beyond all that.

15 MR. CHRISTENSEN: Your Honor, if I could. First of all, we're
16 not arguing what the law is. The law is the law, but I mean, we might be
17 arguing over its application of the case, but that's a whole other issue.

18 Secondly, this is a lien adjudication hearing. This is not
19 opening statement. We don't have a jury. This is being presented to the
20 Court in order for the Court to have a full understanding of the facts as
21 they come in. We believe this is useful and will be helpful to the Court.
22 There's really no rules governing what you can say or can't say in an
23 introductory statement to a court in an adjudicatory -- in a adjudication
24 hearing. I mean, when we submitted our briefs to you, we submitted
25 law, and we submitted facts, and we argued the application of the law to

1 the facts submitted. And this is an extension of that and that's what
2 we're doing here.

3 I understand Mr. Vannah's objections. I understand what
4 goes on in jury trials, when you're presenting things to the jury and
5 when the Judge is going to present the law to them at the end of the
6 case through the jury instructions. That ain't what we got here. This is
7 different.

8 So, you know, I can get on through this, and we can move on
9 or, you know, Mr. Vannah can --

10 THE COURT: Well, I mean --

11 MR. CHRISTENSEN: -- continue to object.

12 THE COURT: -- Mr. Christensen --

13 MR. CHRISTENSEN: This law -- you're going to get this law
14 sooner or later anyway, so let's --

15 THE COURT: Right. And, I mean, that's what I'm saying. I
16 don't --

17 MR. CHRISTENSEN: -- get it done now so that you
18 understand what's going on.

19 THE COURT: Right, and I mean, I -- and I hate to sound frank
20 about this, but I've been presiding over this case almost the entire time
21 I've been on the bench, so there's not a lot of things about the law of this
22 case that I think I'm confused about. I mean, I would hope I could at
23 least earn that much credit, as well as I was up late last night reading all
24 the briefs that you guys submitted in this case, and I have five binders
25 worth of stuff.

1 So, if we could just get to the facts of this case and get to the
2 evidentiary part, and I will let you argue this case until there's no
3 tomorrow at the end, but I've already read like all the stuff because this
4 is absolutely in the trial brief that was submitted, and I have read that.

5 MR. CHRISTENSEN: Okay. Well, I guess I'll abandon the
6 PowerPoint and finish up pretty --

7 THE COURT: Okay. And, I mean, I --

8 MR. CHRISTENSEN: -- quickly.

9 THE COURT: -- just the legal portion of it. I mean, because I
10 think this -- and this is a fact-finding hearing. I'm going to have to make
11 legal determinations at the end, but I have to give everyone the credit
12 that they're due, that you guys have spent massive amounts of times
13 thoroughly briefing this case.

14 MR. CHRISTENSEN: That's true, Your Honor. So, what
15 you're going to find, as the evidence is presented, is that the claim made
16 in the complaint, that there was an expressed agreement in 2016,
17 doesn't hold up. What you're going to find is that there was never a firm
18 agreement on the payment term. That issue was always in flux. There
19 was debate that came up at various times, including in August of 2017,
20 which you've seen the email concerning what are the payment terms for
21 this.

22 And you're -- it's also important to pay attention to the
23 timeline of the evolution of the case, of when it moves from a friends
24 and family matter to there being litigation, and then when the thing
25 really blows up and things are really flying, and that's when there's more

1 effort to reach a term and that fails. So, at the end of the day, there's no
2 expressed term on the payment and there's no implied term.

3 Now, of course, they're going to point to the bills. Bills were
4 sent and paid, that's not the end of the story. That's more the beginning
5 of the story on the bills. What you're going to hear is evidence
6 concerning the reason why the bills were sent. That the bills were sent
7 to bolster the contract claim against Lange and also to put Lange on
8 notice of the existence of that significant claim that was later waived.

9 You'll hear testimony concerning how the \$550 number was
10 reached, and it certainly, from our position, wasn't reached as a result of
11 the meeting of the minds. And then you're also going to see evidence
12 concerning the actual content of the bills, the knowledge of Mr.
13 Edgeworth, and then how no reasonable person in his position could --
14 should not be able to argue that these bills were both the beginning and
15 the end of the story.

16 What you're going to hear is that there was a tremendous
17 amount of work that was done in this file that was not billed for. That's
18 part of the reason why we had these bills that were submitted as part of
19 the adjudication process. That was done for several reasons. One of the
20 reasons is that it's well-known, if you go on over the case law, my
21 apologies to Mr. Vannah, that sometimes the courts like to see an overall
22 listing of time because that's evidence of work. Whether or not they get
23 paid on an hourly or on quantum meruit.

24 So, we provided it for that reason. We also provided it so
25 that you have a good look of what's going on and in case the worst case

1 scenario, from our point, comes true.

2 What's important to understand about those bills is that Mr.
3 Simon's firm is not an hourly firm. They don't have regular timekeepers.
4 They don't have regular billing or timekeeping software. They don't
5 even have the old books that we used to use. They don't have any of
6 that stuff. So not only were there bills that were sent during the
7 underlying litigation incomplete, sometimes grossly so, but when they
8 went through and tried to do a listing of the time spent for the
9 adjudication hearing, they made some errors. And when they'd go on in,
10 what they do is, they would look at a landmark date. So, for example,
11 the date that something was filed and that's what they would key the
12 billing off of.

13 Now, not necessarily all the hours were done that day, but in
14 going back, they wanted to make sure that they got the dates right. As a
15 result of this process, they know that there is a document with a date for
16 every single billing entry. That also means that they didn't capture a lot
17 of their work in those bills because if they couldn't find a piece of paper
18 with a date on it, they didn't bill for it.

19 And before I turn this over to Mr. Vannah, if he cares to make
20 a statement, I do just want to impress on the Court the evidence that
21 you're going to see about the amount of work that was done on this file,
22 that was not reflected on those initial billings and try to give Your Honor
23 an idea of the scale of this litigation and the fact that it dominated the
24 time of this law firm. And what we've done is, there was an awful lot of
25 email correspondence between Mr. Simon, his staff, and Mr. Edgeworth.

1 Mr. Edgeworth really dominated their time, which is fair to do if you pay
2 for it.

3 What we did was, we printed out the emails between these
4 folks during the time the underlying litigation was going, just so that you
5 understand the scale of it. I think a standard banker's box has -- if you
6 don't have any binders in it, it has 5,000 sheets of paper in it. This is
7 obviously a little bit more than that -- or a little bit less than that because
8 we've got binders in here. Just a couple more.

9 THE COURT: These are just the emails?

10 MR. CHRISTENSEN: These are just the emails, Your Honor.
11 Normally, I would carry two at a time, but while I'm not seeking
12 sympathy, I did kind of tweak a muscle in my back a couple days ago.

13 THE COURT: Tell them downstairs, we prefer safety in
14 Department 10.

15 MR. CHRISTENSEN: Yeah, safety first.

16 [Pause]

17 MR. CHRISTENSEN: Now, in full disclosure, Your Honor,
18 there are two of these binders of about this size that are attachments that
19 were, you know, hooked to whatever it linked to the email, but of course,
20 those were -- oh, and there's more. Those were done over and
21 discussed in the context of many of the emails, so we included them as
22 well. So that just gives you a little bit of scale. Later on, we're going to
23 be demonstrating to you the size of the actually underlying file. We're,
24 of course, not going to copy it and bring it all in because it's dozens and
25 dozens of banker's boxes, and we wanted to save a few trees.

1 But at the end of the day, we think that the Court should find
2 -- should reach a fee for Mr. -- a reasonable fee for Mr. Simon and his
3 law firm pursuant to quantum meruit. Thank you.

4 THE COURT: Okay. Thank you. Mr. Vannah, would you
5 wish to make an opening?

6 MR. VANNAH: Yes, Your Honor. Thank you.

7 THE COURT: Okay.

8 PLAINTIFFS' OPENING STATEMENT

9 BY MR. VANNAH:

10 A lot of things here we agree on. So, there was a bad flood,
11 and it was a sprinkler system that was in the house. And so, in May of
12 2016 -- Mr. Edgeworth's wife is good friends with Mrs. Simon and said,
13 you know, why don't you talk to Danny and see what he can do for you?
14 So, Mr. Edgeworth met with Danny. They had a meeting and Danny
15 said, I'll send him some letters and see what we can do. So, he sends
16 him the letters. Didn't do any good, which is not surprising to either one
17 of them, I'm sure.

18 So, what happened is Danny then says to him, look, I'll
19 represent you. I can do your case. I'm going to bill you \$550 an hour.
20 Tells him that point blank. That's what we charge \$550, and then my
21 associate will charge \$275 an hour. And they have an understanding on
22 that. You're going to learn that Mr. Edgeworth was a little concerned
23 about the fee, because that's about twice what he ended up paying his
24 firm that he uses out in California.

25 We brought some of those bills to prove that. But he had a

1 large firm that he used out of California that has done some patent work
2 for them, at a much lesser fee. But he actually ended up having a
3 conversation with his wife and says, I'm thinking about using somebody
4 else. Danny had written the letters and the wife said that might be a
5 problem. Why don't you just use Danny and pay him the higher fee?
6 And against his better judgment, he agreed to do that, but he told Dany
7 all right, fine. I'll hire you, and I'll pay you. Send me the bills.

8 So, Danny does the work, does a fine job. We're not
9 complaining about the work. He files the complaint. He goes forward,
10 and he sends -- he starts sending bills. Now, this is the interesting part.
11 His bills just through September 22nd, which is where the last bill ended
12 that was paid, the bills that were sent were four invoices. They added up
13 to almost \$400,000 in attorney fees. Now this is over a case that
14 everybody suspected had a maximum value between 500 and \$750,000.

15 So, Mr. Kemp -- I like what Mr. Kemp said. Mr. Kemp said, I
16 would have never, under any circumstances, taken this case under a
17 contingency fee. I just wouldn't have done it. It doesn't pencil out. So, I
18 mean, you know, frankly, to be honest with you, I'm looking at my client
19 thinking you know, here's a guy with a Harvard MBA, but he's paid out --
20 and I'm not talking about costs. There's another \$111,000 in costs.

21 By September the 22nd, he had paid out -- just paid out up to
22 that date over \$500,000 in attorney fees and costs on a case that
23 probably did have a value between 500 and \$750,000, so that doesn't
24 make a lot of sense, to be honest with you, from a standpoint of just
25 economic law.

1 And it's not surprising why Mr. Simon -- he apparently
2 agrees with Mr. Kemp that this would be a bad case to take on a
3 contingency, because if you did it at 40 percent, I mean, your -- 40
4 percent of \$750,000 is I think 300,000, and he's already billed \$387,000.
5 So, what happened was -- is -- up through this meeting that took place in
6 San Diego -- so what happened is they went to San Diego, because they
7 weren't happy with the expert. The expert had done a really lousy job,
8 billed a lot of money, and so they both agreed let's just go to San Diego,
9 meet with the experts, talk to them and say what are you doing here? I
10 mean, this isn't a very good job you're doing.

11 So, they go down. That was the purpose of their meeting.
12 So, at this point in time -- and this is really important. This is in August
13 of -- I wrote down the date. August 8, 2017, I believe is the date that they
14 had the meeting in San Diego. That's the critical -- up to that point,
15 everything is pretty clear. I mean, there's been an express
16 understanding that the billing's going to be 550 an hour and 275 with the
17 associate. Two bills had come in at this point in time, and they're paid.

18 So, on August 8th, they go to a bar. They're waiting for the
19 plane back to Las Vegas, and they go have a couple drinks together in a
20 bar, and they get into a discussion about you know what -- you know,
21 this is really expensive. The client saying, well, I'm paying a lot of
22 money out. I wonder if there's some kind of a hybrid kind of thing we
23 could come up with maybe that I wouldn't -- I -- because this is becoming
24 very expensive.

25 So, what happened -- Mr. Edgeworth was borrowing money

1 to pay the legal fees. Generally, I wouldn't recommend that. That's
2 probably not a really great idea to go out and borrow money to pay legal
3 fees, but that's what he had done. He'd gone and borrowed money from
4 his mother-in-law, high interest loans and was paying legal fees with
5 borrowed money. Mr. Simon understood that and realized that.

6 So, on August 8th, they had a discussion in the bar and the
7 discussion was -- I mean, is there a possibility that my future billings
8 would be a little less or maybe even give some of the money back that
9 I've billed and do this case on a contingency, because the case -- Mr.
10 Edgeworth thought the case had more value than Mr. Simon did at that
11 time, but they had that discussion.

12 So, it ended up with Mr. Edgeworth saying to Mr. Simon --
13 now, keep in mind, nobody had ever reduced anything to writing. I'll get
14 back to you about that, and I'll tell you what I'm willing to do. So, Mr.
15 Edgeworth said all right. You make me a proposal, if you want to. Well,
16 that's not what happened. So, what happened, Mr. Simon goes back to
17 his office. A couple weeks go by, some time goes by, doesn't hear
18 anything -- Mr. Edgeworth doesn't hear anything about any proposal.

19 What does Mr. Simon do? He prepares another hourly bill
20 and sends another hourly bill out. My client finally writes an email --
21 that's the one that you read -- saying, look, I mean, if you want, I can pay
22 you hourly, if that's what you want me to do. I'm just going to have to
23 go out and borrow money. I might have to sell some of my Bitcoin. He
24 was investing in Bitcoin. He thought it was a good investment. I can
25 borrow more money. You know, whatever it's going to cost. I'll do

1 whatever it takes. And that email says that if you want to do it hourly, I'll
2 just continue paying you hourly.

3 Mr. Simon's response to all that was to send an hourly bill,
4 send another bill. Mr. Edgeworth borrowed the money, paid the bill in
5 full. After that, Mr. Simon sends another hourly bill. That takes it right
6 up to September 26th, is another hourly bill. Mr. Edgeworth goes out
7 and borrows money. No further discussion. The way he sees it, I guess,
8 Mr. Simon is talking with the bill, do you want to do something different?
9 Mr. Simon just continues sending two more bills.

10 Those bills add up to -- those four invoices that were paid, all
11 of them paid, added up to \$387,000 in attorney fees, almost \$400,000 in
12 attorney fees and over \$100,000 in costs that Mr. Simon -- Mr. Edgeworth
13 paid, all four of those invoices. You're going to also learn in this case
14 that when Mr. Simon -- and I don't want to denigrate Mr. Simon's efforts.
15 I mean, it was a good result, but I want to tell you something.

16 Mr. Edgeworth, as you'll learn from the testimony, is a bright
17 guy. Harvard MBA. Intelligent. He's very involved in the case. He's the
18 one that went out -- and so essentially what had happened is Viking had
19 been dishonest with the Court and with them about how many of these
20 sprinkler systems had malfunctioned in the past. What you're going to
21 learn is that my client -- he's a very -- he micromanages things, and he
22 went on his own and started going on the internet, looking up Viking,
23 finding out that other people had these problems.

24 He went and contacted originally other lawyers in California
25 that had -- were handling these cases, other litigants, had conversations

1 with them, and then learned from them that they're -- a lot more about
2 Viking and about these failures than Viking had admitted. In other
3 words, they had just not been candid about that. And I'm sure Your
4 Honor remembers all that stuff. So that's -- my client goes and does all
5 that and provides all that stuff to Danny's office. Now, you know, I'm not
6 denigrating Danny's efforts or Mr. Simon's efforts. I mean, he's a good
7 lawyer, but my client went out a dug all that stuff up.

8 So, then they had this mediation. And the first mediation,
9 didn't do it, but at the second mediation, they reached a settlement for
10 \$6 million. Right after that happened, there's a meeting -- Danny calls a
11 meeting -- Mr. Simon calls a meeting in the office and that's November
12 17th, 2017, another big day. Mr. and Mrs. Edgeworth go to the meeting,
13 and they're like wow, what's this all about? They're thinking maybe this
14 is some really great meeting.

15 Well, what it's all about is Mr. Simon has now prepared this
16 letter, prepared this fee agreement and tells them, you know what, I want
17 you guys to do the right thing. I understand we had an hourly
18 agreement. I understand you paid all your bills one after another after
19 another, but, you know, nobody expected this case to do as well as it's
20 doing. I'm losing money at \$550 an hour, because my time's worth a lot
21 more than \$550 an hour and, you know, I'm losing money. I'm losing
22 money. Now, let's do the case for 25 percent.

23 So, then he presents this agreement to him saying I want you
24 to pay me 25 percent of the \$6 million. I want 25 percent of that as a fee,
25 and I will give you back credit for the money you've already paid in, the

1 \$400,000 you've already paid in. So -- and on the Lange case, that's
2 going to be separate. We'll work out something different on that, but I
3 want 25 percent of that \$6 million settlement we got. That's \$1.5 million.
4 I'll give you -- but I'll give you credit for what you've already paid in.
5 That's what happened here. So, they're stunned. They're actually
6 stunned. And the words -- conversation wasn't particular friendly.

7 So, Mr. Simon said you need independent counsel. You
8 ought to do that, is what he's supposed to be doing anyway. The rules
9 are very clear that when you start entering into an agreement with your
10 client halfway through the litigation, you want to change the terms, you
11 need to advise them to get an independent counsel. That's what they
12 did. They came to my office. Came to my office and laid out the thing
13 and that's where we are now. That's basically where we are. There was
14 no constructive discharge. There wasn't a discharge at all.

15 So, you know, I -- we had a communication. It was a nice
16 communication with Mr. Simon and Mr. Christensen. We talked on the
17 phone. I made it clear that look, we want you to finish the case off, wrap
18 up the -- all you gotta do is do the release. That's the only thing that was
19 left to do on the \$6 million is sign the release and get the terms down,
20 you know, confidentiality, some things you've got to deal with. Wrap it
21 up. Do that. But, by the way, you guys have reached a point here where
22 the words in the last meeting were pretty bad. If you want, I'll stay in
23 between.

24 You know, I'll -- tell me what you want me to tell them, and I
25 will tell them and vice versa, or we can all have a meeting together.

1 What do you want to do? But I think it ought to be civil. I just didn't
2 want it to become uncivil and -- you know, a screaming match and all
3 that. I don't like all that kind of stuff. I didn't want that to happen, so I
4 said you're not being fired. I'm not coming in on this case. No way I'm
5 going to associate on the case. I'm not going to substitute in on the
6 case. I don't want anything to do with the case. This is all about the fee.
7 The case is over.

8 And he said what about the Lange case? What do you want
9 to do about that? Well, why don't you just give me the proposal? I
10 looked at the proposal. I looked at Mr. Simon's idea, and I ran it by the
11 client, and they said what do you think? I said you know what, you
12 already got \$6 million. You got another 100 on the table. Take it. Just
13 take the money and call it a day. Just wrap it up. Accept the offer as is,
14 and they did. And that was -- that's it. So, I made it clear to Mr. Simon,
15 you know -- I talked to Mr. Christensen, you know. I don't -- nobody
16 needs to do anything.

17 Just wrap this thing up, and we'll deal with the fee issue later
18 with the Judge. We'll deal with that, but right now, let's get the case
19 wrapped up. I mean, you can't hold the clients up on a case, because
20 you're -- it becomes extortion. Then here comes the money. And so, the
21 bottom line was like what are we going to do with this money and look, I
22 made it clear. I said I know Mr. Simon's not going to steal the money.
23 I'm not worried about that. I know he would honor everything. The
24 clients are concerned.

25 So why don't we just go open a trust account? Eventually,

1 that's what we did. Open a trust account. You and I will be the trustee
2 on the trust account. Let's open a trust account, put the \$6 million into
3 the account, let it clear, and then I think at that point, you're obligated to
4 give the clients anything that's not disputed. I mean, you can't hold the
5 whole \$6 million. We all agreed on that and that's what we're here for.
6 There's been no constructive discharge. In fact, Mr. Simon never
7 withdrew from the case.

8 And I don't want to call it a veiled threat. I just said look, if
9 you withdraw from the case, and I've got to spend 50, 60 hours bringing
10 it up to speed and going through all these documents, and then advising
11 the client and doing this, I mean, you know, that's not fair to them.
12 You've already -- you can wrap this case up in an hour. It would take me
13 50 hours to do that, and I don't think that's a particularly good idea.

14 So that's why we're here and that's what the whole case is
15 about. I look at it this way is that you know, it was great for Mr. Simon to
16 get his 550 an hour and the 275 and to bill \$400,000, but when suddenly
17 he realized -- one day it just dawned on everybody, wow, with all this
18 new information, my client dug up, this may be a -- you know, why did
19 Viking settle for that amount of money? They didn't settle for that
20 amount of money, because they thought they were going to have to pay
21 for the house, because that was 500 to 750.

22 They settled for that amount of money, basically, because
23 they recognized and realized that this would be a really, really bad case
24 to go in front of the jury with when it became so obvious that they had
25 been so deceptive and that they knew that these were defective sprinkler

1 systems, and the case just blew up from there. And they were willing to
2 pay whatever to get out of this case, whatever it cost to get away from all
3 this. And the law firm might have had some serious problems, too, in
4 this case, because they were all signing all these agreements, and
5 they're a captive firm.

6 I don't know why, but all I know is that it got really ugly really
7 fast, and they decided, you know, let's just pay whatever it takes to get
8 out of this. They have other cases litigating all over the country right
9 now, class actions and everything else on this and that was -- that's why
10 the case settled. But at the very end, it's just not fair. If my clients agree
11 to pay an hourly fee, and they pay an hourly fee, you can't have the
12 lawyer at the end say you know what, I deserve a bonus. You can say I
13 deserve a bonus; I'd like a million-five bonus.

14 You can say that, but there's no obligation to pay a bonus.
15 And they don't want to pay a bonus. They got that he got paid fairly.
16 And that's what this case is all about is -- oh and going back on the other
17 thing. So, what they did is they -- you know, they hedged their bets.
18 They went back, and they took all those bills that they had billed out
19 \$387,000 on and what did they do? They've gone back and added a
20 couple hundred thousand dollars here and there. We're going to talk
21 about some of that.

22 Some of those days they added -- on some of those days
23 they're billing 21, 22 hours a day. I'll show you that bill, and we'll have
24 an associate on the stand explaining what she added time on days now
25 that add up to 22 hours a day. That's a lot of time. A lot of people sleep,

1 they eat, they take showers. They do other things. So, I'm going to
2 show you that bill, where they -- I'll show you those -- some of those
3 days where they've added days up to where we've got one person
4 working 22 hours in a day on a bill on a normal day.

5 The other thing that happened in this case that's really
6 interesting is the deposition of my client. He's at this deposition. And
7 when he's there, in two different sections of the deposition, two different
8 sections, when Viking is asking -- they ask him -- they don't believe he
9 paid the bill. I know what happened. I do this work.

10 So, the Viking guy is saying well, you've got all these legal
11 billings that you've accumulated. You put that in as a cost and what it's
12 going to cost us eventually under the indemnity agreement to pay you
13 for these legal fees. Okay. Well, we're looking here at \$500,000 or so.

14 I mean, they were -- they misadded it, but it's like -- it was
15 closer to -- it was over 500, but they were a little off. But she was
16 saying -- one of the things was like you've got a 500 and some odd
17 thousand dollar bill. You haven't paid this, have you? You haven't paid
18 this, have you? And my client said, yeah, I have paid it. I've paid every
19 single bill that's on there. I've paid all this. All these bills have been
20 paid. And I can see the stunned silence. You know, you don't usually
21 have clients that pay those kind of bills.

22 And they've all been paid. And then the question was asked
23 right there in the deposition. Mr. Simon's there and he said, well, is this
24 all of the billing? And Mr. Simon says, yeah, I've given this stuff to you
25 over and over and over again. He was kind of irritated that they're

1 asking. He said, I've given you guys this over and over again. This is the
2 billing. This is all the billing. So, the new story is that Mr. Simon -- I
3 mean, the story -- I guess, in -- nobody -- this will be a secret intention
4 that nobody told my client. So, Mr. Schoenstein (phonetic), he had this
5 secret idea and that only he knew.

6 Only he knew this, that he would just bill a lesser billing at
7 \$550 an hour and 275, submit those billings to the client. And the reason
8 he's doing that is so he can show these bills to Lange and say to Lange,
9 oh, look, this is how much money you guys are going to be stuck on the
10 hook for. But he never tells my client that he's got this secret intent, but
11 in reality, his real intent is to do this on a percentage. Well, the problem
12 with that is -- and that's why they can't go there, and they know that.
13 You can't do a contingency fee orally. That's Bar rule. Not -- it's not
14 maybe, maybe not. It says flat-out, if a client's going to enter --

15 MR. CHRISTENSEN: I thought we weren't going to talk about
16 the law, Mr. Vannah.

17 MR. VANNAH: We are -- we did a little bit, yes.

18 THE COURT: Okay. Well, Mr. Vannah, we're going to get to
19 the loan. We're going to litigate all this stuff.

20 MR. VANNAH: Well, I'm going to be asking Mr. Simon this
21 question.

22 THE COURT: Right. And we're going to get --

23 MR. VANNAH: I'm going to --

24 THE COURT: -- to that when you ask him.

25 MR. VANNAH: Right. So, you'll hear the evidence. I'm

1 going to ask Mr. Simon did you not know, did you not read the Bar
2 rules? Were you not familiar with the fact, Mr. Simon, that you cannot
3 enter into a contingency fee with a client that's oral? Did you not know
4 that? I'm going to be asking him that question.

5 THE COURT: Okay.

6 MR. VANNAH: I presume he's going to say he read those
7 rules, he knew that, and he knew that when he entered into it. And I'm
8 going to also ask him about the rule that says at the bottom of the rule,
9 the 1.5(b), I think it is, that says if you're going to have a fee with a
10 client --

11 MR. CHRISTENSEN: Same objection to the argument.
12 What's good for --

13 MR. VANNAH: So, this is --

14 MR. CHRISTENSEN: -- the goose is good for the gander. If I
15 can't talk about those rules, Mr. Vannah can't either, because I was going
16 to talk about 1.5(a) and 1.5(b), but --

17 THE COURT: And we're going to --

18 MR. CHRISTENSEN: -- but I was foreclosed by Mr. Vannah.

19 THE COURT: Right. We're going to get into all of those
20 when we get into the argument section. This is just simply the facts and
21 as I've already restated, you guys have argued this stuff 80 times.

22 MR. VANNAH: You know what, Your Honor, you're right as
23 rain, and you've read all this. It's all been read.

24 THE COURT: I have. I've read everything --

25 MR. VANNAH: I know you've read everything.

1 THE COURT: -- in this case.

2 MR. VANNAH: So, with that, let's hear the case.

3 THE COURT: All right. Mr. Christensen, your first witness?

4 MR. CHRISTENSEN: Judge, it'll be handled by Mr.
5 Christiansen.

6 THE COURT: Christiansen. Okay. And just so you two know.
7 I'm going to apologize ahead of time, if I mix you up.

8 MR. CHRISTENSEN: I'm fine with Jim, Your Honor.

9 THE COURT: Okay. And who's first Mr. Christiansen?

10 MR. CHRISTIANSEN: Brian Edgeworth, please, Your Honor.

11 THE COURT: Okay. Mr. Edgeworth. And just so you guys
12 know, I'm going to probably go for like an hour, and then me and my
13 staff have to have a break. We've been on the bench since 8:30. So
14 then, we'll go to lunch, and then we'll come back.

15 MR. CHRISTIANSEN: Why don't I have sort of a short portion
16 of the cross --

17 THE COURT: Okay.

18 MR. CHRISTIANSEN: -- and then I'll stop.

19 THE COURT: Okay.

20 MR. CHRISTIANSEN: The lengthier stuff I'll keep for after
21 lunch.

22 THE COURT: That would be perfect, Mr. Christiansen.

23 MR. CHRISTIANSEN: Is that okay with you?

24 BRIAN EDGEWORTH, PLAINTIFF, SWORN

25 THE CLERK: Please be seated, stating your full name,

1 spelling your first and last name for the record.

2 THE WITNESS: Brian Edgeworth, B-R-I-A-N E-D-G-E-W-O-R-
3 T-H.

4 THE COURT: Okay. And nobody has problems hearing him?

5 MR. VANNAH: No.

6 THE COURT: Okay. Mr. Christiansen, your witness.

7 MR. CHRISTIANSEN: May I proceed, Your Honor?

8 DIRECT EXAMINATION

9 BY MR. CHRISTIANSEN:

10 Q Mr. Edgeworth, you are the Plaintiff, or you're the principal,
11 the Plaintiff in the case proceeded against Viking and Lange that Mr.
12 Simon represented you on. Is that fair?

13 A Is that a legal term? I think I am, but I don't know if that's a
14 legal term, being the principal.

15 Q Okay. Did you sit as the principal for a department for those
16 two --

17 A The PMK?

18 Q -- entities?

19 A Like the person most knowledgeable? I think so.

20 Q Are you represented today by Mr. Vannah?

21 A Yes, I am.

22 Q Okay. You're not represented by Mr. Simon today. You're
23 represented by Mr. Vannah, correct?

24 A I still retain Simon on the case, though.

25 Q Okay. In this matter, who's your lawyer?

1 A I don't under -- I'm sorry. I just understand --

2 Q This fine gentleman --

3 A -- the question.

4 Q -- here is representing you today, correct?

5 A Is this evidentiary hearing --

6 Q Yes.

7 A -- about your lien, right?

8 Q Yes.

9 A Correct? Yes. Mr. Vannah is my lawyer.

10 MR. CHRISTIANSEN: Permission to treat as an adverse
11 witness and lead, Your Honor.

12 THE COURT: Okay.

13 MR. CHRISTIANSEN: Judge, this new Elmo's got me fooled.

14 THE COURT: You and me both, Mr. Christiansen, so I won't
15 be of any assistance to you. I would hope, you know, my Marshal could
16 help you.

17 UNIDENTIFIED SPEAKER: Oh, I think we have to disconnect
18 over here.

19 THE COURT: Oh, okay.

20 MR. CHRISTIANSEN: I just don't want to break it.

21 THE COURT: I don't know that we've ever used the new one.
22 We just recently got our JAVS upgrade, so I'm not confident. As you
23 see, I --

24 MR. CHRISTIANSEN: It's got like some free download sticker
25 on it.

1 THE COURT: I peeled the plastic off my screen when we
2 started this hearing, so I'm not confident.

3 [Pause]

4 THE COURT: Can you call IT?

5 MR. CHRISTIANSEN: Maybe we'll break before I get started,
6 then.

7 THE COURT: Yeah. Can you get IT in here?

8 THE CLERK: Yeah.

9 THE COURT: Okay. We'll contact IT and get them over here,
10 Mr. Christiansen.

11 MR. CHRISTIANSEN: Judge, I'm happy if you want to take
12 your lunch break now, and then IT can come.

13 THE COURT: Yeah. Are you guys okay with that?

14 MR. CHRISTIANSEN: Whatever's convenient to Mr. Vannah.
15 I don't -- whatever --

16 MR. VANNAH: Whatever works is fine.

17 THE COURT: Okay. So, let's do that. Let's just break, so that
18 we make sure --

19 MR. CHRISTIANSEN: Okay.

20 THE COURT: -- all the stuff works. We'll get IT up here.

21 MR. CHRISTIANSEN: Okay.

22 MR. VANNAH: Sure.

23 THE COURT: So --

24 MR. CHRISTIANSEN: Thank you, Your Honor.

25 THE COURT: -- we'll come back at 1:00. So, Mr. Edgeworth,

1 we'll come back at 1:00. I'll remind you, sir, that you are still under oath.
2 So, we'll come back at 1:00. We'll get IT here and hopefully get all this
3 worked out. I apologize.

4 MR. CHRISTIANSEN: That's fine. That's great, Judge.

5 MR. CHRISTENSEN: See you at 1:00, Your Honor. Thank
6 you.

7 THE COURT: Okay. 1:00. Okay.

8 MR. CHRISTIANSEN: Thank you, ma'am.

9 MR. VANNAH: Thank you, Your Honor.

10 [Recess at 11:42 a.m., recommencing at 1:02 p.m.]

11 MR. CHRISTIANSEN: Judge, I don't recall. I asked for
12 permission to treat as an adverse witness, and then we got sort of
13 sidetracked with the Elmo, but may I treat as an adverse --

14 THE COURT: Yes.

15 MR. CHRISTIANSEN: -- witness and lead?

16 DIRECT EXAMINATION CONTINUED

17 BY MR. CHRISTIANSEN:

18 Q Mr. Edgeworth, what that -- Her Honor's ruling means is I'm
19 going to ask questions that call for yes or no answers and expect you to
20 respond accordingly. Is that fair?

21 A Yes.

22 Q Okay. Great. You are Canadian?

23 A Yes.

24 Q All right. You are not an American Citizen?

25 A All right.

1 Q Is -- parts of Canada are French Canada and English Canada.
2 Is English your first language?

3 A Yes.

4 Q And I heard Mr. Vannah tell Her Honor this morning that at
5 this initial meeting you had with Danny Simon on or about the 27th or
6 28th of November 2000, and -- I'm sorry -- May 2016, you were told that
7 Danny's rate was 550 an hour. Is that fair? Is that your testimony?

8 A No.

9 Q It's not your testimony?

10 A No.

11 Q You heard your lawyer tell the Judge that, right?

12 A Yes, I believe so.

13 Q And similarly, it's not your testimony that at this initial
14 meeting, Danny Simon ever told you that Ashley Ferrel was going to get
15 275 an hour --

16 A No.

17 Q -- correct?

18 A Correct.

19 Q That was never discussed at your initial meeting?

20 A No.

21 Q Sir, do you know what perjury is?

22 A Yes.

23 Q Do you know when you sign an affidavit under -- it's the
24 same as -- in a court of law, and you submit it to a judge, the oath you
25 take is the same oath you took when you came in her court?

1 A No, but I believe you.

2 Q Okay. You signed three affidavits relative to this proceeding
3 and the other case in which you sued Danny Simon leading up to this
4 hearing. Is that fair?

5 A I think so.

6 Q Okay. You signed one on February the 2nd, correct?

7 A If you show them to me, I can confirm.

8 Q You signed one on the 12th, correct?

9 A I don't know. I think so.

10 Q Okay. And you signed one on March the 15th, correct?

11 A I do not know, but I think so.

12 Q In all three affidavits, you told Her Honor, because that's who
13 the -- they were sent to, that at the outset -- that's the word you used --
14 the outset, Mr. Simon told you his fee would be 550, correct? That's
15 what you put in --

16 A Correct.

17 Q -- all three affidavits, correct?

18 A Correct.

19 Q That's not your testimony today, is it?

20 A Yes, it is.

21 Q I just asked you, sir, did Mr. Simon at the initial meeting at
22 the outset tell you his rate was 550, and you just told me no, correct?

23 A Correct.

24 Q Okay. So, in all three of your affidavits, when you say Dan
25 Simon told me, Brian Edgeworth, at the outset, his rate was 550, all three

1 of those statements in all three affidavits are false, correct?

2 A I don't think so.

3 Q English is your first language, right?

4 A Correct.

5 Q Outset means the beginning, correct?

6 A The beginning of the case, correct.

7 Q Beginning of the case would be when you say you retained
8 Mr. Simon, correct?

9 A Yes.

10 Q And your position is you retained him the 27th of May 2016,
11 correct?

12 A No, not correct.

13 Q When did you retain him?

14 A On June 10th, he called me, when they had to file a lawsuit,
15 because nobody responded.

16 Q Sir, tell me when you put in all three affidavits --

17 MR. VANNAH: Excuse me, Your Honor. He just interrupted
18 the answer. I don't know why he's doing that. It's rude for one thing and
19 wrong.

20 MR. CHRISTIANSEN: I apologize, Mr. Vannah.

21 MR. VANNAH: Can I hear the answer?

22 BY MR. CHRISTIANSEN:

23 Q Go ahead. Do you have anything else, sir?

24 A Can you restate your question, please?

25 Q Sure. I'll restate it.

1 MR. CHRISTIANSEN: I apologize, Mr. Vannah.

2 BY MR. CHRISTIANSEN:

3 Q In all three of your affidavits, sir, didn't you tell the Judge
4 under oath, under penalty of perjury, that you hired Danny Simon -- you
5 used the word retained -- May the 27th, 2016?

6 A I don't know. It might have been in there. It might be a typo.
7 I don't know. I --

8 Q Did you --

9 A -- if you show it to me, I can tell you.

10 Q Sir, I get to decide how I conduct cross-examination.

11 A I understand that.

12 Q Okay. All right.

13 A I just asked you --

14 Q Did you read the affidavits before you signed them?

15 A Yes.

16 Q And in all three affidavits, isn't it true you said you retained
17 Danny Simon May the 27th, 2016?

18 A Probably.

19 Q Yes or no?

20 A I don't know.

21 Q What do you mean, you don't know?

22 A I mean, if you show it to me, I can read it and tell you yes --

23 Q Did you read them --

24 A -- or no.

25 Q Did you read them in preparation of today?

1 A No, I did not.

2 Q Okay. And so, your testimony here under oath is that you
3 didn't retain Danny Simon May the 27th, 2016. Is that -- do I understand
4 that correctly?

5 A On that date --

6 Q Sir, that's a yes or no question. Is that your testimony that
7 you did not retain Danny Simon May the 27, 2016?

8 A No.

9 Q Poorly worded question. So, the record is clear, is it your
10 testimony under oath that Danny Simon was retained by Brian
11 Edgeworth on behalf of American Grating and the Edgeworth Family
12 Trust May the 27th or the 28th, 2016?

13 A Yes.

14 Q That is your testimony?

15 A Yes.

16 Q Well, I just asked you five seconds ago.

17 A You said it wasn't your testimony. You're confusing me with
18 the different questions. He --

19 Q Well sir, do you understand that perjury as a non-American
20 citizen is a deportable offense?

21 A Yes.

22 MR. VANNAH: Your Honor, I've got to object --

23 THE WITNESS: This is --

24 MR. VANNAH: -- to this whole thing. This thing about
25 talking about he's a foreign -- that he's not a -- first of all, it's against the

1 rules, and it's against the law --

2 MR. CHRISTIANSEN: It's not.

3 MR. VANNAH: -- to bring up anybody's ethnicity or their
4 citizenship. That's the rule in this state and that everybody's treated the
5 same, whether they're a citizen or not a citizen in a courtroom. Why are
6 we talking about whether he's a Canadian citizen or not and whether it is
7 a deportable offense? He's not perjuring himself, for one thing.

8 MR. CHRISTIANSEN: Judge, that's a speaking --

9 THE COURT: Okay.

10 MR. CHRISTIANSEN: -- objection, but.

11 MR. VANNAH: No, it's not a speaking objection. It's an
12 objection about ethnicity and citizenship, and it's absolutely improper to
13 bring that up.

14 THE COURT: Mr. Christiansen, your response?

15 MR. CHRISTIANSEN: As the Court knows, I do a
16 considerable amount of criminal defense work and when the witness
17 tells me that three times he put something in an affidavit that he then
18 backs away from, I feel compelled to inform the witness that, you know,
19 changing your story under oath can have ramifications, if you're not an
20 American citizen. That was it. I intend to move on --

21 THE COURT: Okay.

22 MR. CHRISTIANSEN: -- from it.

23 THE COURT: We can move on, Mr. Christiansen.

24 MR. VANNAH: We don't need the legal advice to my client.

25 Thank you, though.

1 MR. CHRISTIANSEN: And, Judge, just so we're clear going
2 forward, it's my understanding this is Mr. Greene's witness and so in the
3 future, I think it's probably appropriate one lawyer, one witness.

4 THE COURT: Okay. This is Mr. Greene's witness?

5 MR. CHRISTIANSEN: That's my understanding, Your Honor.

6 MR. VANNAH: That's correct.

7 THE COURT: Okay.

8 MR. CHRISTIANSEN: Okay.

9 THE COURT: Okay.

10 BY MR. CHRISTIANSEN:

11 Q All right. So, Mr. Edgeworth, I'm just trying to understand
12 what your testimony is. Okay. What your version of events are. When I
13 started out, I asked you did you hire Danny Simon May the 27th. You
14 told me no, correct?

15 A I believe what you said, did I hire him at \$550 an hour on
16 May the 27th, sir. I believe that's what you said. I might be mistaken,
17 but I believe that's what you said, and I said no.

18 Q Okay. Did you retain him May the 27th?

19 A Correct. Yes, I did.

20 Q And at that outset, the day you retained him, did he tell you
21 his rate was 550 an hour?

22 A No. He said he would do me a favor.

23 Q And at the outset, the say you retained him, did he tell you
24 what his associate's fee was going to be?

25 A No, he did not.

1 Q He said he would do you a favor?

2 A Yes.

3 Q Because he was your friend?

4 A Our wives were friends, correct.

5 Q And you guys had traveled together?

6 A Correct.

7 Q And his wife, Elaina [phonetic] had done things for your wife.

8 Fair?

9 A Perhaps, yes.

10 Q Like organ -- I mean, simple stuff. Like she organized a
11 birthday party, I think, for your wife. Helped with a funeral. Things of
12 that nature. Social things.

13 A You could ask my wife. I -- likely.

14 Q Okay. When you signed all three of those affidavits, did you
15 read them before you signed them?

16 A Yes.

17 Q Did you write them?

18 A No.

19 Q All right. I want to work with you -- backwards with you, sir,
20 a little bit. Mr. Vannah was nice enough this morning to give us the
21 retainer agreement. And I'll have it marked. What's the next in line,
22 Ash?

23 MS. FERREL: Our number 90.

24 MR. CHRISTIANSEN: I'll mark it as 90, John, if that's okay.

25 (Defendant's Exhibit 90 marked for identification)

1 BY MR. CHRISTIANSEN:

2 Q And I'll just put it up for proposed Plaintiff's (sic) Exhibit 90.
3 Is that the retainer agreement that you saw Mr. Vannah give us this
4 morning?

5 A Yeah. I think so. I can't see it. Can I see it on this monitor
6 here?

7 Q If it's on you can.

8 THE COURT: You can't see it.

9 MR. CHRISTIANSEN: May I approach, Judge? I'll help him.

10 THE COURT: Yes, please. Is there nothing on your monitor?

11 THE WITNESS: No, it's just blank.

12 MR. CHRISTIANSEN: There's not judge. Just blank.

13 THE COURT: Okay.

14 THE WITNESS: Should I move this microphone then?

15 THE COURT: Sure.

16 MR. CHRISTIANSEN: Tell me when -- if it comes on, Mr.
17 Edgeworth.

18 THE WITNESS: No.

19 MR. CHRISTIANSEN: There.

20 THE WITNESS: Okay.

21 THE COURT: And can you see the document or no?

22 THE WITNESS: It's just booting up.

23 THE COURT: Okay.

24 MR. CHRISTIANSEN: Judge, are these Elmo screens such
25 that he can touch it?

1 THE COURT: You can't do that anymore, Mr. Christiansen.

2 MR. CHRISTIANSEN: Can't do that anymore?

3 THE COURT: They took that away from us. You get 1 plus
4 and three minuses. No, apparently you can't.

5 BY MR. CHRISTIANSEN:

6 Q I'll try to put it in the middle, Mr. Edgeworth, and if you tell
7 me you can't see it, I'll try to blow it up.

8 A Mine's out of focus, is yours?

9 THE COURT: Yeah, mine is a little blurry too, Mr.
10 Christiansen, but I don't think there's anything you can do.

11 MR. CHRISTIANSEN: Oh, let me see if I can zoom in, Judge,
12 and then I'll hit auto focus or auto --

13 THE COURT: There we go.

14 MR. CHRISTIANSEN: Oh, got a little crazy.

15 THE COURT: Okay. Is that clear enough?

16 THE WITNESS: Yeah, that's good. That's very good.

17 THE COURT: Okay.

18 BY MR. CHRISTIANSEN:

19 Q Is that the fee agreement you executed, Mr. Edgeworth?

20 A Yes.

21 Q And you see how it says down here on behalf of the
22 Edgeworth Family Trust and American Grating?

23 A Yes.

24 Q You were acting as --

25 A Correct.

1 Q -- as an agent, correct?

2 A Correct.

3 Q You understood that when you signed the fee agreement,
4 right?

5 A Yes.

6 Q Okay. Just checking. And this was entered into July the 29th
7 of 2017?

8 A Yes, I believe so.

9 THE COURT: November 29th, Mr. Christiansen?

10 MR. CHRISTIANSEN: Did I say July?

11 THE COURT: Yeah.

12 MR. CHRISTIANSEN: I'm sorry, Judge. November.

13 BY MR. CHRISTIANSEN:

14 Q I misspoke. I apologize. November the 29th, 2017. Is that
15 fair?

16 A Yes.

17 Q Was this your first meeting with Mr. Vannah, the day -- I
18 mean, is this the date of the meeting with -- first meeting with Mr.
19 Vannah?

20 A Yes.

21 Q And this is the day you hired him?

22 A Yes.

23 Q Okay. And from November the 29th forward in time, you
24 have not spoken verbally to Danny Simon, correct?

25 A I don't know. I don't think so.