

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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Elizabeth A. Brown
Clerk of Supreme Court
(District Court A-18-767242-C
Consolidated with
A-16-738444-C)

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1 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

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

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

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

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

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

19 (Def. Exhibit 43).

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

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

27 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
28

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

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

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

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

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

14 15 **CONCLUSION OF LAW**

16 ***Breach of Contract***

17 The First Claim for Relief of the Amended Complaint alleges breach of an express oral
18 contract to pay the law office \$550 an hour for the work of Mr. Simon. The Amended Complaint
19 alleges an oral contract was formed on or about May 1, 2016. After the Evidentiary Hearing, the
20 Court finds that there was no express contract formed, and only an implied contract. As such, a
21 claim for breach of contract does not exist and must be dismissed as a matter of law.

22 23 ***Declaratory Relief***

24 The Plaintiff's Second Claim for Relief is Declaratory Relief to determine whether a contract
25 existed, that there was a breach of contract, and that the Plaintiffs are entitled to the full amount of
26 the settlement proceeds. The Court finds that there was no express agreement for compensation, so
27 there cannot be a breach of the agreement. The Plaintiffs are not entitled to the full amount of the
28

1 settlement proceeds as the Court has adjudicated the lien and ordered the appropriate distribution of
2 the settlement proceeds, in the Decision and Order on Motion to Adjudicate Lien. As such, a claim
3 for declaratory relief must be dismissed as a matter of law.
4

5 *Conversion*

6 The Third Claim for Relief is for conversion based on the fact that the Edgeworths believed
7 that the settlement proceeds were solely theirs and Simon asserting an attorney's lien constitutes a
8 claim for conversion. In the Amended Complaint, Plaintiffs allege "The settlement proceeds from
9 the litigation are the sole property of the Plaintiffs." Amended Complaint, P. 9, Para. 41.

10 Mr. Simon followed the law and was required to deposit the disputed money in a trust
11 account. This is confirmed by David Clark, Esq. in his declaration, which remains undisputed. Mr.
12 Simon never exercised exclusive control over the proceeds and never used the money for his
13 personal use. The money was placed in a separate account controlled equally by the Edgeworth's
14 own counsel, Mr. Vannah. This account was set up at the request of Mr. Vannah.

15 When the Complaint was filed on January 4, 2018, Mr. Simon was not in possession of the
16 settlement proceeds as the checks were not endorsed or deposited in the trust account. They were
17 finally deposited on January 8, 2018 and cleared a week later. Since the Court adjudicated the lien
18 and found that the Law Office of Daniel Simon is entitled to a portion of the settlement proceeds,
19 this claim must be dismissed as a matter of law.
20

21 *Breach of the Implied Covenant of Good Faith and Fair Dealing*

22 The Fourth Claim for Relief alleges a Breach of the Implied Covenant of Good Faith and
23 Fair Dealing based on the time sheets submitted by Mr. Simon on January 24, 2018. Since no
24 express contract existed for compensation and there was not a breach of a contract for compensation,
25 the cause of action for the breach of the covenant of good faith and fair dealing also fails as a matter
26 of law and must be dismissed.
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Breach of Fiduciary Duty

The allegations in the Complaint assert a breach of fiduciary duty for not releasing all the funds to the Edgeworths. The Court finds that Mr. Simon followed the law when filing the attorney's lien. Mr. Simon also fulfilled all his obligations and placed the clients' interests above his when completing the settlement and securing better terms for the clients even after his discharge. Mr. Simon timely released the undisputed portion of the settlement proceeds as soon as they cleared the account. The Court finds that the Law Office of Daniel Simon is owed a sum of money based on the adjudication of the lien, and therefore, there is no basis in law or fact for the cause of action for breach of fiduciary duty and this claim must be dismissed.

Punitive Damages

Plaintiffs' Amended Complaint alleges that Mr. Simon acted with oppression, fraud, or malice for denying Plaintiffs of their property. The Court finds that the disputed proceeds are not solely those of the Edgeworths and the Complaint fails to state any legal basis upon which claims may give rise to punitive damages. The evidence indicates that Mr. Simon, along with Mr. Vannah deposited the disputed settlement proceeds into an interest bearing trust account, where they remain. Therefore, Plaintiffs' prayer for punitive damages in their Complaint fails as a matter of a law and must be dismissed.

CONCLUSION

The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court adjudicated the lien. The Court further finds that the claims for Breach of Contract, Declaratory Relief, Conversion, Breach of the Implied Covenant of Good Faith and Fair Dealing, Breach of the Fiduciary Duty, and Punitive Damages must be dismissed as a matter of law.

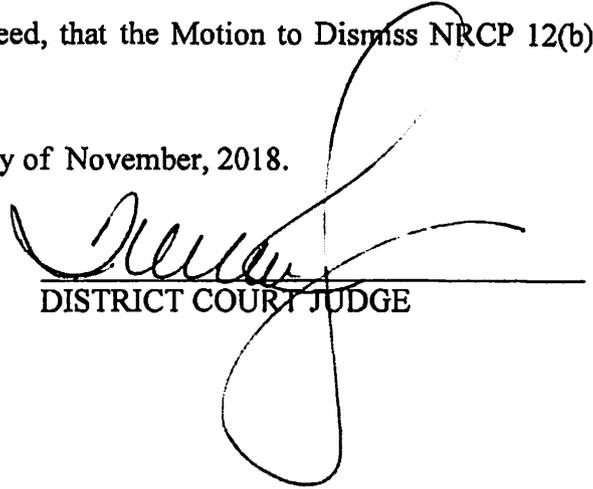
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ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Dismiss NRCP 12(b)(5) is GRANTED.

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



DISTRICT COURT JUDGE

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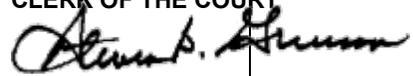
CERTIFICATE OF SERVICE

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

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Tess Driver
Judicial Executive Assistant
Department 10



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Eighth Judicial District Court

District of Nevada

10 EDGEWORTH FAMILY TRUST, and
11 AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

18 EDGEWORTH FAMILY TRUST;
19 AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**REPLY IN SUPPORT OF MOTION
FOR ATTORNEY FEES AND
COSTS**

Date of Hearing: 1.15.19

Time of Hearing: 9:30 A.M.

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 **I. Argument**

2 The Edgeworths sued Simon for conversion, case no. A-18-767242-C. This
3 Court dismissed the conversion case pursuant to NRCP 12(b)(5) as a matter of law.
4 Simon moved for fees because the conversion case was not well-grounded in fact
5 and was not warranted by existing law.
6

7 The focus of the subject motion is on the conversion case: whether the
8 conversion case was filed on reasonable grounds; whether the conversion case was
9 warranted under the law; and, whether counsel made a “reasonable and competent
10 inquiry” into the facts and law prior to filing the conversion complaint, and then
11 pursuing the conversion case after facts and law were made known to counsel.¹
12

13 The Edgeworths opposed the subject motion by making personal attacks
14 against Mr. Simon. *Argumentum Ad Hominem* attacks - that is, name calling - is a
15 deceptive argument tactic. Name calling is a sign of a flawed argument.
16

17 The flaws in the Edgeworths’ position is also exposed by what the
18 opposition did not address. The Edgeworths *did not* oppose the substance of the
19 motion². The Edgeworths *did not* provide the Court with facts which made filing
20 or pursuit of the conversion case reasonable. The Edgeworths *did not* provide the
21 Court with legal authority under which the filing and pursuit of the conversion case
22
23

24 ¹ See, e.g., *Bergman v. Boyce*, 856 P.2d 560 (Nev. 1993).

25 ² The Edgeworths argue that NRS 18.015 does not contemplate an award of fees,
however, Simon did not ask for fees pursuant to NRS 18.015.

1 was warranted. The Edgeworths *did not* provide the Court with a description of an
2 inquiry into the basis of the conversion case. Lastly, the Edgeworths *did not*
3 contradict any of the applicable law set forth in the motion for fees or the earlier
4 motions to dismiss.³

5
6 Instead, the Edgeworths opposed the motion for fees by making an
7 unsupported statement of personal belief:

8 “PLAINTIFFS strenuously object to any such characterization or
9 representation, as it is unfounded in fact and law.”

10 (Opp., at 11:10-11.) The strength of the Edgeworths’ subjective belief is
11 meaningless. What matters is the basis for filing and then maintaining the
12 conversion case. On what matters, the Edgeworths fall short. The Edgeworths
13 have not provided this Court with any objective support for its subjective belief.
14

15 The Court’s analysis of a motion seeking fees for filing and pursuing a
16 frivolous complaint is an objective review of the facts and law of the conversion
17 case. Thus, the Court’s analysis must focus on such things as:
18

- 19 • That Plaintiffs cannot sue for conversion when no money was converted.
- 20 • That Plaintiffs cannot sue for conversion when Plaintiffs share control of the
21 money under an agreement of the Parties.
22

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24
25 ³ *But see*, fn. 2.

- 1 • That Plaintiffs cannot sue for conversion when Plaintiffs receive the benefit
2 of all interest from the money (including interest earned off funds due Simon
3 for costs and fees).
- 4 • That Plaintiffs cannot sue for conversion when using an attorney's lien is
5 permitted by statute.
- 6 • That Plaintiffs cannot sue for conversion, when an attorney is due money for
7 advanced costs and fees secured by an attorney lien, only the amount is
8 disputed.
- 9 • That Plaintiffs cannot sue for conversion when filing an attorney lien is not
10 conversion as a matter of law.
- 11 • That Plaintiffs cannot sue for conversion when filing an attorney lien is not
12 conversion as a matter of law.

13 In the motions to dismiss, Simon described in detail the law of conversion and why
14 a conversion did not occur when Simon acted in strict accordance with the lien
15 statute and with the safekeeping property ethical rule, NRPC 1.15 - including an
16 opinion from former Bar Counsel David Clark (an opinion which is not challenged
17 by the Edgeworths). As a matter of law, an attorney cannot be sued for conversion
18 by a client in a fee dispute when the attorney has complied with Nevada statute and
19 the safekeeping property rule. The Edgeworths have yet to provide a case where
20 such a claim was recognized, let alone succeeded. The Edgeworths have yet to
21 provide a statute or rule of law which supports the conversion case.
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1 Antagonism between the Parties and name calling are not grounds to pursue
2 a conversion case against a lawyer who uses an attorney's lien. An objective
3 analysis by the Court of the facts and law of the conversion case necessarily leads
4 to the conclusion that filing and pursuit of the conversion case was frivolous, and
5 that Simon is due his fees and costs incurred in defense of the conversion case.
6

7 **A. Groundless litigation must be sanctioned.**

8 The Court protects the integrity of the judicial system by shielding limited
9 judicial resources against frivolous litigation and by fostering timely and
10 inexpensive resolution of claims.⁴ The Court is provided with substantial tools to
11 protect the administration of justice in Nevada. However, the judicial system will
12 only be protected if the Court acts when cases are brought that are not well
13 grounded in fact and law.
14

15
16 There is a Legislative mandate in Nevada instructing Courts to sanction
17 those who threaten the administration of justice by pursuing warrantless cases.
18 The Nevada Legislature directs Courts to "liberally construe the provisions of this
19 section in favor of awarding costs, expenses and attorney's fees" in both NRS
20 7.085 and 18.010(2)(b).
21
22
23
24

25 ⁴ See, e.g., NRS 7.085.

1 The Nevada Supreme Court agrees with the Legislature about the need to
2 deter groundless cases. NRCP 11 states that Courts “shall impose” sanctions for
3 frivolous litigation.

4 In this case, Simon served an attorney’s lien as permitted by Nevada statute
5 law to resolve a dispute over fees and costs owed by the Edgeworths for Simon’s
6 work on the Viking sprinkler case. Under the attorney lien statute, the Edgeworths
7 can assert every factual and legal defense available to the fee claim and are given
8 an opportunity to be heard and present their side of the dispute.
9
10

11 The problem, which led to this motion, arose when the Edgeworths sued
12 Simon for conversion. The Law requires reasonable grounds for filing the
13 conversion case. If reasonable grounds did not exist, then sanctions must follow.
14

15 The Edgeworths filed the conversion case, and continued the case through
16 their amended complaint and beyond, on the claim that Simon was due nothing
17 from the settlement.⁵ That claim was factually and legally false.⁶ Simon was due
18 advanced costs and Simon was due fees, even if the amount was in dispute.⁷
19

20 Counsel for the Edgeworths has repeatedly conceded this point in making
21 statements to this Court that this is just a fee dispute.
22

23 ⁵ D&O granting 12(b)(5) motion to dismiss at 6:24-7:19. All the causes of action in
24 the conversion case were based on the Edgeworths’ false claim that no money for
costs or fees was owed to Simon.

25 ⁶ See, fn. 5.

⁷ See, fn. 5.

1 This Court has found, and Edgeworths' counsel apparently agrees, that there
2 was no reasonable basis for filing the conversion case.⁸ Because the conversion
3 case was filed without reasonable grounds, the law requires that the Edgeworths,
4 and their attorney, be sanctioned.

5
6 **B. The fees and costs sought are a reasonable sanction amount.**

7 The filing and pursuit of the conversion case forced Simon to incur
8 significant defense fees and costs. Simon has built a law practice over many years
9 of hard work; the practice continues based on reputation and word of mouth.
10 (Simon does not appear on TV or use billboards.) Besides the obvious threat of a
11 conversion case and a prayer for punitive damages, the conversion claim directly
12 threatened manifest reputational harm. When the Edgeworths took the
13 unwarranted and unneeded step of filing the conversion case, they triggered a
14 necessary and foreseeable robust reaction.
15
16

17 All the fees and costs sought are related to the defense of the frivolous
18 conversion complaint. *But for* the conversion case, Simon could have dealt with
19 the fee dispute in house. *But for* the conversion case, Simon would not have
20 retained former Bar Counsel David Clark to opine on the conversion complaint.
21 *But for* the conversion case, Simon would not have retained Will Kemp to support
22 Simon's fee claim against the groundless claims of wrongful dominion over the
23
24

25 ⁸ See, fn. 5.

1 settlement funds. *But for* the conversion case, Simon would not have retained Pete
2 Christiansen to expose the Edgeworths' false factual claims, nor retain Jim
3 Christensen to expose the Edgeworths' baseless legal claims.

4 In an argument against the amount of fees sought, the Edgeworths observe
5 that much of the time spent by Simon counsel was during the evidentiary hearing.
6 However, that observation is another flawed argument because the lien issues and
7 the facts underlying the conversion case were intertwined.
8

9 This Court already ruled the conversion case and the lien adjudication were
10 related when the Court granted consolidation; and, when the Court decided to rule
11 on the motion to dismiss and the motion to adjudicate at the same time - after
12 receiving evidence at the evidentiary hearing.⁹ The Edgeworths did not challenge
13 the Court rulings by motion for reconsideration, writ, or in their notice of appeal.
14 The Edgeworths cannot contest the Court's rulings on the close relationship of the
15 cases now.
16
17

18 Based on this Court's rulings, the time spent in the evidentiary hearing was
19 incurred for the motion to dismiss the conversion case A-18-767242-C; and, to
20 adjudicate the attorney lien in A-16-738444. Based on the Court's rulings,
21 apportionment is not appropriate.
22
23

24 ⁹ The Court found the facts and circumstances of the motion for adjudication and to
25 dismiss to be closely related. Exhibit 2 to the Edgeworth Opposition, April 3,
2018 transcript at 2:19-24, 15:20-16:2, & 17:20-18:16.

1 **C. The *Brunzell* factors**

2 In making its award of fees, the Court must review the amounts sought
3 under the *Brunzell* factors.¹⁰ The factors have been heavily briefed already and
4 will not be repeated here.

5 Retained counsel are highly qualified. The CVs are attached at Exhibit A
6 and B. The hourly fee sought is reasonable for both.

7 The character of the work to be done, and the work actually done, supports
8 the fees sought. The conversion case presented a unique effort to circumvent the
9 impact of the Nevada attorney lien statute. The quality of advocacy was high
10 throughout the prolonged pleadings and evidentiary hearing.

11 The result of dismissal of the conversion case supports the fees sought. The
12 conversion case presented a clear and present threat of reputational harm to Simon.
13 Dismissal of the conversion case as groundless as a matter of law was a major
14 victory for Simon.

15 **D. Costs**

16 Simon is also due recoverable costs as requested in A-18-767242-C pursuant
17 to NRS 18.020(2) & (3). The conversion case was dismissed; therefore, Simon is a
18 prevailing party for the costs incurred, and is due costs in defense of A-18-767242-
19 C, without reaching the frivolous nature of the conversion case.
20
21
22
23
24

25 ¹⁰ *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

1 **II. Conclusion**

2 There were no reasonable grounds for filing, and then maintaining, the
3 conversion case. The Edgeworths have had several chances to explain why the
4 conversion case was warranted but have not done so.

5
6 The Nevada Legislature and the Supreme Court have told Courts to sanction
7 those who file and pursue baseless litigation. This is such a case.

8 Dated this 8th day of January 2019.

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

18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of the foregoing REPLY IN SUPPORT OF
20 MOTION FOR ATTORNEY FEES AND COSTS was made by electronic service
21 (via Odyssey) this 8th day of January, 2019, to all parties currently shown on the
22 Court's E-Service List.

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

EXHIBIT A

Peter S. Christiansen, Esq.
Christiansen Law Offices, Trial Attorneys
810 S. Casino Center Boulevard, Suite 104
Las Vegas, NV 89101
Phone: (702) 240-7979
Fax: (866) 412-6992
Email: pete@christiansenlaw.com
Web: www.christiansenlaw.com

Peter S. Christiansen is the founding partner and lead trial attorney at Christiansen Law Offices, a boutique firm focused exclusively on trying catastrophic personal injury cases and criminal matters, as well as fraud and business related disputes. A testament to Mr. Christiansen's advocacy skills, he is among the youngest attorneys ever to be inducted into the American College of Trial Lawyers ("ACTL"), which is widely recognized as the preeminent organization of trial lawyers in North America. The mission of the ACTL is to maintain and improve standards of trial practice, professionalism, ethics and the administration of justice.

Bar Admissions:

Nevada, 1994
U.S. Court of Appeals, 9th Circuit, 1994
U.S. District Court for the District of Nevada, 1994

Education:

University of Wyoming, College of Law, Laramie, Wyoming, 1994
J.D.
Honors: With Honors
Honors: Order of the Coif

University of California at San Diego, La Jolla, CA, 1991, B.A.
Major: Political Science

Representative Cases/Clients:

State v. Maurice Sims

Defense in state prosecution of defendant accused of two counts of murder, one count of attempted murder and multiple counts of conspiracy, robbery and burglary with use of a firearm. During the first trial, in which the State sought the death penalty, the jury hung on all murder and attempted murder counts resulting in a mistrial and the State choosing to not pursue the death penalty but opting to try the defendant a second time. In the re-trial, the jury acquitted the defendant on all but one count of burglary, resulting in the first acquittal of a capital defendant in State history.

United States Anti-Doping Agency v. Jon Jones

Defense of UFC Fighter Jon Jones for alleged second violation of the UFC Anti-Doping Policy. After counsel's presentation of facts and witnesses, an independent

arbitrator sanctioned Jones just fifteen months for his second violation, substantially reducing the thirty month sanction initially imposed pre-hearing. The reduction of the sentence by half was based upon the circumstances of the case and reduced degree of fault demonstrated during the hearing.

Khiabani v. Motor Coach Industries et al.,

Wrongful death action involving allegations of negligence against multiple defendants and strict products liability against bus manufacturer resulting in pre-trial settlement of all negligence claims and jury verdict in favor of plaintiffs and awarding in excess of \$18.7 million against bus manufacturer.

United States of America v. Noel Gage

Defense in federal prosecution of local attorney alleging complex conspiracy between Gage and local surgeons.
Discovery intensive case which included over 200,000 documents produced by the Government.

Jackie Templeton v. EPMG

Prosecution of medical malpractice case brought by decedent's widow for failure to diagnose cancer. Jury verdict returned for \$18 million resulting in judgment of over \$24 million.

Marsha R. Gray, et al. v. Wyeth Pharmaceuticals, Inc., et al.

Lead co-counsel in Mass Tort action regarding hormone replacement therapy ("HRT") drugs. Case settled during trial which led to the settlement of the last 96 HRT cases in the U.S.

Dirk Eldredge v. Granite Construction

Prosecution of personal injury action stemming from on-the-job incident. Jury verdict returned and judgment entered for in excess of \$9 million. Case settled for confidential amount during appeal.

United States of America v. James Hannigan, et al.

State of Nevada v. James Hannigan, et al.

Defense in federal and state prosecutions of members of the Hells Angels Motorcycle Club arising out of incident at Harrah's Laughlin. Defendant faced multiple life sentences. Cases resolved with resulting sentence of 12 months.
Discovery intensive case where government produced over 100,000 documents and over 5 thousand hours of surveillance video and audio recordings.

United States of America v. Floyd Strickland, et al.

Defense of federal prosecution of 18 members of the Rolling Sixties Crips gang. Government sought death penalty. Succeeded in convincing Government to drop death penalty.
Discovery intensive case where government produced over 70,000 documents and hundreds of hours of surveillance video and audio recordings.

United States of America v. Gary Harouff, et al.

Defense in federal white-collar prosecution alleging embezzlement of over \$8 million. Succeeded in convincing government to drop charges in exchange for plea to one count of deprivation of honest goods and services. The Court granted client probation.

Mowen v. Walgreens

Slip and fall case. Jury award was largest verdict against national drug store chain and largest slip and fall verdict in Nevada.

State of Nevada v. Steve Shaw

Defense in state prosecution of chiropractor accused of murder. Successfully obtained dismissal of murder charge and eventual plea agreement resulting in client being afforded opportunity to complete probation.

University of Nevada Las Vegas

Represented University in administrative proceedings before the Board of Regents.

Certifications and Appointments:

Clark County Indigent Defense Panel Attorney, 1995 - present

Criminal Justice Act (CJA) Panel Attorney, 1999 - 2016

Nevada Supreme Court Rule 250 (Death Penalty) Qualified, 1998 - present

Martindale - Hubbell - (Peer Rated for High Professional Achievement)

Professional Associations and Memberships:

American College of Trial Lawyers, Fellow, 2015 - present

National Association of Criminal Defense Lawyers, 1997 - present

Nevada Attorneys for Criminal Justice, 1997 - present

Clark County Bar Association, 1995 - present

Nevada Justice Association, 1994 - present

American Bar Association, 1994 - present

Law Related Education Positions:

University of Nevada Las Vegas, William S. Boyd School of Law, Adjunct Professor:

- Trial Advocacy, Spring 2019
- Opening Statements and Closing Arguments, Spring 2018
- Opening Statements and Closing Arguments, Spring 2017

State Bar of Nevada, Trial Academy Instructor

Nevada Justice Association, Continuing Legal Education Instructor on trial advocacy and related topics

EXHIBIT B

NRPC 1.4(c) BIOGRAPHICAL DATA FORM FOR JAMES R. CHRISTENSEN

EDUCATION

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

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

PUBLICATIONS

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

EXPERIENCE

More than 25 years of litigation, including over 35 trials to a verdict in State and Federal Court, and more than 100 arbitrations. Cases handled include medical malpractice, product defect, premises liability, construction defect, personal injury, wrongful death, land transactions, breach of contract, fraud, insurance bad faith, the financial industry and FINRA, Native American gaming law and governance, ERISA, and disability claims.

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

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

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

Rated "AV" by Martindale-Hubbell.

REPORTED CASES

Gunderson v. D.R. Horton, Inc., 319 P.3d 606 (Nev. 2014).

D.R. Horton v. The Eighth Judicial District Court, 215 P.3d 697 (Nev. 2009).

D.R. Horton v. The Eighth Judicial District Court, 168 P.3d 731 (Nev. 2007).

Powers v. USAA, 962 P.2d 596 (1998); *rehearing denied*, 979 P.2d 1286 (Nev. 1999)(briefing).

EMPLOYMENT HISTORY

April 2009 – Present
James R. Christensen PC
601 S. Sixth St.
Las Vegas NV 89101
(702) 272-0406 Fax (702)272-0415

November 2009 – 2016
Fox Rothschild LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, NV 89169

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

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

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

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

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

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

LICENSES/AFFILIATIONS

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

REGISTER OF ACTIONS

CASE No. A-16-738444-C

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

§
§
§
§
§
§
§
§
§
§

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

RELATED CASE INFORMATION

Related Cases

A-18-767242-C (Consolidated)

PARTY INFORMATION

Lead Attorneys

Defendant Lange Plumbing, L.L.C.

Theodore Parker
Retained
7028388600(W)

Plaintiff Edgeworth Family Trust

Daniel S. Simon, ESQ
Retained
7023641650(W)

EVENTS & ORDERS OF THE COURT

01/15/2019, 01/17/2019*Decision***Minutes**

01/15/2019 9:30 AM

- APPEARANCES CONTINUED: James Christensen Esq., and Pete Christiansen Esq., on behalf of Daniel Simon, and John Greene Esq., of behalf of Edgeworth Family Trust. Following arguments by counsel, COURT ORDERED, matter CONTINUED for Decision of the date given. 01/18/19 (CHAMBERS) DECISION: Motion for Attorney Fees and Costs

01/17/2019 3:00 AM

- The Motion for Attorney s Fees is GRANTED in part, DENIED in part. The Court finds that the claim for conversion was not maintained on reasonable grounds, as the Court previously found that when the complaint was filed on January 4, 2018, Mr. Simon was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust account. (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such, Mr. Simon could not have converted the Edgeworth s property. Further, the Court finds that the purpose of the evidentiary hearing was primarily for the Motion to Adjudicate Lien. It has been argued that the Court s statement of during the course of that evidentiary hearing, I will also rule on the Motion to Dismiss at the end of the close of evidence, because I think that evidence is interrelated (Motion Hearing April 3, 2018, pg. 18) should be construed to mean that the evidentiary hearing was for the Motions to Dismiss as well as the Motion to Adjudicate Lien. While the Court acknowledges said statement, during the same hearing, the Court also stated So in regards to the Motion to Adjudicate the Lien, we re going to set an evidentiary hearing to determine what Mr. Simon s remaining fees are. (Motion Hearing April 3, 2018, pg. 17). During that same hearing, it was made clear that the primary focus of the evidentiary hearing was to determine the amount of fees owed to Mr. Simon. So, the primary purpose of the evidentiary hearing was for the Motion to Adjudicate Lien. As such, the Motion for Attorney s Fees is GRANTED under 18.010(2)(b) as to the Conversion claim as it was not maintained upon reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworth s property, at the time the lawsuit was filed. The Motion for Attorney s Fees is DENIED as it relates to the other claims. In considering the amount of attorney s fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against Mr. Simon, on January 4, 2018. However, they were also the attorneys in the evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found was primarily for the purpose of adjudicating the lien asserted by Mr. Simon. Further, the Motion to Consolidate The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr. David Clark Esq. were solely for the purposes of defending the lawsuit filed against Mr. Simon by the Edgeworths. As such, the Court has considered all of the factors pertinent to attorney s fees and attorney s fees are GRANTED in the amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

[Return to Register of Actions](#)

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Las Vegas, Nevada, Tuesday, January 15, 2019

[Case called at 9:44 A.M.]

THE COURT: Counsel.

MR. CHRISTENSEN: Good morning, Your Honor. Jim Christensen and Mr. Chris Jansen on behalf of Mr. Simon.

MR. GREENE: And John Greene for the Edgewood Plaintiffs.

THE COURT: Good morning. So, this is on for your motion -- for Mr. Simon's motion for attorney's fees and costs. I've read the motion, I've read the opposition, I've read the reply. Mr. Christensen, do you have anything you want to add? I do have a question.

MR. CHRISTENSEN: I do, Your Honor.

THE COURT: I was a little -- I was interested in the fact that your original motion talks about a lot of reasons. It lists like three or four statutes, as well as the Rule 11 sanctions and all of that. And then it appears in the reply, you kind of deviated to just talking about getting attorney's fees based on the conversion claim and not any of the other things that were referenced in the original motion.

MR. CHRISTENSEN: Your Honor, that was not a conscious attempt to limit any of our amounts of recovery in this matter. That was simply done for clarity of argument.

THE COURT: Okay. Just making sure. Because I mean that's how I read it so I'm just making sure that we were on the same page; that I understood what it was you intended to convey in the

1 reply.

2 MR. CHRISTENSEN: And, thank you, Your Honor. Of
3 course, any questions just let me know.

4 THE COURT: Okay.

5 MR. CHRISTENSEN: We're here on Mr. Simon's motion for
6 attorney's fees following the dismissal of the Edgeworth conversion
7 complaint against Mr. Simon. That dismissal was done pursuant to
8 12(b)(5) following a five day evidentiary hearing. The rules on granting
9 attorney's fees are fairly straightforward and simple.

10 If a claim or defense is filed or maintained without
11 reasonable grounds, then sanctions should issue. That's found in NRS
12 7.085, NRS 18.010(2)(b), NRCP 11, a host of case law, including the
13 *Boyce* case, which we cited to the Court and the very recent *Capanna*
14 *vs. Orth* case that just came down September -- or December 27th.

15 THE COURT: And have you had an opportunity to review
16 that *Capanna* case, Mr. Greene?

17 MR. GREENE: Yes, Your Honor.

18 THE COURT: Okay. Because I did, so I just wanted to make
19 sure that everybody else had the opportunity.

20 MR. CHRISTENSEN: Another way of stating that rule is, if
21 there is no legal basis or factual basis for a claim or defense, then
22 sanctions must issue.

23 I'm going to go over a very abbreviated portion of the facts
24 that focus in on essentially what occurred between November 29th and
25 January 18th.

1 THE COURT: Of 2017, right?

2 MR. CHRISTENSEN: November 29, 2017.

3 THE COURT: To January 18th of '18.

4 MR. CHRISTENSEN: To January 18th of '18.

5 On November 29, 2017, the Edgeworth's retained Mr.
6 Vannah and Mr. Greene. On November 30th, Mr. Vannah gave notice
7 of the hire. The following day, Mr. Simon filed his attorney lien. That
8 was on December 1, 2017. On that same day, December 1, 2017, Mr.
9 Vannah signed the release with Viking for the settlement of \$6 million.
10 On December 18th, 2017, the checks -- there were two checks -- were
11 picked up by Mr. Simon. Mr. Simon notified Mr. Greene that same day
12 said, hey, the checks are available, let's endorse them, get them into
13 the trust accounts so that there's no delay in disbursement of
14 undisputed funds. There was some back and forth. There was
15 confusion about who was in town, who wasn't. Those checks were not
16 immediately endorsed.

17 Fast forward to December 26, 2017, Mr. Vannah sent an
18 email in which he said the clients are fearful that Simon will steal the
19 money. And because of that, Mr. Vannah did not want to use Mr.
20 Simon's trust account. On the 27th, I was involved, and I sent a letter
21 back, and I said that we should avoid hyperbole and went through the
22 history of the claim and then offered to work collaborative with Mr.
23 Vannah to resolve this.

24 On the 28th of December of 2017, Mr. Vannah wrote in an
25 email that he did not believe Simon would steal money, he was simply

1 relaying his client's statements to me. Later that day, Mr. Vannah
2 proposed, and Mr. Simon and we agreed, to a single purpose trust
3 account that has both Simon and Vannah as signators and that the
4 Edgeworth's benefit from the interest on all the money in the account,
5 including that money that may, at some point, be provided to Mr.
6 Simon for fees and advance costs.

7 On January 2nd, 2018, Mr. Simon filed an amended lien.
8 On January 4th, 2018, a conversion suit was filed, based upon the
9 allegation brought by the Edgeworths that Mr. Simon was stealing their
10 money. On January 8th, 2018, Mr. Vannah, and Mr. Simon, and the
11 Edgeworths separately went to the bank, endorsed the checks and all
12 \$6 million was deposited into the trust -- into the joint trust account.

13 So, at that time, January 8th of 2018, there's no doubt there
14 was actual notice that the funds were sitting in an account, Mr. Vannah
15 was a signatory on the account so the Edgeworths had control of the
16 money, all the interest was inuring to their benefit and there was --

17 THE COURT: The money can only be moved if Simon and
18 then Vannah signed off on it, right?

19 MR. CHRISTENSEN: Correct.

20 THE COURT: Okay. Just making sure.

21 MR. CHRISTENSEN: Dual signatures are required on that
22 account.

23 THE COURT: Right.

24 MR. CHRISTENSEN: And at that time also, the amended
25 lien had been filed. So, the amount of funds that were in dispute was

1 known and the amount of funds that was not in dispute under the lien
2 was known.

3 The following day, the conversion suit was served on my
4 office. I agreed to accept service. And I reached out and said, you
5 know, what's going on here. They confirmed that although the
6 Edgeworths had sued Mr. Simon, Mr. Simon was not fired, at least in
7 their view of the facts.

8 On the 18th, after the large item hold was withdrawn, the
9 Edgeworths received the undisputed amount of just under \$4 million.
10 Late January through March there was a motion to dismiss and an
11 Anti-SLAPP motion filed. On March 15, 2018, there was an amended
12 complaint filed. A motion to dismiss and an Anti-SLAPP motion to
13 dismiss were filed in response to the amended complaint. The Anti-
14 SLAPP motion was eventually dismissed as moot. The 12(b)(5) motion
15 was granted following the evidentiary hearing. The claims -- the
16 conversion claims and the other claims in that conversion case, were
17 brought and maintained through that evidentiary hearing and beyond.

18 So, we understand the law, and we understand the facts.
19 Sanctions should issue for filing the conversion case and for
20 maintaining it, even after they understood money was safe kept in the
21 trust account over which they had control. When there is a dispute
22 over fees and costs, Nevada statute says the lawyer may file a lien and
23 move for adjudication. There is no basis to claim conversion when
24 Simon followed the lien statute to protect his fee claim and advance
25 costs. And again, that becomes crystal clear when you examine the

1 timing that occurred. By the time that complaint was served, the
2 Edgeworths and their attorneys knew the money was safe kept in the
3 trust account.

4 Now, when looking at whether or not there were
5 reasonable grounds to bring the suit or to maintain the suit, because
6 that's the standard, did you have reasonable grounds to sue. And the
7 law understands that facts change as the case evolves, discovery
8 occurs, what have you, so then the law also says, well, we're also going
9 to look at whether he had reasonable grounds to maintain a suit. And
10 that concept was really brought to light in the, not only *Boyce*, but also
11 in the *Capanna vs. Orth* case. In *Capanna vs. Orth*, -- Dr. Capanna's a
12 neurosurgeon, he's been a neurosurgeon for many years in this town,
13 he operated on Mr. Orth and allegedly operated on the wrong levels in
14 his back, causing Mr. Orth a great deal of trouble, subsequent care,
15 pain and disability. During the case, both parties provided experts. Dr.
16 Capanna had an expert saying well, he didn't violate the standard of
17 care.

18 And the case went to trial with Dr. Capanna defending on
19 liability on the medical malpractice claims. The jury found for Orth.
20 Following that case, there was a motion for attorney's fees and costs
21 under NRS 18.010(2)(b) by Plaintiff's counsel because Plaintiff's counsel
22 said the defense didn't have reasonable grounds to maintain the
23 defense that Dr. Capanna acted within the standard of care when he
24 operated on the wrong level. And the court agreed, the district court
25 agreed, and awarded sanctions and costs for maintaining that defense.

1 And that was upheld by the supreme court recently on December 27th.

2 So, what we see there is the mandate handed down by the
3 legislature and by the supreme court to prevent and deter
4 unreasonable litigation. In this case, sanctions should issue because
5 there were no reasonable grounds for filing the conversion case. In the
6 opposition to this motion, the defense spent a great deal of time of
7 pointing the finger and name calling and understandably, they attacked
8 the fact that Mr. Simon never got a fee agreement with his friends,
9 former friends, Brian and Angela Edgeworth. And that was something
10 we never disputed. There was no fee agreement. We acknowledge
11 that. That's what led to the dispute.

12 The problem is this. The Edgeworths were well within their
13 rights and had reasonable ground to dispute the amount of fees that
14 Mr. Simon was requesting in the lien adjudication. And they can
15 certainly tell their side of the story within the context of that process of
16 that case. When they took the extra step of suing Mr. Simon, in a
17 separate case alleging conversion, when they put pen to paper in their
18 claims that he's going to steal money, when they ask for punitive
19 damages against Mr. Simon, that's when they went too far. They did
20 not have reasonable grounds to sue Mr. Simon for conversion when
21 the money is safe kept in a trust account and only the disputed funds
22 remain in that account. The undisputed funds were promptly
23 disbursed when the large item hold was removed by the bank.

24 And our legislature clearly says, in NRS 7.085 and
25 18.010(2)(b), that when looking at issues like this, the court should

1 liberally grant sanctions to deter unreasonable litigation.

2 Now the defense may argue that the lien was improper.

3 They may argue that it was improper because there was no fee
4 agreement. Well, you don't have to have a fee agreement to file a lien
5 to get quantum meruit. Or, in this case, the court found that at least for
6 a period of time, there is a contract implied by conduct.

7 THE COURT: Right.

8 MR. CHRISTENSEN: Even so, that doesn't mean you don't
9 get anything. It means you should get whatever fees are found under
10 that contract and, of course, you get reimbursement of advanced costs.
11 And of course, the lien was proper under the statute. There is
12 absolutely nothing wrong with that. As this court found, Mr. Simon
13 followed that statute to a T. They may argue that the lien was improper
14 maybe an amount.

15 That was one of the reasons why Mr. Will Kemp was
16 retained. And Mr. Will Kemp came in, as an outside observer, who has
17 immense experience and knowledge in determining the value of
18 product liability cases. And he came in and found what he thought
19 would be a reasonable fee, which was, in fact, slightly less than the
20 amount of Mr. Simon's claim.

21 THE COURT: But you would agree, Mr. Kemp was retained
22 to do the quantum meruit analysis on the motion to adjudicate the lien
23 and that was -- well I'll let you answer.

24 MR. CHRISTENSEN: No, Your Honor, I don't. And --

25 THE COURT: So, what is Mr. Kemp's link to the conversion

1 claim or the lawsuit that was filed by the Edgeworths against Danny
2 Simon. What does Will Kemp -- how does Will Kemp -- because when
3 Will Kemp testified -- I know we will all never forget those five lovely
4 days we all spent together, and I think we went into a day six. But what
5 did Will Kemp testify to in regards to the lawsuit. Give me Will Kemp's
6 connection to and David Clark.

7 MR. CHRISTENSEN: Mr. Kemp had two purposes. One,
8 was obviously, to put a number on the quantum meruit claim. But the
9 second purpose was because there was at least an implied claim,
10 they've never come out and expressly said it, but there was an implied
11 claim that Mr. Simon's lien was improper because it was overreaching
12 or excessive in amount. And Mr. Kemp said, no, no, no, this is a
13 reasonable claim. And in fact, that's why Mr. Kemp's declaration was
14 attached to each of our motions to dismiss under 12(b)(5), to cut off
15 that claim.

16 So, there is no doubt that Mr. Kemp provided, or that his
17 role was in determining the amount of the lien, but that's not the end of
18 the story. He had two roles. And he had a role in each of the two
19 cases, because, as we know, Your Honor consolidated the claims.

20 THE COURT: Right.

21 MR. CHRISTENSEN: And deferred ruling on the 12(b)(5)
22 motion, the motions to dismiss, until after evidence was educed at the
23 evidentiary hearing --

24 THE COURT: Right.

25 MR. CHRISTENSEN: -- because the issues were

1 intertwined. So, as far as apportionment saying well this hour was for
2 this case or the second hour was for this case, that really doesn't apply
3 because everything that was done applied equally to both cases.

4 THE COURT: Okay. What about Clark?

5 MR. CHRISTENSEN: I was actually surprised at the
6 opposition that they raised that. You know, Mr. David Clark is former
7 bar counsel.

8 THE COURT: Right.

9 MR. CHRISTENSEN: His summary opinion was, it is my
10 opinion to a reasonable degree of probability that Mr. Simon's conduct
11 is lawful, ethical and does not constitute a breach of contract or
12 conversion as those claims are pled in Edgeworth Family Trust, on and
13 on, versus Daniel Simon on and on filed January 4, 2018 in the 8th
14 Judicial District Court. So, we didn't call Mr. Clark to testify at the
15 evidentiary hearing. We certainly submitted his declaration.

16 THE COURT: Right.

17 MR. CHRISTENSEN: And we felt that his opinions were
18 valuable to that proceeding, but Mr. Clark was specifically retained to
19 rebut the unreasonable claim that Mr. Simon had committed
20 conversion. So, he is directly, no doubt, related to that conversion
21 case.

22 Getting back to what the defense may argue. The defense
23 may argue that evidence of the reasonableness of their claim can be
24 seen because the -- they beat the motion to dismiss on Ant-SLAPP
25 grounds. Well as we've seen in *Boyce* and yet again in *Orth*, it's the

1 totality of the circumstances that you look at. At the end of the day,
2 was there reasonable grounds.

3 The Court has -- the Nevada Supreme Court has repeatedly
4 said, you know, when you're talking about a motion to dismiss, those
5 are specific distinct standards and the court's looking at specific distinct
6 items and is maybe not looking at the entire case. At the end of the
7 day, as they found in *Orth*, and that's a defense that actually went to
8 trial and at the end of the trial, the judge said in the order that the
9 evidence was overwhelming.

10 So, you look at the totality of the facts and circumstances at
11 the end of the day. And at the end of this day, under your Judge's
12 order, there was no basis for any of the claims that were brought
13 against Mr. Simon, not just conversion. In the opposition, the defense
14 said that they strenuously believed that they brought their claim in
15 good faith. And again, I talked about how that subjective evidence of
16 belief really has to be analyzed for the Court, it needs to be looked at
17 objectively. What facts did they bring their claim on, what case law,
18 and they didn't provide any.

19 Getting to the amounts that we requested, we've already
20 discussed briefly the experts. The amount for attorney's fees is
21 between Mr. Chris Jansen and myself, my fee -- or the fee claimed for
22 my hours was \$62,604.48, for Mr. Chris Jansen, it was \$199,495 and
23 then we have the costs that we requested, 11,498.15 for Will Kemp,
24 5,000 even for Mr. Clark and then there were miscellaneous costs that
25 were later detailed at 1,936.58. The total requested is 280,534.21.

1 I would point out that on the costs, we don't need to
2 establish that there were no reasonable grounds. We are the prevailing
3 party for purposes of costs only in the conversion case, so therefore,
4 the Court can also award expert fees and other costs under that
5 provision. Although you do have to get a money judgment to be a
6 prevailing party under the 18, but that's not an issue that's before the
7 Court.

8 We went through a very brief Brunzell analysis. The
9 amounts requested are reasonable for the quality of counsel and the
10 time spent, which was quite a bit. And again, the defense may argue
11 that most of that time was spent in the evidentiary hearing. That is
12 true, but that argument misses the point, it doesn't go far enough. The
13 fact is, is that this Court consolidated the cases and wanted to hear all
14 the evidence educed at the evidentiary hearing before ruling on the
15 12(b)(5) motion because those issues were intertwined.

16 The Edgeworths had an opportunity to challenge that
17 decision of the Court by a motion for reconsideration. By writ, they
18 could have noted that as error in their recently filed notice of appeal.
19 They did none of those things. So, they missed the opportunity to
20 challenge that. So, while technically, it may not be law in the case, it's
21 about as good as you can get short of an appellate confirmation of it.

22 Lastly on the costs, they may argue against awarding
23 expert's fees in excess of \$1,500. But, of course, that's not a hard rule
24 in the statute As we saw in *Orth*, amounts are routinely awarded above
25 1500. And the quality, experience of Mr. Kemp can't be challenged.

1 He's one of the best trial lawyers in the United States. And it would be
2 hard to challenge Mr. Clark's experience and qualifications for
3 rendering opinions on ethical matters and the bounds of proper
4 conduct from attorney. He was with the state bar for 15 years or so and
5 bar counsel for about 10.

6 There's one last thing I would like to get to. The
7 Edgeworths are -- I anticipate in argument, that Mr. Simon is driving
8 this bus, that they didn't want anything of this to happen and that --

9 THE COURT: They made that argument in their opposition.

10 MR. CHRISTENSEN: -- and that they are the victims here.

11 I'd like to point out a few things. One, before that conversion complaint
12 was filed, I reached out and I said let's resolve this collaboratively, let's
13 work together to resolve these issues. And then when Mr. Vannah
14 suggested a separate trust account, we were debating, you know, an
15 escrow, we were debating interpleading the funds, and Mr. Vannah
16 came up and said, listen, why don't we just open a single purpose trust
17 account, and as soon as I saw that email, I responded immediately the
18 same day and said that's a great idea, Bob, let's do that.

19 I saw that as that we were now on a road to reconciliation,
20 that we could get this thing resolved and get it done without too much
21 blood. And I thought we were well on that way when everybody met at
22 the bank, the funds were deposited, everything seemed to be going in
23 the right direction. And then a complaint for conversion was served
24 and I looked at the date it was filed, and it was filed right around the
25 same time that Mr. Vannah had sent a letter to the bank saying, hey,

1 this is what we're going to do.

2 When we seemed to be working collaboratively to get this
3 thing resolved, they sue Mr. Simon for conversion. I even called up
4 John. I said, John, you know, do you have a case, do you have
5 something to support your position, I'll go on down, I'll have a heart to
6 heart meeting with my client, you know, tell me there's something here
7 because I could see what was going to happen there. That was going
8 to throw everything off the rails. And it did. We got into protracted
9 litigation, we got into the very long evidentiary hearing. And even
10 now, they're going to stand up and say we're still the victims, we're
11 willing to agree with the Judge's decisions and this and that, and the
12 fact remains is that the Edgeworths filed a notice of appeal. And days
13 later, Mr. Simon filed another cross appeal to preserve certain claims.

14 But, you know, those are the hard and fast facts. So, on
15 that basis, I submit it and under the law that says the Court has to
16 literally grant fees for unreasonable litigation, this case fits, the
17 conversion case fits. They did not have a basis to sue Mr. Simon for
18 conversion when the money was sitting in a trust account that they had
19 control over. Thank you, Your Honor.

20 THE COURT: Thank you. Mr. Greene.

21 MR. GREENE: Yes, Your Honor. Thank you so much. I
22 know you've heard so much of this case and I'm sure the end is near
23 but let me just --

24 THE COURT: You guys keep promising me but then I'll get
25 my calendar and it's back on.

1 MR. GREENE: One more.

2 THE COURT: Because there's a motion on 2/5, right?

3 MR. GREENE: Yes. There is one for the release of the
4 funds in excess of what you adjudicated --

5 THE COURT: Okay.

6 MR. GREENE: -- that Mr. Simon was entitled to receive.

7 THE COURT: Okay. Well we'll deal with that. I haven't
8 read any of that. I just saw that we have another hearing coming up. I
9 haven't read that. So, we'll deal with that on February 5th.

10 MR. GREENE: I'm not getting in to that, Your Honor.

11 Let me just begin at the beginning. I'm not going to restate
12 everything. We've heard all of this so many times. Let me focus on
13 what is important from a legal standpoint and a factual standpoint
14 concerning this 12(b)(5).

15 First of all, Your Honor, when you issued your two orders,
16 the one in October, then the one in November concerning Plaintiff's
17 four claims for relief, there wasn't one iota of language that indicated
18 that the Edgeworths claims were not based on reasonable grounds.
19 You dismissed them, but did not make that finding. This was a matter
20 that wasn't litigated, unlike the *Capanna* case, it wasn't a subject of
21 discovery, unlike the *Capanna* case. This was something that you put
22 on hold, Your Honor, while we could adjudicate the beast that was in
23 this room, which is the attorneys lien and adjudicating that.

24 So, again, Your Honor, there's nothing in your orders that
25 indicates that the Edgeworth's amended complaint was based on

1 unreasonable grounds. And you wouldn't have found that because you
2 know the law, Your Honor, the supreme court asks us in this room
3 when we're looking at a 12(b)(5) motion, to take a look at the
4 allegations in the complaint that Plaintiffs have made and accept them
5 as true. And the Edgeworths allege breach of contract, they allege that
6 there was an oral agreement at 550 an hour, they dutifully paid 550 an
7 hour, as you know, from all those entries that we showed. They
8 dutifully paid 387 plus thousand dollars in fees without any review,
9 without any reduction, without any delay, but something happened.

10 On November 17th, at that infamous meeting in Mr.
11 Simon's office, these clients went from paying four invoices without
12 question, asking for a fifth two days before, willing to pay that and all
13 of a sudden that meeting happens. You heard testimony from the
14 Edgeworths on this and something happened in that meeting that
15 changed the relationship that eroded the trust that caused the
16 Edgeworths to believe that their settlement funds were in jeopardy.
17 They still believe that to this day. They maintained that complaint --
18 that claim, one of the four, for conversion, based on good faith.

19 Mr. Simon knew, he is a very good attorney, he knew that
20 the law didn't allow him to get a contingency fee here. You found that.
21 He knew that if he can't have a contingency fee, how in the world is
22 anybody going to allow him to get a contingency fee in the same
23 amount, based on quantum meruit. That's exactly what he's done
24 since day one, despite, if we believe the allegation to be true, like we
25 have to, that there was an oral contract for the purposes of this

1 particular hearing here, they maintain that in good faith. They felt that
2 their settlement proceeds were going to be jeopardized and still to this
3 day.

4 All the amounts of 1.977 million dollars, they're all sitting
5 there still. Two percent interest being earned on them the past year
6 and a half'ish -- well not a year and a half, year. They've lost the
7 investment potential, they've lost the ability to use their money.
8 They're willing to pay Danny Simon. We've sent two letters, we don't
9 want to appeal, don't make us appeal, we'll pay, let us resolve this.
10 Two letters to Mr. Christiansen. We have no desire to do any of this
11 appeal junk. We want this thing to end.

12 What this really comes down to, all these fees, Your Honor.
13 We sat through all this. You didn't hear one minute of testimony, five
14 day evidentiary hearing, five plus days, that dealt with any 12(b)(5).
15 Every bit of Mr. Clark's, Mr. Kemp's testimony, everything that was
16 asked dealt with trying to establish what Mr. Simon felt that he was
17 entitled to in fees. There's nothing in the law that allows him to get
18 fees in an effort to get fees under NRS 18.105. You can't do it, there's
19 no provision for it.

20 Everything that's been submitted here, Your Honor, in
21 summary, one, there's nothing that they can point to that can be
22 pointed to that Plaintiff's claims were not made to anything other than
23 reasonable grounds and in good faith. We have to take their
24 allegations as true. There are facts that they testified to that said they
25 believe that to be true. So, you didn't find that there were no

1 reasonable grounds. And finally, all these fees and costs were
2 associated with this motion to adjudicate. We just want this to end,
3 Your Honor. Please [indiscernible] maintain this and let this matter go,
4 please. Thank you.

5 THE COURT: Thank you, Mr. Greene. Do you have any
6 response to that, Mr. Christiansen?

7 MR. CHRISTENSEN: Thank you, Your Honor.

8 The 12(b) motion did not address the grounds as
9 unreasonable because, as Mr. Greene later confirmed, that's not the
10 standard to be addressed at that stage of the proceeding. What the
11 Court did find was that there were no grounds in which those claims
12 could be brought as a matter of law. The question of
13 unreasonableness, as the supreme court has repeatedly said is
14 reserved for this motion. So, this is the time for that analysis.

15 In making that analysis, one of the things the Court needs
16 to look at, was were there any legal grounds for the claim being
17 brought and then being maintained. Yet again, we have not heard a
18 single case citation from the Edgeworths that underlies, or rule of law,
19 that underlies their claim that an attorney can be sued for conversion
20 because the attorney filed a lien and the amount of the fees and costs
21 ultimately due that attorney are in dispute. There is no such case. If
22 there was, they would have brought it up.

23 What we did in the motions to dismiss, is we drilled down
24 into the law of conversion. We brought in cases from every jurisdiction
25 that we could find where this has been looked at. And you can't sue an

1 attorney for filing an attorney lien, for following the law, just because
2 you dispute the fee claim, especially when that fee claim is supported,
3 as was Mr. Simon's, by unrefuted, uncontested expert testimony.

4 There's two issues on the contingency fee argument. The
5 first issue is, that is an issue that is part of their dispute. They're saying
6 that well, Mr. Simon doesn't get quantum meruit because that's like a
7 contingency fee and there wasn't a written agreement. Fine. Make that
8 argument within the four corners of the adjudication proceeding.

9 That's not a basis for suing a lawyer for conversion. And we provided
10 to the Court, which is still unrefuted and unrebutted by the Edgeworths,
11 the basis for the amount claimed by Mr. Simon. It comes right out of
12 the third restatement of the law governing lawyers that says under
13 quantum meruit, you can ask for market rate. It's -- right in the
14 restatement it says it.

15 And, in fact, that's what happens in Nevada after a lawyer is
16 terminated on the courthouse steps. Because at that moment, there is
17 no contract because the client killed it. Does that mean you can't get a
18 quantum meruit recovery that is the same as if that contingency fee
19 contract still existed. Of course not. There's all sorts of cases, starting
20 with the *Camp* case back in California that talks about lawyers getting
21 their full contingency when they're fired on the courthouse steps.

22 So, that's not some weird, bizarre concept that obviously
23 leads to a conversion case. It's not. And they haven't provided any law
24 that supports that claim. Again, you know, we got the subjective belief.
25 We strenuously believe. Okay. That's good as far as it goes. But what

1 was your belief based upon. You have to provide the basis for the
2 belief. These folks sued Mr. Simon for punitive exemplary damages
3 alleging that he acted maliciously because he filed a lien to resolve an
4 attorney fee dispute. Because he was sued for punitive damages, Mr.
5 Simon was, because he followed the law. That is, by definition,
6 unreasonable.

7 Mr. Greene brought up the argument that fees are not
8 contemplated under NRS 18.015. He's absolutely correct, they're not.
9 It's not mentioned in that statute, but we're not requesting fees under
10 NRS 18.015. That's a red herring. We're requesting fees under 7.085
11 and 18.010(2)(b). Just because 18.015 doesn't have a fee provision in
12 it, doesn't mean you can file frivolous litigation.

13 I think that's it, Your Honor, unless Your Honor has a
14 specific question.

15 THE COURT: I don't have any questions.

16 MR. CHRISTENSEN: Thank you, Your Honor.

17 THE COURT: There's a couple other things I want to look at
18 before I rule on this. I'll issue a ruling on Thursday from chambers.

19 MR. CHRISTENSEN: Judge, can I ask the Court to take a
20 quick look at your April 3rd, 2018 transcripts at Pages 15, 16 and 17.
21 Mr. Greene attached it as Exhibit 2 to his opposition. That just goes to
22 Your Honor's initial finding that all these issues were so intertwined
23 you had to do it all at once.

24 THE COURT: Yes. April 3rd of '18.

25 MR. CHRISTENSEN: It's Exhibit 2 to Mr. Greene's

1 opposition, Your Honor. He attached it.

2 THE COURT: I will do that. Exhibit 2 to the opposition.

3 MR. CHRISTENSEN: Thank you, Your Honor.

4 THE COURT: Okay. I will issue an order from chambers.

5 MR. GREENE: Thank you, Your Honor.

6 THE COURT: Okay. Thank you.

7 [Proceedings concluded at 10:21 a.m.]

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

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/s/Jessica B. Cahill

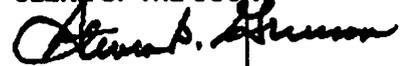
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Maukele Transcriber, LLC

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Jessica B. Cahill, Transcriber CER/CET-708

25



ORDER
JAMES CHRISTENSEN, ESQ.
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Email: jim@christensenlaw.com
Attorney for Daniel S. Simon

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON 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

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

Date of Hearing: 1.15.19
Time of Hearing: 1:30 p.m.

CONSOLIDATED WITH

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

1 This matter came on for hearing on January 15, 2019, in the Eighth Judicial
2 District Court, Clark County, Nevada, the Honorable Tierra Jones presiding.
3 Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a
4 Simon Law (jointly the "Defendants" or "Simon") having appeared by and through
5 their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.;
6 and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
7 "Edgeworths") having appeared through by and through their attorneys of record,
8 the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having
9 considered the evidence, arguments of counsel and being fully advised of the
10 matters herein, the **COURT FINDS** after review:
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14 The Motion for Attorney s Fees is **GRANTED** in part, **DENIED** in part.
15

16 1. The Court finds that the claim for conversion was not maintained on
17 reasonable grounds, as the Court previously found that when the complaint was
18 filed on January 4, 2018, Mr. Simon was not in possession of the settlement
19 proceeds as the checks were not endorsed or deposited in the trust account.
20

21 (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such,
22 Mr. Simon could not have converted the Edgeworths' property. As such, the
23 Motion for Attorney s Fees is **GRANTED** under 18.010(2)(b) as to the Conversion
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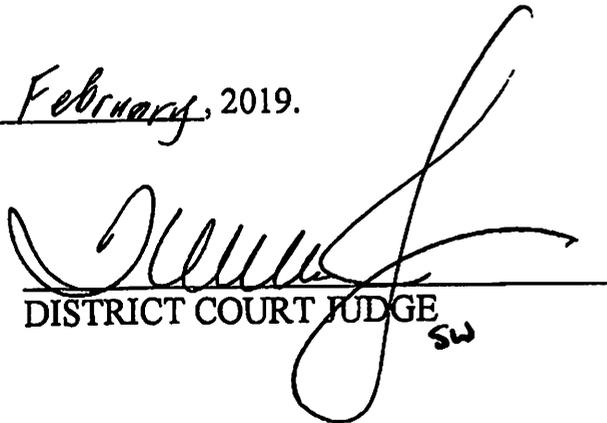
1 claim as it was not maintained upon reasonable grounds, since it was an
2 impossibility for Mr. Simon to have converted the Edgeworths' property, at the
3 time the lawsuit was filed.
4

5 2. Further, the Court finds that the purpose of the evidentiary hearing was
6 primarily for the Motion to Adjudicate Lien. The Motion for Attorney s Fees is
7 DENIED as it relates to the other claims. In considering the amount of attorney's
8 fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and
9 Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against
10 Mr. Simon, on January 4, 2018. However, they were also the attorneys in the
11 evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found
12 was primarily for the purpose of adjudicating the lien asserted by Mr. Simon.
13 The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the
14 purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr.
15 David Clark Esq. were solely for the purposes of defending the lawsuit filed
16 against Mr. Simon by the Edgeworths. As such, the Court has considered all of the
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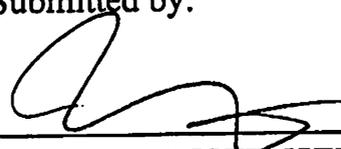
1 factors pertinent to attorney's fees and attorney's fees are GRANTED in the
2 amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

3 IT IS SO ORDERED.

4
5 Dated this 6 day of February, 2019.

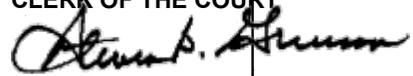
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7
8 
9 DISTRICT COURT JUDGE
SW

10 Submitted by:

11 
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21 
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ORDR

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Attorney for SIMON

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

**AMENDED DECISION AND ORDER
ON SPECIAL MOTION TO DISMISS**

ANTI-SLAPP

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

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

4 3. On April 10, 2016, a house the Edgeworths were building as a
5 speculation home suffered a flood. The house was still under construction and the
6 flood caused a delay. The Edgeworths did not carry loss insurance if a flood
7 occurred and the plumbing company and manufacturer refused to pay for the
8 property damage. A fire sprinkler installed by the plumber, and within the
9 plumber's scope of work, caused the flood; however, the plumber asserted the
10 fire sprinkler was defective and refused to repair or to pay for repairs. The
11 manufacturer of the sprinkler, Viking, et al., also denied any wrongdoing.
12

13 4. In May of 2016, Mr. Simon agreed to help his friend with the flood
14 claim and to send a few letters. The parties initially hoped that Simon drafting a
15 few letters to the responsible parties could resolve the matter. Simon wrote the
16 letters to the responsible parties, but the matter did not resolve. Since the matter
17 was not resolved, a lawsuit had to be filed.
18
19
20

21 5. On June 14, 2016, a complaint was filed in the case of Edgeworth
22 Family Trust; and American Grating LLC vs. Lange Plumbing, LLC; the Viking
23 Corporation; Supply Network Inc., dba Viking Supplynet, in case number A-18-
24 738444-C. The cost of repairs was approximately \$500,000. One of the elements of
25

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

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

10
11 We never really had a structured discussion about how this might be done. I
12 am more that happy to keep paying hourly but if we are going for punitive
13 we should probably explore a hybrid of hourly on the claim and then some
14 other structure that incents both of us to win an go after the appeal that these
15 scumbags will file etc.

16 Obviously that could not have been doen earlier snce who would have
17 though this case would meet the hurdle of punitives at the start.

18 I could also swing hourly for the whole case (unless I am off what this is
19 going to cost). I would likely borrow another \$450K from Margaret in 250
20 and 200 increments and then either I could use one of the house sales for
21 cash or if things get really bad, I still have a couple million in bitcoin I could
22 sell. I doubt we will get Kinsale to settle for enough to really finance this
23 since I would have to pay the first \$750,000 or so back to Colin and
24 Margaret and why would Kinsale settle for \$1MM when their exposure is
25 only \$1MM?

(Def. Exhibit 27).

26 7. During the litigation, Simon sent four (4) invoices to the Edgeworths.
27 The first invoice was sent on December 2, 2016, seven (7) months after the
28 original meeting at Starbucks. This invoice indicated that it was for attorney's fees

1 and costs through November 11, 2016. (Def. Exhibit 8). The total of this invoice
2 was \$42,564.95 and was billed at a "reduced" rate of \$550 per hour. Id. The
3 invoice was paid by the Edgeworths on December 16, 2016.

4 8. On April 7, 2017 a second invoice was sent to the Edgeworths for
5 attorney's fees and costs through April 4, 2017 for a total of \$46,620.69, and was
6 billed at a "reduced" rate of \$550 per hour. (Def. Exhibit 9). This invoice was paid
7 by the Edgeworths on May 3, 2017. There was no indication on the first two
8 invoices if the services were those of Mr. Simon or his associates; but the bills
9 indicated an hourly rate of \$550.00 per hour.
10
11

12 9. A third invoice was sent to the Edgeworths on July 28, 2017 for
13 attorney's fees and costs through July 28, 2017 totaling of \$142,080.20. (Def.
14 Exhibit 10). This bill identified services of Daniel Simon Esq. for a "reduced" rate
15 of \$550 per hour totaling \$104,021.20; and services of Ashley Ferrel Esq. for a
16 "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was paid by
17 the Edgeworths on August 16, 2017.
18
19

20 10. The fourth invoice was sent to the Edgeworths on September 19, 2017
21 in an amount of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being
22 calculated at a "reduced" rate of \$550 per hour for Daniel Simon Esq., \$60,981.25
23 being calculated at a "reduced" rate of \$275 per hour for Ashley Ferrel Esq., and
24 \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for Benjamin
25

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

3 11. The amount of attorney's fees in the four (4) invoices was
4 \$367,606.25, and \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies
5 were paid to Daniel Simon Esq. and never returned to the Edgeworths. The
6 Edgeworths secured very high interest loans to pay fees and costs to Simon. They
7 made Simon aware of this fact.
8

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

13 13. On the evening of November 15, 2017, the Edgeworth's received the
14 first settlement offer for their claims against the Viking Corporation ("Viking").
15 However, the claims were not settled until on or about December 1, 2017.
16

17 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon
18 asking for the open invoice. The email stated: "I know I have an open invoice that
19 you were going to give me at a mediation a couple weeks ago and then did not
20 leave with me. Could someone in your office send Peter (copied here) any invoices
21 that are unpaid please?" (Def. Exhibit 38).
22

23
24
25 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for
the services of Ashley Ferrel; and \$2,887.50 for the services of Benjamin Miller.

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

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

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

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

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

23 (Def. Exhibit 43).
24

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

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

7
8 21. Mr. Edgeworth alleges that the fee agreement with Simon was only
9 for an hourly express agreement of \$550 an hour; and that the agreement for \$550
10 an hour was made at the outset of the case. Mr. Simon alleges that he worked on
11 the case always believing he would receive the reasonable value of his services
12 when the case concluded. There is a dispute over the reasonable fee due to the Law
13 Office of Danny Simon.
14

15
16 22. The parties agree that an express written contract was never formed.

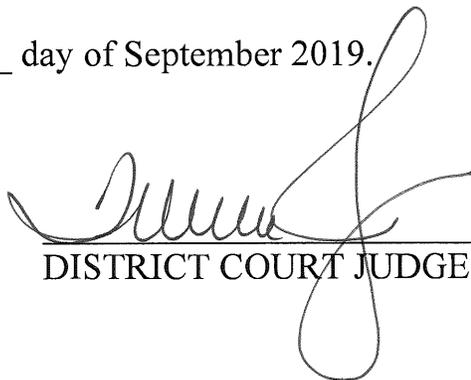
17 23. On December 7, 2017, the Edgeworths signed Consent to Settle their
18 claims against Lange Plumbing LLC for \$100,000.
19

20 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit
21 against Simon in Edgeworth Family Trust; American Grating LLC vs. Daniel S.
22 Simon, the Law Office of Daniel S. Simon, a Professional Corporation, case
23 number A-18-767242-C.
24
25

ORDER

1
2 It is hereby ordered, adjudged, and decreed, that the Special Motion to
3 Dismiss Anti-Slapp is MOOT.

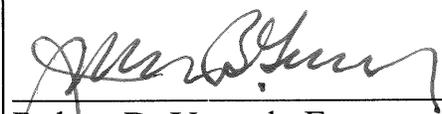
4 IT IS SO ORDERED this ____ day of September 2019.

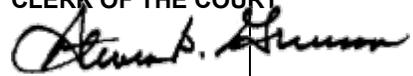
5
6
7 
8 _____
9 DISTRICT COURT JUDGE

10 Respectfully submitted by:
11 **JAMES R. CHRISTENSEN PC**

12 
13 _____
14 James R. Christensen Esq.
15 Nevada Bar No. 3861
16 601 S. 6th Street
17 Las Vegas, Nevada 89101
18 *Attorney for SIMON*

19 Approved as to form and content:
20 **VANNAH & VANNAH**

21 
22 _____
23 Robert D. Vannah, Esq.
24 Nevada Bar No. 2503
25 John B. Greene, Esq.
Nevada Bar No. 4279
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs



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4 Las Vegas, NV 89101
5 (702) 272-0406
6 jim@jchristensenlaw.com
7 *Attorney for Daniel S. Simon*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 EDGEWORTH FAMILY TRUST, and
11 AMERICAN GRATING, LLC
12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE
15 VIKING CORPORATION, a Michigan
16 corporation; SUPPLY NETWORK,
17 INC., dba VIKING SUPPLYNET, a
18 Michigan Corporation; and DOES 1
19 through 5 and ROE entities 6 through
20 10;

21 Defendants.

22 EDGEWORTH FAMILY TRUST;
23 AMERICAN GRATING, LLC

24 Plaintiffs,

25 vs.

26 DANIEL S. SIMON; THE LAW
27 OFFICE OF DANIEL S. SIMON, A
28 PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

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

**OPPOSITION TO THE SECOND
MOTION TO RECONSIDER;
COUNTER MOTION TO
ADJUDICATE LIEN ON REMAND**

Hearing date: 5.27.21
Hearing time: 9:30 a.m.

CONSOLIDATED WITH

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

OPPOSITION TO THE SECOND MOTION FOR RECONSIDERATION

I. Relevant Procedural Overview

Over two years ago, this Court adjudicated the Simon lien and sanctioned the Edgeworths for bringing and maintaining their conversion complaint without reasonable grounds. The Supreme Court affirmed in most respects with instructions to revisit the quantum meruit fee award to Simon and the amount of the sanction levied upon the Edgeworths. The high court then denied the Edgeworths' bid for rehearing. Procedure relevant to the subject motions follows.

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

On January 15, 2021, the Edgeworths filed a petition for rehearing. The Edgeworths again challenged the dismissal of the conversion complaint and the sanction order. The petition did not follow the rules and was rejected.

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

1 On January 26, 2021, the Supreme Court granted leave to the
2 Edgeworths to file an untimely petition for rehearing. *The order granting*
3 *leave to file the untimely petition was not copied to this Court.*
4

5 On March 16, 2021, per the instructions on remand, this Court issued
6 the Amended Decision and Order Granting in Part and Denying in Part,
7 Simon's Motion for Attorney's Fees and Costs ("Attorney Fee Order"). This
8 Court also issued an amended order adjudicating the lien.
9

10 On March 18, 2021, rehearing was denied by the Supreme Court. A
11 corrected order denying rehearing followed on March 22, 2021.
12

13 On March 31, 2021, the Edgeworths filed a motion for reconsideration
14 in district court.
15

16 On April 12, 2021, remitter was issued by the Supreme Court.
17

18 On April 28, 2021, this Court issued the Third Amended Decision and
19 Order on Motion to Adjudicate Lien ("Third Lien Order").
20

21 On May 3, 2021, the Edgeworths filed their second motion for
22 reconsideration.
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1 **II. Summary of Arguments**

2 The second Edgeworth motion for reconsideration addresses the
3 Third Lien Order and the Attorney Fee Order. Simon opposes the motion
4 to reconsider the Third Lien Order, acknowledges the Attorney Fee Order
5 must be refiled; and brings a counter motion to adjudicate the lien and/or
6 reconsider the Third Lien Order regarding the quantum meruit fee award to
7 Simon per the remand instructions.
8
9

10 **A. The Third Lien Order**

11 The Edgeworths' second motion to reconsider the Third Lien Order is
12 without merit. The Edgeworths do not present adequate grounds for
13 reconsideration.
14
15

16 First, the Edgeworths assert they are due reconsideration because
17 they were deprived of "the right to reply" in support of their first motion for
18 reconsideration. The Edgeworths are incorrect. The Edgeworths do not
19 provide a citation to support the claim that the opportunity to reply is a
20 fundamental right. The Edgeworths did not make an offer of proof
21 regarding the reply, and thus did not establish they suffered undue
22 prejudice. Nor did the Edgeworths provide authority that motion practice is
23 required before the Court acts on the remand instructions. In any event,
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1 the Edgeworths have had ample notice and many opportunities to be heard
2 on lien adjudication. Process does not provide a basis for reconsideration.

3
4 Second, the Edgeworths argue for reconsideration by making the
5 claim that a disagreement over the facts underlying the quantum meruit
6 decision amounts to a clear error of law. The argument is poor. A
7 disagreement over facts is not a clear error of law meriting reconsideration.
8
9 The determination of attorney fees under quantum meruit is within the
10 discretion of the district court. As such, the Edgeworths are effectively
11 foreclosed from relief via promotion of their own factual narrative under the
12 abuse of discretion standard. Further, the Edgeworths' frivolous
13 conversion narrative, which they have morphed into an equally frivolous
14 extortion narrative in the current motion, was solidly rejected by this Court
15 and the Supreme Court. The Edgeworths did not provide the substantially
16 different evidence required for reconsideration, they have merely served up
17 different spin.
18
19
20
21

22 Finally, the Edgeworths complain about a scrivener's error regarding
23 costs owed. In doing so, the Edgeworths note but fail to take to heart the
24 "Costs Owed" section of the Third Lien Order which specifically states that
25 costs were paid, and no costs are currently owed. Specific language
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27
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1 controls over general language. Thus, there is no possibility of undue
2 prejudice and no basis to reconsider the Third Lien Order is presented.

3 **B. The Attorney Fee Order**
4

5 The Attorney Fee Order was issued before remittitur. Accordingly,
6 the order must be refiled. The Edgeworths appear to have abandoned their
7 challenge to the conservative amount of fees awarded. As to Clark's costs,
8 Simon has already informed the Edgeworths that only the amount of the bill
9 (\$2,520.00) will be sought. Accordingly, while Simon does not oppose
10 changing the cost number for Clark's fees in the Attorney Fee Order, no
11 prejudice will result to the Edgeworths regardless.
12
13
14

15 **C. Simon's Counter Motion**

16 Whether the counter motion is more properly presented as a motion
17 to adjudicate the lien on remand or as a motion to reconsider, Simon
18 respectfully requests this Court to revisit its quantum meruit decision
19 expressed in the Third Lien Order. Simon requests that the Court abide by
20 the finding affirmed on appeal that the implied contract was discharged and
21 therefore, not enforce the implied payment term for work performed after
22 September 19, 2017. Re-adjudication and/or reconsideration on this point
23 may be had because the use of an implied payment term of a discharged
24 contract as controlling in a fee adjudication is a clear error of law.
25
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1 Simon's counter motion is well-supported by the uncontested
2 declaration of Will Kemp, whom this Court has already recognized as an
3 expert.
4

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

7
8 The Edgeworths' factual arguments are inaccurate and contrary to
9 the Court's affirmed findings. Because the facts are well known, only a
10 brief response follows.
11

12 **A. The Edgeworths have the case file.**

13 The Edgeworths continue their false argument regarding the case file.
14 During lien adjudication, everything Vannah requested was provided, but
15 Vannah did not request the file. (Ex. 1, Day 4 at 26.)
16

17 In 2020, a different Edgeworth lawyer asked for the file and the file
18 was given directly to Brian Edgeworth as requested. (Ex. 2, Ex. 3, & Ex. 4.)
19 As can be seen from the attached correspondence, there were certain
20 matters that were not produced because they were covered by non-
21 disclosure agreements, etc. The privileged items withheld did not present a
22 problem until the Edgeworths filed their second motion for reconsideration
23 when they apparently felt the need for an additional argument.
24
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1 After the Edgeworths filed their second motion for reconsideration,
2 counsel spoke about the file. Letters were exchanged and are attached.
3 (Ex. 5 & 6.) As can be seen from the Simon response, the allegations of
4 stripping emails, etc., are farfetched. (Ex. 6.)

6 In addition, NRS 7.055 applies to a “discharged attorney”. Before
7 admitting to discharge at a point when the Edgeworths thought the change
8 of course might benefit them, the Edgeworths had consistently denied they
9 had discharged Simon, for example at the evidentiary hearing:
10

12 MR. VANNAH: Of course, he’s never been fired. He’s still counsel of
13 record. He’s never been fired.

14 (Ex. 1, Day 4 at 22:1-2.) And before the Supreme Court:

16 Neither the facts nor the law supports a finding of any sort of
17 discharge of Simon by Appellants, constructive or otherwise.

18 (Ex. 7, opening brief excerpt, at 10.)

19 The Edgeworths wasted time and resources on their frivolous no
20 discharge stance; therefore, new sanctions are warranted based on their
21 recent admission that Simon really was discharged. *Capanna v. Orth*, 134
22 Nev. 888, 432 P.3d 726 (2018) (sanctions are appropriate when a claim or
23 defense is maintained without reasonable grounds). Rebutting the
24 Edgeworths’ frivolous no discharge position wasted at least a day of the
25
26
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28

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

3 **B. The November 17 meeting**

4
5 The Edgeworths' description of the November 17 meeting is fanciful
6 and rehashes claims made at the evidentiary hearing which the Court
7 found wanting. The latest version contains factual claims that are not in the
8 findings and are not supported by citation to the record.
9

10 The Edgeworths admitted six times in their opening appeal brief that
11 they were not found to be credible. (Ex. 7 at 11,12,15,18, & 28.) The latest
12 factual claims corroborate the many Edgeworth admissions that they are
13 not credible.
14
15

16 **C. The privileged Viking email of November 21**

17 The November 21 email was sent between two different lawyers
18 representing Viking; accordingly, Simon did not know its contents. The
19 Edgeworths did not disclose how they obtained a privileged email sent
20 between Viking's lawyers. Further, the Edgeworths did not address how
21 they propose the Court could consider this new proffer of evidence years
22 after the evidentiary hearing ended.
23
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1 Nevertheless, the email supports Simon. Simon agrees that Viking
2 was aware confidentiality was an issue and that the confidentiality term was
3 removed after November 21.
4

5 **D. The date of the Viking settlement and release terms**

6 Continuing the lack of credibility theme, the Edgeworths argue: “***all***
7 ***negotiations were complete by November 27***”. (Bold and italics in
8 original.) (2nd Mot., at 12:21-22.) Putting aside that the bolded factual
9 assertion is not supported by what the cited record states, there is a larger
10 problem in that the factual claim is contrary to the findings of this Court.
11

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

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

18 (Ex. 8 at 4:22-24, & Third Lien Order at F.F. #13 at 4:22-24.) A good
19 portion of the second motion for reconsideration dwells on factual claims
20 contrary to the finding (see, e.g., 2nd Mot., at 4:5-6:11), while never
21 mentioning or contrasting finding of fact #13 - which is now the law of the
22 case.
23

24 The Edgeworths have taken so many bites at the evidentiary apple
25 that it is down to the core. They do not get another. This issue is over.
26
27
28

1 **E. The Lange settlement**

2 In a new brand-new factual claim, raised years after the evidentiary
3 hearing, the Edgeworths accuse Simon of slow walking the Lange
4 settlement. The accusation is untimely and unfair, resolution of a complex
5 case takes time. Further, Simon had been fired by the clients, was being
6 frivolously sued by his former clients, and was working via replacement
7 counsel who acknowledged in open court he did not know what was going
8 on:
9
10
11

12 MR. VANNAH: If you take out the form and content, I don't know
13 anything about the case, and I want – I don't know anything about the
14 case – I mean, we're not involved in a case. You understand that,
15 Teddy?

16 MR.PARKER: I do.

17 MR. VANNAH: We – we're not involved a case in any way shape, or
18 form.

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

20 In the November 19, 2018, Lien Order this Court found that Simon
21 was due recognition for improving the position of his former clients. (See,
22 e.g., Ex. 8 at 19:19-20:1.) This aspect of the Lien Order was not
23 challenged on appeal and is now the law of the case. The finding was
24 repeated in the Third Lien Order. (Third Lien Order at 20:8-17.) The
25 Edgeworth assertions are wholly without merit.
26
27
28

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

3 The Edgeworths proclaim that the “only evidence in the record of
4 work Simon claims to have performed post-discharge is set forth in the
5 “super bill”. (2nd Mot., at 9:24-25.) The claim is not true. The Court took
6 days of testimony at the evidentiary hearing regarding work that was done,
7 some of which is cited by the Court in the Third Lien Order. (See, e.g.,
8 Third Lien Order at 18-22.)
9
10

11 Finally, the assertion that only simple acts remained to be addressed
12 is belied by Vannah’s statements, acts, and emails. Vannah openly
13 admitted he was in deep water and needed Simon to close the case. If
14 Vannah, at \$925 dollars an hour, does not feel competent to close out the
15 case, then the work that remained is more than ministerial, just as this
16 Court found.
17
18

19 **G. The Viking settlement drafts**

20 The Edgeworths first raised a complaint over the Viking tender of
21 settlement drafts, instead of a certified check, in their first motion for
22 reconsideration, years after the evidentiary hearing. The grievance is
23 repeated in the second motion. (2nd Mot., at 6:12-2.) The picayune
24 criticism would have been better left unraised because it underscores the
25 weakness of the Edgeworths’ overall position.
26
27
28

1 In addition to being untimely, the complaint is nonsensical. Viking
2 tendered settlement drafts in the proper amount which were deposited and
3 cleared. At worst, the Viking drafts can be seen as falling within the ambit
4 of substitute performance - which is normally not a problem at least when
5 the Edgeworths are not involved. The Edgeworths and Vannah did not
6 raise the settlement drafts as an issue years ago, and the settlement drafts
7 should not be an issue to the Edgeworths and their latest counsel today.
8
9

10 **IV. Argument**

11
12 The Edgeworths did not provide an adequate basis for this Court to
13 grant reconsideration of the Third Lien Order. Reconsideration is rarely
14 granted and only when there is considerably different evidence or a clear
15 error. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga &*
16 *Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.3d 486, 489 (1997) (reconsideration
17 may be granted on rare occasion when there is “substantially different
18 evidence ... or the decision is clearly erroneous”).
19
20
21

22 The Edgeworths’ argument they received inadequate process is
23 unsupported and incorrect. The Edgeworths merely rehash old factual
24 arguments about the inferences to be had from the evidence, they do not
25 present substantially different evidence. Finally, the Edgeworths do not
26
27
28

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

3 **A. The Edgeworths received due process.**
4

5 The Edgeworths claim they did not receive due process and are due
6 reconsideration on that basis, because they only had a short time in which
7 to file a reply. (2nd Mot., at 2:27-3:7 & 10:18-19.) The claim is
8 unsupported, and the Edgeworths do not present cogent argument or
9 relevant authority. Hence, the argument can be ignored. See, *Edwards v.*
10 *Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288
11 n.38 (2006). Similarly, the Edgeworths do not provide argument or
12 authority that additional briefing was contemplated or required on remand.
13
14
15
16 (*Ibid.*)

17
18 Importantly, the Edgeworths do not present an offer of the reply
19 arguments they were deprived of or explain how a reply would have
20 changed the outcome.
21

22 In this case, there were multiple filings and hearings regarding
23 adjudication of the lien. There was a five-day evidentiary hearing and post
24 hearing arguments and motion practice. There was an appeal. The
25 Edgeworths have had more than sufficient notice and a generous
26 opportunity to be heard. See, e.g., *Callie v. Bowling*, 123 Nev. 181, 160
27
28

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

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

5
6 **B. The Edgeworths' latest quantum meruit arguments merely**
7 **rehash or spin prior arguments and evidence.**

8 The Edgeworths argue they are due reconsideration because the
9 Court made a poor factual decision. The argument does not raise to the
10 level required for a district court to grant reconsideration. *Masonry & Tile*
11 *Contractors Ass'n of S. Nevada*, 113 Nev. 737, 741, 941 P.3d 486, 489
12 (reconsideration may be granted on rare occasion when there is
13 "substantially different evidence ... or the decision is clearly erroneous").
14
15

16
17 In support of their request for reconsideration, the Edgeworths argue
18 their latest factual narrative. However, the latest narrative is not based on
19 substantially different evidence, it is based on the latest spin. The
20 Edgeworths do not explain how this Court can ignore its own factual
21 findings which are now law of the case and now find, for example, that
22 Simon "slow walked" the Lange settlement.¹
23
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28 ¹ At the hearing of 2/20/2018, attorney Teddy Parker explained how adding
Vannah to the mix caused some extra steps and delay. (Ex. 9.)

1 The Edgeworths' arguments are exposed by their return yet again to
2 the use of *ad hominin* attacks against Simon. Just as the claim of
3 conversion against Simon was frivolous, so too is the claim of extortion. An
4 attorney is due a reasonable fee. NRS 18.015. An attorney may file a lien
5 when there is a fee dispute. NRS 18.015. The use of a lien is not an
6 ethical violation. NRS 18.015(5). An attorney can take steps to protect
7 themselves and/or to secure a reasonable fee for their work. NRS 18.015
8 & NRPC 1.16(b)(6). The only limit is an attorney cannot seek an
9 unreasonable fee. NRCP 1.5. The expert testimony of Will Kemp stands
10 un rebutted, the fee sought by Simon is reasonable under the market
11 approach. The latest frivolous accusation is simply a continuation of the
12 Edgeworths desire to "punish" Simon.
13
14
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16

17 Here, this Court already found that Simon legitimately used a
18 statutory attorney lien to seek a reasonable fee. This Court already found
19 that Simon's work was exceptional, and the result obtained was impressive.
20 Yet, the Edgeworths frivolously sued Simon for conversion claiming Simon
21 was owed nothing - even though they admitted to already receiving more
22 money than the claim was worth, and that Simon was in fact owed fees and
23 costs. The ill placed trust argument is Simons to use, not the Edgeworths.
24
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1 The Edgeworths did not present substantially different facts, nor did
2 they demonstrate clear error. There is no basis for reconsideration.

3 **C. The cost award**

4
5 The Edgeworths protest the cost language in the conclusion of the
6 Third Lien Order as grounds for reconsideration. Yet, the Edgeworths
7 acknowledge that the costs are correctly found as paid on page 18 of the
8 same order. In so doing the Edgeworths establish that there is no undue
9 prejudice. The order's specific and detailed language on page 18 controls
10 over the general language in the conclusion.
11
12

13 **D. The Attorney Fee Order**

14
15 The Attorney Fee Order needs to be re-filed. Although Simon will
16 only seek the amount Clark billed in any event, Simon has no objection to
17 the correction of the amount of costs related to Clark's fees, \$2,520.00.
18

19 **VI. Conclusion**

20 The motion for reconsideration is without merit. Simon requests the
21 motion be denied and the Edgeworths sanctioned for needlessly extending
22 this case.
23
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1 **II. The Court may Reconsider the Quantum Meruit Award on a**
2 **Claim of Clear Legal Error.**

3 The Court found that Simon worked for the Edgeworths on the
4 sprinkler case on an implied in fact contract; and, that Simon was
5 discharged from the contract on November 29, 2017. (Third Lien Order at
6 9:1-9 & 12:16-17.)
7
8

9 The Court found that Simon was paid under the implied contract
10 through September 19, 2017, and was not paid for considerable work that
11 came after September 19. (Third Lien Order at 14:26-15:3.)
12

13 This Court also concluded that:
14

15 When a lawyer is discharged by the client, the lawyer is no longer
16 compensated under the discharged/breached/repudiated contract,
17 but is paid based on quantum meruit. (Citations omitted.)

18 (Third Lien Order at 18:5-6.) The conclusion coincides with NRS 18.015(2)
19 and case law. The conclusion and the findings were affirmed on appeal.
20 *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800.
21

22 However, the payment term of the repudiated implied contract was
23 enforced for the time worked from September 19 through November 29,
24 2017. Retroactive enforcement of the payment term of a discharged or
25 repudiated contract is not consistent with the finding quoted above, NRS
26 18.015(2) or case law. The conflict with established law creates clear error
27
28

1 needed under *Masonry & Tile Contractors Ass'n of S. Nevada*, 113 Nev.
2 737, 741, 941 P.3d 486, 489, for reconsideration. Simon respectfully
3 submits that the correct path is to use quantum meruit as the measure to
4 compensate Simon for work performed from the date of September 19,
5 2017 forward.
6

7
8 **A. When a fee contract is terminated by the client, the amount of**
9 **the outstanding fee due the attorney is determined by quantum**
10 **meruit.**

11 The Edgeworths discharged Simon on November 29, 2017. Thus,
12 the fee contract was repudiated as of that date. The Edgeworths
13 terminated the fee contract before the lien was served, before funds were
14 paid and before Simon was paid for work dating from September 19, 2017.
15 Therefore, the implied fee contract had been repudiated and was not
16 enforceable when the lien was adjudicated, and the amount Simon should
17 be paid from September 19 is not controlled by the repudiated implied
18 contract.
19
20
21

22 When a lawyer is discharged by the client, the lawyer is no longer
23 compensated under the discharged contract but is paid based on *quantum*
24 *merit*. *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800;
25 *Golightly v. Gassner*, 281 P.3d 1176 (Nev. 2009) (unreported) (discharged
26 attorney paid by *quantum merit* rather than by contingency); *citing, Gordon*
27
28

1 v. *Stewart*, 324 P.3d 234 (1958) (attorney paid in *quantum merit* after client
2 breach of agreement); and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941)(fees
3 awarded in *quantum merit* when there was no agreement).
4

5 This Court cited *Rosenberg* in concluding the Edgeworths fired
6 Simon. *Rosenberg v. Calderon Automation, Inc.*, 1986 Ohio App. LEXIS
7 5460 (1986). In *Rosenberg*, Calderon stopped all communication with his
8 lawyer, Rosenberg, on the eve of a settlement. Rosenberg sought his fees.
9

10 The *Rosenberg* court found that Rosenberg was constructively
11 discharged when Calderon stopped speaking with the lawyer. On the
12 question of compensation, the court found that termination of a contract by
13 a party after part performance of the other party *entitles the performing*
14 *party to elect to recover the value of the labor performed irrespective of the*
15 *contract price. Id.*, at *19. In other words, the lawyer is not held to the
16 payment term of the repudiated contract, but rather receives a reasonable
17 fee under quantum meruit.
18
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22 The Edgeworths did not admit to firing Simon even after they stopped
23 communication and then frivolously sued for conversion. Even as late as
24 the appeal, the Edgeworths denied firing Simon in a transparent gambit to
25 avoid a reasonable fee under quantum meruit. The law is clear that
26 because Simon was fired, Simon's outstanding fee for the work performed
27
28

1 on the sprinkler case after September 19, 2017, is set by quantum meruit,
2 the reasonable value of services rendered as per NRS 18.015(1). Simon
3 respectfully requests this Court use quantum meruit to reach the attorney
4 fee due Simon for work performed after September 19, instead of
5 retroactively applying the payment term of the discharged fee contract.
6

7
8 **B. The quantum meruit award**

9 Will Kemp testified as an expert on product defect litigation, the
10 prevailing market rate for such litigation in the community², and the method
11 of determination of a reasonable fee for work performed on a product case
12 in Las Vegas. Mr. Kemp's credentials are well known, and his opinion was
13 beyond question.
14
15

16 The Edgeworths have gone to ridiculous lengths to punish Simon and
17 extend this dispute, such as hiring counsel at \$925 an hour and filing a
18 frivolous complaint. Yet even the Edgeworths did not attempt an attack on
19 Mr. Kemp; his opinion was so solid, it stood un rebutted.
20
21

22 Mr. Kemp has provided a declaration in which he reviewed his
23 un rebutted opinion in the light of the Supreme Court orders. (Ex. 10) Mr.
24 Kemp responded to the Supreme Court's instructions and explained how
25

26
27 ² The Edgeworths also rely upon the prevailing market rate as a metric for
28 quantum meruit, although they misapply the standard. 1st Mot., at 21:10-
21.

1 his opinion is in agreement. Mr. Kemp also reviewed the *Brunzell* factors
2 and concluded that a reasonable fee under the prevailing market rate of the
3 community for product liability trial counsel from September 19, 2017,
4 through February of 2018, is \$2,072,393.75.
5

6 **III. Conclusion**

7
8 Simon respectfully suggests the Court make a reasonable fee award
9 based on the market rate under quantum meruit for the work performed
10 following September 19, 2017, through February of 2018, in accord with
11 the unrefuted opinion of Will Kemp, which is consistent with the Supreme
12 Court's order of remand.
13

14
15 DATED this 13th day of May 2021.

16 /s/ James R. Christensen
17 JAMES CHRISTENSEN, ESQ.
18 Nevada Bar No. 003861
19 601 S. 6th Street
20 Las Vegas, NV 89101
21 (702) 272-0406
22 (702) 272-0415
23 jim@jchristensenlaw.com
24 *Attorney for Daniel S. Simon*
25
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CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing Opposition and Request for Sanctions; Countermotion was made by electronic service (via Odyssey) this 13th day of May 2021, to all parties currently shown on the Court's E-Service List.

As Dawn Christensen
an employee of
JAMES R. CHRISTENSEN

EXHIBIT 1

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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC, ET AL.,

Defendants.

CASE#: A-16-738444-C

DEPT. X

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON, ET AL.,

Defendants.

CASE#: A-18-767242-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
THURSDAY, AUGUST 30, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

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

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 MR. VANNAH: Of course, he's never been fired. He's still
2 counsel of record. He's never been fired. There's no -- in fact, there's an
3 email telling him that you are still on the case, do a good job.

4 THE COURT: And I've seen that email, Mr. Vannah. So, I
5 mean, we're going to -- I know Mr. Simon's characterization of what
6 happened is he believed he was fired and that is the reason -- based on
7 the reasons that he's already testified to here this morning. But the
8 constructive discharge issue is still an issue that's before this Court that I
9 have yet to decide on.

10 MR. CHRISTENSEN: Correct, Your Honor. And perhaps it
11 was inartful phrasing of the question, but Mr. Simon has already testified
12 that he felt he had been fired --

13 THE COURT: I understand. He testified to the --

14 MR. CHRISTENSEN: -- so that was the gist in which the
15 question was -- was made.

16 THE COURT: Right. And he testified the reasons for which
17 he felt that way.

18 MR. CHRISTENSEN: However, I just for the record I do
19 disagree with Mr. Vannah's characterization.

20 THE COURT: And I know. I mean that's an issue that I'm
21 going to decide as part of what we're having this hearing about, but I
22 understand Mr. Simon believed he was fired, he testified to it, as well as
23 he testified to the reasons for which he was fired. So that's based on Mr.
24 Simon's understanding.

25 BY MR. CHRISTENSEN:

1 pending motions for summary judgment and counter summary
2 judgment. I mean there was just so much going on it was crazy.

3 Q What kind of contact did you receive from Vannah and
4 Vannah to become involved in that process to effect a compromise?

5 MR. VANNAH: Your Honor, let me object again as leading. I
6 never called him to effect a compromise. It's leading. He's testifying as
7 to his theory of the case. He's leading every single question.

8 THE COURT: Well, I mean, I think the -- I mean if he gets to
9 change the first word of that to did, did you receive any communication
10 from Vannah and Vannah?

11 BY MR. CHRISTENSEN:

12 Q Did Vannah and Vannah call?

13 A No.

14 Q Did you receive requests for the file?

15 A Didn't receive a request for the file. I think we had our first
16 meaningful discussion on a conference call with Mr. Vannah, Mr.
17 Greene, yourself, and myself, on December 7th.

18 Q Okay.

19 A I'm sure I had prior conversations, I think you did, too, with
20 Mr. Greene, but they weren't too meaningful because he always had to
21 check with Mr. Vannah.

22 Q What were you doing during that period with regard to the
23 underlying case?

24 A What I was expected to do.

25 MR. VANNAH; I'm sorry --

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[Counsel confer]

MR. VANNAH: Okay. So sounds great.

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

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

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

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

[Counsel confer]

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

MR. CHRISTIANSEN: And then come back.

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

MR. CHRISTIANSEN: Thank you very much.

MR. VANNAH: Thank you, Judge.

THE COURT: Thank you.

MR. CHRISTIANSEN: Judge, thanks for you accommodations.

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MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

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

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



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

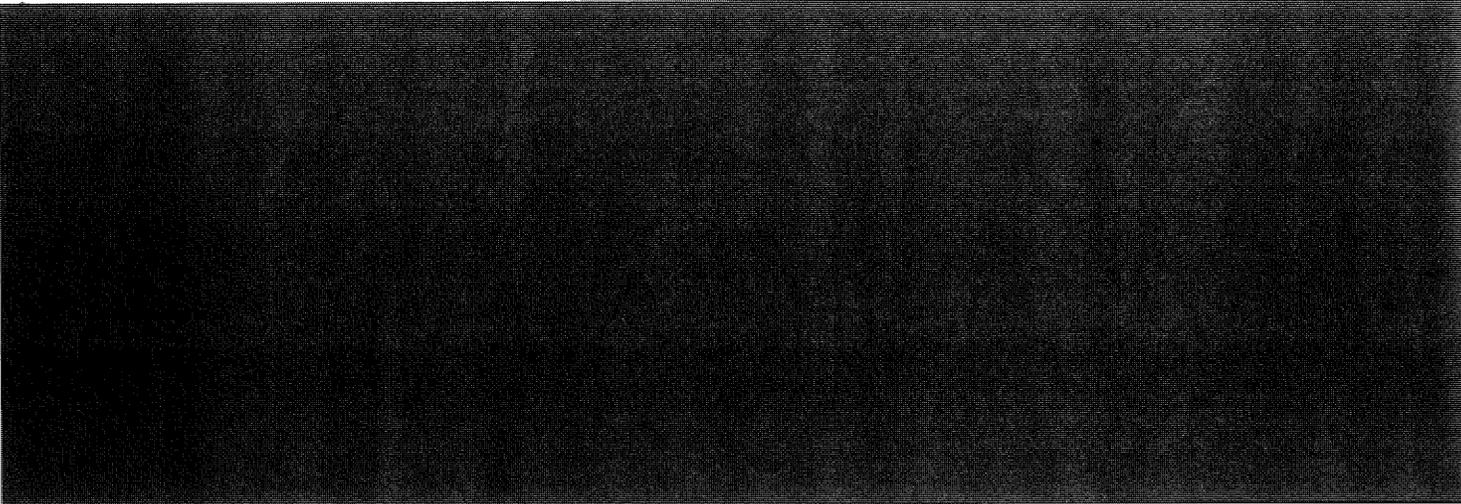
EXHIBIT 2

Ashley Ferrel

From: Kendelee Works <kworks@christiansenlaw.com>
Sent: Sunday, May 17, 2020 4:24 PM
To: Patricia Lee
Cc: Peter S. Christiansen; Jonathan Crain
Subject: Simon v. Edgeworth et al: underlying client file
Attachments: Edgeworth Stipulated Protective Order.pdf; ATT00001.txt

Patricia,

We are in receipt of your Notice of Intent to Bring Motion to Compel Production of Legal File Per NRS 7.055(2). Please note that because the client has not paid for the services rendered, a retaining lien exists under the law. Additionally, the 16.1 conference in this case has not taken place (to date, no Defendant has filed an answer) and thus, Plaintiffs are not yet obligated to produce any documents in the instant litigation. That aside, we are nevertheless willing to work with you and produce the file. Simon Law has expended substantial time getting the file ready and because it is so large, they had to purchase an external hard drive. However, it has come to our attention there exists information in the file that is subject to a protective order that must be addressed prior to disclosure. Please find attached the protective order for the underlying litigation with Viking and Lange. Specifically, please review the notice provision requiring that we notify the underlying defendants of any production of these materials prior to releasing the subject documents. The fact that you are not bound by the protective order, of course, raises concerns. If you have any input on addressing these matters in a professional manner, please let us know at your earliest convenience.



From: Patricia Lee <plee@hutchlegal.com>
Date: May 19, 2020 at 12:01:58 AM PDT
To: Kendelee Works <kworks@christiansenlaw.com>
Cc: "Peter S. Christiansen" <pete@christiansenlaw.com>, Jonathan Crain <jcrain@christiansenlaw.com>
Subject: RE: Simon v. Edgeworth et al: underlying client file

Kendelee: With respect to the Edgeworth defendants, they are presumably bound by the protective order and are absolutely entitled to receive all of the information that makes up their legal file per NRS 7.055. As they are parties to the Protective Order, which does not prevent them from being in possession of this information, we once again maintain that the entirety of the file must be produced prior to the expiration of the 5-day notice. As counsel for the Edgeworths, we will analyze the information produced (once it's finally produced) to determine which portions are arguably within the scope of the executed Protective Order and will conduct ourselves accordingly. In short, the Protective Order cannot be an excuse for withholding the entirety of the file. In closing, we will expect the entirety of the file prior to the expiration of the 5-day notice. Thank you.

Best regards,

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

From: Kendelee Works [mailto:kworks@christiansenlaw.com]
Sent: Sunday, May 17, 2020 4:24 PM
To: Patricia Lee <PLee@hutchlegal.com>
Cc: Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>
Subject: Simon v. Edgeworth et al: underlying client file

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course, raises concerns. If you have any input on addressing these matters in a professional manner, please let us know at your earliest convenience.

Patricia Lee

Partner

[HS

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HUTCHISON & STEFFEN, PLLC

(702) 385-2500

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Ashley Ferrel

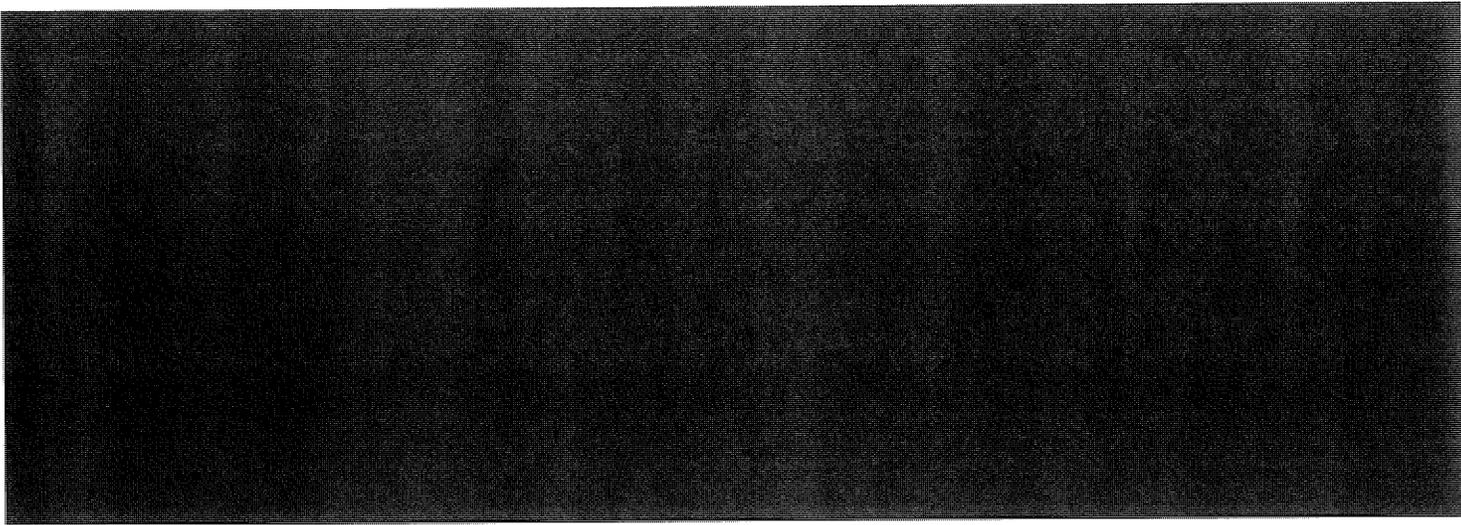
From: Kendelee Works <kworks@christiansenlaw.com>
Sent: Friday, May 22, 2020 9:40 AM
To: Patricia Lee
Cc: Peter S. Christiansen; Jonathan Crain
Subject: Re: Simon v. Edgeworth et al: underlying client file
Attachments: Exhibit A.pdf; ATT00001.htm

Patricia,

We understand that the Edgeworths are a party to the Protective Order and thus, bound by its terms. However, section 7.1 makes clear that a party in receipt of protected materials may only use such documents for prosecuting, defending or attempting to settle the underlying litigation. Confidential protected material may only be disclosed to a party's counsel of record in the underlying litigation. See Section 7.2. Accordingly, despite that we have not received any formal subpoena or document request, we nevertheless contacted the underlying defendants with notice of your request for the protected material. Mr. Parker for Lange Plumbing requested that we not disclose the non-construction documents in the production. Mr. Henriod is contacting his client for further direction prior to disclosure. We anticipate they will require at a minimum, that you and Ms. Carteen execute the Acknowledgment and Agreement to be Bound, which is attached hereto for your reference. Please promptly let us know whether you are willing to sign the Acknowledgment and if so, sign and return executed copies as soon as possible.

We would prefer to resolve this issue amicably and in compliance with the parties' respective obligations under the underlying protective order. However, if you insist upon motion practice, pursuant to NRS 7.055(3), we will deposit the file with the clerk so the Court may adjudicate the Edgeworth's rights to the file, a significant portion of which constitutes confidential, protected material. Please let us know how you wish to proceed.

Thank you,
KLW



From: Patricia Lee <plee@hutchlegal.com>
Date: May 22, 2020 at 4:40:31 PM PDT
To: Kendelee Works <kworks@christiansenlaw.com>
Cc: "Peter S. Christiansen" <pete@christiansenlaw.com>, Jonathan Crain
<jcrain@christiansenlaw.com>
Subject: RE: Simon v. Edgeworth et al: underlying client file

Kendelee: Please arrange to have the file mailed directly to Mr. Edgeworth at the following address:

Brian Edgeowrth
American Grating
1191 Center Point Drive
Henderson, Nevada 89074

You may send the bill for the carrier or postage to my attention for payment, or, alternatively, we can arrange for Fed Ex to pick it up for delivery directly to Mr. Edgeworth, whichever you prefer. As we will not be receiving any portion of the file, my firm does not need to execute a wholesale agreement with respect to the Protective Order. In any event, the terms of the Protective Order itself mandates that Mr. Simon's office return or destroy all CONFIDENTIAL information produced within 60 days of the conclusion of the dispute. My understanding is that the underlying dispute has been concluded for some time. It is therefore unclear what documents you would even still have in your possession that would be deemed "Protected."

In any event, we will not be dispatching anyone to your office as we are carefully minimizing our staff's exposure to third party situations in light of COVID. Please let me know if you would like us to arrange Fed Ex pick up for delivery to Mr.

Edgeworth. Otherwise, please have it mailed via carrier to Mr. Edgeworth and send us the bill for such delivery. Thank you.

Best regards,

From: Kendelee Works [mailto:kworks@christiansenlaw.com]
Sent: Friday, May 22, 2020 3:40 PM
To: Patricia Lee <PLee@hutchlegal.com>
Cc: Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>
Subject: Re: Simon v. Edgeworth et al: underlying client file

The file is ready for pick-up by the Edgeworth's. Please sign and return the Acknowledgment sent this morning prior to having the file picked up so that we may release it without any concerns for our respective clients. The file can be picked up any time before 5:00 p.m. at 810 S. Casino Center Blvd, Las Vegas, Nevada 89101.

Please note that Simon Law has retained internal emails based on relevancy, work product privilege and proportionality. Additionally, at the request of Mr. Parker, the Lange Plumbing Tax Returns are not being produced. If you have additional concerns, you may reach me on my cell anytime: (702) 672-8756.

On May 22, 2020, at 10:28 AM, Patricia Lee <PLee@hutchlegal.com> wrote:

I'm not refusing anything. I'm asking you to please produce my clients' file to them as requested over a month ago. Also, as you know, Lisa is not yet counsel of record on this matter so I'm not sure why you need her signature.

So, to be clear, you will produce the entirety of my clients' legal file today, if I sign the protective order? Alternatively, I would expect that you could produce the non-"confidential" portions of their file without any issues, either way. Thanks!

Best regards,

From: Kendelee Works [mailto:kworks@christiansenlaw.com]
Sent: Friday, May 22, 2020 10:15 AM
To: Patricia Lee <PLee@hutchlegal.com>
Cc: Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>
Subject: Re: Simon v. Edgeworth et al: underlying client file

To be clear, are you refusing to sign off on the Acknowledgment and be bound by the protective order?

On May 22, 2020, at 9:51 AM, Patricia Lee
<PLee@hutchlegal.com> wrote:

Kendelee: You may produce the protected portions of the Edgeworth's file (which, based on the definitions set forth in the Protective Order are likely limited) directly to them as they are under the protective order. We will expect full production of the Edgeworth's legal file today. Thank you.

Best regards,

From: Kendele Works [<mailto:kworks@christiansenlaw.com>]
Sent: Friday, May 22, 2020 9:40 AM
To: Patricia Lee <PLee@hutchlegal.com>
Cc: Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>
Subject: Re: Simon v. Edgeworth et al: underlying client file

Patricia,

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We would prefer to resolve this issue amicably and in compliance with the parties' respective obligations under the underlying protective order. However, if you insist upon motion practice, pursuant to NRS 7.055(3), we will deposit the file with the clerk so the Court may adjudicate the Edgeworth's rights to the file, a significant portion of which constitutes confidential, protected material. Please let us know how you wish to proceed.

Thank you,
KLW

Patricia Lee
Partner



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

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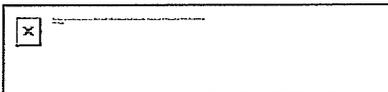
Patricia Lee
Partner



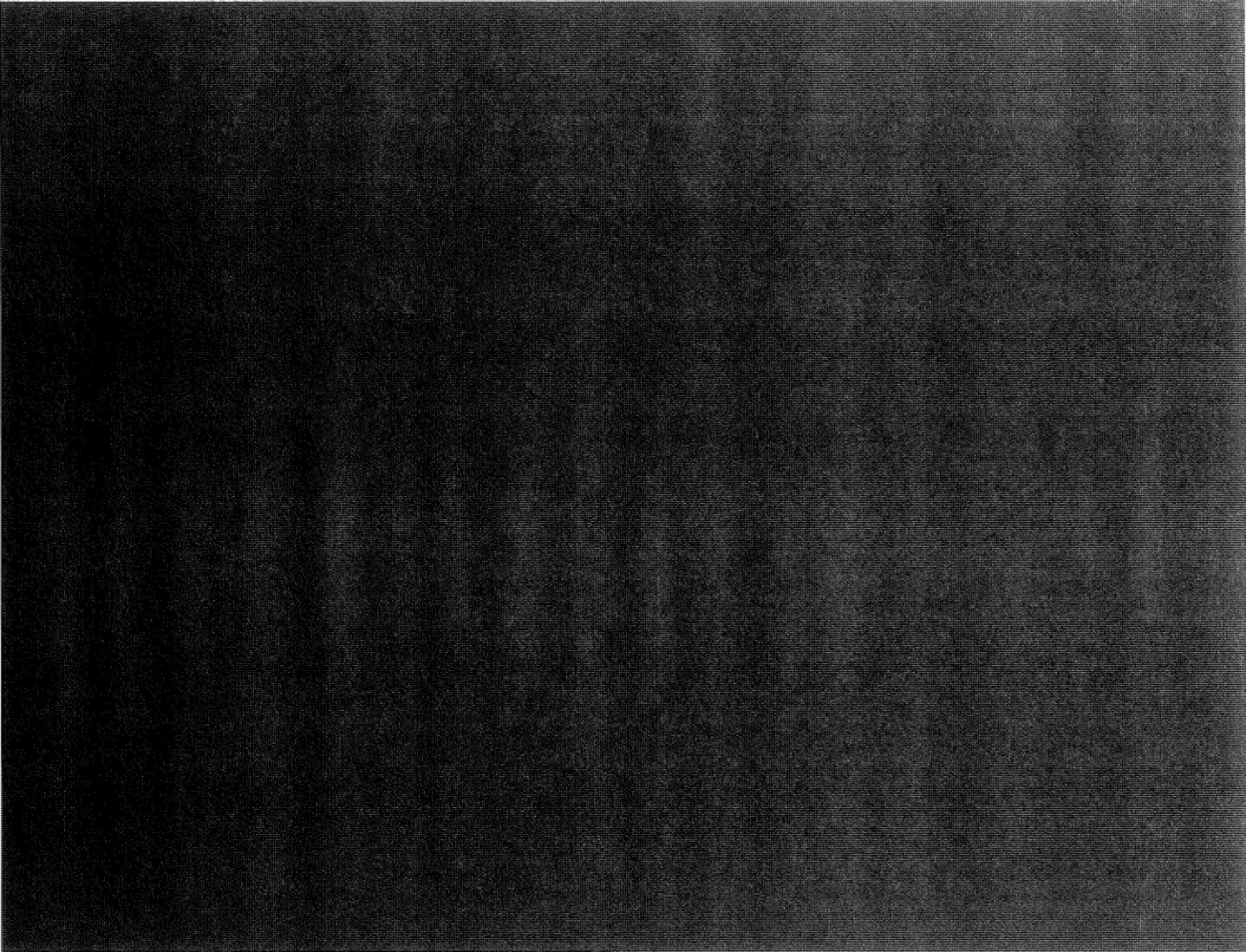
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Patricia Lee
Partner



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com



From: Patricia Lee <PLee@hutchlegal.com>
Subject: RE: **Simon v. Edgeworth et al: underlying client file**
Date: May 27, 2020 at 2:37:51 PM PDT
To: "Peter S. Christiansen" <pete@christiansenlaw.com>
Cc: Jonathan Crain <jcrain@christiansenlaw.com>, Kendelee Works <kworks@christiansenlaw.com>

Mr. Christiansen: We will inform our client that their attorney file, sans documents clearly marked "Confidential," should be received by them shortly. It is my understanding that the "action" to which the Protective Order pertains is the underlying products defect action, not the unrelated attorneys' lien matter which involves different parties and different issues. It is therefore perplexing that you still consider the litigation to which the Protective Order clearly applies, to still be "ongoing." In any event, I appreciate your office finally agreeing to turn over those parts of the file that are not deemed "Confidential," (which is what I suggested at the outset when initially confronted with the "Protective Order") and depositing the balance

with the Court. As for my comment, "I'm not refusing anything," it was not an agreement that I would sign a blanket protective order with language subjecting my firm to liability. If you read the rest of my email, it was actually me that was trying to seek clarification about your firm's position with respect to the Edgeworths' legal file (which was to be produced by the 14th per the agreement of the parties).

As for my demands and threats, they are neither baseless nor "threatening." It is your firm's actions that have triggered the need for repeated extra-judicial intervention by my firm. Indeed, right out of the gate your firm, after waiting 3 months to serve a complaint, ran to court with your "hair on fire" demanding that my clients turn over all of their personal electronic devices for full imaging by a third party, with absolutely zero explanation as to the "emergency" or any explanation as to why extraordinary protocols were even warranted. When I asked about it during our call, you retorted that "this was not the time nor place to discuss these issues." When presented with a different preservation protocol, that still contemplated full imaging of "all" electronic devices, I followed up with a series of clarifying questions, which have gone unanswered by your firm to date.

Next, your firm files a completely untenable opposition to Ms. Carteen's routine *pro hac vice* application, which I tried to resolve with your associate outside of the need for further motion practice, which attempts were solidly rebuffed by your office.

Finally, the simple act of providing a former client with his or her file has somehow become unnecessarily complicated by the introduction of a "Protective Order" which your office insisted that my firm execute prior to the production of the same. The Edgeworths are absolutely entitled to their legal file without the need to propound discovery. Thank you for finally agreeing to send it.

It is clear that your office is taking a scorched earth approach to this litigation in an attempt to inflate costs and wage a war of attrition. Mr. Simon, who is likely the author of many if not all of the pleadings and papers being generated on your end, has the luxury of being an attorney and can therefore better manage and control costs

on his end, and use his abilities to vexatiously multiply the proceedings to the material detriment of my clients.

As I have stated from the first time that you and I spoke on the phone, it is always my goal to work cooperatively with opposing counsel so long as doing so does not prejudice my client. Reciprocally, I would expect the same professionalism on the other end. Thanks Peter.

Best regards,

From: Peter S. Christiansen [<mailto:pete@christiansenlaw.com>]
Sent: Wednesday, May 27, 2020 12:57 PM
To: Patricia Lee <PLee@hutchlegal.com>
Cc: Jonathan Crain <jcrain@christiansenlaw.com>; Kendelea Works <kworks@christiansenlaw.com>
Subject: Re: Simon v. Edgeworth et al: underlying client file

Ms. Lee:

Your erratic and inconsistent emails make responding rationally difficult. You first demanded we turn the Edgeworth file over to you ASAP and followed with a series of threats. When we agreed to turn over the file but noted there was a protective order in place you responded that because your client is bound by the order there should be no issue providing you with the entire file, including the confidential protected material. We then pointed out that use of the confidential material was limited to the underlying litigation and counsel of record in that particular case, which you were not. You then stated you were not refusing to "sign anything," seemingly indicating you would sign the Acknowledgement and agreement to be bound. When we sent the Stip for you to sign you then pivoted and DEMANDED we send the entire file to the Edgeworths via mail b/c your office is observing covid protocol (which is funny in light of your ridiculous timed demands for the file forcing my office to work).

While we are willing to provide the Edgeworth's with their file (despite that discovery has not yet begun and there remains a charging lien in place), my client is bound by a protective order which it has become apparent you are attempting to circumvent (perhaps in an attempt to conjure up another baseless counterclaim or frivolous accusations against my client). Further, you stated that it was your understanding that the underlying dispute has been concluded for some time and you are unclear what documents we would have in our possession that would be deemed "protected." Your understanding is incorrect. Pursuant to the protective order, these documents are only supposed to be destroyed within 60 days of the final

disposition of the "action." Since the fee dispute litigation is ongoing, these documents have not been destroyed.

As a result, we will mail the Edgeworths the file without the protected confidential material. If you want to sign the Acknowledgment and agree to be bound, we will produce the entire file. Short of that, we intend to deposit the balance of the file with the clerk and seek the court's guidance as to how to proceed. That will of course require input from counsel for both Lange and Viking (Mr. Parker and Mr. Henriod).

Lastly, please refrain from any further baseless demands, threats and personal attacks in this matter. We prefer to proceed professionally so that we may all litigate this case on the merits.

Thanks,

PSC

Peter S. Christiansen, Esq.
Christiansen Law Offices
810 S. Casino Center Boulevard
Las Vegas, NV 89101
Phone (702) 240-7979
Fax (866) 412-6992

This email is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If the reader of this email is not the intended recipient, or the employee or agent responsible for delivering the email to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

From: Patricia Lee <PLee@hutchlegal.com>
Sent: Wednesday, May 27, 2020 8:52 AM
To: Kendelee Works
Cc: Peter S. Christiansen; Jonathan Crain
Subject: Re: Simon v. Edgeworth et al: underlying client file

Please confirm that you have mailed the Edgeworth's legal file.

Best regards,

Sent from my iPhone

On May 22, 2020, at 3:40 PM, Kendelee Works
<kworks@christiansenlaw.com> wrote:

The file is ready for pick-up by the Edgeworth's. Please sign and return the Acknowledgment sent this morning prior to having the file picked up so that we may release it without any concerns for our respective clients. The file can be picked up any time before 5:00 p.m. at 810 S. Casino Center Blvd, Las Vegas, Nevada 89101.

Please note that Simon Law has retained internal emails based on relevancy, work product privilege and proportionality. Additionally, at the request of Mr. Parker, the Lange Plumbing Tax Returns are not being produced. If you have additional concerns, you may reach me on my cell anytime: (702) 672-8756.

On May 22, 2020, at 10:28 AM, Patricia Lee
<PLee@hutchlegal.com> wrote:

I'm not refusing anything. I'm asking you to please produce my clients' file to them as requested over a month ago. Also, as you know, Lisa is not yet counsel of record on this matter so I'm not sure why you need her signature.

So, to be clear, you will produce the entirety of my clients' legal file today, if I sign the protective order? Alternatively, I would expect that you could produce the non-"confidential" portions of their file without any issues, either way. Thanks!

Best regards,

From: Kendelee Works
[<mailto:kworks@christiansenlaw.com>]
Sent: Friday, May 22, 2020 10:15 AM
To: Patricia Lee <PLee@hutchlegal.com>

Cc: Peter S. Christiansen <pete@christiansenlaw.com>;
Jonathan Crain <jcrain@christiansenlaw.com>
Subject: Re: Simon v. Edgeworth et al: underlying client
file

To be clear, are you refusing to sign off on the
Acknowledgment and be bound by the protective
order?

On May 22, 2020, at 9:51 AM,
Patricia Lee
<PLee@hutchlegal.com> wrote:

Kendelee: You may produce
the protected portions of the
Edgeworth's file (which, based
on the definitions set forth in
the Protective Order are likely
limited) directly to them as
they are under the protective
order. We will expect full
production of the Edgeworth's
legal file today. Thank you.

Best regards,

From: Kendelee Works
[mailto:kworks@christiansenlaw.com]
Sent: Friday, May 22, 2020 9:40 AM
To: Patricia Lee
<PLee@hutchlegal.com>
Cc: Peter S. Christiansen
<pete@christiansenlaw.com>; Jonathan
Crain <jcrain@christiansenlaw.com>
Subject: Re: Simon v. Edgeworth et al:
underlying client file

Patricia,

We understand that the Edgeworths
are a party to the Protective Order
and thus, bound by its
terms. However, section 7.1 makes
clear that a party in receipt of
protected materials may only use

such documents for prosecuting, defending or attempting to settle the underlying litigation. Confidential protected material may only be disclosed to a party's counsel of record in the underlying litigation. See Section 7.2. Accordingly, despite that we have not received any formal subpoena or document request, we nevertheless contacted the underlying defendants with notice of your request for the protected material. Mr. Parker for Lange Plumbing requested that we not disclose the non-construction documents in the production. Mr. Henriod is contacting his client for further direction prior to disclosure. We anticipate they will require at a minimum, that you and Ms. Carteen execute the Acknowledgment and Agreement to be Bound, which is attached hereto for your reference. Please promptly let us know whether you are willing to sign the Acknowledgment and if so, sign and return executed copies as soon as possible.

We would prefer to resolve this issue amicably and in compliance with the parties' respective obligations under the underlying protective order. However, if you insist upon motion practice, pursuant to NRS 7.055(3), we will deposit the file with the clerk so the Court may adjudicate the Edgeworth's rights to the file, a significant portion of which constitutes confidential, protected material. Please let us know how you wish to proceed.

Thank you,
KLW

Patricia Lee
Partner



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

Patricia Lee
Partner



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

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Patricia Lee
Partner

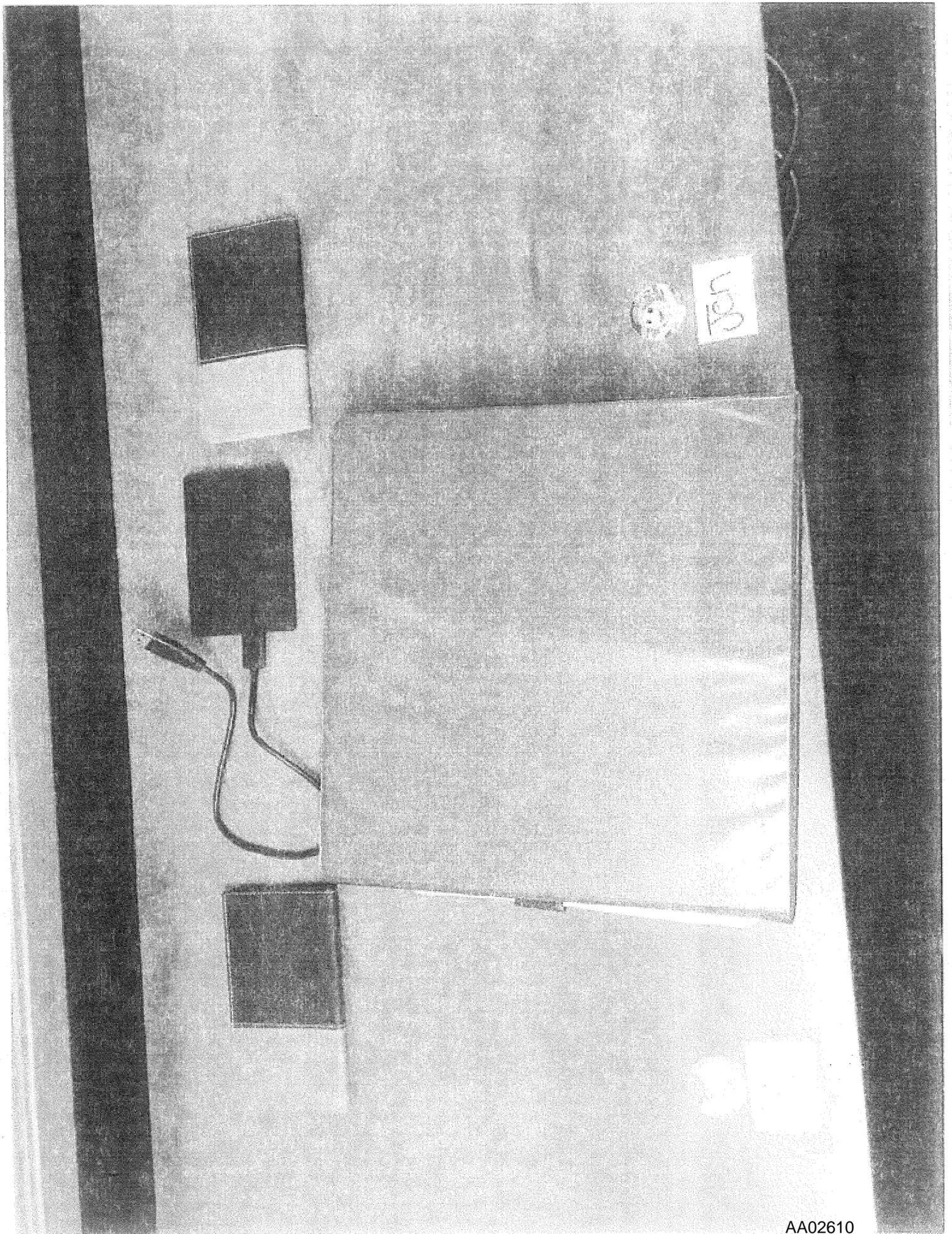


HUTCHISON & STEFFEN, PLLC
(702) 385-2500
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Patricia Lee
Partner

EXHIBIT 3



AA02610

EXHIBIT 4



Dear Customer,

The following is the proof-of-delivery for tracking number: 393277379817

Delivery Information:

Status:	Delivered	Delivered To:	
Signed for by:	M.BRIAN	Delivery Location:	
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday; No Signature Required		HENDERSON, NV,
		Delivery date:	May 28, 2020 10:16

Shipping Information:

Tracking number:	393277379817	Ship Date:	May 27, 2020
		Weight:	
Recipient:		Shipper:	
HENDERSON, NV, US,		LAS VEGAS, NV, US,	

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

AA02612



TRACK ANOTHER SHIPMENT

393277379817

ADD NICKNAME



Delivered
Thursday, May 28, 2020 at 10:16 am



DELIVERED

Signed for by: M.BRIAN

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM
LAS VEGAS, NV US

TO
HENDERSON, NV US

Travel History

TIME ZONE
Local Scan Time

Thursday, May 28, 2020

10:16 AM HENDERSON, NV Delivered

Shipment Facts

TRACKING NUMBER

393277379817

SERVICE

FedEx Priority Overnight

SPECIAL HANDLING SECTION

Deliver Weekday, No Signature Required

SHIP DATE

5/27/20 ?

ACTUAL DELIVERY

5/28/20 at 10:16 am

EXHIBIT 5

MORRIS LAW GROUP

ATTORNEYS AT LAW

801 S. RANCHO DR., STE. B4
LAS VEGAS, NV 89106
TELEPHONE: 702/474-9400
FACSIMILE: 702/474-9422
WEBSITE: WWW.MORRISLAWGROUP.COM

May 4, 2021

VIA EMAIL: jim@jchristensenlaw.com

James R. Christensen
601 S. 6th Street
Las Vegas, NV 89101

Re: *Eighth Judicial District Court Case No. A-16-738444-C*

Dear Jim:

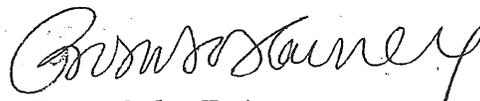
As discussed in our call, please consider this formal demand, pursuant to NRS 7.055, that your client provide mine with the complete client file in the above-referenced case. I understand Mr. Simon (or someone on his behalf) previously provided portions of the file to Mr. Edgeworth, however, the file provided is incomplete.

Among the items missing are all attachments to emails included in the production, all correspondence, including email, with third-parties regarding the settlement of the Viking and Lange Plumbing claims, other drafts of the settlement agreements, communications regarding experts, including the expert reports themselves, all research conducted and/or research memos prepared on behalf of and paid by my clients.

NRS 7.055 is unambiguous that an attorney must, "upon demand and payment of the fee due from the client, deliver to the client all papers, documents, pleadings, and *items of tangible personal property which belong to or were prepared for that client.*"

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Rosa Solis-Rainey

EXHIBIT 6

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

May 7, 2021

Via E-Mail

Rosa Solis-Rainey
Morris Law Group
801 S. Rancho Drive Suite B4
Las Vegas, NV 89106
rsr@morrislawgroup.com

Re: Edgeworth v. Viking and related matters

Dear Ms. Solis-Rainey:

Thank you for your letter of May 4, 2021, concerning the case file. At the outset, it is doubtful that NRS 7.055 applies because the full fee has not yet been paid, and recent motion practice may further delay payment of the fee. That said, as discussed last year, my client is willing to reasonably comply within the bounds of the law, which has been done.

There was a good deal of discussion last year regarding the impact of a non-disclosure agreement (NDA) on providing discovery information and expert reports which relied upon, cited to, and incorporated discovery subject to the NDA. I was not involved in the file production last year, but I have reviewed the correspondence. A fair reading seems to be that the NDA counterparties reaffirmed their position, the Edgeworths and their counsel declined to be bound by the NDA, and as a result it was agreed that items subject to an NDA would not be provided. If there has been a change in position on being bound by an NDA, or if you want to discuss the prior agreement, please let me know.

I need some clarification on the email attachment request. There are thousands of emails. Many emails repeat the same attachment in a forward or a reply. Further, it is believed that all the attachments have been provided, although multiple copies have not been provided each as a specific attachment to a particular email. For example, please review the first motion for reconsideration filed this year and the opposition. Your client argued that a stipulation and order attached to an email had been intentionally withheld. Of course, the argument was groundless. The stipulation and order had been signed by the court and was a matter of public record and is in the file produced. At some point, reasonableness and proportionality must be considered. Perhaps if you could provide some specificity.

I will confer with my client on the research and draft settlement agreements and get back to you.

Lastly, the file is quite large, I would be surprised if no gaps existed.

I will speak with my client and provide a further response per above next week. Please clarify your NDA position and provide some specificity to the attachment request.

I believe that covers all the areas raised. If not, please let me know.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

JAMES R. CHRISTENSEN

JRC/dmc
cc: Client(s)

EXHIBIT 7

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 08 2019 11:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

EDGEWORTH FAMILY TRUST;
AND AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

Supreme Court Case

**No. 77678 consolidated with No.
78176**

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

APPEAL FROM FINAL JUDGMENTS ENTERED FOLLOWING
EVIDENTIARY HEARING
THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA
THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

APPELLANTS' OPENING BRIEF



ROBERT D. VANNAH, ESQ.
Nevada State Bar No. 2503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
VANNAH & VANNAH
400 South Seventh Street, 4th Floor
Las Vegas, Nevada 89101
*Attorneys for Appellants/Cross
Respondents*
EDGEWORTH FAMILY TRUST;
AND, AMERICAN GRATING, LLC

The District Court further decided Simon was “entitled to a reasonable fee in the amount of \$200,000.” *AA, Vol. 2, 000370-000373*. Appellants contest the District Court’s constructive discharge determination and appeal the its determination of the \$200,000 amount. Why?

Neither the facts nor the law supports a finding of any sort of discharge of Simon by Appellants, constructive or otherwise. Appellants needed him to complete his work on their settlements, and he continued to work and to bill. *AA, Vols. 1 & 2 000301:4-11; 000159-163, 000263-000265*. Plus, the amount of the awarded fees doesn’t have a nexus to reality or the facts. Could there be a better barometer of truth of the reasonable value of Simon’s work in wrapping up the ministerial tasks of the Viking and Lange cases for those five weeks than the work he actually performed? No.

When it became clear to him that his Plan A of a contingency fee wasn’t allowed per NRPC 1.5(c), Simon adopted Plan Zombie (“Z”) by creating a “super bill” that he spent weeks preparing that contains every entry for every item of work that he allegedly performed from May 27, 2016 (plus do-overs; add-ons; mistakes; etc.), through January 8, 2018. *AA, Vols 1 & 2 000053-000267*. It also contains some doozies, like a 23-hour day billing marathon, etc. *Id., Vols 1 & 2 000159-000163; 000263-000265* All of the itemized tasks billed by Simon and Ms. Ferrel (at \$550/\$275 per hour, respectively) for that slim slot of time total **\$33,811.25**. *Id.*

How is it less than an abuse of discretion to morph \$33,811.25 into \$200,000 for five weeks of nothing more than mop up work on these facts?

E. The District Court's Dismissal of Appellants' Amended Complaint

Settlements in favor of Appellants for substantial amounts of money were reached with the two flood defendants on November 30 and December 7, 2017. *AA, Vol 3 000518-3:22-25, 000518-4:1-6*. But Simon wrongfully continued to lay claim to nearly \$1,977,843 of Appellants' property, and he refused to release the full amount of the settlement proceeds to Appellants. *AA, Vols. 1 & 2 000006; 000300*. When Simon refused to release the full amount of the settlement proceeds to Appellants, litigation was filed and served. *AA, Vols. 1 & 2 000014; 000358:10-12*.

Appellants filed an Amended Complaint on March 15, 2018, asserting Breach of Contract, Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith and Fair Dealing. *AA, Vol. 2 000305*. Eight months later, the District Court dismissed Appellants' Amended Complaint. *Id., 000384:1-4*. In doing so, the District Court ignored the standard of reviewing such motions by disbelieving Appellants and adopting the arguments of Simon. Therefore, Appellants appeal the District Court's decision to dismiss their Amended Complaint. *AA, Vol. 2 000425-000426*.

F. The District Court's Award of \$50,000 in Attorney's Fees and \$5,000 in Costs

After Simon filed a Motion for Attorney's Fees and Costs, the District Court awarded Simon \$50,000 in attorney's fees and \$5,000 in costs. *AA, Vol. 2 000484:1-2*. The District Court again ignored the standard of review, believed Simon over Appellants, and held that the conversion claims brought against Simon were maintained in bad faith. *AA, Vol 2 000482:16-23*. The District Court awarded these fees and costs without providing any justification or rationale as to the amounts awarded. *Id., at 000484*. Appellants appealed the District Court's decision to award \$50,000 attorney's fees and \$5,000 costs. *AA, Vol 2 000485-000486*.

G. The Amounts in Controversy

Appellants have no disagreement with the District Court's review of all of Simon's invoices from May 27, 2016, through January 8, 2018. Specifically, it reviewed Simon's bills and determined that the reasonable value of his services from May 27, 2016, through September 19, 2017, was \$367,606.25. *AA, Vol 2000353-000374*. Appellants paid this sum in full. *Id., 000356*. It also determined that the reasonable value of Simon's services from September 20, 2017, through November 29, 2017, was \$284,982.50. *Id., 000366-000369*. Appellants do not dispute this award, either. In reaching that conclusion and award, the District Court

reviewed all, and rejected many, of Simon's billing entries on his "super bill" for a variety of excellent reasons. *Id.*, 000366-000369; 000374.

Appellants do, however, dispute the award of a bonus in the guise of fees of \$200,000 to Simon from November 30, 2017, through January 8, 2018. In using the same fee analysis the District Court applied above, Simon would be entitled to an additional \$33,811.25, which reflects the work he actually admits he performed, for a difference of \$166,188.75. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265*. Appellants also dispute the \$50,000 in fees and \$5,000 in costs awarded to Simon when the District Court wrongfully dismissed Appellants' Amended Complaint, etc.

Finally, Appellants assert that once Simon's lien was adjudicated in the amount of \$484,982.50, with Simon still holding claim to \$1,492,861.30, he is wrongfully retaining an interest in \$1,007,878.80 of Appellants funds. *AA, Vol. 2 000415-000424*. That's an unconstitutional pre-judgment writ of attachment. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969).

IV. PROCEDURAL OVERVIEW:

Simon filed a Motion to Adjudicate his \$1,977,843.80 lien on January 24, 2018. *AA, Vols. 1 & 2 000025-000276*. Appellants opposed that Motion. *AA, Vol. 2 000277-000304*. The District Court set an evidentiary hearing over five days on this lien adjudication issue. *AA, Vol. 3 000488*. Appellants argued there was no

basis in fact or law for Simon's fugitive attorney's liens, or his Motion to Adjudicate Attorney's Lien, and that the amount of Simon's lien was unjustified under NRS 18.015(2). *AA, Vol. 2 000284: 21-27*. Appellants further argued that there was in fact an oral contract for fees between Simon and Appellants consisting of \$550/hr for Simon's services that was proved through the testimony of Brian Edgeworth and through the course of consistent performance between the parties from the first billing entry to the last. *Id., 000284-000292*.

The District Court found that Simon asserted a valid charging lien under NRS 18.015. *AA, Vol. 2 000358: 18-28*. The District Court also determined that November 29, 2017, was the date Appellants constructively discharged Simon. *Id.* As a result, the District Court found that Simon was entitled to quantum meruit compensation from November 30, 2017, to January 8, 2018, in the amount of \$200,000. *Id., 000373-000374*.

**A. Simon's Motion to Dismiss Amended Complaint Under
NRS 12(B)(5)**

Simon filed a Motion to Dismiss Appellants' Amended Complaint pursuant to NRCPC 12(b)(5). Appellants opposed Simon's Motion and argued that the claims against Simon were soundly based in fact and law. *AA, Vol. 2 000344-000351*. Appellants also stressed that Nevada is a notice-pleading jurisdiction, which the Amended Complaint had clearly met the procedural requirement of asserting "a

short and plain statement of the claim showing that the pleader is entitled to relief....” *NRCP 8(a)(1). AA, Vol. 2 000343.*

However, the District Court chose to believe Simon and dismissed Appellants’ Amended Complaint in its entirety. *AA, Vol. 2 000384.* The District Court noted that after the Evidentiary Hearing and in its Order Adjudicating Attorney’s Lien, no express contract was formed, only an implied contract existed, and Appellants were not entitled to the full amount of their settlement proceeds. *Id.* Yet, whose responsibility was it to prepare and present the fee agreement to the clients—Appellants—for signature? Simon’s. Whose fault—invited error—was it that it wasn’t? Simon’s, of course, as he’s the lawyer in the relationship. *NRPC 1.5(b).* Regardless, the District Court dismissed Appellants’ Amended Complaint. *AA, Vol. 2 000384.* It did so without allowing any discovery and barely eight months after it was filed. *AA, Vol. 2 000381, 000384.*

B. Simon’s Motion for Attorney’s Fees and Costs

Simon filed a Motion for Attorney’s Fees and Costs on December 7, 2018. Appellants opposed Simon’s Motion, arguing their claims against Simon were maintained in good faith. *AA, Vol. 2 000437-000438.* They further argued it would be an abuse of discretion for the District Court to award Simon attorney’s fees when such fees were substantially incurred as a result of the evidentiary hearing to adjudicate Simon’s own lien and conduct, namely his exorbitant \$1,977,843.80

attorney's lien. *AA, Vol. 2 000432-000435*. The District Court awarded Simon \$50,000 in fees under NRS 18.010 (2)(b), and \$5,000 in costs, but providing no explanation in its Order as to the amount of the award. *Id.*

V. STANDARD OF REVIEW:

A. Adjudicating Attorney's Liens - Abuse of Discretion:

A district court's decision on attorney's lien adjudications is reviewed for abuse of discretion standard. *Frank Settlemeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1215 (2008). An abuse of discretion occurs when the court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

B. Motions to Dismiss – de novo Review

An order on a motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). De novo review requires a matter be considered anew, as if it had not been heard before and as if no decision had been rendered previously. *United States v. Silverman*, 861 F.2d 571, 576 (9th Cir.1988).

C. Motions for Attorney's Fees and Costs – *Abuse of Discretion*

A district court's decision on an award of fees and costs is reviewed for an abuse of discretion. *Gunderson v. D.R. Norton, Inc.*, 130 Nev. 67, 319 P.3d 606, 615 (2014); *LVMPD v. Yeghiazarian*, 129 Nev 760, 766, 312 P.3d 503, 508 (2013). An abuse of discretion occurs when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are “clearly erroneous or not supported by substantial evidence” can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

VI. SUMMARY OF ARGUMENTS:

There was no basis in fact or law for the content of Simon's fugitive lien, as its amount was never *agreed upon* by the attorney and the client under NRS 18.015(2). *Id.* In fact, there was a clear fee agreement between Appellants and Simon whereby Simon was to represent Appellants in the flood lawsuit in exchange for an hourly fee of \$550. *Id.* Upon settlement of the underlying case, when Simon refused to hand over Appellants' settlement funds post lien-adjudication, effectively retaining \$1,492,861.30 of Appellants' undisputed funds, a conversion of Appellants' settlement funds had taken place. And still does today.

Reviewing the District Court's Order Dismissing Appellants' Amended Complaint *de novo*, it is clear the District Court committed reversible legal error when it: 1.) Used the wrong legal standard when analyzing the Amended Complaint; 2.) Failed to accept all of Appellants' factual allegations in the complaint as true; and, 3.) Failed to draw all inferences in favor of Appellants. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Rather than follow the law, the District Court did just the opposite here by ignoring the law, believing Simon's story, and drawing all inference in favor of Simon. That can't be allowed to stand.

To make the abuse of discretionary matters worse, when Simon moved for attorney's fees and costs on December 7, 2018, the District Court wrongfully awarded Simon another \$50,000 pursuant to NRS 18.010(2)(b), and \$5,000 in costs. *AA, Vol. 2 000484:1-2*. The \$50,000 award was a manifest abuse of discretion, as it was predicated on the District Court's: 1.) Abuse of discretion by dismissing Appellants' Amended Complaint in the first place by applying the exact opposite standard of ignoring Appellants' allegations and inferences and believing Simon; 2.) Inaccurately finding that Appellants' conversion claim was maintained in bad faith; and, 3.) Failure to consider the *Brunzell* factors. *Hornwood v. Smith's Food King No. 1*, 807 P2d 209 (1991) And in its Order awarding \$50,000 in fees

VIII. CONCLUSION/ RELIEF SOUGHT:

The District Court committed clear and reversible error when it applied the wrong standard in considering Simon's Motion to Dismiss. When it should have considered all of Appellants' allegations and inferences as true, the District Court did just the opposite and believed Simon.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional \$50,000 in fees and \$5,000 in costs while dismissing Appellants' Amended Complaint, a pleading that never should have been dismissed to begin with. Even so, these fees were awarded without the requisite analysis that Nevada law requires.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional \$200,000 in fees under the guise of the equitable remedy of quantum meruit and its plus one, an attorney's "charging" lien. The facts are clear that Simon was never discharged and never acted as such, at least through the conclusion of the flood litigation. Instead, he continued to work the case through January 8, 2018, continued to represent Appellants, completed the ministerial work to close out the flood case, and billed for all his efforts.

Plus, quantum meruit is an equitable remedy and equity requires clean hands. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992);

requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the reporter's transcript or appendix, where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of August, 2019.

VANNAH & VANNAH



ROBERT D. VANNAH, ESQ.

Nevada Bar No. 002503

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400 South Seventh Street, Fourth Floor

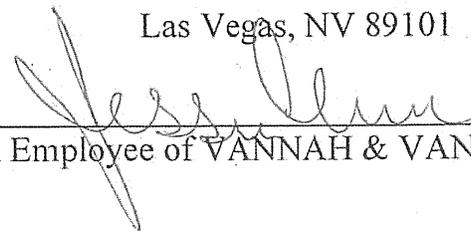
Las Vegas, Nevada 89101

(702) 369-4161

CERTIFICATE OF SERVICE

Pursuant to the provisions of NRAP, I certify that on the 8th day of August, 2019, I served **APPELLANTS' OPENING BRIEF** on all parties to this action, electronically, as follows:

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, P.C.
601 S. 6th Street
Las Vegas, NV 89101



An Employee of VANNAH & VANNAH

EXHIBIT 8

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ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

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

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

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

7
8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

15 I could also swing hourly for the whole case (unless I am off what this is
16 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.

17 I doubt we will get Kinsale to settle for enough to really finance this since I
18 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?

19
20 (Def. Exhibit 27).

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

26 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
27 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16
17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

- 24 1. An attorney at law shall have a lien:
25 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
26 damages, which has been placed in the attorney's hands by a client for suit or
collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

29 Id.

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

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

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

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Implied Contract

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

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

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

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

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5
6 *Costs Owed*

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

14
15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) Whether the client is liable for expenses regardless of outcome;

2 (4) That, in the event of a loss, the client may be liable for the
3 opposing party's attorney fees, and will be liable for the opposing party's
4 costs as required by law; and

5 (5) That a suit brought solely to harass or to coerce a settlement may
6 result in liability for malicious prosecution or abuse of process.

7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
8 with a written statement stating the outcome of the matter and, if there is a
9 recovery, showing the remittance to the client and the method of its
10 determination.

11 NRCP 1.5.

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

23 CONCLUSION

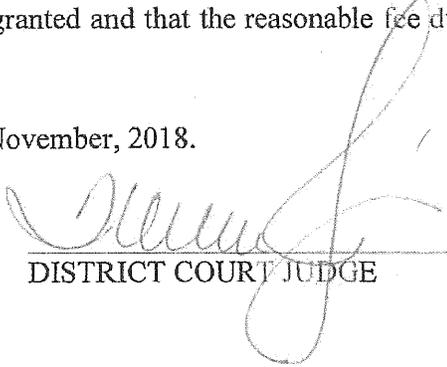
24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
27 Edgeworths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

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

9
10 **ORDER**

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

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

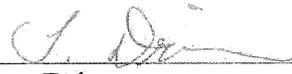
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17 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

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

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



Tess Driver
Judicial Executive Assistant
Department 10

EXHIBIT 9

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST,

Plaintiff,

vs.

LANGE PLUMBING, LLC,

Defendant.

CASE NO. A-16-738444-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

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

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

THEODORE PARKER, ESQ.

For Daniel Simon:

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

For the Viking Entities:

JANET C. PANCOAST, ESQ.

Also Present:

DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 THE COURT: Okay.

2 MR. SIMON: I have two issues. The Edgeworth's have
3 signed the releases.

4 THE COURT: Okay.

5 MR. SIMON: Mr. Vannah and Mr. Greene did not, even
6 though -- there wasn't -- their name wasn't as to the form of content.

7 THE COURT: Okay.

8 MR. SIMON: But I didn't sign it because I didn't go over the
9 release with them, so I think they need to sign as to form of content.
10 That's what they did, I think with the Viking release. So if they want to
11 sign in that spot, I think that release will be complete. Mr. Parker's client
12 still has not signed the release, it's a mutual release. So, depending on
13 whether you guys have any issues waiting on that, on Mr. Parker's
14 word --

15 THE COURT: Mr. Vannah?

16 MR. SIMON: -- that they'll sign that.

17 MR. VANNAH: Why do we have to have anything on form
18 and content? That is not required, it's for the lawyers to sign.

19 MR. SIMON: Then if --

20 MR. VANNAH: -- I'm asking that question.

21 MR. SIMON: -- he's ok with that, then I'm fine with that.

22 MR. VANNAH: If you take out the form and content, I don't
23 know anything about the case, and I want -- I don't know anything about
24 the case -- I mean, we're not involved in a case. You understand that,
25 Teddy?

1 MR. PARKER: I do.

2 MR. VANNAH: We -- we're not involved a case in any way,
3 shape, or form.

4 MR. PARKER: This is my concern, Bob, the -- when we sent
5 over the settlement agreement that we prepared -- our office prepared
6 the -- prepared it, we worked back and forth trying to get everything right
7 and getting the numbers right. Once we did that, I learned that Mr.
8 Vannah's office was involved in the advising and counseling the
9 Plaintiffs.

10 THE COURT: Right.

11 MR. PARKER: So then, I was informed by Mr. Simon that Mr.
12 Vannah was going to talk to the Plaintiff directly, and then once that's
13 done, we'd eventually get the release back, if everything was fine. I got
14 notice that it was signed, but I did not see approved as the form of
15 content, and so Mr. Simon explained to me that because the discussion
16 went between the Plaintiffs and Mr. Vannah, that he thought it was
17 appropriate for Mr. Vannah to sign as form and content. Which I don't
18 disagree since he would have counseled the client on the
19 appropriateness of the documents.

20 THE COURT: Well I don't necessarily disagree with that
21 either because based on everything that's happened up to this point, it's
22 my understanding that, basically anything that's being resolved between
23 Mr. Simon and the Edgeworths is running through Mr. Vannah.

24 MR. PARKER: Exactly. And --

25 THE COURT: And that was my understanding from the last

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MR. PARKER: Thank you, Your Honor.

MR. VANNAH: Thank you.

THE COURT: Thank you.

[Hearing concluded at 9:47 a.m.]

* * * * *

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



Brittany Mangelson
Independent Transcriber

EXHIBIT 10

1
2 **DECLARATION OF WILL KEMP, ESO.**

3 I have been asked to clarify my earlier opinion as to the amount and period of time that quantum
4 meruit should apply. I have reviewed the Supreme Court orders dated December 30, 2020. I further
5 understand the relief sought by each party leading to the orders. Edgeworth challenged the amount of
6 quantum meruit in the sum of \$200,000 after the date of discharge on November 29, 2017. Simon
7 sought relief that the period of time that quantum meruit applies is for the period of time that
8 outstanding fees are due and owing at the time of discharge.

9 It seems clear that the Supreme Court is asking the District Court to analyze the value of
10 quantum meruit for the period of time that outstanding fees for services were due when Mr. Simon was
11 discharged forward. The Supreme Court adopted the same basic analysis I used and made clear that the
12 period of time that work was performed and paid by Edgeworth prior to discharge should not be
13 considered in the quantum meruit analysis. (See Order in Docket No. 77678, P. 5). The Supreme Court
14 affirmed the finding of the District Court that Mr. Simon was discharged on November 29, 2017. At the
15 time Mr. Simon was discharged, the last bill paid by Edgeworth was for work performed through
16 September 19, 2017. Therefore, the period of time that outstanding fees were due and owing was from
17 September 19, 2017 thru the end of the case. Simon and his office was working on the case into
18 February, 2018. In my opinion, the quantum meruit value of the services from September 19, 2017 thru
19 the end of the case equals \$2,072,393.75. The last bill paid by Edgeworth covered the period of time
20 thru September 19, 2017. Edgeworth paid the total sum of 367,606.25 for the work performed prior to
21 September 19, 2017 and pursuant to the Supreme Court orders, these payments cover the period of time
22 prior September 19, 2017. The work performed during this time is not factored into my present
23 quantum meruit analysis. My opinion only considers the time after September 19, 2017.

24 In my previous Declaration I opined the total value of quantum meruit was the sum of \$2.44M.
25 The basis for my opinion was analyzing all of the Brunzell factors. When analyzing the Brunzell
26 factors, it is clear that the most significant and substantive work leading to the amazing outcome was
27 performed during the period after September 19, 2017 thru the end of the case. The analysis is as
28 follows:

1 At paragraph 19 of my previous declaration I discussed the 4th Brunzell factor: Result
2 Achieved- no one involved in the case can dispute it is an amazing result. This case involved a single
3 house under construction. Nobody was living there and repairs were completed very quickly. This case
4 did not involve personal injury or death. It concerned property damage to a house nobody was living in
5 and repairs made quickly. I would not have taken this case unless it was a friends and family situation
6 and they would need to be very special friends. The Edgeworth's were lucky that Mr. Simon was
7 willing to get involved. This was a very hard products case and the damages are between 500k to 750k
8 and the result of \$6.1 million is phenomenal.

9 Edgeworth is sophisticated and understood that it would take a trial and an appeal to g, et
10 "Edgeworth's expected result." Instead of taking years of litigation, Simon got an extraordinary result 3
11 months after the 8/22/17 contingency email sent by Mr. Edgeworth, and Simon's firm secured \$6.1M for
12 this complex product liability case where "hard damages" were only 500-750k. Getting millions of
13 dollars in punitive damages in this case is remarkable and therefore, this factor favors a large fee. The
14 bulk of this work was primarily done from September, 2017 thru December, 2017. For example, serious
15 settlement negotiations did not start until after September, 2017: 1) the first mediation was on October
16 10, 2017; the first significant offer was \$1.5 million on October 26, 2017, (3) there was a second
17 mediation on November 10, 2017; and 4) the \$6 million was offered on November 15, 2017. This is also
18 supported by the register of actions and the multiple hearings and filings. Mr. Simon was discharged
19 November 29, 2017 and continued to negotiate very valuable terms favoring the Edgeworth's, including
20 the preservation of the valuable Lange Plumbing claim and omitting a confidentiality and non-
21 disparagement clauses. The serious threat of punitive damages did not occur until September 29, 2017,
22 when the motion to strike Vikings Answer was filed by the Simon firm. This serious threat also led to
23 the amazing outcome.

24 At paragraphs 20-23 of my testimony, I addressed the 2nd & 3rd Brunzell factors: Quality &
25 Quantity of Work- The quality and quantity of the work was exceptional for a Products case against a
26 worldwide manufacturer with highly experienced local and out of state counsel. Simon retained
27 multiple experts, creatively advocated for unique damages, brought a fraud claim and filed a lot of
28 motions other lawyers would not have filed. Simon filed a motion to strike Defendants answer seeking

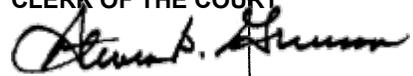
1 case terminating sanctions and exclusion of key defense experts. Simon's aggressive representation was
2 a substantial factor in achieving the exceptional results. The amount of work Simon's office performed
3 was impressive given the size of his firm. Simon's office does not typically represent clients on an
4 hourly basis and the fee customarily charged in Vegas for similar legal services is substantial when also
5 considering the work actually performed. Simon's office lost opportunities to work on other cases to get
6 this amazing result. There were a lot of emails, which I went through and substantial pleadings and
7 multiple expert reports for a property damage case. The house stigma damage claim was extremely
8 creative and Mr. Simon secured all evidence to support this claim. The mediator also recommended the
9 6M settlement based on the expected attorney's fees of 2.4M. In an email to Simon in November, 2017
10 Mr. Edgeworth suggested 5M as the appropriate value for the proposal by the mediator, yet Simon
11 advocated for 6M and go \$6.1 Million (including Lange Plumbing). Negotiating a large claim in a
12 complex case also takes great skill and experience that Mr. Simon exhibited to achieve the great result,
13 as well as the very favorable terms for the benefit of the Edgeworth's.

14 I also analyzed the novelty and difficulty of the questions presented in the case; the adversarial
15 nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on
16 other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved
17 given the total amount of the settlement compared to the "hard" damages involved. The reasonable value
18 of the services performed in the Edgeworth matter by the Simon firm, in my opinion, would be in the
19 sum of \$2,072,393.75 for the period of after September 19, 2017. This evaluation is reasonable under
20 the Brunzell factors. I also considered the Lodestar factors, as well as the NRCP 1.5(a) factors for a
21 reasonable fee. Absent a contract, Simon is entitled to a reasonable fee customarily charged in the
22 community based on services performed. NRS 18.015. The extraordinary and impressive work occurred
23 primarily during the period of September 19, 2017 thru the end of the case. Mr. Simon actually
24 performed the work and achieved a great result.

25 ///

26 ///

27 ///



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(702) 272-0406
4 (702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for SIMON

5 Eighth Judicial District Court
6 District of Nevada

7
8 EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

9 Plaintiffs,

10 vs.

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

17 Defendants.

18 EDGEWORTH FAMILY TRUST;
19 AMERICAN GRATING, LLC

20 Plaintiffs,

21 vs.

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

25 Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

NOTICE OF ENTRY OF ORDERS

Date of Hearing: N/A

Time of Hearing: N/A

Case No.: A-18-767242-C

Dept. No.: 26

Date of Hearing: N/A

Time of Hearing: N/A

1
2 PLEASE TAKE NOTICE, the following Orders were entered on the
3 docket:

4 1. March 16, 2021 – Amended Decision and Order Granting in
5 Part and Denying in Part, Simon’s Motion for Attorney’s Fees and Costs;
6

7 2. March 16, 2021 – Second Amended Decision and Order on
8 Motion to Adjudicate Lien;

9 3. April 19, 2021 – Third Amended Decision and Order on Motion
10 to Adjudicate Lien; and,
11

12 4. April 28, 2021 – Third Amended Decision and Order on Motion
13 to Adjudicate Lien.

14 A true and correct copy of each file-stamped order is attached hereto.

15 DATED this 16th day of May 2021.
16

17
18 */s/ James R. Christensen*

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

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CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF
ORDERS was made by electronic service (via Odyssey) this 16th day of
May 2021, to all parties currently shown on the Court's E-Service List.

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

EXHIBIT 1

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ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: X

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

AMENDED DECISION AND ORDER ON ATTORNEY'S FEES

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

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

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

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

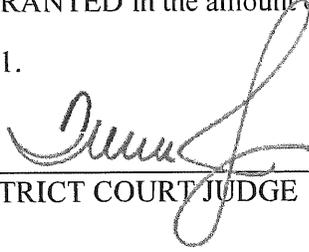
13 2. Further, The Court finds that the purpose of the evidentiary hearing was primarily on the
14 Motion to Adjudicate Lien. The Motion for Attorney's Fees is DENIED as it relates to other claims.
15 In considering the amount of attorney's fees and costs, the Court finds that the services of Mr. James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

23 3. The court has considered all of the *Brunzell* factors pertinent to attorney's fees and attorney's
24 fees are GRANTED. In determining the reasonable value of services provided for the defense of the
25 conversion claim, the COURT FINDS that 64 hours was reasonably spent by Mr. Christensen in
26 preparation and defense of the conversion claim, for a total amount of \$25,600.00. The COURT
27 FURTHER FINDS that 30.5 hours was reasonably spent by Mr. Christiansen in preparation of the
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defense of the conversion claim, for a total of \$24,400.00. As such, the award of attorney's fees is
Dated this 16th day of March, 2021
GRANTED in the amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

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



DISTRICT COURT JUDGE

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

1 CSERV

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
15 recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 3/16/2021

17 Daniel Simon .	lawyers@simonlawlv.com
18 Rhonda Onorato .	ronorato@rlattorneys.com
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20 Michael Nunez	mnunez@murchisonlaw.com
21 Tyler Ure	ngarcia@murchisonlaw.com
22 Nicole Garcia	ngarcia@murchisonlaw.com
23 Bridget Salazar	bsalazar@vannahlaw.com
24 John Greene	jgreene@vannahlaw.com
25 James Christensen	jim@jchristensenlaw.com
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5 Christopher Page chrispage@vannahlaw.com
6 Jessie Church jchurch@vannahlaw.com
7
8

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

11 Theodore Parker 2460 Professional CT STE 200
12 Las Vegas, NV, 89128
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EXHIBIT 2

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ORD

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

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

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

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

7
8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

24 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 CONCLUSION OF LAW

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

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

22 NRS 18.015(1)(a) states:

- 23 1. An attorney at law shall have a lien:
24 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
25 damages, which has been placed in the attorney's hands by a client for suit or
26 collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

(Def. Exhibit 27).

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

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

Constructive Discharge

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

- Refusal to communicate with an attorney creates constructive discharge. Rosenberg v. Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).

- 1 • Refusal to pay an attorney creates constructive discharge. *See e.g., Christian v. All Persons*
2 *Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 3 • Suing an attorney creates constructive discharge. *See Tao v. Probate Court for the Northeast*
4 *Dist. #26*, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). *See also Maples v.*
5 *Thomas*, 565 U.S. 266 (2012); *Harris v. State*, 2017 Nev. LEXIS 111; and *Guerrero v. State*,
6 2017 Nev. Unpubl. LEXIS 472.
- 7 • Taking actions that preventing effective representation creates constructive discharge.
8 *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002).

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

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

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

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

29 *Id.*

30 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
31 Simon had already begun negotiating the terms of the settlement agreement with Viking during the

1 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
2 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
3 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
4 identified as the firm that solely advised the clients about the settlement. The actual language in the
5 settlement agreement, for the Viking claims, states:

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

14 Id.

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

18 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
19 Though there were email communications between the Edgeworths and Simon, they did not verbally
20 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
21 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
22 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
23 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
24 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
25 working on this claim, but he had no communication with the Edgeworths and was not advising
26 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
27 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
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1 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
2 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
3 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
4 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
5 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
6 Simon never signed off on any of the releases for the Lange settlement.

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

16 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
17 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
18 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
19 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
20 was attached to the letter), and that Simon continued to work on the case after the November 29,
21 2017 date. The court further recognizes that it is always a client's decision of whether or not to
22 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
23 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
24 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
25 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
26 with him, making it impossible to advise them on pending legal issues, such as the settlements with
27 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
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1
2 Simon from effectively representing the clients. The Court finds that Danny Simon was
3 constructively discharged by the Edgeworths on November 29, 2017.
4

5 **Adjudication of the Lien and Determination of the Law Office Fee**

6 NRS 18.015 states:

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

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

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

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

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

22 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

2 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms
3 are applied. Here, there was no express contract for the fee amount, however there was an implied
4 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his
5 services, and \$275 per hour for the services of his associates. This contract was in effect until
6 November 29, 2017, when he was constructively discharged from representing the Edgeworths.
7 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is
8 due a reasonable fee- that is, quantum meruit.
9

10 *Implied Contract*

11 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
12 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
13 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
14 created when invoices were sent to the Edgeworths, and they paid the invoices.
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16 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
17 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
18 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as
19 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is
20 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that
21 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the
22 bills to give credibility to his actual damages, above his property damage loss. However, as the
23 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund
24 the money, or memorialize this or any understanding in writing.

25 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
26 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
27 paid in full and there was never any indication given that anything less than all the fees had been
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1 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
2 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
3 the NRC 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
4 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
5 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
6 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
7 Office retained the payments, indicating an implied contract was formed between the parties. The
8 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
9 date they were constructively discharged, November 29, 2017.

10
11 *Amount of Fees Owed Under Implied Contract*

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

20 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
21 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
22 and attempted to create a bill for work that had been done over a year before. She testified that they
23 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
24 email that was read and responded to. She testified that the dates were not exact, they just used the
25 dates for which the documents were filed, and not necessarily the dates in which the work was
26 performed. Further, there are billed items included in the "super bill" that was not previously billed
27 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
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1 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
2 indicated that there were no phone calls included in the billings that were submitted to the
3 Edgeworths.

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

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

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

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

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

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

16 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
17 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
18 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
19 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
20 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
21 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
22 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
23 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
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25 _____
26 ²There are no billing amounts from December 2 to December 4, 2016.

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

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

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

1 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

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

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

7
8 *Costs Owed*

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

16
17 *Quantum Meruit*

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

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

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

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

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

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

21 Quality of the Advocate

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

2 2 The Character of the Work to be Done

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

12 3 The Work Actually Performed

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

21 4 The Result Obtained

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

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

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

12 (1) The time and labor required, the novelty and difficulty of the
13 questions involved, and the skill requisite to perform the legal service
14 properly;

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

17 (3) The fee customarily charged in the locality for similar legal
18 services;

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

20 (5) The time limitations imposed by the client or by the
21 circumstances;

22 (6) The nature and length of the professional relationship with the
23 client;

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

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

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

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

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

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

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

5 (3) Whether the client is liable for expenses regardless of outcome;

6 (4) That, in the event of a loss, the client may be liable for the
opposing party's attorney fees, and will be liable for the opposing party's
costs as required by law; and

7 (5) That a suit brought solely to harass or to coerce a settlement may
result in liability for malicious prosecution or abuse of process.

8 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
9 with a written statement stating the outcome of the matter and, if there is a
recovery, showing the remittance to the client and the method of its
10 determination.

11 NRCP 1.5.

12
13 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
14 the Edgeworths, the character of the work was complex, the work actually performed was extremely
15 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
16 factors justify a reasonable fee under NRCP 1.5.

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

21 Instead, the Court must determine the amount of a reasonable fee. In determining this
22 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
23 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
24 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
25 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
26 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
27 continued to work on the Viking settlement until it was finalized in December of 2017, and the
28

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

10 11 CONCLUSION

12 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
13 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
14 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
15 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
16 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
17 Simon as their attorney, when they ceased following his advice and refused to communicate with
18 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
19 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
20 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
21 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
22 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
23 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
24 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
25 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
26 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.

27 //

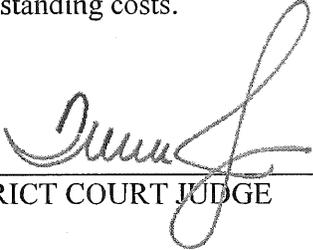
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ORDER

5
6 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
7 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
8 Office of Daniel Simon is \$556,577.43, which includes outstanding costs.
9

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

11 
12 _____
13 DISTRICT COURT JUDGE

14 B7B 840 B8A7 FF62
15 Tierra Jones
16 District Court Judge
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Edgeworth Family Trust,
Plaintiff(s)

vs.

Lange Plumbing, L.L.C.,
Defendant(s)

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

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/16/2021

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- James Christensen jim@jchristensenlaw.com
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Jessie Church	jchurch@vannahlaw.com

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

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

EXHIBIT 3

1 **ORD**

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4

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

6

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

7

Plaintiffs,

8

vs.

9

CASE NO.: A-18-767242-C

DEPT NO.: X

10

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;

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12

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Defendants.

14

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

15

16

Plaintiffs,

17

vs.

18

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

19

20

21

Defendants.

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23

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

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25

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

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

7
8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

15 I could also swing hourly for the whole case (unless I am off what this is
16 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.

17 I doubt we will get Kinsale to settle for enough to really finance this since I
18 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?

19
20 (Def. Exhibit 27).

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

26 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
27 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per
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1 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

16 26. On November 19, 2018, the Court entered a Decision and Order on Motion to
17 Adjudicate Lien.

18 27. On December 7, 2018, the Edgeworths filed a Notice of Appeal.

19 28. On February 8, 2019, the Court entered a Decision and Order Granting in Part and
20 Denying in Part, Simon's Motion for Attorney's Fees and Costs.

21 29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon
22 filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

23 30. On December 30, 2020, the Supreme Court issued an order affirming this Court's
24 findings in most respects.

25 31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

26 32. On March 16, 2021, this Court issued a Second Amended Decision and Order on
27 Motion to Adjudicate Lien.

28

1 33. On March 18, 2021, the Nevada Supreme Court denied the Motion for Rehearing.
2
3

4 **CONCLUSION OF LAW**

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

7 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
8 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
9 738444-C under NRS 18.015.

10 NRS 18.015(1)(a) states:

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

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

14 Nev. Rev. Stat. 18.015.

15 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
16 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
17 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
18 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
19 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
20 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
21 is enforceable in form.

22 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
23 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
24 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
25 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
26 under NRS 18.015, thus the Court must adjudicate the lien.

1 *Fee Agreement*

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

9 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
10 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
11 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
12 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
13 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
14 22, 2017 email, titled "Contingency," he writes:

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

(Def. Exhibit 27).

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

1 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
2 things without a compromise. Id. The retainer agreement specifically states:

3
4 Client retains Attorneys to represent him as his Attorneys regarding
5 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING
6 ENTITIES and all damages including, but not limited to, all claims in this
7 matter and empowers them to do all things to effect a compromise in said
8 matter, or to institute such legal action as may be advisable in their judgment,
9 and agrees to pay them for their services, on the following conditions:

- 10 a) ...
11 b) ...
12 c) Client agrees that his attorneys will work to consummate a settlement of
13 \$6,000,000 from the Viking entities and any settlement amount agreed to be
14 paid by the Lange entity. Client also agrees that attorneys will work to reach
15 an agreement amongst the parties to resolve all claims in the Lange and
16 Viking litigation.

17 Id.

18 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
19 Simon had already begun negotiating the terms of the settlement agreement with Viking during the
20 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
21 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
22 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
23 identified as the firm that solely advised the clients about the settlement. The actual language in the
24 settlement agreement, for the Viking claims, states:

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

1 Id.

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

5 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
6 Though there were email communications between the Edgeworths and Simon, they did not verbally
7 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
8 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
9 responds to the email saying, “please give John Greene at Vannah and Vannah a call if you need
10 anything done on the case. I am sure they can handle it.” (Def. Exhibit 80). At this time, the claim
11 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
12 working on this claim, but he had no communication with the Edgeworths and was not advising
13 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
14 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
15 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
16 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
17 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
18 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
19 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
20 Simon never signed off on any of the releases for the Lange settlement.

21 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
22 Esq. to James Christensen Esq. dated December 26, 2017, which states: “They have lost all faith and
23 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
24 Quite frankly, they are fearful that he will steal the money.” (Def. Exhibit 48). Then on January 4,
25 2018, the Edgeworth’s filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
26 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
27 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
28

1 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
2 doesn't seem in his best interests." (Def. Exhibit 53).

3 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
4 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
5 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
6 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
7 was attached to the letter), and that Simon continued to work on the case after the November 29,
8 2017 date. The court further recognizes that it is always a client's decision of whether or not to
9 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
10 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
11 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
12 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
13 with him, making it impossible to advise them on pending legal issues, such as the settlements with
14 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
15
16 Simon from effectively representing the clients. The Court finds that Danny Simon was
17 constructively discharged by the Edgeworths on November 29, 2017.

18
19 **Adjudication of the Lien and Determination of the Law Office Fee**

20 NRS 18.015 states:

- 21 1. An attorney at law shall have a lien:
22 (a) Upon any claim, demand or cause of action, including any claim for
23 unliquidated damages, which has been placed in the attorney's hands by a
24 client for suit or collection, or upon which a suit or other action has been
25 instituted.
26 (b) In any civil action, upon any file or other property properly left in the
27 possession of the attorney by a client.
28 2. A lien pursuant to subsection 1 is for the amount of any fee which has
been agreed upon by the attorney and client. In the absence of an agreement,
the lien is for a reasonable fee for the services which the attorney has rendered
for the client.

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

5 4. A lien pursuant to:

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

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

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

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

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

25 Nev. Rev. Stat. 18.015.

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

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was

1 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
2 created when invoices were sent to the Edgeworths, and they paid the invoices.

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

12 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
13 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
14 paid in full and there was never any indication given that anything less than all the fees had been
15 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
16 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
17 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
18 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
19 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
20 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
21 Office retained the payments, indicating an implied contract was formed between the parties. The
22 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
23 date they were constructively discharged, November 29, 2017.

24
25 *Amount of Fees Owed Under Implied Contract*

26 The Edgeworths were billed, and paid for services through September 19, 2017. There is
27 some testimony that an invoice was requested for services after that date, but there is no evidence
28

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
2 fees was formed, the Court must now determine what amount of fees and costs are owed from
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
5 billings, the attached lien, and all other evidence provided regarding the services provided during
6 this time.

7 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
8 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
9 and attempted to create a bill for work that had been done over a year before. She testified that they
10 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
11 email that was read and responded to. She testified that the dates were not exact, they just used the
12 dates for which the documents were filed, and not necessarily the dates in which the work was
13 performed. Further, there are billed items included in the "super bill" that was not previously billed
14 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
15 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
16 indicated that there were no phone calls included in the billings that were submitted to the
17 Edgeworths.

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

25 Simon argues that he has no billing software in his office and that he has never billed a client
26 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
27 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;
28

1 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
2 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
3 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
4 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
5 emails or calls, understanding that those items may be billed separately; but again the evidence does
6 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
7 This argument does not persuade the court of the accuracy of the “super bill”.

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

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

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

22 The amount of attorney’s fees for the period of July 31, 2017 to September 19, 2017, for the
23 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney’s fees for this period for
24 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney’s fees for this period for Benjamin Miller
25

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

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

1 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
2 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
3 paid by the Edgeworths on September 25, 2017.

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
5 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
10 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

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

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

18 *Costs Owed*

19
20 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
21 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
22 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
23 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
24 reimbursement for advances costs of \$71,594.93. The amount sought for advanced cots was later
25

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

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

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

1 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
2 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

3 4 *Quantum Meruit*

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

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

27 The *Brunzell* factors are: (1) the qualities of the advocate; (2) the character of the work to be
28

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

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

7 1. Quality of the Advocate

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

15 2. The Character of the Work to be Done

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

25 3. The Work Actually Performed

26 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
27 numerous court appearances, and deposition; his office uncovered several other activations, that
28

1 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
2 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
3 other activations being uncovered and the result that was achieved in this case. Since Mr.
4 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
5 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
6 the Law Office of Daniel Simon led to the ultimate result in this case.

7 4. The Result Obtained

8 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
9 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
10 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
11 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
12 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
13 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
14 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
15 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
16 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
17 were made more than whole with the settlement with the Viking entities.

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

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

24 (1) The time and labor required, the novelty and difficulty of the
25 questions involved, and the skill requisite to perform the legal service
26 properly;

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

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

(4) The amount involved and the results obtained;

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

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

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

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

5 NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:
6

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

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

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

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

17 (3) Whether the client is liable for expenses regardless of outcome;

18 (4) That, in the event of a loss, the client may be liable for the
opposing party's attorney fees, and will be liable for the opposing party's
costs as required by law; and

19 (5) That a suit brought solely to harass or to coerce a settlement may
result in liability for malicious prosecution or abuse of process.

20 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
with a written statement stating the outcome of the matter and, if there is a
21 recovery, showing the remittance to the client and the method of its
determination.
22

23
24 NRCP 1.5.

25 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
26 the Edgeworths, the character of the work was complex, the work actually performed was extremely
27

1 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
2 factors justify a reasonable fee under NRPC 1.5.

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

7 Instead, the Court must determine the amount of a reasonable fee. In determining this
8 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
9 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
10 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
11 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
12 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
13 continued to work on the Viking settlement until it was finalized in December of 2017, and the
14 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
15 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
16 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
17 himself were continuing, even after the constructive discharge. In considering the reasonable value
18 of these services, under quantum meruit, the Court is considering the previous \$550 per hour fee
19 from the implied fee agreement, the Brunzell factors, and additional work performed after the
20 constructive discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is
21 entitled to a reasonable fee in the amount of \$200,000, from November 30, 2017 to the conclusion of
22 this case.

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CONCLUSION

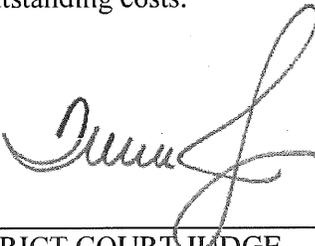
The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the Edgeworths once Simon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

ORDER

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

Dated this 19th day of April, 2021

IT IS SO ORDERED.



DISTRICT COURT JUDGE

**DEB 12B 0D66 116F
Tierra Jones
District Court Judge**

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Edgeworth Family Trust,
Plaintiff(s)

vs.

Daniel Simon, Defendant(s)

CASE NO: A-18-767242-C

DEPT. NO. Department 10

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/19/2021

- | | |
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EXHIBIT 4

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ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

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

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

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

7
8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

9 It reads as follows:

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

25 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 26. On November 19, 2018, the Court entered a Decision and Order on Motion to
17 Adjudicate Lien.

18 27. On December 7, 2018, the Edgeworths filed a Notice of Appeal.

19 28. On February 8, 2019, the Court entered a Decision and Order Granting in Part and
20 Denying in Part, Simon's Motion for Attorney's Fees and Costs.

21 29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon
22 filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

23 30. On December 30, 2020, the Supreme Court issued an order affirming this Court's
24 findings in most respects.

25 31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

26 32. On March 16, 2021, this Court issued a Second Amended Decision and Order on
27 Motion to Adjudicate Lien.

28

1 *Fee Agreement*

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

9 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
10 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
11 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
12 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
13 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
14 22, 2017 email, titled "Contingency," he writes:

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

(Def. Exhibit 27).

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

1 The Court finds that an implied fee agreement was formed between the parties on December
2 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
3 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
4 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the
5 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger
6 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
7 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
8 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
9 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

10 *Constructive Discharge*

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

- 12 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v.
13 Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 14 • Refusal to pay an attorney creates constructive discharge. *See e.g.*, Christian v. All Persons
15 Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 16 • Suing an attorney creates constructive discharge. *See* Tao v. Probate Court for the Northeast
17 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). *See also* Maples v.
18 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
19 2017 Nev. Unpubl. LEXIS 472.
- 20 • Taking actions that preventing effective representation creates constructive discharge.
21 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

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

26 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and
27 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement
28 agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was

1 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
2 things without a compromise. Id. The retainer agreement specifically states:

3
4 Client retains Attorneys to represent him as his Attorneys regarding
5 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING
6 ENTITIES and all damages including, but not limited to, all claims in this
7 matter and empowers them to do all things to effect a compromise in said
8 matter, or to institute such legal action as may be advisable in their judgment,
9 and agrees to pay them for their services, on the following conditions:

- 10 a) ...
11 b) ...
12 c) Client agrees that his attorneys will work to consummate a settlement of
13 \$6,000,000 from the Viking entities and any settlement amount agreed to be
14 paid by the Lange entity. Client also agrees that attorneys will work to reach
15 an agreement amongst the parties to resolve all claims in the Lange and
16 Viking litigation.

17 Id.

18 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
19 Simon had already begun negotiating the terms of the settlement agreement with Viking during the
20 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
21 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
22 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
23 identified as the firm that solely advised the clients about the settlement. The actual language in the
24 settlement agreement, for the Viking claims, states:

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

1 Id.

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

5 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
6 Though there were email communications between the Edgeworths and Simon, they did not verbally
7 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
8 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
9 responds to the email saying, “please give John Greene at Vannah and Vannah a call if you need
10 anything done on the case. I am sure they can handle it.” (Def. Exhibit 80). At this time, the claim
11 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
12 working on this claim, but he had no communication with the Edgeworths and was not advising
13 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
14 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
15 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
16 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
17 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
18 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
19 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
20 Simon never signed off on any of the releases for the Lange settlement.

21 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
22 Esq. to James Christensen Esq. dated December 26, 2017, which states: “They have lost all faith and
23 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
24 Quite frankly, they are fearful that he will steal the money.” (Def. Exhibit 48). Then on January 4,
25 2018, the Edgeworth’s filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
26 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
27 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
28

1 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
2 doesn't seem in his best interests." (Def. Exhibit 53).

3 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
4 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
5 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
6 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
7 was attached to the letter), and that Simon continued to work on the case after the November 29,
8 2017 date. The court further recognizes that it is always a client's decision of whether or not to
9 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
10 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
11 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
12 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
13 with him, making it impossible to advise them on pending legal issues, such as the settlements with
14 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
15
16 Simon from effectively representing the clients. The Court finds that Danny Simon was
17 constructively discharged by the Edgeworths on November 29, 2017.

18
19 **Adjudication of the Lien and Determination of the Law Office Fee**

20 NRS 18.015 states:

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

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

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

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

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

5 4. A lien pursuant to:

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

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

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

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

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

25 Nev. Rev. Stat. 18.015.

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

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was

1 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
2 created when invoices were sent to the Edgeworths, and they paid the invoices.

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

12 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
13 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
14 paid in full and there was never any indication given that anything less than all the fees had been
15 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
16 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
17 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
18 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
19 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
20 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
21 Office retained the payments, indicating an implied contract was formed between the parties. The
22 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
23 date they were constructively discharged, November 29, 2017.

24
25 *Amount of Fees Owed Under Implied Contract*

26 The Edgeworths were billed, and paid for services through September 19, 2017. There is
27 some testimony that an invoice was requested for services after that date, but there is no evidence
28

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
2 fees was formed, the Court must now determine what amount of fees and costs are owed from
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
5 billings, the attached lien, and all other evidence provided regarding the services provided during
6 this time.

7 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
8 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
9 and attempted to create a bill for work that had been done over a year before. She testified that they
10 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
11 email that was read and responded to. She testified that the dates were not exact, they just used the
12 dates for which the documents were filed, and not necessarily the dates in which the work was
13 performed. Further, there are billed items included in the "super bill" that was not previously billed
14 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
15 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
16 indicated that there were no phone calls included in the billings that were submitted to the
17 Edgeworths.

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

25 Simon argues that he has no billing software in his office and that he has never billed a client
26 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
27 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;
28

1 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
2 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
3 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
4 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
5 emails or calls, understanding that those items may be billed separately; but again the evidence does
6 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
7 This argument does not persuade the court of the accuracy of the “super bill”.

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

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

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

22 The amount of attorney’s fees for the period of July 31, 2017 to September 19, 2017, for the
23 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney’s fees for this period for
24 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney’s fees for this period for Benjamin Miller
25

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

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

1 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
2 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
3 paid by the Edgeworths on September 25, 2017.

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
5 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
10 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

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

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

18 *Costs Owed*

19
20 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
21 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
22 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
23 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
24 reimbursement for advances costs of \$71,594.93. The amount sought for advanced cots was later
25

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

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

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

1 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
2 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

3 4 *Quantum Meruit*

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

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

27 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
28

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

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

7 1 Quality of the Advocate

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

15 2 The Character of the Work to be Done

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

25 3 The Work Actually Performed

26 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
27 numerous court appearances, and deposition; his office uncovered several other activations, that
28

1 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
2 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
3 other activations being uncovered and the result that was achieved in this case. Since Mr.
4 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
5 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
6 the Law Office of Daniel Simon led to the ultimate result in this case.

7 4. The Result Obtained

8 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
9 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
10 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
11 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
12 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
13 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
14 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
15 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
16 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
17 were made more than whole with the settlement with the Viking entities.

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

21
22 (a) A lawyer shall not make an agreement for, charge, or collect an
23 unreasonable fee or an unreasonable amount for expenses. The factors to be
24 considered in determining the reasonableness of a fee include the following:

25 (1) The time and labor required, the novelty and difficulty of the
26 questions involved, and the skill requisite to perform the legal service
27 properly;

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

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

(4) The amount involved and the results obtained;

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

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

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

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

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

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

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

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

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

17 (3) Whether the client is liable for expenses regardless of outcome;

18 (4) That, in the event of a loss, the client may be liable for the
opposing party's attorney fees, and will be liable for the opposing party's
costs as required by law; and

19 (5) That a suit brought solely to harass or to coerce a settlement may
result in liability for malicious prosecution or abuse of process.

20 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
21 with a written statement stating the outcome of the matter and, if there is a
22 recovery, showing the remittance to the client and the method of its
determination.

23
24 NRCP 1.5.

25 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
26 the Edgeworths, the character of the work was complex, the work actually performed was extremely

1 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
2 factors justify a reasonable fee under NRPC 1.5.

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

7 Instead, the Court must determine the amount of a reasonable fee. In determining this
8 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
9 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
10 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
11 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
12 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
13 continued to work on the Viking settlement until it was finalized in December of 2017, and the
14 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
15 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
16 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
17 himself were continuing, even after the constructive discharge. In considering the reasonable value
18 of these services, under quantum meruit, the Court is considering the previous \$550 per hour fee
19 from the implied fee agreement, the Brunzell factors, and additional work performed after the
20 constructive discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is
21 entitled to a reasonable fee in the amount of \$200,000, from November 30, 2017 to the conclusion of
22 this case.

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