

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE TIERRA JONES,
DISTRICT JUDGE, DEPT. 10,

Respondents,

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

Real Parties in Interest.

Supreme Court Case No. 86467
Electronically Filed
Aug 14 2023 12:22 PM
Elizabeth A. Brown
(District Court Clerk for Supreme Court)

**APPENDIX TO ANSWER OF RESPONDENTS TO WRIT OF
MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A
QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY
THIS COURT BUT DISREGARDED BY THE DISTRICT COURT**

VOLUME 1 OF 1

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ORIGINAL

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Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE
VIKING 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.: A738444
Dept. No.: 10

**MOTION TO ADJUDICATE
ATTORNEY LIEN OF THE LAW
OFFICE DANIEL SIMON PC;
ORDER SHORTENING TIME**


Date of Hearing:
Time of Hearing:

DEPARTMENT X
NOTICE OF HEARING
DATE 1/30/18 TIME 9:30
APPROVED BY JD

AA001

1 The LAW OFFICE OF DANIEL S. SIMON, P.C. moves the Court for an
2 Order adjudicating its attorney lien on shortened time.

3 DATED this 23rd day of January, 2018.

4
5 
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15 DANIEL S. SIMON, P.C.
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AA002

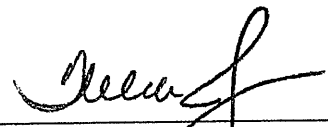
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ORDER SHORTENING TIME/NOTICE OF MOTION


Good cause appearing, it is hereby

ORDERED the Motion to Adjudicate Attorney Lien of the LAW OFFICE
OF DANIEL S. SIMON, P.C. may be heard on shortened time on the 30 day of
January, 2018, at the hour of 9:30, or as soon thereafter as counsel
may be heard, before Department 10 of the Eighth Judicial District Court.

DATED this 23 day of January, 2018.


DISTRICT COURT JUDGE
sw

Submitted by:


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AA003

**DECLARATION OF COUNSEL IN SUPPORT OF
ORDER SHORTENING TIME**

1. I, JAMES R. CHRISTENSEN, make this Declaration of my own personal knowledge and under the penalty of perjury pursuant to NRS 53.045.

2. I represent the LAW OFFICE OF DANIEL S. SIMON, P.C. on the motion to adjudicate the attorney charging lien in this case.

3. The attorney lien statute provides for hearing a motion to adjudicate a charging lien on five days of notice. NRS 18.015(6).

4. The clients have alleged that they have suffered, and will suffer, damages from delay in settling the attorney fee. Accordingly, shortened time is requested to alleviate any potential resulting prejudice that the clients may claim caused by an alleged delay in settling the fee.

This motion is filed in good faith and not for any purpose of undue delay or harassment.

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

Dated this 18th day of January, 2018.



James R. Christensen

POINTS AND AUTHORITIES

I. INTRODUCTION

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

The plumber's work caused the flood, however, the plumber blamed a fire sprinkler and refused to repair or to pay for repairs. On June 16, 2016, a complaint was filed against the plumber and fire sprinkler manufacturer. The original cost of construction of the house was about \$3M. The case settled for \$6.1M¹.

There is a dispute over the reasonable fee due The Law Office of Daniel S. Simon, A Professional Corporation. This Court is respectfully requested to adjudicate the attorney's charging lien pursuant to NRS 18.015.

¹ Brian Edgeworth refused to pay a \$24,117.50 remediation contractor bill because the contractor did not have a signed contract. The settlement totals \$6,075,882.50; \$6.1M less the remediation bill.

II. THE CHARGING LIEN STATUE

A charging lien is a “creature of statute”. *Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, 782 (Nev. 2009).

The charging lien statute is NRS 18.015. NRS 18.015 was amended in 2013. The current version of the statute applies. The 2013 statute states in full:

NRS 18.015 Lien for attorney’s fees: Amount; perfection; enforcement.

1. An attorney at law shall have a lien:

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

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

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

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

1 4. A lien pursuant to:

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

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

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

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

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

20 (Added to NRS by 1977, 773; A 2013, 271)

21 **III. PRINCIPLES OF LAW**

22 The law office moves for adjudication of its charging lien. The following
23 principles of law apply:

- 24 • The Court has personal jurisdiction "to adjudicate a fee dispute based on a
25 charging lien". *Argentina*, 216 P.3d at 782-83.
- The Court has subject matter jurisdiction to adjudicate a fee dispute based on
a charging lien. *Argentina*, 216 P.3d at 783.

- 1 • An attorney “shall have a lien” on a case they worked on for a client. NRS
2 18.015(1)(a).
- 3 • If there is no express contract, the charging lien is for a “reasonable fee”.
4 NRS 18.015(2); *Gordon v. Stewart*, 324 P.2d 234 (Nev. 1958); and, *see*,
5 *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009).
- 6 • A reasonable fee is determined by the factors in *Brunzell v. Golden Gate*
7 *Nat’l Bank*, 455 P.2d 31, 33-34 (Nev. 1969). *Argentina*, 216 P.3d at fn.2.
- 8 • A charging lien does not have to state an exact amount. *Golightly &*
9 *Vannah, PLLC v TJ Allen LLC*, 373 P.3d 103, at 106 (Nev. 2016).
- 10 • A charging lien is perfected by service on the client by certified mail, return
11 receipt requested. NRS 18.015(3).
- 12 • A charging lien attaches to money received after service of the lien. NRS
13 18.015(4)(a); *Golightly & Vannah*, 373 P.3d at 105 (a charging lien must be
14 perfected “before the attorney receives the funds”).
- 15 • An attorney **does not** violate a professional duty owed to a client by filing a
16 charging lien. NRS 18.015(5).
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- A charging lien may be adjudicated by the Court upon five days' notice. NRS 18.015(6); and, *Leventhal*, 305 P.3d at 911 (timely adjudication allows the court to determine the fee while "the attorney's performance is fresh in its mind", and before "proceeds are distributed").
- A charging lien is not precluded, nor does it preclude, other remedies in a fee dispute. NRS 18.015(7).

IV. FACTS

The Simon family met the Edgeworth family when their children went to the same school. Over the years, the families became close. The children played sports together, the families went on trips abroad together, and they helped each other during difficult times.

The families knew the others background from their close relationship. Danny Simon knew that Brian Edgeworth went to Harvard Business School; that the Edgeworths founded Pediped Footwear, a successful shoe company with production sites in Nevada and China and a worldwide retail presence; that the Edgeworths' company, American Grating LLC, was a global manufacturer of "fiberglass reinforced plastic" products used in settings from offshore oil to

1 pedestrian walkways; and, that Brian Edgeworth was involved in construction,
2 including speculation houses.²

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

9 **A. The Flood**

10 The house is in McDonald Ranch at 645 St. Croix. Brian Edgeworth built
11 the house as an investment.³ The general contractor on the build was Giberti
12 Construction LLC, who had built other speculation houses for Mr. Edgeworth.
13 Brian Edgeworth funded the build through his plastics company, American
14 Grating. The total cost of the build was about \$3.3M.⁴ The house was listed for
15 sale at \$5.5M.⁵ The house is not currently on the market.
16

17 Viking fire sprinklers were installed in the house by sub-contractor Lange
18 Plumbing & Fire Control. On April 10, 2016, during the build, a Viking fire
19 sprinkler(s) malfunctioned, which caused a destructive flood.
20
21

22
23
24 ² The flooded house started as a speculation project.

25 ³ The Edgeworths currently live in the house.

⁴ Exhibit 1; cost basis of speculation build.

⁵ Exhibit 2; MLS listing for 645 St. Croix.

1 Before the build began, Mr. Edgeworth decided to go without builder's
2 risk/course of construction insurance. Without insurance, Mr. Edgeworth looked
3 to Lange for repairs. Lange did not agree to repair, so Mr. Edgeworth asked his
4 friend for help.

5
6 Brian Edgeworth spoke with other attorneys, but wanted Danny Simon to
7 help him. In May of 2016, Mr. Simon agreed to lend a hand, and "send a few
8 letters".⁶

9
10 Danny Simon did not have a structured discussion with Brian Edgeworth
11 about the fee for the case.⁷ Mr. Simon worked without a written fee agreement.

12 Lange and Viking were intransigent. Brian Edgeworth paid the cost of
13 repair for the house, around \$500k; and, in December of 2016, a certificate of
14 occupancy was issued for the house.

15
16 On June 14, 2016, a complaint was filed against Lange and Viking.
17
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23 ⁶ See, e.g., Exhibit 3; 5.27.2016 email string.

24 ⁷ See, e.g., Exhibit 4; 8.22.2017 email from Brian Edgeworth, "Subject:
25 Contingency"- "We never really had a structured discussion about how this might
be done." Mr. Edgeworth mentioned a hybrid or greater hourly payments as fee
options.

1 **B. The Case**

2 In sum, Viking was sued for a product defect in their fire sprinkler and
3 Lange was sued on the construction contract. There was a clear route to recover
4 attorney fees against Lange based on the construction contract. There was no easy
5 road to fees against the manufacturer, Viking.
6

7 The case became complex with multiple parties, cross and counter claims.
8 In short order, the case went from a friends and family matter to a major litigation,
9 which soon dominated time at the law office; and, involved the advancement of
10 about \$200,000.00 in total costs.
11

12 In December of 2016, the law office started sending bills on the file. The
13 bills enabled the clients to demonstrate damages, while allowing the law office to
14 recover some costs advanced, and to defray some of the business loss caused by
15 being unable to devote time to other contingency cases.
16

17 The bills submitted to Brian Edgeworth do not cover all the time spent on
18 the case. The law office does not take hourly cases. The firm does not have hourly
19 billing software, nor experienced time keepers. Also, Mr. Simon understood that
20 Brian Edgeworth had decided to finance his share of the litigation through high
21 interest loans⁸ (presumably, based on a solid business rationale). Mr. Simon knew
22
23
24

25 ⁸ The high interest loans were contested by defendants. The loans were from the
mother in law of Brian Edgeworth and a close friend of Mr. Edgeworth. The

1 the case might not generate a return beyond the cost of repair, and he did not fully
2 bill the case. Mr. Simon was willing to wait until the end of the case to final the
3 bill in light of the money obtained; that was his normal practice anyway.

4 **C. The Fee Dispute**

5
6 The case was aggressively pursued. In the summer of 2017, well over
7 100,000 pages of documents were obtained. It was learned that the fire sprinkler
8 defect was known to Viking and had caused other floods; and, that Viking had
9 done nothing to fix, or warn of, the defect.

10
11 In the late summer of 2017⁹, and into the fall, there were talks about how to
12 calculate a fee; but, no agreement was reached. Danny Simon was occupied with
13 the case and Brian Edgeworth was content to leave the issue alone.

14
15 By the fall of 2017, the case was positioned for an excellent trial result with
16 a strong chance of a finding against Viking for punitive damages; with motions
17 pending to strike the main defense expert, and to strike the defendants' answers.

18
19 In November of 2017, Viking offered \$6M to settle. To place the offer in
20 context, the cost basis for the entire house was \$3.3M. The high offer was a direct
21 result of the extraordinary effort and skill of Mr. Simon in preparing the case for a
22 great trial outcome.

23
24
25 interest rate was 33%, well above market rate.

⁹ See, fn. 7.

1 In mid to late November of 2017, while the details of the Viking settlement
2 were being worked on by Mr. Simon, Mr. Edgeworth became difficult to reach.
3 Previously, Brian Edgeworth frequently called and e-mailed Mr. Simon.
4 Communication came to an end when Mr. Simon tried to resolve the fee.
5

6 On November 27, 2017, Mr. Simon wrote to the clients about the fee.¹⁰

7 On November 30, 2017, the clients sent Mr. Simon a fax stating that the
8 Vannah firm had been retained.¹¹
9

10 On December 1, 2017, the Law Office of Daniel S. Simon, A Professional
11 Corporation issued a charging lien pursuant to NRS 18.015.¹² On December 4,
12 2017, the clients were served by certified mail return receipt requested.¹³
13

14 In December of 2017, Lange made a settlement offer, \$100,000.00 less the
15 remediation bill Brian Edgeworth had refused to pay.
16

17 On December 7, 2017, Mr. Simon, his counsel, and Mr. Vannah held a
18 conference call. Mr. Vannah told Mr. Simon not to contact the clients. Mr.
19 Vannah was told the clients could seek attorney fees from Lange based on contract,
20 and that the law office was working on a bill that would include all previously
21 unbilled events. Mr. Vannah was told that the fee and cost claim against Lange
22

23 ¹⁰ Exhibit 5.

24 ¹¹ Exhibit 6.

25 ¹² Exhibit 7.

¹³ Exhibit 8.

1 might be in the \$1.5M range. Mr. Vannah did not tell Mr. Simon to cease work or
2 to transfer the file. Mr. Simon documented the call.¹⁴

3 On December 7, 2017, the clients signed a "Consent to Settle" prepared by
4 the Vannah office. In the Consent, the clients knowingly abandoned the attorney
5 fee claim against Lange and directed Mr. Simon to settle the Lange claim for
6 \$100,000 minus the unpaid bill. Mr. Simon was not told to cease work or to
7 transfer the file.¹⁵

8
9 In December of 2017, Mr. Simon finalized the details of the Viking
10 settlement, which were approved by the clients via the Vannah office.

11
12 On Monday, December 18, 2017, two checks with an aggregate value of
13 \$6M for the Viking settlement were picked up.¹⁶

14
15 On Monday, December 18, 2017, immediately following check pick-up, Mr.
16 Simon called the Vannah office to arrange check endorsement. Mr. Simon left a
17 message.¹⁷

18 On Monday, December 18, 2017, Mr. Greene of the Vannah office called and
19 spoke to Mr. Simon. Mr. Simon said he was leaving on a holiday trip starting
20 Friday, December 22, 2017, until after the new year. Mr. Simon asked that the
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24 ¹⁴ Exhibit 9.

25 ¹⁵ Exhibit 10.

¹⁶ Exhibit 11.

¹⁷ Exhibit 12.

1 clients endorse the checks prior to December 22nd. Mr. Greene told Mr. Simon that
2 the clients were not available to endorse until after the New Year. Mr. Greene
3 stated that he would contact LAW OFFICE OF DANIEL S. SIMON, P.C. about
4 scheduling endorsement.¹⁸

5
6 On Friday, December 22, 2017, the Simon family went on their holiday trip.

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

9
10 Are you agreeable to putting this into an escrow account? The client does
11 not want this money placed into Danny Simon's account. How much money
12 could be immediately released? \$4,500,000? Waiting for any longer is not
13 acceptable. I need to know right after Christmas.¹⁹

14 On Tuesday, December 26, 2017, counsel for Mr. Simon sent a reply
15 indicating that endorsement could be arranged after the new year when everyone
16 was available.
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25 ¹⁸ Exhibit 12.

¹⁹ Exhibit 12.

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

2 The clients are available until Saturday.²⁰ However, they have lost all faith
3 and trust in Mr. Simon. Therefore, they will not sign the checks to be
4 deposited into his trust account. Quite frankly, they are fearful that he will
steal the money.²¹

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

6 On December 27, 2017, a response was sent to Mr. Vannah. In sum, Mr.
7 Vannah was asked to act collaboratively and to avoid hyperbole.²²
8

9 On December 28, 2017, Mr. Vannah wrote he did not believe Mr. Simon
10 would steal money, he was simply "relaying his clients' statements to me". Mr.
11 Vannah proposed opening a single client trust account.²³
12

13 The same day, Mr. Simon agreed to open a single client non-IOLTA trust
14 account at Bank of Nevada, with all interest going to the clients.²⁴

15 On January 2, 2018, an amended lien was filed. The lien contained an
16 amount certain for the reasonable value of services claimed.²⁵ On January 4, 2018,
17 the lien was served.²⁶
18
19

20 ²⁰ On December 18, 2017, Mr. Greene indicated the clients were out of town until
21 after the new year. (Exhibit 12.) It appears the clients became available to
22 endorse checks the day after Mr. Simon left town.

23 ²¹ Exhibit 12.

24 ²² Exhibit 13.

25 ²³ Exhibit 14.

26 ²⁴ Exhibit 14.

²⁵ Exhibit 15.

²⁶ Exhibit 16.

1 On January 4, 2017, collaborative efforts continued to set up the trust
2 account, and the clients sued their friend for "conversion".²⁷

3 On January 8, 2017, a meeting was held at Bank of Nevada. The clients
4 arrived separately to endorse checks. Account forms were signed, the checks were
5 endorsed and deposited, and placed on a large item hold.
6

7 The morning of January 9, 2018, the complaint was served upon counsel for
8 Mr. Simon (who had agreed to accept service). At the same moment as the
9 acceptance of service was being signed, Mr. Greene sent an email asking for an
10 update on the Lange settlement.²⁸
11

12 Later in the day, Mr. Vannah confirmed that LAW OFFICE OF DANIEL S.
13 SIMON, P.C. had not been fired, despite being sued by the clients for conversion.²⁹
14 Mr. Vannah stated if Mr. Simon withdrew, the damages sought from him would go
15 up.³⁰
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19 ²⁷ Exhibit 17; the complaint.

20 ²⁸ Exhibit 18.

21 ²⁹ The clients are walking a tightrope. Mr. Simon was sued for conversion to
22 create an argument against lien adjudication, but firing Mr. Simon would moot
the alleged contract claim. The clients are left in the odd, contrary position of
keeping an attorney they have accused of converting millions of dollars.

23 ³⁰ On January 9, 2018 at 10:24 a.m. Mr. Greene from the Vannah office wrote,
24 "He settled the case, but we're just waiting on a release and the check." The
25 same day at 3:32 p.m., Mr. Vannah wrote, "I'm pretty sure that you see what
would happen if our client has to spend lots more money to bring someone else
up to speed." Exhibit 18.

1 **V. ARGUMENT**

2 A charging lien provides “a unique method of protecting attorneys.”
3 *Leventhal v. Black & Lobello*, 305 P.3d 907, 909 (Nev. 2013); *superseded by statute*
4 *on other grounds as stated in, Fredianelli v. Pine Carman Price*, 402 P.3d 1254
5 (Nev. 2017).
6

7 The statute protects clients. Under the statute the Judge who knows the case
8 best, and who has seen the attorney at work, settles the fee dispute. The Judge is
9 empowered to reduce or reject a lien claim from an undeserving attorney. *See, e.g.,*
10 *Golightly*, 281 P.3d 1176.
11

12 The statute also promotes judicial economy. Prompt adjudication of a lien
13 allows a court to determine the fee when “the attorney’s performance is fresh in its
14 mind”. *Leventhal*, 305 P.3d at 911. Prompt adjudication prevents time consuming
15 and costly work months or years later in the same or a different court.
16

17 The Law Office of Daniel S. Simon, A Professional Corporation
18 perfected it’s charging lien. This Court has jurisdiction to promptly adjudicate the
19 lien; and, in the absence of an express contract, settle the amount of the reasonable
20 fee due the law firm pursuant to NRS 18.015(2).
21

22 There is no set manner of calculation for a reasonable fee. *Albios v. Horizon*
23 *Communities, Inc.*, 132 P.3d 1022, 1034 (Nev. 2006). A court has wide discretion on
24 the method of calculation of the reasonable fee. A court can calculate the fee on a
25

1 market basis, an hourly basis, or any other basis, as long as, the fee is reasonable
2 under the under the *Brunzell* factors. *Ibid.* A court need only explain its decision in
3 written findings. *Argentina*, 216 P.3d at fn.2.

4 The court may hold an evidentiary hearing to aide in the determination of the
5 reasonable fee.³¹ Because of the size and complexity of the underlying case, and the
6 size of the reasonable fee sought, an evidentiary hearing is respectfully requested.

7 The Law Office of Daniel S. Simon, A Professional Corporation seeks a
8 reasonable fee in the amount of \$1,977,843.80 as stated in the Amended Lien of
9 January 2, 2018.³² The amount is based upon the market approach. Mr. Simon
10 considered the type and nature of the case, and the limited number of attorneys in
11 the greater Las Vegas area with the ability to obtain the result obtained. Mr. Simon
12 also relied upon discussion with local attorneys including extended discussion with
13 attorney Will Kemp.³³

14 It is acknowledged that a contingency fee is only appropriate when there is an
15 express contingency fee agreement. However, the fact is that most Plaintiff product
16

17 ³¹ In, *Hallmark v. Christensen Law Office LLC.*, 381 P.3d 618 (Nev. 2012)
18 (unpublished)the Supreme Court remanded a case to District Court and Ordered
19 the court to hold an evidentiary hearing for a lien adjudication.

20 ³² Exhibit 15.

21 ³³ Mr. Kemp is one of the best product liability attorneys in the United States. Mr.
22 Kemp has obtained two trial verdicts over \$500M, one in a product case. Mr.
23 Kemp was lead trial counsel in the MGM Fire Litigation, and has been appointed
24 on numerous steering committees for multi-district tort litigations, including
25 tobacco, breast implant, orthopedic screw, and pharmaceutical claims.

1 liability attorneys work on a contingency, sometimes as high as 45%. Mr. Simon
2 arrived at a reasonable fee number of \$1,977,843.80 because it is in the low range of
3 what a Plaintiff's product liability attorney would charge. It is a fair market price for
4 the work performed. The fair market value, or market price, is an accepted method to
5 calculate A fee. Restatement Third, The Law Governing Lawyers, §39.
6

7 Time sheets can be valuable to a determination, even when the court reaches a
8 reasonable fee based on a market approach. The time sheets document work
9 performed. The previously unbilled hours of the law office are attached at Exhibit
10 19. At the prior rates paid, the total outstanding is \$692,120.00. The previous time
11 sheets are attached at Exhibit 20. These billings do not contain hundreds of hours
12 that could not be recovered.
13

14 Costs advanced need to be reimbursed. Outstanding costs are \$71,794.93.³⁴
15 The amount is slightly less than the amount in the lien. A billing was received on
16 January 12, that demonstrated a refund of \$4,937.50 was due. The \$71,794.93 cost
17 number reflects the expected refund.
18

19 Adjudication of an attorney lien may not be appropriate when a client claims
20 malpractice occurred. *Argentina*, 216 P.3d at 788. Obviously, Mr. Simon did not
21 commit malpractice, his efforts created a \$6.1M settlement for his clients. Instead,
22 the clients may assert that the law office committed conversion by using a charging
23
24

25 ³⁴ Exhibit 21; Memorandum of Costs.

1 lien.³⁵ The argument runs contrary to law. NRS 18.015(5) explicitly states an
2 attorney does not breach a duty by pursuing a lien. Further, the declaration of David
3 Clark Esq.,³⁶ is attached.³⁷ Mr. Clark explains that an attorney does not breach a
4 contract or commit conversion by deposit of a settlement check into a trust account
5 while asserting a lien for fees, because that is the process an attorney is supposed to
6 follow when there is a fee dispute.
7

8 **A. The charging lien is ripe for adjudication.**

9 The court has jurisdiction over the clients, the charging lien and the fee
10 dispute. NRS 18.015; and, *Argentina*, 216 P.3d at 782-83.
11

12 The charging lien has been perfected by proper service upon the clients.
13 NRS 18.015 (3). The case is resolved³⁸, money is held in a trust account, and the lien
14 is ripe for adjudication.
15
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19 ³⁵ Even if true, which it is not, the conversion claim might not be enough to stop
20 adjudication. *Hallmark v. Christensen Law Office LLC.*, 381 P.3d 618 (Nev.
21 2012) (unpublished). In *Hallmark*, the Supreme Court remanded an adjudication
22 claim and ordered the District Court to conduct an evidentiary hearing on a
reasonable fee and “the allegations of billing fraud”. If fraud can be addressed in
an adjudication, then conversion probably can as well.

23 ³⁶ Mr. Clark was Nevada State Bar Counsel and is intimately familiar with all the
24 Rules of Professional Conduct and related issues.

24 ³⁷ Exhibit 22.

25 ³⁸ Pending completion of the Lange settlement. The closing documents are in the
hands of the Lange attorney.

1 The law office requests an evidentiary hearing. If the court finds there is no
2 express contract, then a reasonable fee, based on the market or some other approach,
3 may be set by court under the *Brunzell* factors pursuant to NRS 18.015(2). If an
4 express contract is found, then fees and costs are still due under the charging lien as
5 demonstrated by the time sheets and the memorandum of costs.
6

7 The complaint for conversion does not divest this court of jurisdiction over the
8 parties, the lien or the fee. A charging lien is a creature of statute, and there is no
9 exception to jurisdiction stated in the statute for a claim of conversion. To the extent
10 an exception is noted in the case law, it is when there is a malpractice claim, which
11 has not been brought, nor could be brought, for the amazing work in this case.
12

13 A claim for conversion is contrary to law in any event. The law directs an
14 attorney to place money in a trust account to adjudicate a lien if there is a fee dispute.
15 That is exactly what occurred in this case.
16

17 A breach of contract claim does not divest the court of jurisdiction. In fact, the
18 statute contemplates that a lien adjudication can be freely used with other remedies,
19 including a separate suit. NRS 18.015(7); and, *Argentina*, 216 P.3d 779.
20

21 It is apparent that the complaint was filed to further the ulterior purpose of
22 forum shopping the fee dispute and to stop adjudication of the charging lien by the
23 Judge who knows the case best. For example, the complaint alleges Mr. Simon
24 failed to provide a number certain for the amount in dispute (it is termed undisputed
25

1 amount by the clients), however, the complaint was filed two days after Mr. Simon
2 did just that via the amended lien. The complaint alleges conversion, yet it was filed
3 before checks had been endorsed or deposited. And, the funds were placed in a
4 special trust account that requires the signature of Mr. Vannah on any withdrawals,
5 with all interest going to the client.
6

7 Perhaps nothing exposes the nature of the complaint better than the clients'
8 refusal to fire Mr. Simon, even though he stands accused of converting millions of
9 dollars. The situation is absurd. Mr. Vannah is one of the top attorneys in this State.
10 Mr. Vannah could review and approve the closing documents for Lange in well
11 under an hour. After all, he has already provided advice to the client on settlement
12 with Lange and on the abandonment of a contract based claim for attorney fees
13 against Lange potentially worth over \$1M.³⁹ However, if Mr. Simon is fired, then he
14 would no longer be limited to an hourly contract as the clients claim. *Gordon*, 324
15 P.2d 234. Thus, to stop adjudication, the clients must claim something terrible, but
16 still not fire Mr. Simon.
17
18
19

20 Lien adjudication is appropriate.
21
22
23
24
25

³⁹ Exhibit 10.

1 **B. The *Brunzell* Factors**

2 A reasonable fee must be determined by use of the *Brunzell* factors. *Brunzell*
3 *v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969). The *Brunzell* factors are:

- 4 1. The qualities of the advocate;
5
6 2. The character of the work to be done;
7
8 3. The work actually performed; and,
9
10 4. The result obtained.

11 The factors support a finding that a large reasonable fee is due Mr. Simon for
12 his great work on the clients' case.

13 1. Qualities of the advocate.

14 *Brunzell* expands on the “qualities of the advocate” factor and mentions such
15 items as training, skill and education of the advocate. The C.V. of Mr. Simon is
16 attached. (Exhibit 23.) Mr. Simon has been an active Nevada trial attorney for over
17 two decades. He has several 7-figure trial verdicts to his credit, and an 8-figure
18 settlement. Mr. Simon is a highly qualified advocate, deserving of a high fee.

19 2. The character of the work to be done.

20 The character of the work to done in the case was difficult and complex.
21
22 There were multiple parties and multiple claims. Affirmative claims by the clients
23 covered the gamut from product liability to negligence, to recovery under a
24 construction contract.
25

1 Understanding and establishing proof of the product defect required technical
2 knowledge. Establish economic loss from the flood required knowledge of real
3 estate and finance.

4 This case demanded quality work of the highest order.

6 3. The work actually performed.

7 The work actually performed was amazing. Mr. Simon was aggressive and
8 successful in discovery, which lead to the disclosure of prior floods. Mr. Simon kept
9 a tight hold on deadlines and the Court's trial order, which allowed the clients an
10 opportunity to fully present their case, while placing the defense at risk of losing their
11 main expert and having their answers struck.

13 Mr. Simon found, retained and prepared experts on the product defect, and on
14 the difficult and rare damage claim of real estate stigma. Most lawyers would not be
15 able to even address a claim of damages from real estate stigma, let alone present an
16 expert opinion sufficient to survive a *Hallmark* challenge.

18 The time records submitted establish that Mr. Simon went the extra mile for
19 his clients, responding to countless phone calls and emails, and going to great extent
20 to prepare the case. For example, Mr. Simon flew to San Diego to meet with experts
21 face to face in the airport for 8 hours. The phone, Go to Meeting or Skype, was not
22 good enough for Mr. Simon. He knew the case required in depth and in person
23 discussion, so that is what he did.
24
25

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The *Brunzell* factors support a significant fee to Law Office of Daniel S. Simon, P.C. In the absence of an express contract, the market approach fee is requested. If a contract is found, then the outstanding fees and costs per the contract are requested.

The charging lien is ripe for adjudication. An evidentiary hearing is respectfully requested at the earliest convenience of the court.

January 2018:


James R. Christensen Esq

AA027

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing MOTION TO ADJUDICATE
ATTORNEY LIEN OF THE LAW OFFICE OF DANIEL S. SIMON, P.C.;
ORDER SHORTENING TIME was made by electronic service (via Odyssey) this
~~23rd~~ ^{24th} day of January, 2018, to all parties currently shown on the Court's E-Service
List.

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

INVOICE FOR DANIEL S. SIMON
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

1/3/18	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze , review schedule and additional emails from S. Guindy	.50
1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.50
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	T/C with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5
	Review all Emails concerning service of all pleadings (679 emails)	135.80
	Total Hours	866.20
	Total Fees at \$550 per hour	\$476,410.00

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

DATE	DESCRIPTION	TIME
12.20.16	Review, Download & Save Defendants the Viking Corporation and Supply Network, Inc.'s Substitution of Counsel	0.30
1.4.17	Review, Download & Save Joint Case Conference Report	0.30
1.6.17	Email to DSS re Lange K inserts added to MSJ	0.15
1.9.17	Review email from DSS re phone call to Pancoast	0.15
1.9.17	Review, Download & Save Defendant The Viking Corporation and Supply Network , Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.10.17	Review, Download & Save Plaintiffs Response to Defendants The Viking Corporation and Supply Network Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.11.17	Review email from DSS re making small changes to MSJ	0.15
1.13.17	Review, Download & Save Plaintiffs Motion for Summary Judgment	0.30
1.17.17	Review email from DSS re preparing written discovery and depo notices	0.15
1.17.17	Review email from DSS to Pancoast re moving MSJ hearing and Opp date	0.15
1.18.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment	0.30
1.19.17	Email chain with DSS re Viking's Opposition to MSJ	0.50
1.20.17	Email chain with DSS re Stackiewicz case	0.15
1.20.17	Review, Download & Save Notice of Video Deposition of Shelli Lange	0.30
1.20.17	Review, Download & Save Subpoena for Shelli Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition Bernie Lange	0.30
1.20.17	Review, Download & Save Subpoena for Bernie Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition of Tracey Garvey	0.30
1.20.17	Review, Download & Save Subpoena for Tracy Garvey	0.30

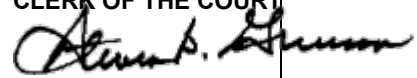
INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.8.17	Review, Download & Save Lange Plumbing 14 th Supp to 16.1ECC List of Witnesses and Docs	0.30
12/11/17	Discussion with DSS re client's release of claims	0.20
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
12.12.17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
12.13.17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5
TOTAL HOURS x \$275 per hour (reduced)		762.6
TOTAL FEES		\$209,715.00

INVOICE FOR BENJAMIN J. MILLER
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
8/16/17	Research and review prior cases and brief bank for written discovery on punitive damages	0.75
8/16/17	Send interoffice email regarding punitive damage discovery from other cases	0.25
8/17/17	Research and review licensing standards and regulations from California Board of Professional Engineers, Land Surveyors and Geologists for possible use in upcoming expert depositions	1.5
8/30/17	Send interoffice email regarding punitive damages written discovery from other cases	0.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35
11/13/17	Draft interoffice email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/6/17	Research Nevada case law regarding cost of repair damages and diminution in value damages	0.75
11/6/17	Research case law of surrounding jurisdictions regarding cost of repair damages and diminution in value damages	1.5
11/6/17	Research various law review articles, restatements of law, jury instructions and other legal authorities regarding cost of repair damages and diminution in value damages	1.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35

11/8/17	Prepare memo regarding cost of repair damages and diminution in value damages	2.0
11/9/17	Discussion with DSS re: Memo	0.5
11/13/17	Research Nevada law regarding admissibility of litigation conduct for bad faith	0.5
11/13/17	Research case law of surrounding jurisdictions regarding admissibility of litigation conduct for bad faith	3.25
11/13/17	Research various law review articles and other legal authorities regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Prepare memo regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Draft email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/14/17	Research Contract Validity within NRS Chapter 624 and Nevada case law for summary judgment briefing	2.75
11/16/17	Confer regarding recoverable damages within breach of contract vs. products liability	0.75
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
	Total Hours x's \$275 per hour (reduced)	21.8
	Total Fees	\$5,995.00



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST,

Plaintiff,

vs.

LANGE PLUMBING, LLC,

Defendant.

CASE NO. A-116-738444-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

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

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

THEODORE PARKER, ESQ.
(Via telephone)

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

TRANSCRIBED BY: MANGELSON TRANSCRIBING

AA035

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Las Vegas, Nevada, Tuesday, February 06, 2018

[Case called at 9:47 a.m.]

THE COURT: We're going to go on the record in Edgeworth Family Trust versus Lange Plumbing, LLC.

We have Mr. Parker present here on behalf of Lange plumbing. He's present on court call.

[THEODORE PARKER, APPEARING TELEPHONICALLY]

THE COURT: If we could have the other parties' appearances for the record.

MR. VANNAH: Robert Vannah and John Greene on behalf of the Edgeworth Family.

MR. CHRISTENSEN: Jim Christensen on behalf of the law firm.

MR. CHRISTIANSEN: Pete Christiansen on behalf of the law firm.

MS. PANCOAST: Janet Pancoast on behalf of the Viking entities.

THE COURT: Okay. Ms. Pancoast, we're going to do the stuff that involves you and Mr. Parker first and then -- since -- so we can get Mr. Parker off the court call. So Mr. Parker has a Motion on for a Determination of a Good Faith Settlement. There has been no Opposition to this Motion. I'm assuming there's no Opposition since the checks have already been issued and this case has already been settled.

AA036

1 So, based upon that the Motion for Good Faith Settlement is
2 going to be granted under the *MGM Fire* factors have been met, as well
3 as NRS 16.245.

4 And in regards to the settlement documents, I believe we have
5 those because I believe the checks have been issued, is that correct?

6 MS. PANCOAST: Your Honor, the checks were issued long
7 ago from the Viking entities and frankly, I've got a stipulation that I've
8 brought today hoping to get Mr. Simon's signature and Mr. Parker is the
9 final signature as to -- so to get Viking out.

10 I mean, Mr. Simon did sign a dismissal to get Viking out, but
11 we're trying to sort of wrap up the entire case and now we've had, as
12 you are aware, a bit of a snafu. And so I'm not sure how we deal with
13 that. But I mean, I'd like to get this stip filed, so at least --

14 MR. CHRISTENSEN: I can do it.

15 MS. PANCOAST: -- you know, Mr. Parker and I and our
16 clients are sort of harm's way.

17 MR. SIMON: We don't have the checks yet.

18 THE COURT: And --

19 MR. CHRISTENSEN: Your Honor, just to let the Court know,
20 the closing documents for Lange took a little bit of time. They have
21 finally been -- they were signed by the client where needed yesterday
22 and then been provided to Mr. Simon who's got to get some signatures
23 and get them on over back to Mr. Parker.

24 THE COURT: Okay. So that's where you are. Counsel, what
25 is --

AA037

1 MR. CHRISTENSEN: It's in the works.

2 THE COURT: -- you and Mr. Simon's position in regards to
3 this stip?

4 MR. CHRISTENSEN: I think it's appropriate.

5 MR. SIMON: Yeah, there's -- unless Mr. Vannah has an issue
6 with it.

7 MR. VANNAH: No.

8 THE COURT: Okay.

9 MR. VANNAH: No, we're -- my understanding of the whole
10 case is -- the underlying case is -- we signed everything yesterday we --
11 and we want Mr. Simon to finish it off and it's almost done.

12 THE COURT: Okay.

13 MR. VANNAH: The whole case is just about to be dismissed,
14 it's just a matter of a few days, I imagine.

15 THE COURT: Okay. So Mr. Panco -- Ms. Pancoast, you can
16 get Mr. Simon to sign that. Mr. Parker is not here today, you'll have to
17 get him as soon as he's back in the jurisdiction.

18 MR. PARKER: And I'll be back -- Your Honor, this is Mr.
19 Parker. I'll be back in jurisdiction tonight and --

20 THE COURT: Okay.

21 MR. PARKER: -- certainly I can find time to go by Ms.
22 Pancoast's office if necessary to sign the stipulation tomorrow. Or if she
23 had it delivered to my office, I will sign it tomorrow morning.

24 I wanted to make sure that it was clear on the record that the
25 Good Faith Settlement determination, as well as the stipulation that

AA038

1 we've -- we will be signing involves and determines that not only were
2 the settlements in good faith, you know, reached at arm's length
3 negotiations, but they include the resolution of all claims between the
4 Defendant and cross-claims and any additional shared obligations the
5 Defendants may have had amongst each other, as well the, of course,
6 the Plaintiff's claims.

7 THE COURT: Well did --

8 MR. PARKER: I think that's all but agreed, but since I'm not
9 there I figured I'd say it one more time so it's on the record clearly.

10 THE COURT: Okay. And does anyone have an objection to
11 that?

12 MS. PANCOAST: No, that's agreed. That's correct.

13 THE COURT: Okay. There being no objections to that that'll
14 be part of the record. And then in the regard to the settlement
15 documents, as soon as those things are signed, we'll get those. Do you
16 guys think we need another status check to get those done or do you
17 guys --

18 MR. SIMON: You might as well set it. We still don't have the
19 settlement checks from Mr. Parker, but --

20 MR. PARKER: Yeah.

21 THE COURT: Okay.

22 MR. PARKER: I'm sorry, I couldn't hear --

23 MR. SIMON: So I mean, there's a --

24 MR. PARKER: -- what someone just --

25 MR. SIMON: -- little bit left to do.

1 MR. PARKER: -- said, but let me just put on the record, Your
2 Honor, this is again Teddy Parker on behalf of Lange. We do have our
3 settlement check. It has arrived. So tomorrow I'm more than happy to
4 have it sent over to Mr. Simon's office in exchange for the settlement
5 documents.

6 THE COURT: Okay. So what we will do then is we'll set a
7 status check on that issue in two weeks just to make sure all of that stuff
8 has been resolved.

9 MS. PANCOAST: Yes, Your Honor, that would be great. And
10 what I am doing is I'm giving the stipulation to Mr. Simon because he
11 doesn't have the check yet and I can understand he doesn't want to sign
12 it before the check, so he's got it then he will get it to Teddy or exchange
13 it when they exchange the check, so --

14 THE COURT: Okay.

15 MS. PANCOAST: -- Mr. Simon's facilitating wrapping this up.

16 THE COURT: Okay. Mr. Parker, could you hear that? Based
17 on when you and Mr. Simon exchange the check, then the stipulation
18 can be signed after that.

19 MR. PARKER: Sounds great.

20 THE COURT: Okay. So we'll set a status check on the
21 settlement documents in two weeks. That date is?

22 THE CLERK: February 20th at 9:30.

23 THE COURT: Okay.

24 And so then in regards to the other motion, I mean, Mr.
25 Parker, you're not involved in the other motions, would you like to stay

AA040

1 on the court call or would you like to -- it's up to you.

2 MR. PARKER: Your Honor, I am -- I'm -- I think tangentially
3 I'm involved --

4 THE COURT: Okay.

5 MR. PARKER: -- and the only reason I say that is because I
6 think we all as a party to this case would like to have this whole thing
7 wrapped up at once so that there's nothing hanging over any of our
8 hands any further -- any longer.

9 THE COURT: Okay.

10 MR. PARKER: So I'd like to stay on in the event my
11 comments may prove beneficial to the Court's consideration of the
12 motion.

13 THE COURT: Okay. And I appreciate that, Mr. Parker, I just
14 didn't know if you had something else to do or --

15 Okay. So, we're going to start with Danny Simon's Motion to
16 Consolidate that was done on an Order Shortening Time. I have read
17 the motion, I've also read the Opposition, and I did read the Reply that
18 did come in yesterday.

19 Mr. Vannah, have you had an opportunity to review the Reply?

20 MR. VANNAH: I have, Your Honor.

21 THE COURT: Okay. So based upon that, Mr. Christensen.

22 MR. CHRISTENSEN: Yes, Your Honor.

23 So Rule 42 addresses consolidation; essentially if there is a
24 common issue of fact or of law the cases can be consolidated under the
25 discretion of the Court.

AA041

1 In this situation we have common issues of fact. The common
2 issues of fact are the litigation of the case against Viking and Lange and
3 the facts of that underlying litigation, the house flood, et cetera.

4 Common issues of fact are the work of the law office. Common issues
5 of fact are the reasonable fees due the law office.

6 Common issues of law are the relationship between the law
7 office and Plaintiffs, whether there's an express contract or not, and
8 those types of related issues to the existence of the contract; whether
9 there was a constructive discharge of the contract, things of that type.

10 I don't want to go through all the facts of the consolidation,
11 Your Honor, is quite familiar with the underlying case.

12 THE COURT: And I've read it, but I will tell you one of the
13 concerns that I have is the issue with this contract because as you know
14 from where you guys are standing your position is there was some
15 discussions, but there was never anything put in writing, but from
16 where -- and Mr. Vannah's Opposition basically what Mr. Vannah is
17 saying is everything indicates that there was a contract that this would
18 be done on an hourly basis. And I do have a couple questions for Mr.
19 Vannah in regards to that. So I do want to hear your position about that.

20 MR. CHRISTENSEN: Okay. Jumping the gun a little bit on
21 the Motion to Adjudicate, but that's --

22 THE COURT: Sorry.

23 MR. CHRISTENSEN: -- fair enough. It's all right.

24 So, first of all, in the big picture the existence of the contract
25 does not affect the jurisdiction of the Court over the Motion to Adjudicate

AA042

1 and only affects the manner of calculation of the fee due.

2 THE COURT: Right.

3 MR. CHRISTENSEN: On the issue of the existence of the
4 contract, we're talking about whether there's an express contract or not.
5 There seems to be a little bit of confusion, so let me see if I can clear it
6 up. An express contract can be writing or oral, there just has to be a
7 meeting of the minds. So, whether I have a piece of paper that says I'll
8 cut your lawn for \$20 and it's signed or whether I say I will cut your lawn
9 for \$20 and the homeowner agrees and I cut the lawn and I then get
10 \$20, that's an express contract.

11 You can also have contract implied by the facts or conduct.
12 That's an implied contract and that's not an express contract. So, it may
13 be a little nuanced here, this distinction and as a practical matter when
14 we get into the weeds on that, it may cut different ways, but as we go to
15 the existence of the contract, the allegations of the underlying Complaint
16 filed in the other case argue that an express contract was formed in May
17 of 2000 -- in May of 2016. And that doesn't jive with the e-mail that was
18 sent May 27th. It seems like -- you know, if you read that e-mail and take
19 reasonable inferences from it, you say hey, I got this problem --

20 THE COURT: This is the e-mail between Mr. Edgeworth that
21 was sent to Danny Simon.

22 MR. CHRISTENSEN: Correct.

23 THE COURT: Yes.

24 MR. CHRISTENSEN: It's attached as Exhibit A to the Reply --

25 THE COURT: No, I've read it. I just want to make sure--

AA043

1 MR. CHRISTENSEN: -- and it's also --

2 THE COURT: -- we were talking about the same one.

3 MR. CHRISTENSEN: Right.

4 THE COURT: Yes.

5 MR. CHRISTENSEN: Exactly.

6 And so that raises this reasonable inference that they didn't
7 have an express oral contract at that time.

8 So, the case moves forward and suddenly becomes more
9 than just a simple claims process claim. There's a lot more involved.
10 And the first billing isn't sent up by Mr. Simon's office until something like
11 seven months later in December.

12 THE COURT: Was there an understanding between Mr.
13 Edgeworth and Mr. Simon as regards to when the billing would actually
14 occur?

15 MR. CHRISTENSEN: I don't believe that was -- well, on the
16 part of the law office, no --

17 THE COURT: Okay.

18 MR. CHRISTENSEN: -- and I don't believe that that was
19 asserted on the part of Mr. Edgeworth.

20 THE COURT: Okay. And I mean, he didn't assert that, that's
21 a question that I have --

22 MR. CHRISTENSEN: Right.

23 THE COURT: -- because as we talk about like how long it
24 took for the billings to begin and stuff like that, that was just a question
25 that I had.

AA044

1 MR. CHRISTENSEN: Well -- and it's a good question, Your
2 Honor, because when you do hourly work that's typically a material term.
3 I mean, usually when doing hourly work you're getting billed within 30 to
4 60 days --

5 THE COURT: Right.

6 MR. CHRISTENSEN: -- if events are occurring and you know,
7 then there's language in there about how quickly it's going to get paid, et
8 cetera, et cetera.

9 In the alleged oral contract that the Edgeworths say existed,
10 the only term they talk about is \$550 an hour. I cited the *Loma Linda*
11 case, that's been law in Nevada for a long, long time. Even if you're
12 asserting an oral contract and you've got one term that seemingly
13 there's an agreement upon, if there's not agreement upon all the other
14 terms, there's no contract. It's all or nothing. So, that's the position of
15 the law firm that there was no contract.

16 As you move forward in time to August of 2017, when the
17 case was obviously getting very hot and heavy in this courtroom --

18 THE COURT: Uh-huh.

19 MR. CHRISTENSEN: -- you can see that Mr. Simon, again,
20 raised that issue because there was a lot more money being spent on
21 the case, there was a lot more time being devoted to the case. He
22 wanted to tie up that lose issue because, you know, he agreed to take
23 the case and send some letters, you know, for a long family friend and
24 didn't think it was going to be that big of a deal and now suddenly it is.

25 And it's dominating time at the law office, he's not working on

AA045

1 other files, it's become an issue. So he tries to address it. There's not
2 that much documentation of his attempts to --

3 THE COURT: Well, that's --

4 MR. CHRISTENSEN: -- address it.

5 THE COURT: -- was going to be my next question because I
6 have --

7 MR. CHRISTENSEN: There are --

8 THE COURT: -- the e-mail here from Brian Edgeworth, but
9 did Danny Simon respond to this e-mail or what did he do to address this
10 issue?

11 MR. CHRISTENSEN: My understanding of that e-mail is that
12 it's a standalone e-mail. In other words, it wasn't pulled out of a string of
13 e-mails --

14 THE COURT: Okay.

15 MR. CHRISTENSEN: -- back and forth. I can't answer the
16 question concerning whether there were other e-mails that addressed
17 that. The e-mails literally are a stack -- how high? This high?

18 MR. SIMON: Higher.

19 MR. CHRISTENSEN: Higher. I did not go through them. At
20 least not yet. Hopefully I won't have to.

21 But this one e-mail that we pulled out appears to address that
22 issue on the head and that's why we attached it. It's Exhibit B to the
23 Reply.

24 THE COURT: Yes.

25 MR. CHRISTENSEN: It's in the other -- attached to the other

AA046

1 documents.

2 And a reasonable inference that you can draw from that e-mail
3 is that there really wasn't a firm agreement. It's stated right out that we
4 never had a structured discussion and that seems to match the conduct
5 of the parties. So, even if we're going to go down the road to an implied
6 contract, that matches the conduct of the parties. Not all things were
7 getting billed, there were costs being fronted.

8 That's very rare for an hourly lawyer to do. And there were
9 large amounts of costs being fronted. As a matter of fact, there are still
10 some \$71,000 in costs outstanding. That's not typical behavior of an
11 hourly lawyer and that's because Mr. Simon does not take hourly cases
12 as a rule. You know, he takes cases where there -- where you address
13 the fee at the end of the case and that's what we have here.

14 So and all of those facts -- to kind of segway back to the
15 Motion to Consolidate, all of those issues are at play on the Motion for
16 Adjudication. So there are common issues of fact and law that relate to
17 that contract.

18 And there's another issue here that I wanted to bring up and
19 that is the basic legal premise and the public policy against multiplicity of
20 suits. It's enshrined in Rule 13, it's expressed in other ways through the
21 law, and it's actually dug into by Leventhal where Leventhal cited the
22 Gee case out of Colorado. And it talked about the problem of creating
23 multiple suits when there is a lien adjudication.

24 And it addresses it from the standpoint of judicial economy
25 and it says -- the Gee case quotation that was cited by Leventhal, our

AA047

1 Supreme Court case says: To restrict the means of enforcement of an
2 attorney's liens solely to independent civil actions would be a waste of
3 judicial time, as well as contrary to the legislative intent reflected by the
4 statutory language.

5 And it goes on to say: The trial judge heard the proceedings --
6 Your Honor -- which gave rise to the lien is in a position to determine
7 whether the amount asserted as a lien is proper and can determine the
8 means for the enforcement of the lien.

9 And that dovetails exactly with our statutory language. The
10 statute says the Court -- the statute says that the Court shall adjudicate
11 the lien. There's no discretion in the word shall. Certainly there's
12 discretion in the question of consolidation, that's a maybe question. But
13 the question of adjudication I shall. So, this Court is going to have to
14 address those issues.

15 Under the *Verner* case, which was cited by the Edgeworths,
16 it's very interesting that was kind of an opposite fact scenario where a
17 case was split up and the Supreme Court said no, you shouldn't have
18 done that. And one of the reasons why is they said that there must be a
19 demonstration that a bifurcated trial is clearly necessary to lessen costs
20 and expedite litigation. That's not going to happen.

21 That's why all of this should be consolidated in one court
22 because the case law is clear that Your Honor is the most
23 knowledgeable that will promote judicial economy and we shouldn't lose
24 on that. If we have two cases running on parallel tracks, there's going to
25 be a lot of duplicity of effort, we're going to lose judicial economy.

AA048

1 Now, the most natural reply for the Edgeworths is to say well,
2 wait a second, under the Constitution we have a right to jury trial and
3 that's true. There's nothing in consolidation that would prevent the
4 proceeding of their action. That would have to be done by something
5 else; by say a Motion to Dismiss. And there is nothing in the statute that
6 prevents the proceeding of their contract claim, if they decide to do so
7 after adjudication of the lien.

8 In fact, the statute, subsection 7, although it's looking at it from
9 the attorney's point of view says this is not an exclusive remedy, you can
10 file an independent action. There's nothing in the law that says that a
11 lien cannot be adjudicated and then there can't be an independent
12 action that addresses those same facts and law.

13 As a practical matter, obviously it may have an impact on the
14 damages in the breach of contract case, depending upon how far we go
15 in determination of facts and law in the adjudication process that could
16 have fact or issue preclusion in the contract case, depending how it all
17 works out; how the findings come out.

18 But that doesn't mean that both of these things can't operate
19 at the same time. That doesn't create mutual exclusivity. Both of these
20 remedies are available at the same time. By consolidating it, we can
21 save a lot of time and effort. We don't have to go over tilled ground
22 again. So, that's the argument on consolidation.

23 I -- if you'd like me to I can address some of the other factors
24 that maybe lead to why we should either adjudicate today or set it for an
25 evidentiary hearing to adjudicate in the near future.

1 THE COURT: Yeah. And if you could do that because when
2 Mr. Vannah responded he responded to both, so I'm going to give him
3 an opportunity to respond to both, based on the Opposition that he filed.

4 MR. CHRISTENSEN: Okay. Very good, Your Honor.

5 So, I'm going to dip back into the well-known facts, just
6 because I think it's necessary for a brief review so that we have a
7 common ground of understanding.

8 So, Plaintiffs were building a house as an investment. Lange,
9 the plumber installed Viking fire sprinklers, it was within the contracted
10 work of the plumber and one of those sprinklers experienced a
11 malfunction, flooded the house, damaged the house. All -- there is a
12 contract between Lange and American Grating. Some of the terms of
13 the contract same things like Lange has to assert warranty rights if there
14 is a malfunction in an item installed in the home, things of that type and
15 there's also an attorney fee provision and that becomes important as the
16 case progresses.

17 At the early stage Lange said we're not going to do anything,
18 it's Viking's fault. Mr. Edgeworth had not purchased any course of
19 construction coverage or anything else that would have covered an
20 incident like this. So, because of that decision he was obligated to go
21 through this claims process against Viking and/or Lange. He was
22 bumping his head up against the wall, started reaching out for legal
23 assistance. Reached out to his friend. We saw the e-mail from Blake
24 May.

25 The case obviously grew into a major litigation, contentious,

AA050

1 even. Lots of motion practice, lots of things going on. Around the
2 middle of 2017, Mr. Simon approached Mr. Edgeworth and tried to get a
3 resolution on this fee issue. He had a lot of costs fronted, he was eating
4 up a lot of time at the office. They are not hourly billers, they do not
5 have the standard hourly billing programs. It was a problem.

6 Mr. Edgeworth is a principal of two companies with an
7 international footprint. He has another revenue stream from investment
8 homes. He apparently has another revenue stream from various
9 investments. He's experienced hiring and paying lawyers. I know that
10 they done work in the IP, the intellectual property area, with copyrights
11 for some of those companies, et cetera. He's not a typical lay person.
12 He has dealt with lots of attorneys in the past.

13 And his response of August of 2017 has to be looked at in that
14 light. This is not some guy who's getting bullied into something, here's a
15 guy who's looking at it from a business perspective and sending out
16 options. Well, we could do this. I could take out a loan and pay hourly
17 on the whole case, which implies that he was not or else he wouldn't
18 have brought it up. Discusses a hybrid, discusses a contingency, makes
19 it clear that there's an open question on fees.

20 As the case moved on in November, after more motion
21 practice, Mr. Simon has positioned the case well for success at trial.
22 Mr. Simon has a meeting with Mr. Edgeworth prior to the mediation and
23 shows him the amount of costs outstanding, which at the time were in
24 the neighborhood of 76,000. I believe Mr. Edgeworth receive a copy of
25 that, although that is portrayed by the Plaintiffs in their Opposition.

AA051

1 Discussion was also raised about the fees, it was impressed
2 that that's -- that issue, there was this mediation to take care of. After,
3 as a result of the mediation a settlement is reached with Viking, for six
4 million dollars. The total cost of the build was 3.3, including land
5 acquisition, HOA fees and taxes. So that is an amazing recovery on a
6 case where the property damage loss, depending upon how you look at
7 it, between the hard and soft damages as Mr. Kemp went through that
8 analysis in his declaration, you know, range from three quarters of a
9 million to a million and a half or thereabouts, in that range. That's an
10 amazing result.

11 As a result of that amazing result, Mr. Simon again returned to
12 that fee discussion and at that time client communication started to
13 break down.

14 THE COURT: This is November of 2017, right?

15 MR. CHRISTENSEN: Correct, Your Honor.

16 The culminated in -- at the end of November there was a fax
17 sent from Mr. Vannah's office signed by Mr. Edgeworth saying -- in
18 essence, talk to Mr. Vannah, he's now in power to do whatever on the
19 case. The following day in response to that letter the law firm filed its
20 first attorney's lien and soon perfected it under the statute.

21 We then come to an issue that's been raised because of a
22 factual argument made by the Plaintiffs and it has to deal with the
23 attorney fee claim that existed under contract against Lange. By its very
24 nature that claim was not set until the Viking resolution was made
25 because arguably under that contract, if Lange is supposed to pursue

AA052

1 remedy against Viking for the Edgeworths and Lange says we're not
2 going to do that, Mr. Homeowner, you have to do that and the
3 homeowner expends fees and costs to do that job, then under that
4 contract he -- the homeowner is due those fees and costs because
5 Lange said I know we have this contract term, we're not going to abide
6 by it.

7 So, it doesn't really matter if a December billing is incomplete
8 because the story is -- isn't ended, the story's still ongoing. There was
9 an argument that because Mr. Simon didn't do complete billings as the
10 case went along that somehow he had damaged the case -- the value of
11 the case. Hard to imagine with the result, but that argument is made.
12 And that's simply not true because of that underlying contract.

13 There was a potential for a claim against Lange to recover
14 every penny spent. Now, Lange would have argued, well, some of that
15 is not reasonable or it's due to a different claim or whatever, but there
16 was a potential for a great case against Lange under that contract and
17 that was not ripe and that number was not certain until the settlement
18 with Viking occurred.

19 So as a result those -- if those attorney's fees had been
20 settled in a timely manner, as requested by Mr. Simon, then they would
21 have had that number as a sum certain to pursue against Lange.

22 To understand that little bit further you have to go back into
23 this whole thing about how you get attorney's fees, so, you know, we got
24 the English rule that loser pays. Well, we don't follow that, we follow the
25 American rule that everybody bears their own fees and costs. That's

AA053

1 changed by certain things. For example, if you have an offer of
2 judgment and you're able to go through all the *Batey* factors and all that
3 stuff, that's a tough road to go for fees. It's rarely granted.

4 The other one is if you have a right for fees under a contract
5 and in a claim against Lange, because those would be damages under
6 the contract, you've got a direct claim. That's not something that's, you
7 know, handled by the Court at the end of the case under a fee-shifting
8 statute, like you might have a consumer protection statute or a civil
9 rights statute or something of that type. That's a direct claim and it's not
10 ripe until the case against Viking is settled.

11 So as a practical matter what would have happened in the
12 case in this court is there would have been the resolution with Viking and
13 then if they decided to pursue that contract claim there would have had
14 to been disclosure of the sum certain that would have had to been
15 added to damages. Undoubtedly that would have been bumped the trial
16 date because Lange would have said wait a second, we need to
17 respond to this, we want to explore these damages and then that case
18 would have progressed.

19 That's important because, one, either because of a
20 misunderstanding or a misstatement that takes away this whole
21 Edgeworth argument that Mr. Simon somehow prejudiced the client. But
22 secondly, that was all explained via new Counsel, Mr. Vannah, to the
23 clients. And on December 7th, there's a writing from the clients directing
24 Mr. Simon to settle the case against Lange for 100,000 minus an offset.

25 So, they made the decision to knowingly abandon that

AA054

1 contract claim that would have encompassed those fees against Lange.
2 Having made that based upon the advice of Counsel, Mr. Vannah, they
3 can't now bring it up as a shield to either adjudication or to the existence
4 of contract.

5 What started then was kind of a cat and mouse game by the
6 Edgeworths. For example, on December 18th, when the Viking checks
7 were available, that same day the law office picked up the checks, Mr.
8 Simon got on the phone, sent an e-mail, checks are ready, come on
9 over, endorse them. Sent that to Mr. Greene of Mr. Vannah's office.

10 Mr. Greene called him back promptly and what the
11 conversation was, was Mr. Simon said come on over and sign them
12 because Friday, we're heading out of town for the holidays and we won't
13 be back until after the New Year. Mr. Greene said well, the Edgeworths
14 are out of town and won't be back until after the New Year. Okay.
15 Everybody leaves town.

16 The day after Mr. Simon left town for Christmas a new e-mail
17 comes in Saturday of the Christmas weekend and says, you know, we're
18 not putting up with any more delay, get these checks signed. Well, they
19 already knew he was out of town and he gave them an opportunity.
20 Then we go into the back and forth and they accuse Mr. Simon that he's
21 going to steal the money, put it in his pocket, and run off somewhere.

22 Seemingly we work through that, an agreement is made to
23 open up an interest-bearing trust account at the bank with the interest
24 inuring to benefit of the clients. On January 2nd, 2018, an amended
25 attorney lien was filed. On January 4, the contract claim was filed

AA055

1 against Mr. Simon. On January 8th, the checks were endorsed and
2 deposited. The following day the law firm was signed -- served. And on
3 January 18th, which is soon as the funds cleared, the clients received
4 their undisputed amount, which is the total amount in the Trust account,
5 minus the amount of the lien of January 2nd.

6 So, at the current time there's money sitting in a Trust account
7 that can't go anywhere unless they are co-signed by Mr. Simon and Mr.
8 Vannah and the client is getting the benefit of the interest on that
9 account. At the current time the costs outstanding are \$71,794.93. A
10 Memorandum of Costs was filed and that number is reflected in the two
11 liens. It's actually slightly lower than the number in the two liens
12 because subsequently a rebate was obtained from one --

13 THE COURT: Right.

14 MR. CHRISTENSEN: -- of the experts.

15 The total fee claim outstanding is under the market approach
16 to calculation of fees, which is allowed under quantum meruit, which you
17 can do clearly in absence of contract. The claim is for \$1,977,843.80.

18 The Declaration of Mr. Kemp is attached. Mr. Kemp is
19 obviously one of the top attorneys in the country. One of the top product
20 defect attorneys in the country. He went through the *Brunzell* factors in
21 the case and found the value -- the market value of the fee to be
22 \$2,444,000 before offset for money already paid, which is a little bit
23 higher than the second lien amount.

24 We then get into lien law. So, the issue presented under the
25 Motion to Adjudicate Lien, it's just that. And the statute says the Court

AA056

1 shall adjudicate the lien. The statute does not have any exception to
2 jurisdiction of this Court or the obligation of this Court to adjudicate that
3 lien, it says shall. The case law lays out and we laid it out in the motion,
4 all the cases that say the Court has adjudicated -- has jurisdiction over this fee
5 dispute.

6 And by the way, that jurisdiction continues even if the
7 Defendants are dismissed. There's absolutely no case law anywhere
8 that indicates that somehow that would magically end the jurisdiction of
9 the Court. And in fact, that would cut against the public policy behind
10 that statute because then you'd be playing a game of keeping
11 Defendants who have walked their peace in a case while you're trying to
12 adjudicate a lien.

13 So that would go against the public policy of settlement and
14 allowing these folks out and would allow just another whole level forum
15 shopping and game playing on the part of client, who may be wanting to
16 avoid paying an attorney their just fees. There's also no case law
17 anywhere that says that and it's certainly not stated in the statute.

18 So we have a lien that's been served, it's been perfected,
19 there's no argument that it hasn't. Money has been paid, it's sitting in
20 trusts, so adjudication is ripe. There are some cases that say well, wait,
21 we're not going to adjudicate a lien before money has been paid, that's
22 been -- that's happened. It's sitting in Trust. If that is the proper
23 procedure to be followed under the rules of ethics, that's the proper
24 procedure to be followed under the statute, the statute has been
25 followed each and every point, exactly.

AA057

1 There's some claim that adjudication of the lien at this point
2 would be improper[sic]. I think that addressed that through the
3 Declaration of David Clark, who is State Bar Counsel in the state for
4 many years. His opinion addresses two things, one, does an attorney
5 break and ethical rule by asserting an attorney lien? And the answer is
6 no. In fact, that's what you're supposed to do.

7 And the second thing is does an attorney commit conversion
8 when settlement money is placed in a trust account, interest inuring to
9 the benefit of the client and there's then a Motion to Adjudicate over the
10 disputed amount in that Trust account. And again, the answer is no.

11 We address some of the other conversion law in the motion
12 practice. They can't establish exclusive dominion and a right to possess
13 that money in the Trust account because that claim is based on contract.
14 We cited a California case directly on point. And the Restatement 237,
15 that addresses that. The contract isn't enough. A lien would be enough,
16 but a contract is not a sufficient basis in which to bring a conversion
17 claim.

18 Even if it was, we cited Restatement Section 240 and the
19 other cases. It has to be wrongful dominions in order to serve as a basis
20 for our contract. So they fail on two parts. One, it's not wrongful, in fact,
21 it's encouraged under the law. And two, it's not dominion because it's in
22 a Trust account, Mr. Vannah has signing authority on that account.

23 It's not like they took a cow and put the wrong brand on it and
24 wouldn't release it, it's different. It's in a Trust account with the interest
25 inuring to the benefit of the clients. The reason I raise that is because

AA058

1 it's seemingly brought forth by the clients that because they have this
2 claim in another case or another case until the Court addresses the
3 Motion to Consolidate that that divests the Court of jurisdiction.

4 Now, they don't put it in those terms, but that's the gist of it
5 and that's incorrect. There's nothing in the statute provides an exception
6 to jurisdiction. This Court shall adjudicate that lien. The only possible
7 exception is mentioned in dicta, in an Argentina case, which they don't
8 even address. They don't even raise that in their Opposition. They raise
9 some rhetorical questions, they raise cases that don't apply, but they
10 don't address that core question of whether it's appropriate for this Court
11 to adjudicate the lien. Clearly, it is.

12 When we get into adjudication, then we're going to get into the
13 impact of the contract, whether it's best to go under the market rule, an
14 hourly basis, a hybrid, somewhere in the middle, that's up to the
15 discretion of the Court, the method of calculation. The only requirement
16 is that whatever fee is arrived at is fair and reasonable under the
17 *Brunzell* factors and of course there have to be findings applying
18 *Brunzell* to the fee awarded.

19 That's how the case should proceed. That's an orderly
20 presentation and that's the process of the case that's called for under
21 the statute and cases. And frankly, the Edgeworths haven't provided
22 anything that says different. Certainly they're going to come up and
23 argue and they're going to make an equity argument and that's fine, but
24 that has to fail in the face of the statute and case law. The Court doesn't
25 have discretion to go beyond the confines of that statute. Thank you,

AA059

1 Your Honor.

2 THE COURT: Okay. Thank you.

3 MR. CHRISTENSEN: Unless you have any questions, I'll --

4 THE COURT: No, I do not.

5 Mr. Vannah?

6 MR. VANNAH: Thank you, Your Honor.

7 The procedural history is fairly accurate so -- but here's
8 what -- here's how we perceive what actually happened. They were
9 friends, the client and Mr. Simon and naturally went to him and said hey,
10 I've got this situation going on, I have a flooded house, I'd like you to
11 represent me. Whatever reason, Mr. Simon never does what a good
12 lawyer should do is prepare a written fee agreement.

13 So for a year and a half they have an oral under -- not an oral
14 understanding, they actually have an oral agreement. Mr. Simon says I
15 will work for you and I will bill you \$550 per hour and my associate will
16 bill at a lower rate, I think it was \$275 an hour.

17 THE COURT: And I do have a question about that because --

18 MR. VANNAH: Yes.

19 THE COURT: -- you put that in your Opposition, but in your
20 Opposition you keep referring to -- you referred to Mr. Simon's Exhibit 19
21 and Exhibit 20 that's attached to their motion. And every -- and unless I
22 had -- the copies that I have and that's why I hold them in here and I
23 brought them just to make sure I wasn't wrong, but -- well, Exhibit 19
24 and Exhibit 20 in the motion -- the original motion that was filed says it's
25 \$275 an hour.

AA060

1 MR. VANNAH: For his associate.

2 THE COURT: Okay. So these are for the associate.

3 MR. VANNAH: Right. And he --

4 THE COURT: Okay.

5 MR. VANNAH: And Mr. Simon billed 550 an hour.

6 THE COURT: Okay, but where is that because in your --
7 when you motion you keep referring to Exhibit 19 and Exhibit 20 at the
8 550 an hour. Where is that --

9 MR. VANNAH: It's in the --

10 THE COURT: -- because they both say 275.

11 MR. GREENE: Your Honor, it's been undisputed Mr. Simon
12 billed 550 per hour. We just put it as simple math and it was up to Mr.
13 Simon to put the amounts in the invoices and bill them to the clients.
14 That's what they paid Mr. Simon, no one's contested that --

15 MR. VANNAH: So for --

16 MR. GREENE: -- at 550 an hour.

17 MR. VANNAH: Yeah, for a year and a half we put all -- for
18 one and half years --

19 THE COURT: Right. And I was just wondering how you did
20 math because you know we're all lawyers and --

21 MR. VANNAH: That's what Mr. Simon --

22 THE COURT: -- none of our math is as good as we would like
23 it to be. But I was just wondering because you were referring to Exhibit
24 19 and Exhibit 20 in those amounts you estimate at being at 550 an hour
25 and that's how we come to those amounts and I just saw it as 275 and

AA061

1 when I did the math it was 275, so I didn't understand where the 550
2 came from.

3 MR. VANNAH: It's 275 for her.

4 THE COURT: Right. And that's just what's in 19 and 20 and
5 that is what you referenced in your motion as to how they got to the 550
6 figure.

7 MR. GREENE: It's our understanding in the first portion of the
8 exhibits show Mr. Simon's billings at 550 an hour and then as we dive
9 deeper it's 275. Maybe the copies weren't made in the order that they
10 should have been, but Mr. Simon's time was billed at 550 per hour.

11 MR. CHRISTENSEN: Your Honor, If I can clear this up. I
12 apologize, Mr. Vannah, but --

13 MR. VANNAH: Sure.

14 MR. CHRISTENSEN: So that you can move forward.

15 MR. VANNAH: Sure.

16 MR. CHRISTENSEN: Mr. Simon's billing appears first in
17 Exhibit 19.

18 THE COURT: 19, okay.

19 MR. CHRISTENSEN: And if you look at the bottom it's
20 paginated.

21 THE COURT: Uh-huh.

22 MR. CHRISTENSEN: If you go to page 79 --

23 THE COURT: Okay.

24 MR. CHRISTENSEN: -- that has the total and his fees.
25 Perhaps we should have broken it up into 19A and 19B.

AA062

1 THE COURT: I'm sorry. I just thought it was tabulated at the
2 end.

3 MR. CHRISTENSEN: Yeah. If you go to the --

4 THE COURT: Okay. Okay, I see it.

5 MR. CHRISTENSEN: Okay.

6 THE COURT: I see it. Okay, thank you, Counsel.

7 MR. CHRISTENSEN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. VANNAH: But -- no, thanks, Counsel, I appreciate it.

10 THE COURT: And I'm sorry, I just thought it was all tabulated
11 at the end when I read it so I was looking at the 275 and I just wanted to
12 make sure my math was right.

13 MR. VANNAH: No, no, that's fine. And I don't think anybody
14 disagrees.

15 THE COURT: Okay.

16 MR. VANNAH: So for a year and a half, Mr. Simon billed his
17 time in detail at \$550 an hour for his time and then 275 for his associate
18 for one and a half years. And on each and every billing -- and also
19 included all the costs and my client paid each and every invoice within
20 five to seven days, including the costs.

21 So, when they're talking about Mr. Simon advanced all these
22 costs, you may have paid the costs just like you would if you're working
23 for an insurance company, which I used to do you'd pay the costs out of
24 your general account, you'd send the insurance company a bill and say
25 this is what I spent for court reporters and this is how much my time's

AA063

1 worth and they send you a check.

2 And for a year and a half he paid my -- the Edgeworths paid
3 almost \$500,000, almost half a million dollars for a year and a half. So
4 what happened was in May about two -- nobody's saying anything about
5 any contingency fee. Now, what they want to get is a contingency fee,
6 that's what they really want, that's what Mister -- Mr. Kemp is excellent
7 and I love him to death, he's a good friend of mine.

8 Mr. Kemp said well, if our firm had done it on a contingency
9 fee we would have charged 40 percent. Certainly they could have done
10 that, but the rule -- Supreme Court Rule 1.5 makes it abundantly clear
11 that you can't have a contingency fee unless you have it in writing and a
12 client signs it and it also has to have various paragraphs in it that are
13 required by the State Bar in order to even have a contingency fee.

14 There is no contingency fee in this case, nobody disagrees
15 with that. The agreement was to pay 550 an hour and 275 for the
16 associate. The bills came over and over and over again, including the
17 costs and my client paid each and every bill as they came, no
18 discussion.

19 Then in May of last year or so, in a bar -- they were sitting in a
20 bar, I think it's down in San Diego and they started talking about how this
21 case is getting a little larger, the -- you know, a little bigger. You know --
22 and the thoughts -- the discussion came about maybe a hybrid, maybe
23 finishing off the case in some sort of a hybrid and maybe that might be
24 something they would consider a contingency fee, which would still
25 require a written contingency fee. You can't have a contingency fee

AA064

1 oral -- orally.

2 After that conversation, Your Honor -- and in that e-mail what
3 my client said is I would be -- I would like at something like that if you
4 propose it, but you know what, bottom line is, I can certainly go ahead
5 and keep paying you hourly, I'll have to borrow the money, sell some
6 Bitcoin, do whatever I have to do. After that, another bill came, this was
7 after this conversation --

8 THE COURT: The e-mail from August?

9 MR. VANNAH: Right. This e-mail I'm looking at is -- yes,
10 August 22nd --

11 THE COURT: Okay.

12 MR. VANNAH: -- 2017.

13 THE COURT: Okay.

14 MR. VANNAH: After that e-mail, another bill came in
15 September, hourly, a substantial bill and my client paid that bill and that
16 was the end of the discussion until when the case obviously was settling,
17 Mr. Simon said hey, I want you to come into my office, we need to talk
18 about the case.

19 My client goes into the office, brings his wife, and when he
20 goes in there there's -- Mr. Simon's visibly -- and uses the F word a little
21 bit saying why did you bring her? Why did you effing bring her? Why
22 are you bringing her making this complicated? And he's saying well, my
23 wife's part of this whole thing.

24 And then Mr. Simon says well, you know what, I deserve a
25 bonus. I deserve a bonus in this case, I did a great job, don't you want

AA065

1 to -- I don't really work at 550 an hour, I'm much greater than that. \$550
2 an hour to me is dog food. It's dog crap. It's nothing. So why don't you
3 give me a big bonus. You ought to pay me a percentage of what I've
4 done in the case because I did a great job.

5 Now, nobody's going to quarrel that it wasn't a great result.
6 There's certainly some quall as to why the result was done, my client
7 was very, very involved in this case, but I don't want to get into all of that
8 and I'm certainly not criticizing Mr. Simon for anything he did, other than
9 on the billing situation.

10 At that time Mr. Simon said well, I don't know if I can even
11 continue in this case and wrap this case up unless we reach an
12 agreement that you're going to pay me some sort of percentage, you
13 know, I want a contingency fee and I want you guys to agree to sign
14 that. My client said no, we're not doing that. You didn't take the risk.
15 I've paid you hourly, I've paid you over a half a million dollars. I'm willing
16 to continue finishing up paying you hourly.

17 So, Mr. Simon said well, that's not going to work, I want a
18 contingency fee. They came to us, we got involved, we had a
19 conversation with all of us, and at that point in time everybody agreed,
20 he cannot have a contingency fee in this case because there's nothing in
21 writing. You don't even have an oral agreement, much less in writing.

22 So what happened is -- and this is an amazing part, Judge --
23 and not at the time that Mr. Simon goes to one of the depositions, we
24 quoted that, the other side said to him how much are fees in this case,
25 have they actually been paid. And Mr. -- and that's the point of that. Mr.

AA066

1 Simon then pipes up and says listen, I've given that to you over and over
2 and over again, you guys know what our fees are.

3 I have supplied that to you over and over and over again and
4 you know what the fees are and those were the fees that he gave them
5 were the amount that my clients had paid over the year and a half. And
6 he said these are the fees that have been generated and paid. So he's
7 admitting right there that, you know, this is the fee, you guys have got it.

8 As the case got better and better and better, Mr. Simon had
9 buyer's remorse, you know, I probably could have taken this on a
10 contingency fee. Gee, that would have been great because 40 percent
11 of six million dollars is 2.4 million and I only got half a million dollars by
12 billing at \$550 an hour and I'm worth more than that; I'm a better lawyer
13 than that. That's what he's saying.

14 So he said to -- so you guys need to pay me a contingency fee
15 until that didn't work out so he then said well, you know, I didn't really bill
16 all my time. All that time I billed that you paid -- by the way that's an
17 accord and satisfaction, I sent you a bill, you pay the bill. And this
18 happened like five or six invoices. Here's the bill, bill's paid. Here's the
19 bill, bill's paid. Detailed time.

20 So Mr. Simon has actually gone back all that time and he has
21 actually now added time. Added other tasks that he did and increased
22 the amount of the time to the tune of what, almost a half a million dollars
23 or so. An additional over hourly over that period of time. And then he
24 went and he got Mr. Kemp, who is a great lawyer, who said well, you
25 know what, a reasonable fee in this case, if there is no contract would be

AA067

1 40 percent, that's 2.4 million dollars, it doesn't take a genius to make
2 that calculation.

3 So really, under this market value what should happen is Mr.
4 Simon should get 2.4 million dollars, a contingency fee, even though he
5 didn't have one and even though that would violate the State Bar rules,
6 he actually should in essence get a contingency fee and give my client
7 credit for the half million dollars he's already paid. That's what this is
8 about.

9 When we realized that this wasn't going to resolve, I mean,
10 we're not doing that -- we're not agreeably going to do that because
11 there's an agreement already in place, we filed a simple lawsuit in
12 saying that we want a declaratory relief action; somebody to hear the
13 facts, let us do discovery, have a jury, and have a determination made
14 as to what was the agreement. That's number one.

15 And number two, it's our position that by and is fact intensive,
16 we believe that the jury is going to see and Trier of Fact would see that
17 Mr. Simon used this opportunity to tie up the money to try to put
18 pressure on the clients to agree to something that he hadn't agreed to
19 and there never had been an agreement to.

20 So based on that we argue that that's a conversion and we
21 think that's a factually intensive issue. None -- we don't expect -- it's not
22 a summary judgment motion on that today, just that's the thinking that
23 we use when we came up with that theory and we think it's a good
24 theory.

25 So what I don't -- and, Your Honor, I have no problem with you

AA068

1 being the judge and I have no problem with the other judge being the
2 judge, that's never been an issue in the case. What we do have a
3 problem with is -- and I don't understand and maybe Mr. Christensen
4 can clear that up. He's saying well, we can go ahead and have you take
5 this case and make a ruling without a jury; that you can go through here
6 and have a hearing and make a decision on what the fee should be.
7 And then we can have the jury make a decision as to what the fee
8 should be, but the problem is if you make a decision on what the fee
9 should be that's issue preclusion on the whole thing and it ends up with
10 being a preclusion.

11 So, we want this heard by a jury and no disrespect to the
12 judge, but we'd like a jury to hear the facts, we'd like to hear the jury
13 hear Mr. Simon get up and say to him \$550 an hour is dog meat, you
14 know, he can't make a living on that and I would never bill at such a
15 cheap rate and he's much greater than that. And I'd like to hear the jury
16 hear that, people making \$12 an hour hear that kind of a conversation
17 that Mr. Simon is apparently going to testify to.

18 So there -- so bottom line, we get right down -- I -- so what
19 we're asking, it's -- what we'd like you to do -- this case over. The
20 underlying case with the sprinkler system and the flooding of the house,
21 it's over. In re has nothing to do with determining what the fee should
22 be. The fee -- whole issue is based on what was the agreement. I don't
23 know much about the underlying case and I'm not having a problem
24 understanding the fee dispute. This is a fee dispute.

25 We're just -- and if you want to hear it -- I don't think there's

AA069

1 anything to preclude you, but I don't think that there's commonality of all
2 this -- all this commonality that they're talking about. The underlying
3 case about a broken sprinkler head, flooding, what's the value of the
4 house, all those disputes they had going on. That's got nothing to do
5 with the fee dispute. And --

6 THE COURT: But you would agree, Mr. Vannah, that's it's the
7 underlying case with the sprinkler flooding the house, who's responsible,
8 the defective parts, that's how you get to the settlement that leads us to
9 the fee dispute.

10 MR. VANNAH: You did that, but the settlement's over.

11 THE COURT: Right, but it --

12 MR. VANNAH: It's a done deal.

13 THE COURT: But the fee dispute --

14 MR. VANNAH: I mean, we're not --

15 THE COURT: -- is about the settlement.

16 MR. VANNAH: That's going to be a ten-minute discussion
17 with the jury. Hey, this is what happened; it was a settlement.

18 So the question is, is what -- were the fee reasonable -- I
19 mean, there was an agreement on the fee. I don't think -- it boggles my
20 mind that we've even gotten -- we're even discussing this because when
21 a lawyer sends for a year and a half a detailed billings at a detailed rate
22 and the client pays it for a year and a half and suddenly say well, we
23 never had a fee agreement, that's really difficult at best. That's almost
24 summary judgment for us.

25 I mean, here's the bill, here's the check, and there's no

AA070

1 discussion and he even gets up and tells the other side, I've been paid
2 for all my fees. So what I don't want to happen is I don't want -- I want
3 my client to just have the right to have this case heard by a jury, that's
4 all.

5 THE COURT: And you believe that there would be an issue --
6 preclusion issue if that -- the new case was consolidated into this case
7 when you go to jury trial on the new case?

8 MR. VANNAH: No. Here's where I think the issue preclusion
9 is -- and -- no, if you want to keep the case and, you know -- if it was me,
10 I was judge, I would say I already did one case, I don't need to do
11 another one. I don't have a problem if you want to keep the case, all I'm
12 asking if you keep the case is that you don't -- the money's tied up.

13 THE COURT: The money's in a Trust account, right?

14 MR. VANNAH: Nobody's taking the money, nobody's -- and I
15 don't -- I've never accused Mr. Simon of going to steal -- my client's
16 got -- my client's more concerned because they thought it was dishonest
17 what he did and I said my client's don't want the money in your Trust
18 account, you don't want it in my Trust account, I -- no problem --

19 THE COURT: Right, but the e-mail --

20 MR. VANNAH: -- let's set up a --

21 THE COURT: -- said they didn't want it in Mr. Simon's Trust
22 account. Isn't that what the e-mail said?

23 MR. VANNAH: Right. So we set up a Trust account
24 elsewhere and Mr. Simon and I have -- so the money is tied up, neither
25 one of us are going to try to take the money. The money's going to sit

AA071

1 there. Mr. Simon's lien, whatever it's worth, is totally protected.

2 What I don't want you to do is have you do an adjudication on
3 some kind of a summary proceeding where we don't get to do discovery
4 and everything else and we -- you hear the case without a jury and make
5 a determination because I do think that that is the issue preclusion. That
6 precludes -- and so if you want the case, I mean, we'd love have you.
7 We don't have a problem with that.

8 All I ask, if you're going to have the case is, let's have the
9 case, let's have a jury trial on this matter, let's discovery done on a
10 normal course. The money's tied up, it's there and then at the end of the
11 trial let the jury decide and we get a judgment. If you want to keep it.

12 On the other hand, I mean, if you don't want to keep it, you
13 simply say I don't want to consolidate it and the other judge does it. So
14 either one's fine, I mean, we don't have any -- we do want a jury trial
15 though. We don't want it to be heard without a jury.

16 THE COURT: Right.

17 MR. VANNAH: It's two million dollars.

18 THE COURT: Right. But what you're saying -- so just so I'm
19 clear as to what you're saying is if the case consol -- because I don't
20 think it's a matter of do I want it, do I not want it, I think I got to follow
21 Rule 42.

22 MR. VANNAH: Then --

23 THE COURT: I think I got to go along with what Rule 42 says.
24 It doesn't -- nobody cares what I want Mister -- sir, nobody cares. I
25 mean, I think I have to follow Rule 42, but what -- just so I'm clear on

AA072

1 what you're saying, what you're saying is if the case were to stay here
2 you would want the lien not to be adjudicated until after the jury trial is
3 heard on the second portion.

4 MR. VANNAH: Exactly right. So that the jury --

5 THE COURT: Okay.

6 MR. VANNAH: -- makes the findings of facts of whether there
7 was a contract; if so, how much was it and what's due.

8 THE COURT: Okay.

9 MR. VANNAH: And they can have -- and we can all do
10 discovery because they've got two excellent experts. I mean, so we
11 need to get experts. It means we need to sit down and I need to take
12 Mr. Simon's deposition, I need to take his associate's --

13 THE COURT: Let me ask you this, Mr. Vannah, because
14 you've been doing this for a long time, you have a lot of experience.
15 Hypothetically, if there were to happen, I haven't ruled on anything, but if
16 that were to happen, how long do you think it would take for your jury
17 trial to go forward on the second portion?

18 MR. VANNAH: Oh, we're -- we would -- we could expedite the
19 discovery and get that done. I mean, that's not a problem if for some
20 reason you want to expedite it. On the other hand, it can go forward on
21 the normal course, you know, a year from now or so, have a jury.

22 THE COURT: Okay. Okay. And I just wanted to make sure I
23 was clear on what your point was so that if I had any questions, I could
24 ask you while you were standing here and not later on, oh, I should have
25 asked him this, you know?

AA073

1 MR. VANNAH: Well, you know, you asked some good
2 questions of which I didn't -- there's nobody disputing the 550 and the
3 275 --

4 THE COURT: Right.

5 MR. VANNAH: -- an hour and nobody's disputing that the bills
6 were sent and nobody is disputing the bills were paid.

7 And by the way we do owe -- we just got the bill last week, we
8 definitely clearly owe a cost bill that came in and that can be paid out of
9 the Trust account and we're ready to release that funds and both Mr.
10 Simon and I can sign the check and pay that expert. That's never been
11 an issue.

12 THE COURT: So the money's going to an expert?

13 MR. VANNAH: That's the -- there's some money -- there's --
14 we just got a bill, we --

15 THE COURT: But it's for an expert?

16 MR. VANNAH: Yeah, there's an expert that needs to be paid.

17 THE COURT: Oh, okay.

18 MR. VANNAH: I don't have problems paying -- and I don't
19 have problems paying Mr. Simon any costs that he's incurred either, but
20 at this point -- what would have normally happened, we would have
21 gotten the last bill and we would have paid it. Nobody's ever questioned
22 a single bill that came in and that's what would have normally -- if he'd
23 sent the last bill saying here you go.

24 So they had a mediation or something and Mr. Simon had
25 some kind of a bill there, but he took it with him out of the mediation for

AA074

1 whatever reason. I don't -- nothing nefarious, it just didn't -- my client
2 didn't have bill and has requested it several times. It came last week.

3 THE COURT: Okay.

4 MR. VANNAH: No question we owed a cost and we're willing
5 to pay. We've always paid the costs. So one thing when Mr.
6 Christensen said all this time Mr. Simon's been paying all the costs, that
7 is -- I don't know what he means by that. He might have advanced the
8 costs, but my client has reimbursed him for every dime of costs, other
9 than this last bill. And certainly that's not going to be an issue, we're
10 ready to do that.

11 THE COURT: Okay. Thank you, Mr. Vannah.

12 Mr. Christensen, your response.

13 MR. CHRISTENSEN: Your Honor, I warned the Court that Mr.
14 Vannah was going to come up and make an equity argument against the
15 legal enforcement of the statute and the word shall and he did that, but
16 he didn't state any basis for it. The statute says you shall do it and
17 you're supposed to do it within five days.

18 Now, there is some apparent discretion that the Supreme
19 Court provides, for example, in the *Hallmark* case that we cited. The
20 case went up and was sent back down and the Supreme Court said hey,
21 there's an issue of alleged billing fraud, you need to address that at the
22 adjudication hearing.

23 I cited to all of the other cases from Nevada State Court in the
24 recent time period and from Federal Court where the Court has
25 addressed the issues of billing fraud, disputed costs, disputed fees all at

AA075

1 an adjudication hearing pursuant to the law. That's the obligation of this
2 Court is to enforce the law.

3 When Mr. Vannah comes up with his equity position, it's
4 certainly enticing on a certain level, but it's not legally permissible. It'd
5 be a violation of the statute. And it was interesting in his equity position
6 how the facts kind of changed. It was he paid less than a half a million
7 in fees and by the end of it he was above a half million dollars.

8 You saw the deposition transcript, Mr. Simon never said that
9 all the bills were paid, he said this is what's been paid. You know, the
10 bills that come in and Mr. Edgeworth pays them, that's kind of a two-
11 edged sword. Mr. Edgeworth knows that there are items that haven't
12 paid, he knows that he's been calling Mr. Simon and sending e-mails
13 and getting responses, they know the work's being done.

14 He's so heavily involved in the case he can't not know. He
15 knows because he was on the other end of the phone, he knows
16 because he was on the other end of the e-mail. He knows that there are
17 items that aren't being paid. And by the way, there's nothing in the law
18 that says that someone can't correct the bill. It's not an accord and
19 satisfaction if you pay a bill, that's completely different.

20 An accord and satisfaction is a separate agreement that's
21 reached when it is over a dispute and typically accord and satisfactions
22 are written. So tomorrow if they reach a deal, maybe that's an accord
23 and satisfaction, but it's not accord and satisfaction when you pay a bill,
24 especially when you know it's not a complete bill and it's not an accurate
25 bill.

AA076

1 So, at the current time adjudication is proper because that's
2 what the statute is, that's what the law says. We know that there's still
3 71,000 in costs outstanding and the Edgeworths have been aware of
4 that since November and that number was contained in the two liens.
5 One was filed in December, one was filed in January, and now we're in
6 February and that has not been paid.

7 We know that there are, at a minimum, applying the contract
8 rate of 550 an hour, assuming that's the way the Court decides to go at
9 the adjudication hearing. There's fees outstanding on that. So even
10 taking their best case scenario, there are fees and costs outstanding that
11 need to be reached by the Court in an adjudication.

12 To address this whole market value issue, that's getting into
13 the manner of calculation of a fee that the Court makes at the
14 adjudication hearing. That's an accepted manner of a calculation of a
15 fee. It's endorsed by the restatement of the law governing lawyers,
16 which our Nevada Supreme Court cites to repeatedly. In fact, they just
17 did it back in December on a fee issue. That's an accepted manner of
18 determining a fee.

19 Now, the Court doesn't have to accept that. There's the
20 *Marquis Aurbach Tompkins* line of cases, which I don't know if that was
21 cited --

22 THE COURT: It was not.

23 MR. CHRISTENSEN: -- but in that case Marquis Aurbach did
24 some good work for a client, the client passed away, and then there was
25 an estate. Marquis Aurbach had a written contingency fee agreement.

AA077

1 The estate and the law firm agreed to put the matter before a fee dispute
2 committee, even though the amount was in excess of the agreed
3 amount, but they stip'd around it.

4 And without going through the whole tortuous procedural
5 history because it went up to Judge Denton a couple of times, it went to
6 the Supreme Court, et cetera, at various times the fee was found to be
7 either the hourly, which was some \$28,000, the contingency of 200,000
8 or a hybrid, the quantum meruit, which was in the middle at about 75.
9 That's just kind of an illustration of the options that are available to the
10 Court.

11 In *Tompkins*, the Supreme Court eventually said that's a
12 contingency fee in a domestic case, you can't do that so you get
13 quantum meruit and sent it back down for them to determine whether
14 quantum meruit was the 75 number or the 28 number and that's where
15 the case law ends. We don't know the ultimate resolution. But that's an
16 example of what the Court does.

17 So under the law, and the Edgeworths have not cited an
18 authority contrary, this Court adjudicates the lien, states a basis in its
19 findings, puts the numbers in there, and then after that point, if the
20 Edgeworths or maybe Mr. Simon wants to, there's some sort of a
21 counterclaim or whatever, then they can fight over the remains. But Mr.
22 Vannah was correct that this is a fee dispute.

23 We have a statute specifically designed with a public policy of
24 resolving fee disputes quickly, with judicial economy. This Court has
25 jurisdiction to do it, this Court has a mandate, the law telling the Court to

AA078

1 do it. Let's do it, let's hold an evidentiary hearing, let's flush this out, let's
2 get a number, and then these folks can decide if they want to continue
3 banging their heads against that wall.

4 Thank you.

5 THE COURT: Thank you, Mr. Christensen. And thank you
6 guys very much for the argument on this and I know this I not what you
7 guys want to hear, but I'm going to continue this to Thursday and make
8 a decision on this in chambers. If I choose to consolidate this case, then
9 we can address anything after that at the hearing that's going to be held
10 in two weeks in regards to the status check on the settlement
11 documents.

12 If I do not consolidate this case, then we will still address
13 everything involving this particular case at that hearing and then the
14 other case would be addressed in front of Judge Sturman.

15 MR. CHRISTENSEN: Yes, Your Honor.

16 THE COURT: So I'll have a written decision for you guys
17 Thursday from chambers.

18 THE CLERK: February 8th at no appearance.

19 THE COURT: Thank you.

20 MR. VANNAH: Thank you, Your Honor.

21 MR. CHRISTENSEN: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MS. PANCOAST: Your Honor, is there any reason I need to
24 come to that Thursday hearing?

25 THE COURT: No, it's not a hearing, I'm going to of it from

AA079

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chambers.

MS. PANCOAST: Okay, great.

THE COURT: Yeah, I'll do it from chambers.

And thank you, Mr. Parker.

MR. CHRISTENSEN: Teddy's gone.

THE COURT: Teddy's been gone.

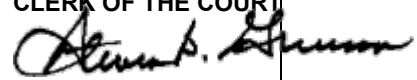
[Hearing concluded at 10:55 a.m.]

* * * * *

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



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

AA081

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Las Vegas, Nevada, Tuesday, February 20, 2018

[Case called at 9:28 a.m.]

THE COURT: Okay, let me just call the case. Let me get to my notes. A7384444, Edgeworth Family Trust versus Lange Plumbing, LLC.

MR. CHRISTENSEN: Good morning, Your Honor. Jim Christensen on behalf of the Daniel Simon Law firm.

THE COURT: Okay.

MR. CHRISTIANSEN: Pete Christiansen on behalf of the same, Your Honor.

MS. PANCOAST: Janet Pancoast in behalf of the Viking Entities.

THE COURT: Okay.

MR. PARKER: Good morning. Theodore Parker on behalf of Lange Plumbing.

THE COURT: Okay.

MR. GREENE: And John Greene and Bob Vannah for the Edgeworth Entities.

THE COURT: Okay. So, the first thing up is the status check on the settlement documents. Have we done all the necessary dismissals, settlement agreements?

MR. SIMON: I have two --

THE COURT: Mr. Simon?

MR. SIMON: Yes and no, Your Honor.

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?

AA083

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

AA084

1 hearing that we had, so I don't --

2 MR. VANNAH: I don't have a big deal with it.

3 THE COURT: Okay.

4 MR. VANNAH: It's not -- I just don't understand why, but I
5 don't care, I'll sign it.

6 THE COURT: Well now, Mr. Vannah, I'm just saying, based
7 on everything that's happened up to this point, and now that --

8 MR. VANNAH: It's trivial --

9 THE COURT: Yes.

10 MR. VANNAH: -- I don't care. It's not worth --

11 THE COURT: Okay.

12 MR. VANNAH: -- debating over it, so I'll just sign it.

13 MR. PARKER: Your Honor, while Mr. Vannah is signing both
14 those documents, there's two releases, and I'm sure he's aware of them.
15 I actually brought the check for \$100,000 and I wanted to do it in open
16 court provided to Mr. Simon, Mr. Vannah, Mr. Greene, whoever wants it.
17 Whoever wants the \$100,000, I'm here to provide it.

18 THE COURT: Well, Mr. Parker --

19 MR. PARKER: I'll just put it on --

20 THE COURT: -- if you just giving --

21 MR. PARKER: -- the --

22 THE COURT: -- out a \$100,000, I want it.

23 MR. PARKER: -- I'll put it on the podium. It seems to be the
24 Swiss neutral area. Whoever wants it can pick it up, but I am providing it
25 in open court.

AA085

1 THE COURT: Okay. And so is everyone acknowledging --

2 MR. PARKER: And here's the --

3 THE COURT: -- that Mr. Parker is --

4 MR. PARKER: -- receipt of check.

5 THE COURT: -- providing the check?

6 MR. VANNAH: The only problem I have with it Teddy, is it

7 says, Simon Law, I don't think --

8 MR. PARKER: You can --

9 MR. VANNAH: -- I should --

10 MR. PARKER: -- scratch that out.

11 MR. VANNAH: Okay.

12 MR. PARKER: And this -- certainly I know you very well --

13 MR. VANNAH: You do, you do.

14 MR. PARKER: -- and your firm very well.

15 MR. VANNAH: No problem.

16 MR. PARKER: I got the acknowledgement of the receipt of
17 check. You guys can just sign one for you and one for me.

18 MR. VANNAH: No problem, I can do that.

19 MR. PARKER: The other thing, Your Honor, is as soon as we
20 get this back, I'll get it signed by Lange Plumbing and then provided full
21 copies to everyone. And then, I think we have the stipulation order for
22 dismissal that we have to do.

23 THE COURT: And there was a sign -- an order that was sent
24 by Ms. Pancoast to chambers, but Mr. Parker it was not signed by you.

25 MR. PARKER: No, it was not. I was out of town, I --

AA086

1 THE COURT: Okay.

2 MR. PARKER: -- believe.

3 THE COURT: Okay. And I believed that you needed to sign.

4 MR. PARKER: And I have no problems signing it. But I think I

5 spoke with Ms. Pancoast and --

6 THE COURT: Okay.

7 MR. PARKER: -- said I was fine with it.

8 MS. PANCOAST: Yes.

9 MR. PARKER: So, she may of sent it because if that.

10 THE COURT: Okay. And I think it was sent while Mr. Parker

11 was out of town--

12 MS. PANCOAST: Yes --

13 MR. PARKER: That's correct.

14 THE COURT: -- and I believe my law clerk --

15 MS. PANCOAST: -- and it was delayed --

16 THE COURT: -- contacted you.

17 MS. PANCOAST: -- it was on route so I just --

18 MR. PARKER: Is that the same one Janet? Same one I just

19 signed?

20 MS. PANCOAST: No, this is the stipulation for dismissal.

21 MR. PARKER: Is it the order for good faith settlement? Is

22 that --

23 THE COURT: Yes.

24 MR. PARKER: -- the one you are speaking of?

25 MS. PANCOAST: Yes, that's the one.

AA087

1 THE COURT: Yes.

2 MR. PARKER: Yes. I think I told Ms. Pancoast that is was
3 fine with me. I -- especially since we were able to discuss it on the
4 record, thanks.

5 THE COURT: Okay. Okay. So, Ms. Pancoast have you -- so
6 Mr. Parker, do you think you need to sign or are you comfortable with
7 the record that was made in open court?

8 MR. PARKER: I think that's it for me, Your Honor.

9 THE COURT: Okay. Okay, so Ms. Pancoast if you could
10 submit that order, did you get it back or do we still have it?

11 MS. PANCOAST: I haven't been in my office for three days. I
12 will check --

13 THE COURT: Okay.

14 MS. PANCOAST: -- Your Honor.

15 THE COURT: Okay.

16 MS. PANCOAST: And just call your chambers --

17 THE COURT: Okay.

18 MS. PANCOAST: -- and say hey, either we have --

19 THE COURT: Can you just follow up with my law clerk
20 because I think she is the one that reached out to you about that.

21 MS. PANCOAST: Yes. Sorry about that, I just -- we now
22 have a dismissal that's signed for dismissals prejudice of all claims of
23 the entire action. I would like to get Your Honor's signature on that if I
24 can.

25 MR. SIMON: I just want to --

AA088

1 MS. PANCOAST: Does anybody have objection to that?
2 MR. SIMON: I just want to make sure that Mr. Vannah does
3 not have an objection to --
4 MS. PANCOAST: Okay.
5 MR. SIMON: -- the stip. --
6 THE COURT: Okay.
7 MR. SIMON: -- and it's ok.
8 THE COURT: Mr. Vannah are you comfortable reviewing that
9 right now or do you need more time?
10 MR. VANNAH: No. That's fine. It's just a straight dismissal
11 right, Janet?
12 MS. PANCOAST: Yes. It's just dismissal, but there's all sorts
13 of cross claims and it's got all the cross claims and everything --
14 MR. VANNAH: Everything's fine?
15 MS. PANCOAST: -- it just --
16 MR. VANNAH: Fine, I'm fine with it.
17 MR. SIMON: The entire action now --
18 MR. VANNAH: Yes. I'm happy with it --
19 MR. SIMON: -- is what this is.
20 THE COURT: Okay.
21 MR. VANNAH: -- that's great.
22 THE COURT: Okay, so you're ok with that Mr. Vannah?
23 MR. VANNAH: Sure. Sure.
24 THE COURT: Okay, so --
25 MR. PARKER: May I approach?

AA089

1 THE COURT: -- Ms. Pancoast if you could approach, then I
2 will sign that.

3 So, Mr. Parker do you want a status check for the Lange
4 Plumbing to sign off on the --

5 MR. PARKER: No, no I'm --

6 THE COURT: Okay.

7 MR. PARKER: -- more than happy with this being the last
8 time, hopefully that we have to get together regarding the settlement
9 documents. I will --

10 THE COURT: Okay.

11 MR. PARKER: -- certainly have Mr. Lange of Lange Plumbing
12 sign them and I will get them copies to Mr. Simon as well as to Mr.
13 Vannah's office.

14 THE COURT: Okay, so is everybody comfortable that we
15 have all the necessary dismissals and settlement of documents signed,
16 except Langu Plumbing signing off on the last document, which Mr.
17 Parker will get and distribute to everyone?

18 MR. VANNAH: Yes.

19 THE COURT: Okay.

20 MS. PANCOAST: Your Honor, one clarification, since Mr.
21 Parker said in open court he has no objection to that Order on the
22 Motion for a Good Faith Settlement, do I need to track down his
23 signature? Or is this --

24 THE COURT: No, if Mister --

25 MR. PARKER: If you --

AA090

1 THE COURT: -- Parker's --
2 MR. PARKER: -- have it -- if you have it with you, I will sign it
3 right now. If the Court has it, I will sign it right now.
4 THE COURT: And let me see if I can -- can you email Sarah
5 and ask her? We'll get --
6 MR. PARKER: I'll sign it right here.
7 THE COURT: -- my law clerk to bring that in here, --
8 MR. PARKER: No problem.
9 THE COURT: -- and then we'll get you to sign it while you are
10 here --
11 MR. PARKER: Sounds great --
12 THE COURT: -- Mr. Parker.
13 MR. PARKER: -- Your Honor.
14 THE COURT: Okay. The next thing is Mister -- Defendant
15 Daniel -- as Simon doing business as Simon Law's Motion to Adjudicate
16 the Attorney Lien of the Law Office of Daniel Simon PC on the Order
17 Shorting Time. I did receive a supplement, Mr. Christensen that you
18 filed. Mr. Vannah, have you had an opportunity to review that? Mine is
19 not file stamped, I believe this was my courtesy copy, but I read it.
20 MR. VANNAH: Mr. Greene reviewed it, and can --
21 THE COURT: Okay, so you guys have had an opportunity to
22 review that?
23 MR. GREENE: Correct, Judge.
24 MR. CHRISTENSEN: It was electronically filed February 16th,
25 11:51 in the a.m. --

AA091

1 THE COURT: Okay.

2 MR. CHRISTENSEN: -- and served via the --

3 THE COURT: Okay. And I think it because --

4 MR. CHRISTENSEN: -- it was served.

5 THE COURT: -- it was Friday. I appreciate the courtesy copy

6 just to make sure that I got it because sometimes there's a little bit of a

7 delay in Odyssey. So, I appreciate it and I have read it.

8 MR. VANNAH: Did you want us to respond to it at all?

9 THE COURT: Well, I mean, this is -- that's up to you Mr.

10 Vannah did you want to respond to the supplement?

11 MR. VANNAH: We could as quickly, orally.

12 THE COURT: Okay.

13 MR. VANNAH: Mr. Greene would -- because he --

14 THE COURT: Okay, Mr. Greene.

15 MR. VANNAH: -- right? Explain why it's --

16 MR. GREENE: We just believe it's -- of course it's a rehash,

17 it's a -- it's just repainting the same car, Your Honor. We believe the

18 arguments have been adequately set forth. But even with the case law

19 seminar, it's different. This is a motion to seek attorney's fees for a

20 prevailing party, following litigation in which the parties decided to have a

21 bench trial.

22 Ours is different. Ours is a independent case seeking

23 damages from Mr. Simon and his law firm, for the breech of contract for

24 conversion, and it's based upon a Constitutional right to a trial by jury.

25 Article I, Section 3. Different apples and oranges, distinguishable case,

AA092

1 distinguishable facts. Be happy to brief it if you'd like. Simply wasn't
2 enough time this weekend to do that. But that's the thumbnail sketch.

3 THE COURT: Okay. Mr. Christensen, do you have any
4 response to that?

5 MR. CHRISTENSEN: Sure, Judge. We move for adjudication
6 under a statute. The statute is clear. The case law is clear. A couple of
7 times we've heard the right to jury trial, but they never established that
8 the statute is unconstitutional. They've never established that these are
9 exclusive remedies. And in fact, the statute implies that they are not
10 exclusive remedies. You can do both.

11 The citation of the *Hardy Jipson* case, is illustrated. If you look
12 through literally every single case in which there's a lien adjudication in
13 the state of Nevada, in which there is some sort of dispute, you -- the
14 Court can take evidence, via statements, affidavits, declarations under
15 Rule 43; or set an evidentiary hearing under Rule 43.

16 That's the method that you take to adjudicate any sort of a
17 disputed issue on an attorney lien. That's the route you take. The fact
18 that the *Hardy* case is a slightly different procedural setting doesn't
19 argue against or impact the effect of Rule 43. In fact, it reinforces it.
20 Just shows that's the route to take.

21 So, you know their -- they've taken this rather novel tact in
22 filing an independent action to try to thwart the adjudication of the lien
23 and try to impede the statute and they've supplied absolutely no
24 authority, no case law, no statute, no other law that says that that
25 actually works. They're just throwing it up on the wall and seeing if it'll

AA093

1 stick. And Judge, it won't stick. This is the way you resolve a fee
2 dispute under the lien.

3 Whatever happens next, if they want to continue on with the
4 suit, if they survive the Motion to Dismiss -- the anti-SLAPP Motion to
5 Dismiss, we'll see. That's a question for another day. But the question
6 of the lien adjudication is ripe, this Court has jurisdiction, and they don't
7 have a legal argument to stop it. So, we should do that.

8 If the Court wants to set a date for an evidentiary hearing, we
9 would like it within 30 days. Let's get this done. And then they can sit
10 back and take a look and see what their options are and decide on what
11 they want to do. But, there's nothing to stop that lien adjudication at this
12 time.

13 THE COURT: Okay. Well, I mean, basically this is what I'm
14 going to do in this case. I mean, it was represented last time we were
15 here, that this is something that both parties eagerly want to get this
16 resolved -- they want to get this issue resolved. So I'm ordering you
17 guys to go to a mandatory settlement conference in regards to the issue
18 on the lien. Tim Williams has agreed to do a settlement conference for
19 you guys, as well as Jerry Wiese has also agreed to do a settlement
20 conference.

21 So if you guys can get in touch with either of those two and set
22 up the settlement conference and then you can proceed through that,
23 and if it's not settled then we'll be back here.

24 Mister --

25 MR. PARKER: Your Honor, my own selfish concern here, my

AA094

1 client's -- my client believed that we were buying peace and
2 completeness of this whole situation, this case. The thought of having to
3 go through discovery in an unrelated or related matter is not appealing.
4 And in fact, I thought under Rule 18.015 that there is no additional
5 discovery that's actually undertaken.

6 I mean, I just got finished with a case that we tried, and we
7 had a very large attorney's fees, not as big as this one, but a large
8 attorney's fees award and the Court made a decision based upon what
9 was in front of the Court, not additional discovery and not additional
10 hearings, other than a hearing on the motion itself for attorney's fees.

11 The prospect of my client being subjected to discovery to
12 determine the reasonableness of a fees, when typically that's within the
13 providence of the Court, it does not -- is certainly not appealing to my
14 client and I don't see where it's required under the statute.

15 Perha -- I haven't read all of the briefing, so maybe there's
16 some case that Mr. Vannah and Mr. Greene is -- are aware of, but I've
17 never seen it done, other than the Court -- especially the Court having
18 being -- been familiar with the underlining -- on the underpinnings of the
19 case making that final decision without the benefit of additional
20 discovery. So hopefully the NSC works out for them, but I think that the
21 rule is fairly clear. I've not seen it done a different way.

22 THE COURT: Okay.

23 MR. PARKER: I don't know if that's beneficial to the Court or
24 not.

25 MS. PANCOAST: And --

AA095

1 MR. VANNAH: I'm not sure I understand the argument
2 because they're not involved in this fee dispute.

3 MS. PANCOAST: I certainly hope so. I'm -- It's been a --

4 MR. VANNAH: They're out of the case.

5 MS. PANCOAST: -- pleasure folks, but --

6 THE COURT: Yes. No, I mean, they're not --

7 MS. PANCOAST: -- I'm done.

8 THE COURT: -- involved in the fee dispute, but if it's my
9 understanding -- Mr. Parker correct me -- my understanding is what Mr.
10 Parker is saying is, if this fee dispute were to go to trial, which is what
11 you are requesting is a jury trial on that issue, that there's going -- and
12 you want to do discovery, you want to do all the trial stuff that comes
13 along with going to trial that is going to somehow going to somehow
14 involve his client, as his client was involved in the underlying litigation
15 that is the source of the fee dispute. Now Mr. Parker, correct me if that
16 wasn't what --

17 MR. PARKER: That's exactly

18 THE COURT: -- you were saying.

19 MR. PARKER: -- exactly right.

20 THE COURT: And that's what he was saying is that's not
21 appealing to him. And Mr. Parker is not saying he's a party to the fee
22 dispute, what he's saying is that would involve his client, so he's putting
23 that on the record while he is still in the case in regards to his client.

24 MR. PARKER: And my thought is an adjudication on the
25 merits of the fee dispute, by necessity may involve the work of Mr.

AA096

1 Simon in terms of my client's contribution to this overall settlement;
2 whether or not the value of that case was what it was or what -- if it
3 wasn't. That would involve my client to potentially taking the stand and
4 looking at the contract and the work that was performed. I don't want to
5 subject my client to that.

6 I was trying to buy my peace and I was hoping this would
7 resolve everything all at one time, including the adjudication of the lien in
8 front of Your Honor without the obligations of going through anymore
9 discovery. Because I don't want my client looking over his shoulder at --
10 potentially coming in for a deposition on that issue or taking the stand.
11 It's just not what I believe is appropriate under the rule, Your Honor.

12 MR. VANNAH: Let me -- regardless of whether or not this is
13 going to be adjudicated as a lien, we're -- who clearly going to be
14 entitled -- it's a two million dollar argument. I assume we're not going to
15 have a two-hour hearing and nobody's going to do any discovery in this
16 case. I mean for example, there's one billing -- I'm looking at one billing
17 where somebody wrote down 130 hours, block billing, worked on file
18 basically. Were not going to have discovery on that? I mean, what does
19 all that mean? That's --

20 THE COURT: Well --

21 MR. VANNAH: -- an additional billing? I mean --

22 THE COURT: Well, I think at this point we have the cart
23 before the horse. Okay? We're going to go to the mandatory settlement
24 conference. If that doesn't work, then we're going to have to readdress
25 all these issues.

AA097

1 MR. VANNAH: Agreed.

2 THE COURT: But for today, I want -- I'm going to order you
3 guys to a mandatory settlement conference. I want you to get in touch
4 with those two judges. One of them will accommodate you, they have
5 already agreed to do that. And if that doesn't happen then we're going
6 to have to come back here and readdress the adjudication of the lien,
7 whether or not we're going to go to trial or what we're going to do. But
8 for today, we're going to go to the mandatory settlement conference.

9 MR. VANNAH: That's fine.

10 THE COURT: Okay.

11 MR. CHRISTENSEN: Your Honor, I --

12 THE COURT: Thank you.

13 MR. CHRISTIANSEN: -- a couple of practical questions.
14 Number one, do you have an understanding of the time frame that
15 Judge Williams or Judge Wiese or -- looking at this end. Because we'd
16 like to get this done --

17 THE COURT: No, I understand. And it's my --

18 MR. CHRISTENSEN: -- as quickly as possible.

19 THE COURT: -- understanding that Judge Williams is trial this
20 week --

21 MR. CHRISTENSEN: Okay.

22 THE COURT: -- but after that he should be available.

23 MR. CHRISTENSEN: Okay.

24 THE COURT: And Judge Wiese will accommodate anything.

25 MR. CHRISTENSEN: Well --

AA098

1 THE COURT: That man -- I mean, he is very accommodating.
2 Judge Wiese has had to overcome several obstacles recently, and that
3 man has not missed a day of work. So, he's very accommodating.

4 MR. CHRISTENSEN: Often things move a lot quicker where
5 there are time limits.

6 THE COURT: Right.

7 MR. CHRISTENSEN: Could we at least have a status check
8 in 45 days to check on the status of the --

9 THE COURT: Sure.

10 MR. CHRISTENSEN: -- NSC?

11 THE COURT: Yes. And so we'll have a status check in 45
12 days to check on the status of the settlement conference. That date is
13 on a Tuesday.

14 THE CLERK: April 3rd at 9:30. And Counsel, I have a
15 handout on -- regarding settlement conferences.

16 THE COURT: And Ms. Pancoast, if you could approach -- Mr.
17 Parker, this is the order for your signature.

18 MR. PARKER: Yes.

19 THE COURT: And the lines crossed out, but you can just sign
20 on one of these pages.

21 MR. CHRISTIANSEN: Your Honor, just to add my two cents
22 in the --

23 THE COURT: Yes, Mr. Christiansen.

24 MR. CHRISTIANSEN: The statute doesn't say you can have
25 a hearing within five days if it contemplates discovery. So I mean, that's

AA099

1 what the statutes says, hearing in five days. We're all happy. We'll all
2 go participate in a settlement conference, but this notion that there's
3 discovery and adjudication, unless somebody knows how to do
4 discovery in five days, which I don't, that's not contemplated. You have
5 a hearing you take evidence, whether it takes us a day or three days to
6 do the hearing, that's how it works.

7 THE COURT: Okay.

8 MR. VANNAH: Well, that's not how it works, because I have
9 done this before, and it was discovery ordered by another Judge saying
10 yeah, you're going to have discovery. Judge Israel ordered discovery.
11 But we're looking at two million dollars here.

12 THE COURT: And I understand that, Mr. Vannah.

13 MR. VANNAH: This is not some old fight over a fee of
14 \$15,000, which I agree would --

15 MR. CHRISTENSEN: Your Honor, I'm sorry, but I've been
16 doing lien work for a quarter century now --

17 MR. VANNAH: Me too.

18 MR. CHRISTENSEN: And --

19 MR. VANNAH: About 40 years.

20 MR. CHRISTENSEN: -- you don't get discovery to adjudicate
21 a lien. It's not contemplated in the statute. If you have a problem with
22 the statute, appear in front of the legislature and argue against it.

23 THE COURT: Okay --

24 MR. VANNAH: No, there's nothing --

25 THE COURT: -- well today, we're going to go to the

1 settlement conference, we will hash out all of these issues if that case
2 does not settle and if this case -- this portion does not settle at the
3 settlement conference.

4 MR. VANNAH: I understand.

5 THE COURT: Okay?

6 MR. CHRISTENSEN: Thank you, Your Honor.

7 MR. PARKER: Thank you, Your Honor.

8 THE COURT: Ms. Pancoast?

9 MR. CHRISTIANSEN: Thank you, Your Honor.

10 MR. PARKER: Yes, I signed it. I think --

11 THE COURT: Yes, Mr. Parker signed it --

12 MR. PARKER: -- just the Court has to sign it.

13 THE COURT: -- as well as so did I. I believe we had
14 everybody else --

15 MR. PARKER: Oh --

16 THE COURT: -- we were just waiting for Mr. Parker.

17 MR. PARKER: -- okay, perfect.

18 THE COURT: So do you want to take this down and file it
19 or --

20 MS. PANCOAST: No, you guys can do it.

21 THE COURT: Okay, so we'll do it, just so -- because we keep
22 a log of what comes in and what goes out. So we'll file it in the order.

23 MS. PANCOAST: Just for the record, Your Honor, I -- for the
24 same -- I want -- Viking wants to echo what Mr. Parker said --

25 THE COURT: Okay.

1 MS. PANCOAST: -- because this is attorney client
2 communications, what was said in Court is, you know -- we're out of it.
3 THE COURT: No, and I understand, and so we will have the
4 same objections from Mr. Parker logged in on behalf of your client.
5 MS. PANCOAST: Thank you, Your Honor.
6 THE COURT: You're welcome.
7 Okay.
8 MR. SIMON: Hold on a second.
9 THE COURT: Uh-oh.
10 MR. SIMON: Your Honor, just while --
11 THE COURT: Yes, Mr. Simon.
12 MR. SIMON: While we're still on the record, I'm giving Mr.
13 Vannah the settlement check from Mr. Parker. He's going to have his
14 clients endorse it and then return it to my office, where I can endorse it
15 and put it in the Trust account.
16 THE COURT: In the --
17 MR. VANNAH: Yes.
18 THE COURT: -- Trust account that's already been
19 established.
20 MR. SIMON: Yes.
21 MR. VANNAH: That will be just fine, sure. --
22 THE COURT: Okay. That --
23 MR. VANNAH: -- that will work.
24 THE COURT: -- record will be made, thank you.
25 MR. SIMON: Thank you, Thank you Your Honor.

AA102

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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

1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-16-738444-C

DEPT. X

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 MONDAY, AUGUST 27, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

AA104

1 What do you want to do? But I think it ought to be civil. I just didn't
2 want it to become uncivil and -- you know, a screaming match and all
3 that. I don't like all that kind of stuff. I didn't want that to happen, so I
4 said you're not being fired. I'm not coming in on this case. No way I'm
5 going to associate on the case. I'm not going to substitute in on the
6 case. I don't want anything to do with the case. This is all about the fee.
7 The case is over.

8 And he said what about the Lange case? What do you want
9 to do about that? Well, why don't you just give me the proposal? I
10 looked at the proposal. I looked at Mr. Simon's idea, and I ran it by the
11 client, and they said what do you think? I said you know what, you
12 already got \$6 million. You got another 100 on the table. Take it. Just
13 take the money and call it a day. Just wrap it up. Accept the offer as is,
14 and they did. And that was -- that's it. So, I made it clear to Mr. Simon,
15 you know -- I talked to Mr. Christensen, you know. I don't -- nobody
16 needs to do anything.

17 Just wrap this thing up, and we'll deal with the fee issue later
18 with the Judge. We'll deal with that, but right now, let's get the case
19 wrapped up. I mean, you can't hold the clients up on a case, because
20 you're -- it becomes extortion. Then here comes the money. And so, the
21 bottom line was like what are we going to do with this money and look, I
22 made it clear. I said I know Mr. Simon's not going to steal the money.
23 I'm not worried about that. I know he would honor everything. The
24 clients are concerned.

25 So why don't we just go open a trust account? Eventually,
AA105

1 that's what we did. Open a trust account. You and I will be the trustee
2 on the trust account. Let's open a trust account, put the \$6 million into
3 the account, let it clear, and then I think at that point, you're obligated to
4 give the clients anything that's not disputed. I mean, you can't hold the
5 whole \$6 million. We all agreed on that and that's what we're here for.
6 There's been no constructive discharge. In fact, Mr. Simon never
7 withdrew from the case.

8 And I don't want to call it a veiled threat. I just said look, if
9 you withdraw from the case, and I've got to spend 50, 60 hours bringing
10 it up to speed and going through all these documents, and then advising
11 the client and doing this, I mean, you know, that's not fair to them.
12 You've already -- you can wrap this case up in an hour. It would take me
13 50 hours to do that, and I don't think that's a particularly good idea.

14 So that's why we're here and that's what the whole case is
15 about. I look at it this way is that you know, it was great for Mr. Simon to
16 get his 550 an hour and the 275 and to bill \$400,000, but when suddenly
17 he realized -- one day it just dawned on everybody, wow, with all this
18 new information, my client dug up, this may be a -- you know, why did
19 Viking settle for that amount of money? They didn't settle for that
20 amount of money, because they thought they were going to have to pay
21 for the house, because that was 500 to 750.

22 They settled for that amount of money, basically, because
23 they recognized and realized that this would be a really, really bad case
24 to go in front of the jury with when it became so obvious that they had
25 been so deceptive and that they knew that these were defective sprinkler

AA106

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MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: See you guys tomorrow.

[Proceedings concluded at 4:33 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

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-16-738444-C

DEPT. X

CASE#: A-18-767242-C
DEPT. X

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

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

AA108

1 Q And then Brian, did he not text you back saying, that line is
2 fine, the settlement is the only thing that is confidential. I assume that
3 means the amount; do you see that?

4 A Yeah.

5 Q So that was his response to his -- to any concerns that he
6 had about the confidentiality; that's how he responded in that text,
7 right?

8 A In that text.

9 Q Okay. All right. Now, let's just finish up with this whole
10 Viking settlement and how it went down, because I have those
11 documents. So, what occurred -- well, first of all, you -- the first time --
12 when's the first time you ever saw my fee agreement with the client?
13 That's this week, right?

14 A Correct.

15 Q Now you didn't have that when you made any decisions to
16 quote/unquote: "Whether you'd been terminated or not." You didn't
17 have my fee agreement?

18 A I did not have your fee agreement before this week.

19 Q Okay. Now, so --

20 [Counsel confer]

21 MR. GREENE: So, the next in order would be Plaintiff's 10-
22 003.

23 THE COURT: Well, see, that's just the Bate stamps, that's not
24 going to be the exhibit numbers.

25 MR. VANNAH: Okay.

AA109

1 THE COURT: So, I mean, what is this.

2 MR. VANNAH: Do you want to just make that 11?

3 THE COURT: Is it somehow related to these texts?

4 MR. VANNAH: It is sort of. It's about the settlement, the
5 actual consummation of the settlement, which deals with --

6 THE COURT: The Viking settlement?

7 MR. VANNAH: Yes.

8 THE COURT: Well, I think it needs to be Plaintiff's 11.

9 MR. VANNAH: Okay.

10 MR. GREENE: Okay.

11 THE COURT: Because if it was somehow related to this text
12 we could add it to 10.

13 MR. VANNAH: No, that's fine, Your Honor.

14 THE COURT: But I think it needs to be 11.

15 MR. VANNAH: Yeah. I don't know why we're trying to save
16 numbers; we've got lots of numbers.

17 THE COURT: Yeah. Mr. Christensen, have you seen this?

18 MR. CHRISTENSEN: It was just handed to me.

19 MR. VANNAH: So, the answer is, yes?

20 [Counsel reviews document]

21 MR. CHRISTENSEN: I don't have an objection to this
22 document. I would ask the Court to inquire of Mr. Vannah and Mr.
23 Greene if they have any more, just produced exhibits, because we had a
24 deal to exchange exhibits --

25 THE COURT: Well, I mean, yeah. And I would like to

AA110

1 resolve--

2 MR. CHRISTENSEN: -- last week.

3 THE COURT: -- that issue now, if we could, so that we don't
4 have to keep stopping before you proceed to every section of
5 questioning. Do you guys have anything else that is not in this binder,
6 that you intend to admit?

7 MR. VANNAH: Yes.

8 THE COURT: Okay. Well, we're going to need to see those.
9 So then hopefully we can get those issues resolved now, because I
10 know there was a stipulation to admit certain things, and then we don't
11 have to keep stopping. And I'm also going to need copies of those.
12 Because if they're not in the binder -- but we actually need two copies,
13 because my clerk needs one too.

14 MR. GREENE: I'm sure that we have. Let me find the other
15 one, Your Honor, as well --

16 THE COURT: Okay.

17 MR. GREENE: That's the --

18 MR. VANNAH: And we'll make sure the clerk gets one.

19 THE COURT: Is this Number 11?

20 MR. GREENE: Yes, Your Honor.

21 MR. VANNAH: It is.

22 THE COURT: Okay.

23 [Court and Clerk confer]

24 MR. VANNAH: And is 11 -- there's another one, right?

25 MR. GREENE: We're going to have one other email between
AA111

1 the parties that Mr. Simon originated. And that will 12, I presume?

2 THE COURT: Yes. And, Mr. Christensen, you have no
3 objection to 11, correct? That was the one we just discussed.

4 MR. CHRISTENSEN: I think that's right, Judge. I believe
5 that's right.

6 THE COURT: Okay. So, no objection to 11, and then you
7 have 12; I don't know what 12 is?

8 MR. VANNAH: Okay. It's an email between --

9 MR. CHRISTENSEN: Let me just get through this.

10 MR. VANNAH: Okay.

11 [Counsel reviews document]

12 MR. CHRISTENSEN: Okay.

13 THE COURT: Do you have any objection to 12?

14 MR. CHRISTENSEN: No, Judge.

15 THE COURT: Okay. So, 11 and 12 are in.

16 [Plaintiff's Exhibits 11 and 12 received]

17 THE COURT: Okay. All right. Mr. Vannah.

18 MR. VANNAH: All right.

19 BY MR. VANNAH:

20 Q So we had some -- you wouldn't answer some questions
21 earlier, and that's what brought this out, is about when -- you pointed
22 out that you went over to, I think his name is Joel Henriod, I don't know
23 him, but a defense lawyer, I take it?

24 A Yeah.

25 Q And you had actually hammered out with him, the release
AA112

1 agreement regarding Viking, right?

2 A Yeah.

3 Q Okay. And there -- the Judge had questions of when all that
4 occurred, and how that occurred, how certain language ended up in
5 there. And so, I think this is -- I hope this helps clarify it. So, if you take a
6 look at 11-01, the first page of 11. So that is -- you'll see what that is, that
7 is an email from you on November 30th, and the timing is important,
8 November 30th at 8:38 a.m., to Mr. Brian Edgeworth; do you see that?

9 A Yes.

10 Q Now when did you first learn that Mr. Edgeworth had asked
11 us to be independent counsel to him?

12 A It must have been after that.

13 Q The next day or so, right?

14 A I never learned that you were independent counsel, but after
15 that is when I got your letter of direction.

16 Q Okay. So, this -- so November 30th, 2017 you sent to Mr.
17 Edgeworth, and I'll read what it says, and then I'll show the Court what
18 you actually included. It says, attached is the proposed settlement
19 release. And just so we're clear on that, that's the proposed settlement
20 release on the Viking settlement, right? You had reached one I think?

21 A I don't -- yeah, I would assume, yeah.

22 Q Well --

23 A Yes.

24 Q Thank you.

25 A Yes. I get you.

AA113

1 Q And it says, please review and advise when you can come in
2 to discuss. I'm available today anytime from 11:00 to 1:00 p.m., 11:00
3 a.m. to 1:10 p.m., to meet with you at my office. Do you see that?

4 A Okay.

5 Q All right. Then what you attached to that -- now let's put the
6 first page on there, I need to get some context of where we're going
7 here. But what you attached to that was this 11-02, the settlement
8 agreement and release between the Edgeworth and Viking it proposed,
9 right?

10 A Okay.

11 Q I mean, that's what you sent to him, right?

12 A I don't know if that's the document that's attached in there,
13 but I don't have any reason to dispute you.

14 Q Okay. And so that's 11-02. Now looking at 11-03, the way it
15 was sent. I don't totally understand how you guys do that, but you have
16 these changes, over here to the right, under settlement terms, on 11-03.
17 How do you do that, I'm just curious. I'd like to learn how to do that,
18 where you can send somebody something and show what the changes
19 are?

20 A I don't do that.

21 THE COURT: It's called -- you can edit documents in Word --

22 MR. VANNAH: Okay.

23 THE COURT: -- Mr. Vannah --

24 MR. VANNAH: All right.

25 THE COURT: -- and you click the corrections, it's corrections
AA114

1 is what it is.

2 BY MR. VANNAH:

3 Q It looked like one of the edited things is on the settlement
4 terms. The check to be made payable to the Edgeworth Family Trust and
5 its Trustees, Brian Edgeworth, and Angela Edgeworth, American Grating,
6 LLC, and this added part, and Law Office of Daniel S. Simon.

7 Did you -- were you the one that requested that your name be
8 added to the check?

9 A Be added to the check?

10 Q Yes. That's -- we're talking about the checks --

11 A Oh.

12 Q -- who's going to be on the check? It looks like there as a
13 request to add your name on the check.

14 A Okay.

15 Q Okay?

16 A I don't disagree with that.

17 Q All right. That's typically something that you would do,
18 right?

19 A Right. Because I'm still their attorney, I think at 11/29.

20 Q No, I --

21 A I didn't get your letter of direction until the following day.

22 Q Yeah, 11/30. Okay. That is on 11/30, at 8:38 a.m. All right.

23 A I'm sorry, what?

24 Q It's 11/30, November 30th, to make that simple, at 8:38 a.m. is
25 when this was sent?

AA115

1 A No, no, no. the correction, as you noted is 11/29, the day
2 before.

3 Q Oh, right. Well, these are the corrections that you were
4 suggesting?

5 A Yes.

6 Q All right. I appreciate that, I'm just trying to understand it.
7 So, the corrections you were proposing were on 11/29, right?

8 A I guess so.

9 Q Okay. All right. So, let me show you 11-3 it's part of the
10 same release. If you go down to paragraph D, D like in David, the
11 bottom of the page.

12 A I'm with you.

13 Q It says:

14 Plaintiffs represent their counsel of record, as explained, the
15 effect of a release of any and all claims known, or unknown,
16 and based upon that explanation and their independent
17 judgment by their reading of this agreement, Plaintiffs
18 understand and acknowledge the legal significance and the
19 consequences of the claims be released by this agreement.

20 That was -- well, then to be fair, let me put the next page up,
21 because it continues that paragraph. And it reads -- that's 11-04.

22 Plaintiffs further represent that they understand and
23 acknowledge the legal significance and consequences of a
24 release of unknown claims against the settling parties, set
25 forth in, or arising from the incident, and hereby assume full

AA116

1 responsibility for any injuries, damages or losses or liabilities
2 that hereafter may occur with respect to the matters release
3 by the agreement.

4 Did I read that right?

5 A You did.

6 Q Okay. And then on the same page, if you go down to -- my
7 name is not mentioned in this, right, this release? You can look at the
8 whole thing, but it's talking about the counsel of record, right?

9 A This is 11/29, you're right. You haven't sent me your letter
10 yet.

11 Q Right. No, I agree. You do down to "confidentiality" and it
12 reads: B. Confidentiality. And it reads:

13 The amount of this agreement shall remain confidential and
14 the settling parties and their counsel, Daniel Simon, agree
15 not to make any statement to anyone, including the press
16 regarding the amount of this settlement, except to the extent
17 that it may be disclosed to their respective attorneys.

18 Rather than just read on, and on, it's the typical confidentiality
19 agreement, agreed?

20 A Yeah.

21 Q Okay.

22 A Just like your prior provision that you read, it's very
23 standard.

24 Q Got you. So --

25 [Counsel confer]

AA117

1 MR. VANNAH: So, what is the exhibit number?

2 MR. GREENE: It's Number 12, page 1.

3 THE COURT: Okay. So, Exhibit 12, Mr. Vannah.

4 MR. VANNAH: Thank you.

5 BY MR. VANNAH:

6 Q On Exhibit 12, this is from Daniel Simon to John Greene at
7 my office. John Greene who is standing here, right? Are you with me, it
8 is, right? I'm just looking at the stuff above.

9 A Can you slide it over just a hair?

10 Q I sure can, I'm sorry.

11 A There we go.

12 Q Yeah.

13 A Yeah. It looks like it.

14 Q All right. I'm not sure how much of this is -- let's see if I
15 could --

16 A What day is that? Oh, November 30th.

17 Q That is dated November 30th --

18 A Oh, okay. You're involved now.

19 Q -- 5:30, right.

20 THE COURT: And I think there might be a zoom out button,
21 Mr. Vannah, so that you can make it a little bit --

22 MR. VANNAH: Help me.

23 THE COURT: Mr. Greene, can you assist. You can make it a
24 little smaller so we can see the whole thing?

25 MR. CHRISTENSEN: Your Honor, may I approach the

AA118

1 witness and provide him with my copy of Exhibit 12 --

2 THE COURT: Okay.

3 MR. CHRISTENSEN: So that he can read the whole thing
4 easily.

5 THE COURT: Sure.

6 MR. VANNAH: That's a great idea. Thank you. Thank you
7 very much.

8 UNIDENTIFIED SPEAKER: Almost there? Oh, yes.

9 THE COURT: This might assist you.

10 MR. GREENE: That's all of it. Okay.

11 THE COURT: Okay. It looks like it's all on there now.

12 MR. GREENE: All right. Beautiful.

13 MR. VANNAH: We're probably all looking at the regular
14 document.

15 BY MR. VANNAH:

16 Q So what do you say to, and I think mainly this is Mr. Greene,
17 but you do -- you do carbon, cc Brian Edgeworth and Angela Edgeworth
18 in this too, right?

19 A Yes.

20 Q All right. And it says: Please find attached, the final
21 settlement agreement.

22 A Correct.

23 Q And that's forwarded to -- all right, it says: Please have
24 clients sign as soon as possible to avoid any delay in processing
25 payment. This shall also confirm that your office -- that would be

AA119

1 Vannah and Vannah, right?

2 A Right.

3 Q Is advising them about the effects of their release and
4 representing them to finalize settlement through my office. We're going
5 to explain the effects of release to them. Because you're not going to
6 talk to them, right? And you're saying that we're going to represent
7 them to finalize settlement through your office.

8 Right? Is that what you're saying?

9 A Through your office.

10 Q No, it says -- I'll read it to you again.

11 A Oh, through my office, okay.

12 Q Through your office.

13 A Oh, yes. Okay.

14 Q We're going to finalize --

15 A I'm with you.

16 Q -- the settlement through your office. Also, I first received a
17 call from you this morning advising the clients wanted to sign the initial
18 draft of the settlement agreement as is.

19 So, what that meant was, that morning, we had advised you that,
20 you know what, the settlement agreement is fine as is, the way it is,
21 they're willing to sign it as is, but you made some modifications, right?

22 A Yep.

23 Q All right. And you -- and you state: Since, this time, and that
24 would -- when I say since this time, that would be on November 30th,
25 from that morning, you had gotten involved and made some

AA120

1 modifications, right?

2 You said: Since that time, I spent substantial time negotiating
3 more beneficial terms to protect the clients. Specifically, I was able to
4 get the Defendants to agree to omit the confidentiality provision
5 providing mutual release and allow the opportunity to avoid a good faith
6 determination of the Court if the clients resolve the Lange claims,
7 providing Lange will dismiss his claims against Viking. Just so we are
8 clear, your office did not ask for these substantial additional beneficial
9 terms to protect the client.

10 Do you see that? Did I read that right?

11 A Yep.

12 Q So, what you're saying is, look, this morning, you told me
13 that the clients were ready to sign the agreement as it is, but guess what,
14 I did a great job. I spent substantial time -- and that's fine -- I spent
15 substantial time working on the case, meeting with the other side, and
16 getting them to take some provisions out of the original settlement
17 agreement that you were already willing to sign. I got them to take the
18 confidentiality agreement out. I got a mutual release. And I got in a
19 position where everybody's going to agree to waive the good faith
20 settlement if you -- if we settle with Lange, right? And that was
21 beneficial to the clients, right?

22 A I guess, based on

23 Q What --

24 A Yeah, based on this email that's -- the email says what it
25 says.

AA121

1 Q Well, it says here, this is very beneficial. You guys didn't ask
2 for it. I went and did it and I did a great job, and I got a better deal on the
3 release on the one you were willing to sign, right? And that's what
4 you're saying?

5 A Yep.

6 Q Okay. Additionally, this morning -- and that would be the
7 morning of November 30th -- you asked me to approach Lange to accept
8 the \$25,000 offer from mediation.

9 Do you see that?

10 A Yes.

11 Q All right. So there had been an offer from Lange for 25,000 at
12 the mediation, and your recollection of the conversation, I'm not
13 disputing it, was that we had said look, we want the Lange case settled,
14 take the 25,000, we want the Lange case settled, right?

15 A Yep.

16 Q All right. And by the way, don't let me -- I don't want to
17 digress yet. All right. Since this time, now that would be the same
18 morning, right, the same day, because that morning I said, go ahead and
19 accept it if that's what you do. Do better, do better, but whatever, we'll
20 accept it if that's what it is. Since that time, and that -- that would be the
21 same day, I was able to secure a \$100,000 offer, less all money Lange is
22 claiming they are owed.

23 Do you see that?

24 A Yes.

25 Q Lange would then dismiss their claims against Viking,

AA122

1 allowing the client to avoid the motion for determination of good faith
2 settlement as part of the settlement. Please advise if the clients want me
3 -- that's you, right, Danny Simon -- to move forward to finalize the
4 settlement with Lange pursuant to these terms.

5 So, you're saying, please advise me, Mr. Vannah or Mr. Greene if
6 the clients want me, Danny Simon, to move forward to finalize the
7 settlement with Lange pursuant to these terms.

8 Do you see that?

9 A Yes.

10 Q All right. And when the -- and the answer was, yes, move
11 forward and do it. You moved forward and you settled it, right?

12 A Based on your direction, yes.

13 Q All right. Now, let's talk about the clients' rights, okay? And
14 when a lawyer's handling in their case. Would you agree with me that
15 often times clients actually make decisions about settlement or not to
16 settle, that really are against the attorney's beliefs and
17 recommendations, agreed?

18 A It's the decision of the client to resolve the claim ultimately,
19 after they've been informed about it.

20 Q Yes. And often times, at least maybe you're better at
21 persuasion than I am, but often times, even though you feel like the
22 client's making a mistake by accepting something or rejecting a
23 settlement. It is the client's right because it's their risk, their life, it's their
24 case. They retain that right to say, you know what, I appreciate your
25 advice, but I want to do it this way. Agreed?

AA123

1 motion for determination of a good faith settlement, as part
2 of the settlement. Please advise that the clients want to
3 move forward do finalize a settlement with Lange pursuant
4 to these terms.

5 And then you say, let's move quickly. And then we communicated
6 with you that we did want to settle that, wrap it up, right?

7 A All right. The timing of this, so just we're clear, Mr. Vannah,
8 because I know you want to be clear on this.

9 Q I do.

10 A All right. So, there's the \$25,000 offer, right?

11 Q Right.

12 A On November 30th, Teddy and I talked over the phone, he
13 offered a 100 grand, but he also wanted his clients, Lange Plumbing paid
14 back for what was outstanding, were due at the Edgeworth house during
15 the construction, which was 22,000.

16 Q And that all happened, didn't it, the settlement --

17 A Eventually. But the timing of all this is, that was the offer
18 that was communicated to you, and then -- right, and then you had to go
19 talk, take that offer to the clients who wouldn't talk to me, and then that's
20 what ultimately led to the consent to settle.

21 Q No. I had already authorized you on behalf of the clients to
22 take 25,000 for -- do you see that right here? It says right here --

23 A Yeah --

24 Q This morning -- let me read it. This morning you asked me to
25 approach Lange to accept the \$25,000 offer for remediation?

AA124

1 A Agreed, it says that.

2 Q I said, take it, take the 25,000. So, you went back to him and
3 talked, and listen, I'm grateful for you, and you used your skills, which
4 are legendary. You've got good skills. You will use your skills, and not
5 only did you get 25 you got it up to a 100, and they had to pay back 22,
6 but they still -- now they're getting 75 instead of 25, which means you've
7 done better than what all authority you had.

8 So, basically, on that day, and that turned out to be exactly what
9 was eventually signed and settled, right?

10 A Yes.

11 Q And when we came to Court, I mean, I want to -- because Mr.
12 Christensen who maybe wasn't here that day, and I don't want to
13 impugn him, but at Court you point out, oh, I'm not, Mr. Vannah is the
14 one that's on that settlement document; he's the one that signed it, not
15 me.

16 Well, that's because, when we're standing here, and I can pull that
17 document out, you said, I don't want to sign, I don't want to sign it
18 because Mr. Vannah has talked to these people, and the judge said, Mr.
19 Vannah, do you have any trouble signing this? I'm like, I'm not even in
20 this case. Now, I have that, I could read that transcript, but if you doubt
21 me, we can --

22 A I know exactly what the transcript says.

23 Q Yeah. And I said, I'm not even in that case, but if you want
24 me to sign it, fine, I'll sign it, because I want this thing to wrap up, and
25 it's not a big deal to me, and I remember I said, it's trivial, is the words I

AA125

1 A I think the first one was December 1st.

2 Q That was your option?

3 A That was my option too.

4 MR. CHRISTENSEN: Thank you, Your Honor. Nothing
5 further.

6 MR. VANNAH: Nothing further, Your Honor.

7 THE COURT: Okay. I have a couple of questions. In the
8 Lange settlement, there's been a lot of talk at how the Edgeworths did
9 not follow your advice, they had followed some other. What did you
10 advise them to do with Lange settlement; what was your advice to them?

11 THE WITNESS: My advice, when they came in on 11/17 was,
12 we're settling with Viking. I wanted to determine the fee, so we learned
13 now what my true fair and reasonable fee would be, as well as all the
14 costs. That attorney fee and cost, whatever they paid me, would be then
15 to resolve the Viking and then pursue the breach of contract and attorney
16 fee provision with Lange.

17 THE COURT: Okay. So that was the advice you gave them
18 on Lange?

19 THE WITNESS: Yeah.

20 THE COURT: And then after that you get communication
21 from Mr. Vannah that they'll take the 25,000, which was offered by Mr.
22 Parker?

23 THE WITNESS: Yeah. That was offered back even in
24 October.

25 THE COURT: In October.

AA126

1 THE WITNESS: Yeah. Yeah. Yeah.

2 THE COURT: That's what was offered in October. So, you
3 get communication from Mr. Vannah, hey, they'll take the 25,000, but
4 then you still go negotiate for the 100,000 with Lange?

5 THE WITNESS: Yeah.

6 THE COURT: And when you get Lange to agree to the
7 100,000, what was your advice to the Edgeworths?

8 THE WITNESS: I didn't have any advice to the Edgeworths.

9 THE COURT: So, you didn't talk to them at that point.

10 THE WITNESS: No. And kind of how the 100 came about is
11 that me and Mr. Parker had already in engaging, you know, in
12 conversations. Just leaving Court, hey, what can we do this case? You
13 know, before Viking, or, you know, that was all finalized. We just always
14 had discussions, you know, because that's what we do; how are we
15 going to resolve this?

16 And they wanted to get some money paid back to their people.
17 And so, Mr. Parker and I kind of worked that out, how we could do that.

18 THE COURT: Okay.

19 THE WITNESS: And that's what changed from the 25 to the
20 100. Because --

21 THE COURT: When you say they, you mean Lange.

22 THE WITNESS: Yeah. Because 25 minus 22 isn't a whole lot.

23 THE COURT: Right.

24 THE WITNESS: Right, so -- but he was willing to extend a
25 100, and I thought they would be ecstatic, here's an extra \$78,000, you

AA127

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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

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST,)	
)	
Plaintiff,)	CASE NO. A-16-738444-C
)	A-18-767242-C
)	DEPT NO. X
vs.)	
)	
LANGE PLUMBING, L.L.C.,)	TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	
)	
<u>AND RELATED CASES AND PARTIES</u>)	

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 18, 2018

RE: EVIDENTIARY HEARING - EXCERPT

TESTIMONY OF ANGELA EDGEWORTH ONLY

APPEARANCES:

FOR DANIEL SIMON:	JAMES R. CHRISTENSEN, ESQ.
	PETER S. CHRISTIANSEN, ESQ.

FOR EDGEWORTH TRUST:	ROBERT D. VANNAH, ESQ.
	JOHN B. GREENE, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

AA129

1 Q All right. And the calculation included line items
2 like John Olivas's \$1.5 million for stigma damage to the house?

3 A Yes.

4 Q You heard your husband say that was a line item that
5 Mr. Simon was solely responsible for; correct?

6 A Correct.

7 Q Do you agree with that?

8 A Yes.

9 Q And do you agree with \$4 million for a \$500,000
10 property claim is being made whole?

11 A Yes.

12 Q Okay. So you've been made whole; correct?

13 A Yes.

14 Q All right. And once you were made whole or about the
15 same time you or made whole, you sued Mr. Simon rather than pay
16 him; correct?

17 A No.

18 Q When were you made whole? When did you get the
19 check? Tell me the date. You knew it earlier?

20 A January 21st.

21 Q You sued Mr. Simon what date? January 4th?

22 A Yes.

23 Q So before you even had your money, you sued
24 Mr. Simon? Yes?

25 A Yes.

1 Q You accused him of converting your money; correct?
2 A Yes.
3 Q Before you even had the money; correct?
4 A Yes.
5 Q Before the money was in a bank account; right?
6 A Yes.
7 Q Okay. In that lawsuit, you sought to get from him
8 personally and individually, from him and his wife, Elena, your
9 friend? You wanted punitive damages; right?
10 A Yes. I didn't ask --
11 Q Yes?
12 A -- to be in this position?
13 Q Just yes? Just yes?
14 A Yes.
15 Q Okay.
16 MR. GREENE: Your Honor, object. Again --
17 MR. CHRISTIANSEN: Most certainly did.
18 MR. GREENE: Elena wasn't sued.
19 MR. CHRISTIANSEN: Well, it's the family --
20 THE COURT: Well, I mean, it's Daniel Simon as an
21 individual and the law office of Danny Simon, isn't it?
22 MR. GREENE: Yes, but we didn't name his wife as a
23 defendant.
24 BY MR. CHRISTIANSEN:
25 Q Is Elena married to Danny?

1 A Yes.

2 Q Okay. So if you're trying to get punitive damages
3 from a husband individually, you're trying to get the family's
4 money; right?

5 MR. GREENE: Same objection.

6 THE COURT: And, Mr. Christiansen, the lawsuit is
7 against Danny Simon as an individual and the law office of
8 Danny Simon. So that's who they sued.

9 BY MR. CHRISTIANSEN:

10 Q You made an intentional choice to sue him as an
11 individual as opposed to just his law office, fair?

12 A Fair.

13 Q That is an effort to get his individual money;
14 correct? His personal money as opposed to like some insurance
15 for his law practice?

16 A Fair.

17 Q And you wanted money to punish him for stealing your
18 money, converting it; correct?

19 A Yes.

20 Q And he hadn't even cashed the check yet; correct?

21 A No.

22 Q All right. He couldn't cash a check because
23 Mr. Vannah and him had to make an agreement. Mr. Vannah I
24 figured out how to do it I think at a bank, right, how to do
25 like a joint --

1 MR. VANNAH: Yeah. We opened a trust account for,
2 both he and I alone, so that neither one of our trust accounts
3 got it, but it went into a trust account by the Bar rules.

4 THE COURT: Okay.

5 MR. VANNAH: If that helps.

6 MR. CHRISTIANSEN: It does. Thank you, Mr. Vannah.

7 MR. VANNAH: Sure.

8 BY MR. CHRISTIANSEN:

9 Q That's what happened; right? That's where the money
10 got deposited?

11 A Yes.

12 THE COURT: And just so I'm clear about that, is the
13 whole \$6 million in that trust account?

14 MR. VANNAH: Yeah. I can help with that.

15 MR. CHRISTIANSEN: Me too, but go ahead, Bob.

16 THE COURT: Okay.

17 MR. VANNAH: So there's \$6 million that went into the
18 trust account.

19 THE COURT: Okay.

20 MR. VANNAH: Mr. Simon said this is how much I think
21 I'm owed. We took the largest number that he could possibly
22 get, and then we gave the clients the remainder.

23 THE COURT: So the six --

24 MR. VANNAH: In other words, he chose a number
25 that -- in other words we both agreed that, look, here's the

1 deal. Odds you can't take and keep the client's money, which
2 is about 4 million. So I asked Mr. Simon to come up with a
3 number that would be the largest number that he would be asking
4 for. That money is still in the trust account.

5 THE COURT: Okay.

6 MR. VANNAH: And the remainder of the money went to
7 the Edgeworths.

8 THE COURT: Okay. So there's about 2.4 million or
9 something along those lines in the trust account?

10 MR. VANNAH: Yeah. There's like 2.4 million minus
11 the 400,000 that was already paid. So there's a couple million
12 dollars in the account.

13 THE COURT: Okay.

14 MR. GREENE: It's 1.9 and change, Your Honor.

15 THE COURT: Okay. Mr. --

16 MR. CHRISTIANSEN: Well, that's true. Mr. Greene was
17 correct.

18 THE COURT: Yeah, just so I was sure about what
19 happened with that. And then the rest of the money was
20 dispersed because I heard her testifying about paying back the
21 in-laws and all this stuff. So they paid that back out of
22 their portion, and the disputed portion is in the trust
23 account?

24 MR. VANNAH: Right. So they took that money, paid
25 back the in-laws on everything so they wouldn't keep the

1 interest running.

2 THE COURT: Right.

3 MR. VANNAH: And then the money that we're
4 disputing --

5 THE COURT: Is in the trust account?

6 MR. VANNAH: -- is held in trust, as the Bar
7 requires.

8 THE COURT: Okay.

9 MR. CHRISTENSEN: And, Your Honor, just to follow up
10 on that, the amount that's being held in trust is the amount
11 that was claimed on the attorney lien.

12 THE COURT: Okay.

13 MR. VANNAH: That's correct.

14 MR. CHRISTENSEN: And also any interest that accrues
15 on the money held in the trust inures to the benefit of the
16 clients.

17 THE COURT: Right. I was aware of that. Yes. It
18 would go to the Edgeworths; right?

19 MR. VANNAH: Exactly.

20 MR. CHRISTENSEN: That's correct.

21 MR. VANNAH: Yeah, that's what we all agree to. Yes.
22 That's accurate.

23 BY MR. CHRISTIANSEN:

24 Q Ms. Edgeworth, in time, timingwise, when was the
25 first time you ever looked at one of your husband's

1 THE COURT: Okay. This witness may be excused.

2 Mrs. Edgeworth, thank you very much for your
3 testimony here today.

4 [Excerpt of proceedings concluded 4:28 p.m.]

5 -oOo-

6 ATTEST: I do hereby certify that I have truly and correctly
7 transcribed the audio/video proceedings in the above-entitled
8 case.

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Dana L. Williams

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Dana L. Williams
Transcriber

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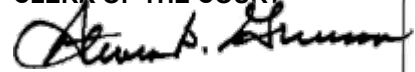
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1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: XXVI

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

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

**DECISION AND ORDER ON MOTION
TO DISMISS NRCP 12(B)(5)**

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

21 Defendants.

22
23 **AMENDED DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)**

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

AA137

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

6
7 **FINDINGS OF FACT**

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

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

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

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

26 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
27 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
28

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

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

9 We never really had a structured discussion about how this might be done.
10 I am more that happy to keep paying hourly but if we are going for punitive
11 we should probably explore a hybrid of hourly on the claim and then some
12 other structure that incents both of us to win an go after the appeal that these
13 scumbags will file etc.
14 Obviously that could not have been doen earlier snce who would have thought
15 this case would meet the hurdle of punitives at the start.
16 I could also swing hourly for the whole case (unless I am off what this is
17 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?

18 (Def. Exhibit 27).

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

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

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

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

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

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

21 13. On the evening of November 15, 2017, the Edgeworth's settled their claims against
22 the Viking Corporation ("Viking").

23 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
24 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
25 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
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 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."

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

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

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
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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.

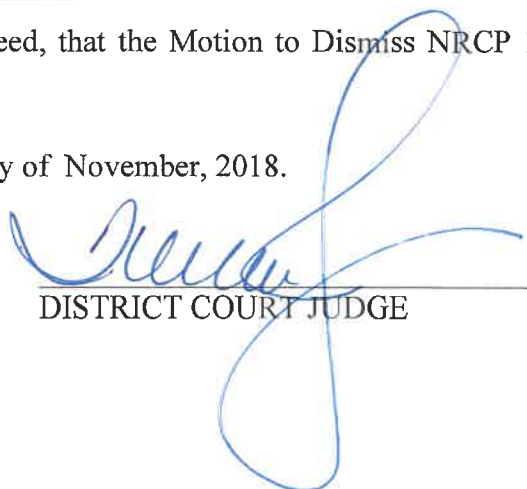
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ORDER

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.

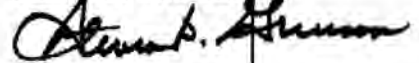


DISTRICT COURT JUDGE

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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



NEO

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(702)240-7979
Attorneys for SIMON

**Eighth Judicial District Court
District of Nevada**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

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

Consolidated with

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

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

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

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1 **NOTICE OF ENTRY OF DECISION AND ORDER DENYING EDGEWORTH'S**
2 **MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING**
3 **PRODUCTION OF COMPLETE FILE**

4 PLEASE TAKE NOTICE, a Decision and Order Denying Edgeworth's Motion for Order
5 Releasing Client Funds and Requiring Production of Complete File was entered on the 17th day
6 of June, 2021. A true and correct copy of the file-stamped Decision and Order is attached hereto.

7 DATED this 18th day of June, 2021.

8 **JAMES R. CHRISTENSEN PC**

9 /s/ James R. Christensen

10 James R. Christensen Esq.

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12 601 S. 6th Street

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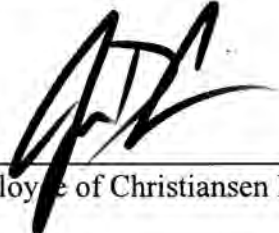
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22 Attorneys for SIMON

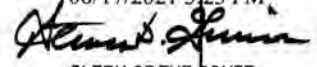
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24
25
AA148

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN TRIAL LAWYERS, and that on this 18th day of June, 2021 I caused the foregoing document entitled ***NOTICE OF ENTRY OF DECISION AND ORDER DENYING EDGEWORTH'S MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING PRODUCTION OF COMPLETE FILE*** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.



An employee of Christiansen Law Offices


 CLERK OF THE COURT
ORDR

James R. Christensen Esq.
Nevada Bar No. 3861

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**Eighth Judicial District Court
District of Nevada**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

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

Consolidated with

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

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

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

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

The Motion for Order Releasing Client funds and Requiring Production of Complete file is DENIED.

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

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

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

3 The Court further finds that the issue of requiring the production of the
4 complete file is prevented by the Non-Disclosure Agreement (NDA) and the
5 request is DENIED.
6

7 IT IS SO ORDERED.

Dated this 17th day of June, 2021

8
9
10 
DISTRICT COURT JUDGE

11
12 **DOB 497 4775 23BB**
13 **Tierra Jones**
District Court Judge

14 Submitted By:

15 **JAMES R. CHRISTENSEN PC**
16

17 /s/ James R. Christensen
18 James R. Christensen Esq.
19 Nevada Bar No. 3861
20 601 S. 6th Street
Las Vegas NV 89101
Attorney for SIMON

Approved as to Form and Content:

MORRIS LAW GROUP

21 Declined
22 Steve Morris Esq.
23 Nevada Bar No. 1543
24 801 S. Rancho Drive, Ste. B4
25 Las Vegas NV 89106
Attorney for EDGEWORTHS

AA152

1 **CSERV**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-18-767242-C

8 vs.

DEPT. NO. Department 10

9 Daniel Simon, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 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:

14 Service Date: 6/17/2021

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2	James Christensen	jim@jchristensenlaw.com
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8	Lauren Calvert	lcalvert@messner.com
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15	Jessie Church	jchurch@vannahlaw.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Petitioners,

vs.

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

Respondents,

and

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON,
Real Parties in Interest.

No. 84159

FILED

SEP 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER GRANTING PETITION IN PART AND DENYING PETITION IN
PART*

This is an original petition for a writ of mandamus to release client funds in excess of an adjudicated lien amount and to direct the real parties in interest to release to petitioners their client file.

This petition stems from the ongoing dispute regarding real party in interest Daniel Simon's fee for services he provided to petitioners Edgeworth Family Trust and American Grating, LLC (collectively, the Edgeworths) as part of the settlement of a products liability action. The Edgeworths challenge two separate issues in their petition: (1) the district court's decision to decline to release client funds being held in trust jointly by the parties for the purpose of satisfying Simon's fee above the amount it adjudicated during the pendency of appellate adjudication, and (2) the

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district court's refusal to compel Simon to produce to the Edgeworths their complete client file. The Edgeworths seek a writ of mandamus to compel both acts.

We consider the Edgeworths' petition only with respect to the file production issue

Writ relief is an extraordinary remedy appropriate when no plain, speedy, or adequate legal remedy exists. *See* NRS 34.170. Generally, we consider a party's ability to appeal from a final judgment an adequate legal remedy that precludes writ relief. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 225, 88 P.3d 840, 841 (2004). It is the petitioner's burden to demonstrate that writ relief is appropriate, *id.* at 228, 88 P.3d at 844, and it is within this court's sole discretion to decide whether to entertain a petition for writ relief, *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

Having considered the petition and its supporting documentation, as well as the answer and reply, we are not persuaded that it is necessary to entertain the Edgeworths' petition with respect to the district court's refusal to release a certain portion of the Edgeworths' client funds being held jointly in trust. Namely, we are unpersuaded that no adequate legal remedy exists to address the district court's decision. Instead, we conclude the opposite is true in that pending a final decision regarding the fee dispute matter and, after all appellate remedies are exhausted, any funds not awarded to Simon will be disbursed to the Edgeworths. Because the issue of Simon's appropriate fee is still being litigated, and because the Edgeworths have not proffered any compelling reason that access to those funds is presently needed, extraordinary intervention is unwarranted.

Regarding the second issue, we conclude that the Edgeworths' have satisfactorily shown that an adequate legal remedy does not exist to challenge the district court's refusal to compel Simon to produce their complete client file and therefore choose to entertain their petition regarding this issue. We previously dismissed the Edgeworths' appeal with respect to the file production issue, concluding that the order in which the district court denied production was not a final order from which an appeal could be taken. *See Edgeworth Fam. Tr. v. Simon*, Nos. 83258/83260 (Nev. Dec. 13, 2021) (Order Consolidating and Partially Dismissing Appeals). Thus, no adequate legal remedy exists to address this issue. Further, Simon's argument regarding the possibility of potential further motion practice before the district court is unpersuasive in demonstrating that an adequate legal remedy exists.

Therefore, we deny the Edgeworths' petition with respect to the withholding of excess funds but entertain the petition regarding Simon's production of the Edgeworths' complete client file, which we address next.

The district court erred in failing to require Simon to produce the complete client file to the Edgeworths under NRS 7.055

This court may issue a writ of mandamus to correct or otherwise "compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station." NRS 34.160. Here, the district court declined to compel Simon to produce the complete client file to the Edgeworths, relying on a previous protection order the parties entered into during discovery in the underlying products liability action.

The Edgeworths aver that the district court's reliance on the protection order was erroneous because the protection order did not apply. Namely, they assert that Simon and the Edgeworths were considered to be the same party under the order and therefore production of the file from

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Simon to the Edgeworths was not subject to the order. Alternatively, and not addressed by the district court, they argue that the district court had a duty to produce to them their complete file after they appropriately made a motion to the court under NRS 7.055.

In response, Simon argues that the district court properly determined that the protection order applied to Simon and the Edgeworths and that the Edgeworths were required to properly comply with the agreement prior to Simon's duty to disclose. Alternatively, Simon rebuts the Edgeworths' argument that NRS 7.055 required production by arguing the prerequisite, that an attorney be paid before production becomes compelled, has not been satisfied because he has not yet received actual payment for his services.

Addressing the protective order argument first, after reviewing the order and based on the totality of the circumstances, we conclude that the order does not prevent Simon from disclosing any portion of the Edgeworths' file, including those confidential portions subject to the order. Specifically, at least to a certain extent, the order treats Simon and the Edgeworths as being one-in-the-same as opposed to being separate parties. We reject Simon's argument that he is "disclosing" confidential information in contravention of the protection order. Thus, we conclude that the district court's reliance on the protective order was erroneous.

We further conclude that the district court had a statutory duty to compel Simon to produce to the Edgeworths their complete file after such a demand was made under NRS 7.055. NRS 7.055(2) states:

A client who, after demand therefor and payment of the fee due from the client, does not receive from his or her discharged attorney all papers, documents, pleadings and items of tangible personal property may, by a motion filed after at

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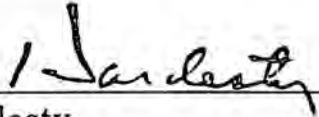
least 5 days' notice to the attorney, obtain an order for the production of his or her papers, documents, pleadings and other property.

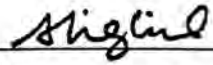
To the extent Simon argues that the Edgeworths have not complied with NRS 7.055(2)'s language that production is required only "after . . . payment of the fee due," we conclude that Simon reads the requirement of payment too narrowly. Payment is defined as "[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation." *Payment*, *Black's Law Dictionary* (11th ed. 2019). Moreover, we have previously construed the term broadly by considering the requirement satisfied when a party, even without making an actual transfer of money, provides sufficient security evidencing their intent to pay. *See Figliuzzi v. Eighth Judicial Dist. Court*, 111 Nev. 338, 343, 890 P.2d 798, 801 (1995) (stating a "district court's power is limited to ordering the attorney to return papers upon the client's presentment of adequate security" (emphasis added)). Here, Simon made a demand of \$2 million in attorney fees. The Edgeworths, although contesting the amount owed, placed \$2 million of their settlement proceeds into a trust account that is jointly managed by themselves and Simon. Funds in the account can only be removed with authorization by both Simon and the Edgeworths. Based on the foregoing facts, we conclude that Simon was sufficiently secured that the Edgeworths would pay and therefore the district court had a duty under NRS 7.055 to compel Simon to produce to the Edgeworths their complete client file. Thus, mandamus relief is available to correct the district court's failure to compel Simon to produce the file. *See* NRS 34.160. Accordingly, we


ORDER the petition with respect to the release of the Edgeworth's funds DENIED and the petition with respect to the production

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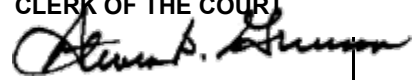
of the client file GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF mandamus instructing the district court to require Simon to produce the complete client file to the Edgeworths.

, J.
Hardesty

, J.
Stiglich

, J.
Herndon

cc: Hon. Tierra Danielle Jones, District Judge
Hon. Jerry A. Wiese, Chief Judge
Morris Law Group
James R. Christensen
Christiansen Trial Lawyers
Eighth District Court Clerk



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST,)	
et al.,)	CASE NO. A-16-738444-C
Plaintiffs,)	
)	DEPT. X
v.)	
)	<u>CONSOLIDATED WITH:</u>
LANGE PLUMBING, LLC, e al.,)	A-18-767242-C
)	
Defendants.)	
)	
<u>And all related claims/actions.</u>		

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, MARCH 21, 2023

**RECORDER'S TRANSCRIPT OF PROCEEDING:
MOTION FOR ADJUDICATION FOLLOWING REMAND**

APPEARANCES:

FOR THE PLAINTIFFS: STEVE MORRIS, ESQ.
Via Videoconferencing

FOR DEFENDANTS LAW OFFICE OF DANIEL S. SIMON, P.C., AND DANIEL S. SIMON: JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC
(Hearing recorded via Bluejeans Videoconference/Audio)

1 LAS VEGAS, CLARK COUNTY, NEVADA, MARCH 21, 2023

2 (Case called at 9:03 a.m.)

3 THE COURT: -- Trust versus Lange Plumbing, LLC.
4 May the record reflect that Mr. Christensen is here. Well,
5 it's Edgeworth Family Trust that was also consolidated with
6 the Edgeworth Family Trust versus the Law Offices of Daniel
7 Simon. Mr. Christensen is here on behalf of the Law Offices
8 of Daniel Simon, and on behalf of Daniel Simon. Mr. Morris is
9 here on behalf of the Edgeworth Family Trust.

10 All right. This is on for the Motion for
11 Adjudication Following the Remand. I have read the Motion.
12 I've read the Response, as well as I've read the Reply in
13 Support.

14 Mr. Christensen, do you have anything you would like
15 to add to your --

16 MR. CHRISTENSEN: Yes, Your Honor.

17 THE COURT: And just briefly, from a procedural
18 standpoint, there is nothing pending at the Supreme Court that
19 I could see. Is that how you guys understand the posture at
20 this time?

21 MR. CHRISTENSEN: That is correct, Your Honor.

22 THE COURT: Okay.

23 Mr. Morris?

24 MR. MORRIS: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. MORRIS: That's correct.

2 THE COURT: All right.

3 All right. Go ahead, Mr. Christensen.

4 MR. CHRISTENSEN: So we're back before Your Honor
5 because -- I guess I could put it this way, the proceedings
6 before the Supreme Court got a little prolonged. There were
7 Motions for Rehearing filed by both parties, that dragged out
8 the Remittiturs the Remands.

9 But we're finally back down here and we need to
10 create another order on the quantum meruit issue and see where
11 that goes, see if there's another appeal on it.

12 So that's what we're here today.

13 In the Order Vacating Judgment and Remanding, dated
14 September 16, 2022, I think reading between the lines, the
15 Supreme Court wanted some more information in the Order for
16 Adjudication.

17 So what we did was we put together our Motion for
18 Adjudication Following Remand, and essentially, pages 4
19 through 18 address what we believe are some of the -- excuse
20 me -- some of the foundation for the work that Simon did post-
21 discharge, in other words, post November 29.

22 I'd like to apologize. We actually have a typo in
23 our motion at page 4, it says November 19, and that's supposed
24 to be 29.

25 So beginning with the information that was included

1 in the Time Sheets, that's detail, beginning at page 4, that
2 goes through page 6 or 8, I forget. And then following that
3 is additional discussion regarding three e-mails that were not
4 initially captured on the Time Sheets. And then following
5 were work that was done after the Time Sheets ended, is
6 described in detail.

7 And then, of course, there's the Declaration of Mr.
8 Simon referring to the Lange Foundation, for the e-mails that
9 were sent back and forth, and some of the other work that was
10 done.

11 And also, importantly, Your Honor, is some of that
12 work was done before Your Honor. We have two different
13 hearings where people showed up, including Mr. Simon. We have
14 transcripts of those which are available to the Court, which
15 are in the record, and they indicate that the defense
16 attorneys, and in fact Mr. Vannah, the Edgeworth attorney,
17 were turning to Mr. Simon to help effectuate the settlement
18 and to bring it home, both for the Viking Settlement and the
19 Lange Settlement.

20 And that's contained in our moving papers at pages 4
21 through 18. And that, I -- from Mr. Simon's perspective, that
22 provides an awful lot of detail and information that perhaps
23 the Supreme Court is looking for. So that could be just stuck
24 in as a block.

25 There's a couple of items that the Edgeworths argue

1 about. One has to do with --

2 THE COURT: Well, let me just stop you. I have a
3 question, Mr. Christensen.

4 So --

5 MR. CHRISTENSEN: Yes, Your Honor.

6 MR. CHRISTENSEN: -- so basically the Supreme Court
7 told this Court on September 16th of 2022, like basically,
8 Judge Jones, we want -- for the second time, we want further
9 clarification as to how you arrived at this \$200,000 figure
10 for Daniel Simon.

11 And when you just talked about the things that you
12 guys reference on page 4 through 18, which if you look at the
13 beginning of page 4, it starts on November 29th of '17, and
14 this goes all the way through things that were being done, up
15 in 2018, when we were actually arguing things in front of this
16 Court, and things of that nature.

17 So when you said, you can just stick those in, what
18 -- talk to me about the issue that if the Court were to just
19 go and stick those in, the Court would have to be expanding
20 upon the fee of Mr. Simon, because the Court had already
21 determine the \$200,000 fee, without knowing this information.

22 Do you understand what I'm saying?

23 MR. CHRISTENSEN: Oh, I understand that, Your Honor.

24 THE COURT: And so --

25 MR. CHRISTENSEN: Um --

1 THE COURT: -- basically, that -- I know that that's
2 basically what you are requesting in this motion, right?

3 MR. CHRISTENSEN: Well, there is -- the case was
4 sent back down.

5 THE COURT: Right.

6 MR. CHRISTENSEN: And in the order it at least --
7 well, I think it overtly states that, Simon, of course, is
8 requesting more money.

9 THE COURT: Right.

10 MR. CHRISTENSEN: And on the last page of the order,
11 the second to the last paragraph, the Supreme Court's
12 commenting on a couple of the Edgeworth claims, and then it
13 goes on, "Because we will not make factual findings in the
14 first instance, we also decline Simon's invitation to affirm
15 the District Court's Order."

16 And then it goes on.

17 So it -- the Supreme Court did not make a definitive
18 statement that it's \$200,000 or --

19 THE COURT: Right.

20 MR. CHRISTENSEN: -- or nothing, or that it's
21 \$200,000, or the Edgeworth proposal, of 30-some-thousand.

22 THE COURT: Right.

23 MR. CHRISTENSEN: And --

24 THE COURT: And so what you're asking this Court to
25 do --

1 MR. CHRISTENSEN: -- normally --

2 THE COURT: -- expand upon that, based on this
3 additional information --

4 MR. CHRISTENSEN: That's --

5 THE COURT: -- and expand upon the monetary sum.

6 MR. CHRISTENSEN: That is correct.

7 THE COURT: Yes.

8 MR. CHRISTENSEN: However, I have to concede that,
9 that new information. And that's not really new, because it
10 all happened before the Court. But it's -- it's -- would be
11 new to the order.

12 THE COURT: Right.

13 MR. CHRISTENSEN: That information could be used
14 either to support the existing quantum meruit award of
15 \$200,000, or a higher one.

16 THE COURT: But that's --

17 MR. CHRISTENSEN: Or, I suppose, our --

18 THE COURT: -- what I'm asking, how --

19 MR. CHRISTENSEN: -- or --

20 THE COURT: -- how does it support, if it was new,
21 and wasn't presented to this Court during the Evidentiary
22 Hearing that we had, or during anything that was previous to
23 this motion being filed?

24 MR. CHRISTENSEN: Well, it doesn't -- it -- it goes
25 both ways, Judge. It just means that your \$200,000 was --

1 that there's even more support for it.

2 Now, I could argue that if the work that the Court
3 based its Findings upon in the first instance, was sufficient
4 for \$200,000, then in light of this new work, that the number
5 should go higher. And, in fact, that is our argument.

6 THE COURT: Oh, because, (indiscernible) I'm pretty
7 sure what you're arguing in the motion.

8 MR. CHRISTENSEN: But that does not mean that the
9 counter-argument is invalid, because the Court could say,
10 well, even though there is more work, and more labor evidenced
11 in the record now, I still think that \$200,000 would be
12 sufficient to compensate that.

13 But I'm not going to -- I'm not going to say that --
14 that definitively, logically, that there's some sort of a
15 contradiction there, because there isn't. But, of course, we
16 think the number should go up.

17 THE COURT: Correct.

18 MR. CHRISTENSEN: The Edgeworths have a couple of
19 arguments. One there's a -- there's a file issue. They
20 continue to complain about the file.

21 I don't want to fully engage on that, because I
22 think it's a red herring. But I -- I do want to just make a
23 couple of -- of comments.

24 In the Reply, we -- we attached a letter I had sent
25 back and some of the issues. Since then, I've gotten a -- a

1 letter back.

2 One of the issues is, if Your Honor recalls, many,
3 many years ago, at the Evidentiary Hearing, there was
4 discussion of a November meeting at Mr. Simon's office, and
5 Mr. Simon says, I had a printout for the costs, and I gave it
6 to him, and the costs at that time were \$70,000, \$80,000,
7 whatever they were.

8 And the Edgeworth version of that conversation was,
9 that was a Fee Agreement that he wanted us to sign, and he was
10 intimidating us, and he took it away at the end of the
11 meeting. So we've got two different factual narratives.

12 The Edgeworths continued to ask for that piece of
13 paper. And as Your Honor can see, my response was, look, that
14 was a -- the costs are taken off of this program that they
15 have that tracks costs. And you push a button and you get a
16 printout. So you get a -- a picture in time of what the costs
17 are.

18 But the costs move. They go up as additional bills
19 come in, or they go down as payments come in. So it's just a
20 snapshot of a moment of time. He just had it printed out and
21 just gave it to them. And that was the -- that was it.
22 Right? There was no retention of a copy, there was no
23 nothing. There's no obligation to retain a copy.

24 In response to that, this is the Edgeworth Reply is,
25 "Your letter suggests a copy of the requested cost printout

1 that was provided to our clients. Mr. Simon handed it to them
2 to look at, but took it back, which is why we're asking you to
3 identify where it can be found in their file. I do not
4 understand how it would no longer be available since he
5 retained it."

6 Well, that's not what we said. And that's not what
7 Mr. Simon testified to, and that's not what I said in my
8 letter. I said, he handed it to them. That's it. If -- if
9 he didn't retain a copy, then there is no copy.

10 So this is the level that the file discourse is
11 getting down to. We're now fighting over factual narratives
12 and not over content. And so I don't want to go down that
13 rabbit hole too far in this motion, because that's really
14 something for another day.

15 There was an argument made that the Court cannot go
16 beyond the bill. And that's wrong for a number of reasons.
17 First of all, the bill ends on January 8th, for the Time
18 Sheets sent on January 8th, and clearly, there was work done
19 after. There was appearances before Your Honor after that
20 date. So clearly, the Court can take those things into
21 consideration. And an argument that somehow the -- the
22 drawbridge goes up on January 8th doesn't make any sense.

23 There's also an interesting issue in that the -- the
24 Time Sheets, there's a -- there's kind of a strawman thing
25 going on here by the Edgeworths. The Simon position has

1 always been that the Time Sheets were incomplete, that they
2 were simply an indication of the work that they could
3 definitively find within the file, but that it didn't
4 encompass all of the work.

5 So from the Simon position, those Time Sheets are
6 incomplete. And Your Honor received evidence to that effect.
7 So that's another reason why being limited to the Time Sheets
8 is not an appropriate way to go.

9 The -- the third reason is that the Supreme Court
10 commented on that argument, because the Edgeworths made that
11 argument to the Supreme Court: "Insofar as the Edgeworths
12 argued that we should award Simon 34,000 in quantum meruit
13 fees, based on Simon's billing statement, that purportedly
14 shows that he completed 71 hours of post-discharge work, we
15 decline to do so. The District Court found that the billing
16 statement may not accurately reflect Simon's post-discharge
17 work."

18 So they -- they tried that argument before the
19 Supreme Court. It didn't work. And now they're trying it
20 before the District Court, which doesn't seem appropriate,
21 considering the facts, the record, and the Supreme Court's
22 dismissal of that argument.

23 So, in conclusion, we think that the information
24 contained at pages 4 through 18 of the motion would be very
25 helpful to the Court in fashioning a new order.

1 There is an issue whether it needs to be a
2 standalone order or whether simply an additional section could
3 be added on to the existing order. In my mind, an additional
4 section could just be added on.

5 There's an awful lot of information in the preceding
6 order, including an in-depth analysis of the Brunzell factors.
7 That, at a minimum, would need to be carried over, if it's
8 going to be a standalone order, that's really just a -- a
9 crafting decision that's to the Court's discretion.

10 So unless there's a question, I'll turn it over to
11 Mr. Morris.

12 THE COURT: No. You answered my question. Thank
13 you very much.

14 MR. CHRISTENSEN: Thank you, Your Honor.

15 THE COURT: Mr. Morris?

16 MR. MORRIS: Your Honor, thank you.

17 We're back here before you for the third time. The
18 Supreme Court has said with respect to the record that was
19 before you and the Supreme Court, in two -- in one writ and an
20 appeal, that they couldn't -- they couldn't determine from
21 that what you had considered to support your \$200,000 quantum
22 meruit award.

23 But, and I know that you filed your Fourth Amended
24 Decision and Order, and you also filed that before -- when you
25 did not have jurisdiction. If that's your position, then you

1 simply need to affirm that. But if you want to consider some
2 of the things that Mr. Christensen has said and argued, I want
3 to point this out: Simon agrees that the time spent on post-
4 discharge matters, 71.10 hours, and Mr. Christensen just
5 mentioned that, is accurate.

6 And that was the number of hours and the time --
7 that represents the time that the -- was be -- was before you
8 for the Supreme Court when they said you didn't sufficiently
9 identify in that -- in that -- on this record that those
10 hours, what would, consistent with Brunzell, the Court, the
11 \$200,000 quantum meruit award.

12 Now we come back -- and now that we're back before
13 you, Mr. Christensen and Simon want to add on, they want to
14 add on work based on e-mails that were withheld, purposely
15 withheld until you denied several months ago -- a couple of
16 months ago -- our Motion for an Order to Show Cause why Simon
17 should not be sanctioned for failing to produce documents.

18 And now that we have those documents that are
19 produced, he wants you to consider those.

20 He also -- he also has by producing these late e-
21 mails, he's confirmed a couple of things that are of interest
22 -- should be of interest. They are to us. They should be of
23 interest to you.

24 To give Simon credit for what he has produced five
25 years after the fact, would award him for withholding part of

1 the file, which shows, for example, that -- that the
2 Edgeworths did not, as he has represented, they didn't request
3 him to negotiate confidentiality, and that he had -- another
4 thing these e-mails show, look at Exhibit K.

5 They show that he had the Viking settlement drafts,
6 but he said he didn't have them. And that is -- is a
7 consequence of his negotiations with Joel Henriod, and he
8 produced those drafts of the Settlement Agreement after we had
9 the Show Cause Hearing.

10 So he was telling the Edgeworths, at the same time,
11 on November the 27th, but you can see on our Exhibit R, that
12 there was much that remained to be done. And that many terms
13 had to be negotiated when in point of fact, the terms for
14 settlement with Viking had been agreed to prior to that time.

15 Those are just -- those are points I raise to show
16 that I don't believe that Mr. Simon has been forthright
17 throughout these proceedings. You may disagree --

18 THE COURT: And Mr. --

19 MR. MORRIS: -- with me. (Indiscernible) --

20 THE COURT: -- Mr. Morris? Let me --

21 MR. MORRIS: Yes?

22 THE COURT: -- ask you a question.

23 When the Lange -- let's talk about the Lange
24 settlement. So, for instance, they're -- Mr. Simon is saying
25 the original -- originally the Langes were going to provide

1 \$25,000. And it is Mr. Simon's work that got the Langes to
2 agree to \$100,000. So do you disagree that he was continuing
3 to work at that time?

4 MR. MORRIS: I don't disagree that he was -- he --
5 he was in conversations at that time.

6 THE COURT: But --

7 MR. MORRIS: But I don't -- but I don't agree, and I
8 don't think that you should find the fact that in -- point of
9 fact, that additional \$75,000 comes out to be much less,
10 because there's an offset involved here.

11 But in any event, that doesn't -- and that increase
12 was negotiated by November 30th.

13 THE COURT: Right.

14 MR. MORRIS: It wasn't completely documented and the
15 Settlement Agreement signed --

16 THE COURT: Right. But I found that --

17 MR. MORRIS: -- until later.

18 THE COURT: -- constructive discharge occurred on
19 November 27. So if the settlement -- if the number doesn't
20 come into an agreement until November 30th, wouldn't you agree
21 that he's still working, unless there is some evidence that it
22 wasn't Danny Simon who negotiated that new number?

23 MR. MORRIS: I would -- I would agree that on
24 November 30th, that he -- that he said there was work that
25 remains to be done.

1 And then in an e-mail, which you have before you, he
2 said he did a couple of things that same day. But the fact --
3 fact of the matter is, Your Honor, that work did not continue
4 beyond November 30. So I don't -- I -- I don't -- and you've
5 had this before you on previous occasions. But that doesn't
6 -- doesn't indicate that Mr. Simon has been deprived of
7 anything.

8 And point of fact, one of the things that we
9 suggested to you in 2021, when we argued this before you for
10 the first time is, that with respect to the hours that he
11 claims, for which he was not compensated, which show largely
12 -- largely, not exclusively, but largely administrative and
13 nominal tasks, that you could compensate him, on the basis
14 that he had agreed to accept compensation before the -- with
15 the Edgeworths, long before this dispute reached your
16 courtroom.

17 And that would yield, as Mr. Christensen has just
18 pointed out, and as we argue to you, that would yield \$33,811
19 as -- as distinguished, or as opposed to, \$200,000.

20 THE COURT: Well, and Mr. Morris, let me ask you --

21 MR. MORRIS: So --

22 THE COURT: -- this though. I mean --

23 MR. MORRIS: -- the -- the --

24 THE COURT: -- Mr. Simon did make additional court
25 appearances in front of this Court. That is part of the court

1 record. There's transcripts that he was here, and that he was
2 making appearances. And as a lawyer, you guys get paid to
3 come in and make appearances for your client.

4 So are you arguing that that wasn't additional work
5 that he was doing?

6 MR. MORRIS: I was -- that -- I just -- I just told
7 you that's some work that he was doing. That is some work,
8 that it was done and completed by November the 30 -- by
9 November 30th, which is evidenced in the e-mails you have.

10 It didn't continue on into December. It didn't
11 continue on --

12 THE COURT: He made appearances --

13 MR. MORRIS: -- into --

14 THE COURT: -- after November 30th. He made
15 appearances on this case --

16 MR. MORRIS: Correct.

17 THE COURT: -- after November 30th. So he did not
18 conclude his work on November 30th. This Court can take
19 judicial notice of Mr. Simon standing in front of me, and
20 there's transcripts, and there's Minutes that reflect that he
21 was here on this case.

22 MR. MORRIS: I'm not arguing with that.

23 THE COURT: Okay. I'm just making sure.

24 MR. MORRIS: I'm not saying that he did nothing
25 beyond November 30th. I was responding to your question with

1 respect to when the increase in the amount from 25 to 100,000,
2 which was really because of an offset, a net of \$53,000, when
3 -- when that was done.

4 That was not done post November 30th. That was done
5 and over on November 30. And Simon continued to perform some
6 administrative tasks, which are evidenced in the increase that
7 you credited in his Super Bill, and they add up to 71.10
8 hours.

9 That doesn't -- I submit to you, and we've argued
10 before, I -- you may disagree with us. I'm simply trying to
11 present our position consistent with what I understand the
12 record to be and the law to be, that it doesn't support under
13 the Brunzell factors, a quantum meruit award of \$200,000.

14 And I think that's one of the -- one of the things
15 the Supreme Court indicated when it sent this back, for you to
16 say, within that 71.10 hours, what is it that Simon did that's
17 consistent with Brunzell, that would produce a recovery of
18 \$200,000 in quantum meruit.

19 And a good deal -- Your Honor, a good deal of what
20 happened post November 30th was just final -- it was
21 finalizing the Lange settlement, and resolving disputes
22 between the Langes and Viking. Remember, the references to
23 the -- if they -- if they didn't resolve the -- didn't resolve
24 that, there would have to be a good faith settlement hearing.

25 So, I'm -- I'm just -- I -- I'm puzzled why you are

1 so resistant to considering the fair amount of what would be a
2 fair amount of compensation for Simon's post November 30 work
3 at the -- at the rate in which he indicated he would be paid,
4 to -- to the Edgeworths, when he commenced representing them.
5 That's \$550 an hour.

6 THE COURT: Well, first off, Mr. Morris --

7 MR. MORRIS: And that adds up to --

8 THE COURT: -- I never said I didn't --

9 MR. MORRIS: -- including \$550 an hour for his
10 associate, who he billed at 275. But that would include --
11 that would include Ashley Ferrel. So, I --

12 THE COURT: Mr. Morris, I never said I was --

13 MR. MORRIS: -- I don't see why --

14 THE COURT: -- resistant to anything. And --

15 MR. MORRIS: Pardon me?

16 THE COURT: I never said I was resistant to
17 anything. And it's going to be this Court's order that's
18 going to decide what is Mr. Simon's fair compensation.

19 MR. MORRIS: Well, Your Honor, if you -- if you
20 believe this cut and dried, you've already -- you've already
21 filed -- although you didn't have the jurisdiction to make a
22 -- to make a entry of it. You filed your Fourth Amended
23 Decision and Order. If you believe you're correct on that,
24 and you have addressed the Supreme Court's concerns that
25 result in this -- that result in this Third Remand, well, then

1 file it, enter that order, and we'll go on from there.

2 But if you want to consider, which is out of time
3 and is not something the Supreme Court asked for, Mr. -- Mr.
4 Christensen's Motion to Adjudicate Fees Post -- Post November
5 30, why then you -- you should, I think, consider what we've
6 been arguing and what we've presented to you.

7 We've been presenting this to you for some time. He
8 would be entitled to, and it could be supported by reference
9 to Brunzell, \$33,811. And if -- if you agree with that, and
10 enter an order according to that, we're done with this case.
11 We don't have to go to the Supreme Court again, and come back
12 before you again. We're done.

13 And I just think that's -- that's something you --
14 you should consider. But if you don't want to consider it, if
15 you wish to stay with the position you've taken, on the record
16 that you have before you, then simply enter your Fourth
17 Decision and Order.

18 THE COURT: All right. Thank you, Mr. Morris.

19 Did you have anything else you wanted to add?

20 MR. MORRIS: No, I think I've -- I -- I think I've
21 said just -- I -- I just want to reemphasize, irrespective of
22 Mr. Christensen's misdescription of what the Supreme Court was
23 looking for, the Supreme Court was not looking for new
24 information, it was looking for you to say, in your order,
25 what it is that you considered, that Simon did in the 71.10

1 hours that are before you, and were taken from his Super Bill,
2 what it is, consistent with Brunzell, that supports, or would
3 support a \$200,000 quantum meruit award.

4 The -- the -- what's -- what Mr. Simon and what Mr.
5 Christensen has presented is just simply some add-ons, and
6 some e-mails, and declarations that don't say anything at all
7 about the time that he spent. He just tenders this stuff
8 saying, this -- this would support, confirming your \$200,000
9 award.

10 Well, if that's true, Your Honor, he should have, as
11 I said a moment ago, and I'll conclude with this, he should
12 have produced that five years ago and he didn't.

13 THE COURT: Okay.

14 Mr. Christensen, anything you want to add in
15 response to those arguments?

16 MR. CHRISTENSEN: Yes, Your Honor.

17 I quoted from the Supreme Court's Order, so I'd
18 rather -- I'm mildly annoyed at the statement that I somehow
19 misstated the finding of the Court, since I've quoted it.

20 There's a -- there's a strawman argument going on.
21 Simon agrees that the 71.10 hours is the minimum accurate
22 number of hours that he spent post-discharge through January
23 8. So that's the minimum through January 8, only.

24 Obviously, Simon spent more time on this matter, as
25 the Court observed. He did make appearances after January

1 8th. When the Court confronted the Edgeworths, on that point,
2 the Edgeworths deflected and said, well, of course we're not
3 saying he can't be compensated for that. But then they
4 immediately return to their 71.10 hour argument, which ignores
5 those additional appearances.

6 There was a claim made that Simon purposely withheld
7 certain e-mails. I'm not sure how they get to purposefully.
8 They're implying intent, again, they did so without any
9 factual basis. I would submit that it's fairly clear that
10 they are doing these simply to obtain a result -- the result-
11 oriented arguments.

12 There was some argument and some discussion
13 concerning the increased offer. If the offer was increased,
14 and that result was obtained on November 30th, well, that's
15 post-discharge, and therefore, it counts towards quantum
16 meruit.

17 The Supreme Court -- and I'll -- I'll finish on
18 these two points. First, this Court, the record, and the
19 Supreme Court, note that -- and Mr. Simon's testimony at the
20 Evidentiary Hearing, indicate that work on the Settlement
21 Agreements began before discharge, and continued after
22 discharge, page 3, of the Supreme Court Order, about the
23 middle -- the first paragraph on that page addresses that.
24 And this Court addressed that, too.

25 So for the Edgeworths to take the position that

1 because the work began pre-discharge, that somehow all of the
2 work was completed pre-discharge, is a -- is a fallacious
3 position to take. One doesn't lead to the other, it's the
4 work was done when the work was done.

5 And, for example, on Lange, we know that the work,
6 increase in the offer, removing confidentiality and other
7 items, was done post-discharge.

8 So that can serve as a basis for a quantum meruit
9 award. And this Court is not limited to an hourly, because
10 it's post-discharge. The Edgeworths destroyed the implied-in-
11 fact contract that the Court found, when they discharged them,
12 that means it goes away, Simon gets a reasonable fee, and
13 there's absolutely nothing in the Supreme Court Order, or in
14 the law of the State of Nevada that says that that has to be
15 another way. That's flatly rejected.

16 The last point I want to bring is, again, the
17 Edgeworths propose a -- a dichotomy which is a false
18 dichotomy. They say, well, either you go with our 71.1 hours,
19 or you enter your prior order, and those are the only choices
20 the Court has. And that's simply incorrect. And that's not
21 what the Supreme Court said.

22 The Court was remanded. It's now in the District
23 Court's jurisdiction. And when you issue an order, you can
24 issue an order as you see fit, within your sound discretion.

25 And we submit to you that adding in the additional

1 information contained in our motion at pages 4 through 18,
2 would likely be a good idea that would provide the Supreme
3 Court with plenty of information upon which they could be able
4 to determine what the quantum meruit award was based upon.
5 And from our perspective, we think that that would bring this
6 matter to a close.

7 Thank you, Your Honor.

8 THE COURT: All right. Thank you both very much.

9 I am going to issue a written order regarding this
10 case. That order will be filed and both parties will be
11 served.

12 MR. CHRISTENSEN: Thank you, Your Honor.

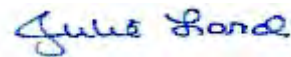
13 THE COURT: All right. Thank you.

14 MR. MORRIS: Thank you.

15 (Proceeding concluded at 9:37 a.m.)

16 * * * * *

ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/visual proceedings in the above-entitled
case.



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