

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

APPELLANTS,

VS.

DANIEL S. SIMON; THE LAW
OFFICE OF DANIEL S. SIMON,

RESPONDENTS.

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Supreme Court Case No. 86676

Dist. Ct. Case No. A-18-767242-C
Consolidated with A-16-738444-C

**EDGEWORTH APPELLANTS' APPENDIX TO
OPENING BRIEF**

**VOLUME V
BATES AA0833-AA1047**

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***EDGEWORTH FAMILY TRUST, ET AL. vs.
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CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL	BATES NOS.
2018-08-27	Excerpts of Evidentiary Hearing Transcript (Day 1)	I	AA0001-06
2018-08-30	Excerpts of Evidentiary Hearing Transcript (Day 4)	I	AA0007-22
2018-10-11	Decision and Order on Motion to Adjudicate Lien (original)	I	AA0023-48
2018-11-19	Decision and Order on Motion to Adjudicate Lien (Amended)	I	AA0049-71
2020-12-30	Nevada Supreme Court Order Affirming in Part, Vacating in Part Remanding	I	AA0072-86
2021-03-16	Second Amended Decision and Order on Motion to Adjudicate Lien	I	AA0087-111
2021-03-30	Defendant's Motion for Reconsideration of Lien & Attorney's Fees & Costs Orders and Second Amended Decision and Order on Motion to Adjudicate Lien	I/II	AA0112-406
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	AA0407-423
2021-04-13	Opposition to Motion to Reconsider & Request for Sanctions; Counter Motion to Adjudicate Lien on Remand	III	AA0424-626
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	IV	AA0627-651

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2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	IV	AA0652-757
2021-05-13	Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of Complete Client File	IV	AA0758-832
2021-05-13	Opposition to the Second Motion to Reconsider Counter Motion to Adjudicate Lien on Remand	V	AA0833-937
2021-05-20	Edgeworths' Reply ISO Motion for Reconsideration of Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Third Amended Decision and Order on Motion to Adjudicate Lien	V	AA0938-978
2021-05-20	Opposition to Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of File	V	AA0979-1027
2021-05-21	Reply ISO Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of Complete Client File	V	AA1028-1047

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DATE	DOCUMENT TITLE	VOL	BATES NOS.
2021-05-24	Notice of Entry of Order Re Second Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs	VI	AA1048-1056
2021-05-27	Transcript of 05-27-21 Hearing Re-Pending Motions	VI	AA1057-1085
2021-06-18	Notice of Entry of Order of Decision & Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Counter Motion to Adjudicate Lien on Remand	VI	AA1086-1093
2021-07-22	Notice of Appeal	VI	AA1094-1265
2021-08-13	Docketing Statement (83260)	VII	AA1266-1277
2021-08-16	Docketing Statement (83258)	VII	AA1278-1289
2021-09-19	Amended Docketing Statement	VII	AA1290-1301
2021-12-13	Order Consolidating and Partially Dismissing Appeals	VII	AA1302-1306
2022-09-16	Order on Edgeworths' Writ Petition (Case No. 84159)	VII	AA1307-1312
2022-09-16	Order Vacating Judgment and Remanding (Case No. 83258-83260)	VII	AA1313-1317
2022-09-27	Fourth Amended Decision & Order on Motion to Adjudicate Lien	VII	AA1318-1343
2022-09-27	Order to Release to the Edgeworth's Their Complete Client File	VII	AA1344-1347
2022-12-15	Remittitur (signed and filed)	VII	AA1348-1351

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2023-02-23	Edgeworths' Response to Motion for Adjudication Following Remand	VII/VI II	AA1377-1649
2023-03-14	Reply ISO Motion for Adjudication Following Remand	VIII	AA1650-1717
2023-03-28	Fifth Amended Decision and Order on Motion to Adjudicate Lien	IX	AA1718-1748
2023-04-24	Notice of Entry of Fifth Amended Decision and Order on Motion to Adjudicate Lien	IX	AA1749-1781
2023-05-24	Notice of Appeal	IX	AA1782-1784

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2023-03-28	Fifth Amended Decision and Order on Motion to Adjudicate Lien	IX	AA1718-1748
2022-09-27	Fourth Amended Decision & Order on Motion to Adjudicate Lien	VII	AA1318-1343
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	AA0407-423
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2021-07-22	Notice of Appeal	VI	AA1094-1265
2023-05-24	Notice of Appeal	IX	AA1782-1784
2023-04-24	Notice of Entry of Fifth Amended Decision and Order on Motion to Adjudicate Lien	IX	AA1749-1781
2021-06-18	Notice of Entry of Order of Decision & Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Counter Motion to Adjudicate Lien on Remand	VI	AA1086-1093
2021-05-24	Notice of Entry of Order Re Second Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs	VI	AA1048-1056
2021-05-20	Opposition to Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of File	V	AA0979-1027

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2023-03-14	Reply ISO Motion for Adjudication Following Remand	VIII	AA1650-1717

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2021-05-27	Transcript of 05-27-21 Hearing Re-Pending Motions	VI	AA1057-1085



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

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

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

Hearing date: 5.27.21

Hearing time: 9:30 a.m.

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

OPPOSITION TO THE SECOND MOTION FOR RECONSIDERATION

I. Relevant Procedural Overview

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

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

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

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

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

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

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

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

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

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

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

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

A. The Third Lien Order

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

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

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

3 Second, the Edgeworths argue for reconsideration by making the
4 claim that a disagreement over the facts underlying the quantum meruit
5 decision amounts to a clear error of law. The argument is poor. A
6 disagreement over facts is not a clear error of law meriting reconsideration.
7
8 The determination of attorney fees under quantum meruit is within the
9 discretion of the district court. As such, the Edgeworths are effectively
10 foreclosed from relief via promotion of their own factual narrative under the
11 abuse of discretion standard. Further, the Edgeworths' frivolous
12 conversion narrative, which they have morphed into an equally frivolous
13 extortion narrative in the current motion, was solidly rejected by this Court
14 and the Supreme Court. The Edgeworths did not provide the substantially
15 different evidence required for reconsideration, they have merely served up
16 different spin.
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22 Finally, the Edgeworths complain about a scrivener's error regarding
23 costs owed. In doing so, the Edgeworths note but fail to take to heart the
24 "Costs Owed" section of the Third Lien Order which specifically states that
25 costs were paid, and no costs are currently owed. Specific language
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1 controls over general language. Thus, there is no possibility of undue
2 prejudice and no basis to reconsider the Third Lien Order is presented.

3 **B. The Attorney Fee Order**

4
5 The Attorney Fee Order was issued before remittitur. Accordingly,
6 the order must be refiled. The Edgeworths appear to have abandoned their
7 challenge to the conservative amount of fees awarded. As to Clark's costs,
8 Simon has already informed the Edgeworths that only the amount of the bill
9 (\$2,520.00) will be sought. Accordingly, while Simon does not oppose
10 changing the cost number for Clark's fees in the Attorney Fee Order, no
11 prejudice will result to the Edgeworths regardless.

12
13 **C. Simon's Counter Motion**

14
15 Whether the counter motion is more properly presented as a motion
16 to adjudicate the lien on remand or as a motion to reconsider, Simon
17 respectfully requests this Court to revisit its quantum meruit decision
18 expressed in the Third Lien Order. Simon requests that the Court abide by
19 the finding affirmed on appeal that the implied contract was discharged and
20 therefore, not enforce the implied payment term for work performed after
21 September 19, 2017. Re-adjudication and/or reconsideration on this point
22 may be had because the use of an implied payment term of a discharged
23 contract as controlling in a fee adjudication is a clear error of law.
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1 Simon's counter motion is well-supported by the uncontested
2 declaration of Will Kemp, whom this Court has already recognized as an
3 expert.
4

5 **IV. Rebuttal to the Edgeworths' statement of facts and related**
6 **argument**
7

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

12 **A. The Edgeworths have the case file.**
13

14 The Edgeworths continue their false argument regarding the case file.
15 During lien adjudication, everything Vannah requested was provided, but
16 Vannah did not request the file. (Ex. 1, Day 4 at 26.)
17

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

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

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

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

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

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

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

3 **B. The November 17 meeting**

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

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

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

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

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

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

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

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

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

24 The Edgeworths have taken so many bites at the evidentiary apple
25 that it is down to the core. They do not get another. This issue is over.
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1 **E. The Lange settlement**

2 In a new brand-new factual claim, raised years after the evidentiary
3 hearing, the Edgeworths accuse Simon of slow walking the Lange
4 settlement. The accusation is untimely and unfair, resolution of a complex
5 case takes time. Further, Simon had been fired by the clients, was being
6 frivolously sued by his former clients, and was working via replacement
7 counsel who acknowledged in open court he did not know what was going
8 on:
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12 MR. VANNAH: If you take out the form and content, I don't know
13 anything about the case, and I want – I don't know anything about the
14 case – I mean, we're not involved in a case. You understand that,
15 Teddy?

16 MR.PARKER: I do.

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

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

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

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

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

17 **G. The Viking settlement drafts**

18 The Edgeworths first raised a complaint over the Viking tender of
19 settlement drafts, instead of a certified check, in their first motion for
20 reconsideration, years after the evidentiary hearing. The grievance is
21 repeated in the second motion. (2nd Mot., at 6:12-2.) The picayune
22 criticism would have been better left unraised because it underscores the
23 weakness of the Edgeworths’ overall position.
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1 In addition to being untimely, the complaint is nonsensical. Viking
2 tendered settlement drafts in the proper amount which were deposited and
3 cleared. At worst, the Viking drafts can be seen as falling within the ambit
4 of substitute performance - which is normally not a problem at least when
5 the Edgeworths are not involved. The Edgeworths and Vannah did not
6 raise the settlement drafts as an issue years ago, and the settlement drafts
7 should not be an issue to the Edgeworths and their latest counsel today.
8
9

10 **IV. Argument**

11 The Edgeworths did not provide an adequate basis for this Court to
12 grant reconsideration of the Third Lien Order. Reconsideration is rarely
13 granted and only when there is considerably different evidence or a clear
14 error. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga &*
15 *Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.3d 486, 489 (1997) (reconsideration
16 may be granted on rare occasion when there is "substantially different
17 evidence ... or the decision is clearly erroneous").
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22 The Edgeworths' argument they received inadequate process is
23 unsupported and incorrect. The Edgeworths merely rehash old factual
24 arguments about the inferences to be had from the evidence, they do not
25 present substantially different evidence. Finally, the Edgeworths do not
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1 present a clear error of law in the Third Lien Order. Reconsideration is not
2 warranted.

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

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

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

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

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

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

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

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

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

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

13
14
15 Here, this Court already found that Simon legitimately used a
16 statutory attorney lien to seek a reasonable fee. This Court already found
17 that Simon's work was exceptional, and the result obtained was impressive.
18 Yet, the Edgeworths frivolously sued Simon for conversion claiming Simon
19 was owed nothing - even though they admitted to already receiving more
20 money than the claim was worth, and that Simon was in fact owed fees and
21 costs. The ill placed trust argument is Simons to use, not the Edgeworths.
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1 The Edgeworths did not present substantially different facts, nor did
2 they demonstrate clear error. There is no basis for reconsideration.

3 **C. The cost award**

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

12
13 **D. The Attorney Fee Order**

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

19 **VI. Conclusion**

20 The motion for reconsideration is without merit. Simon requests the
21 motion be denied and the Edgeworths sanctioned for needlessly extending
22 this case.
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**COUNTER MOTION TO ADJUDICATE LIEN ON
REMAND/RECONSIDERATION**

I. Introduction to the Counter Motion

On December 30, 2020, the Supreme Court issued two orders addressing the Edgeworth appeal and the Simon writ petition. The appeal order affirmed this Court in all but two respects. The appeal order remanded the case with instructions to re-address the quantum meruit award of fees to Simon and to re-address the amount of fees assessed as a sanction against the Edgeworths for pursuit of their frivolous conversion complaint. In the writ order, the Simon petition on the manner of calculation of quantum meruit for outstanding fees due at the time of discharge was denied as moot, apparently in consideration of the instructions on remand contained in the appeal order.

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

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

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

8
9 The Court found that Simon was paid under the implied contract
10 through September 19, 2017, and was not paid for considerable work that
11 came after September 19. (Third Lien Order at 14:26-15:3.)
12

13 This Court also concluded that:
14

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

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

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

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

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

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

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

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

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

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

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

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

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

15
16 The Edgeworths have gone to ridiculous lengths to punish Simon and
17 extend this dispute, such as hiring counsel at \$925 an hour and filing a
18 frivolous complaint. Yet even the Edgeworths did not attempt an attack on
19 Mr. Kemp; his opinion was so solid, it stood unrebutted.
20

21
22 Mr. Kemp has provided a declaration in which he reviewed his
23 unrebutted opinion in the light of the Supreme Court orders. (Ex. 10) Mr.
24 Kemp responded to the Supreme Court's instructions and explained how
25

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

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

6 **III. Conclusion**
7

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

14
15 DATED this 13th day of May 2021.

16 /s/ James R. Christensen

17 JAMES CHRISTENSEN, ESQ.
18 Nevada Bar No. 003861
19 601 S. 6th Street
20 Las Vegas, NV 89101
21 (702) 272-0406
22 (702) 272-0415
23 jim@jchristensenlaw.com
24 Attorney for Daniel S. Simon
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S. Dawn Christensen
an employee of
JAMES R. CHRISTENSEN

EXHIBIT 1

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC, ET AL.,

Defendants.

CASE#: A-16-738444-C

DEPT. X

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON, ET AL.,

Defendants.

CASE#: A-18-767242-C

DEPT. X

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

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

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

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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

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

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

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

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

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

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

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

25 BY MR. CHRISTENSEN:

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

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

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

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

11 BY MR. CHRISTENSEN:

12 Q Did Vannah and Vannah call?

13 A No.

14 Q Did you receive requests for the file?

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

18 Q Okay.

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

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

24 A What I was expected to do.

25 MR. VANNAH; I'm sorry --

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[Counsel confer]

MR. VANNAH: Okay. So sounds great.

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

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

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

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

[Counsel confer]

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

MR. CHRISTIANSEN: And then come back.

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

MR. CHRISTIANSEN: Thank you very much.

MR. VANNAH: Thank you, Judge.

THE COURT: Thank you.

MR. CHRISTIANSEN: Judge, thanks for you accommodations.

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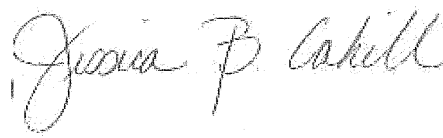
MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

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

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



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

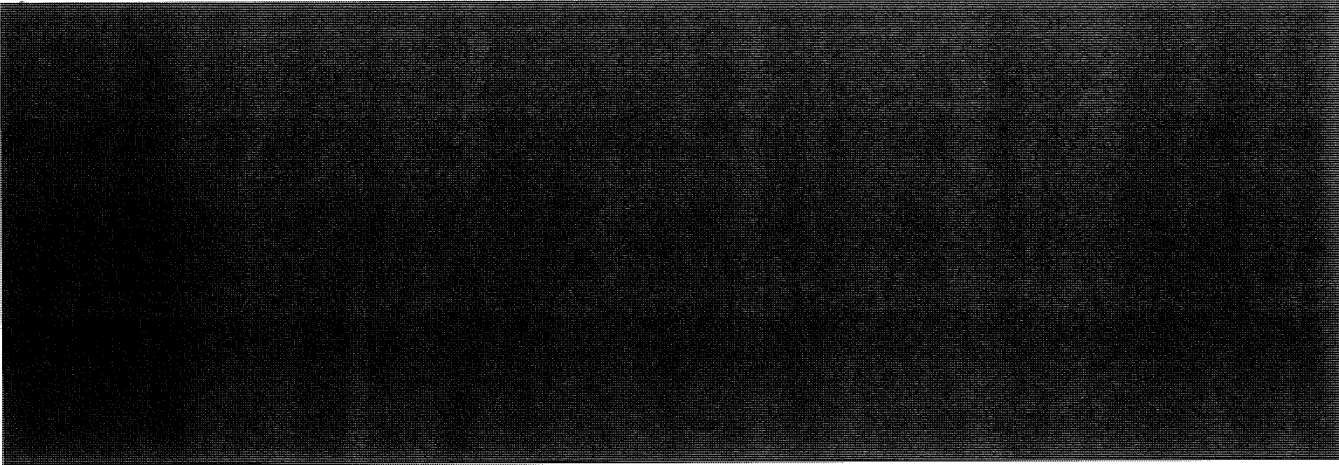
EXHIBIT 2

Ashley Ferrel

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

Patricia,

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



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

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

Best regards,

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

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

Patricia,

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

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

Patricia Lee

Partner

[HS

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HUTCHISON & STEFFEN, PLLC

(702) 385-2500

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

Ashley Ferrel

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

Patricia,

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

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

Thank you,
KLW



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

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

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

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

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

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

Best regards,

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

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

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

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

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

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

Best regards,

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

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

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

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

Best regards,

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

Patricia,

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

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

Thank you,
KLW

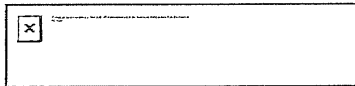
Patricia Lee
Partner



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

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Patricia Lee
Partner



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Patricia Lee
Partner



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



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

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

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

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

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

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

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

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

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

Best regards,

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

Ms. Lee:

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

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

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

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

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

Thanks,

PSC

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

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

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

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

Best regards,

Sent from my iPhone

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

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

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

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

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

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

Best regards,

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

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

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

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

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

Best regards,

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

Patricia,

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

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

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

Thank you,
KLW

Patricia Lee
Partner



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hutchlegal.com

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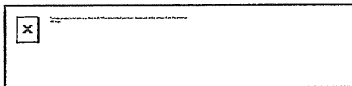
Patricia Lee
Partner



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Patricia Lee
Partner

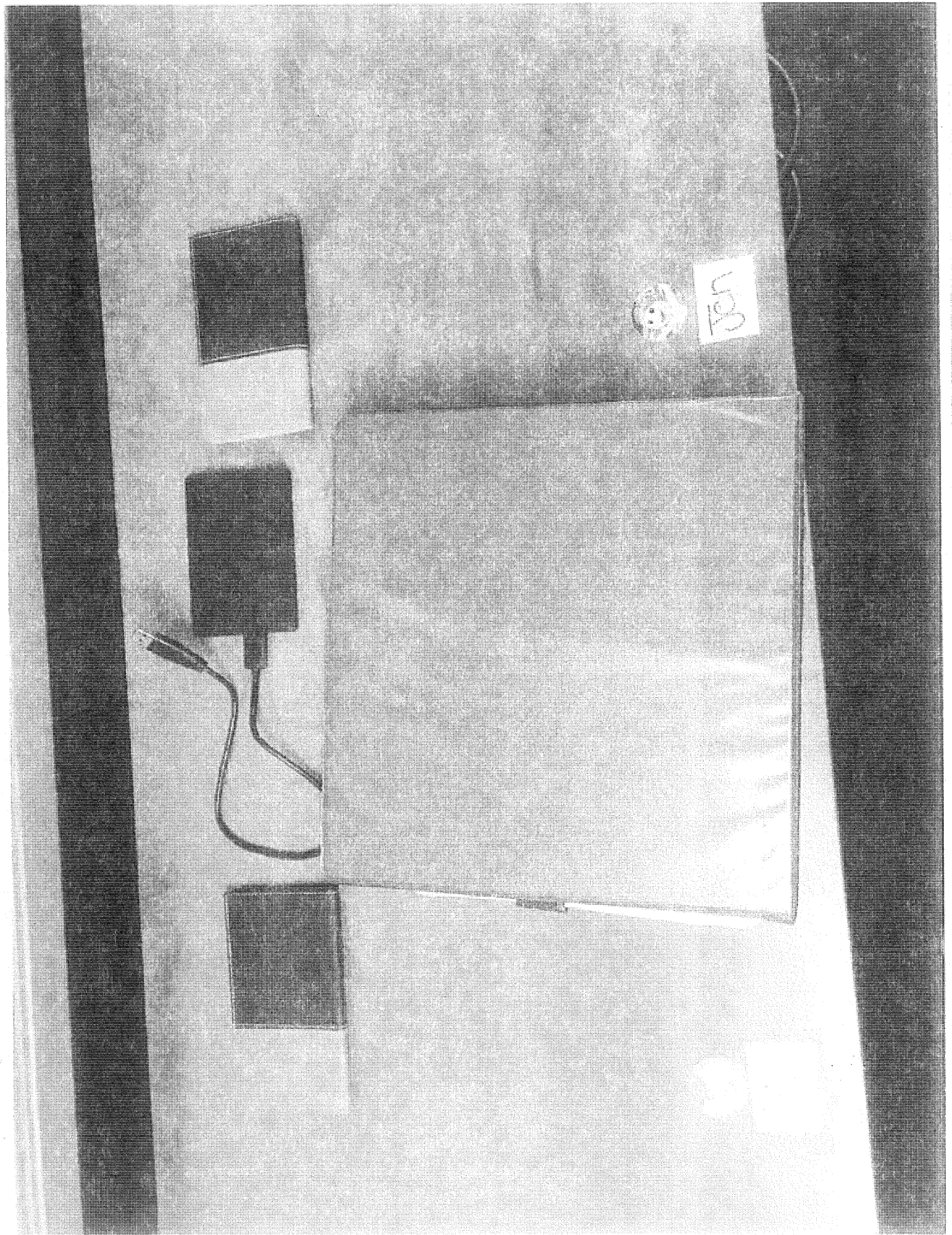


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Patricia Lee
Partner

EXHIBIT 3



AA0881

EXHIBIT 4



Dear Customer,

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

Delivery Information:

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

Shipping Information:

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

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

AA0883

Detailed Tracking



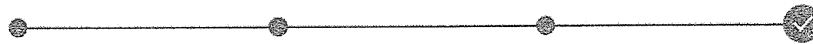
TRACK ANOTHER SHIPMENT

393277379817

ADD NICKNAME



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



DELIVERED

Signed for by: M.BRIAN

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM
LAS VEGAS, NV US

TO
HENDERSON, NV US

Travel History

TIME ZONE
Local Scan Time



Thursday, May 28, 2020

10:16 AM HENDERSON, NV Delivered

Shipment Facts

TRACKING NUMBER

393277379817

SERVICE

FedEx Priority Overnight

SPECIAL HANDLING SECTION

Deliver Weekday, No Signature Required

SHIP DATE

5/27/20 ⓘ

ACTUAL DELIVERY

5/28/20 at 10:16 am

EXHIBIT 5

MORRIS LAW GROUP

ATTORNEYS AT LAW

801 S. RANCHO DR., STE. B4

LAS VEGAS, NV 89106

TELEPHONE: 702/474-9400

FACSIMILE: 702/474-9422

WEBSITE: WWW.MORRISLAWGROUP.COM

May 4, 2021

VIA EMAIL: jim@jchristensenlaw.com

James R. Christensen

601 S. 6th Street

Las Vegas, NV 89101

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

Dear Jim:

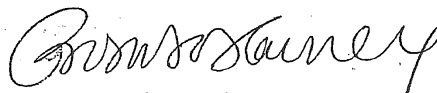
As discussed in our call, please consider this formal demand, pursuant to NRS 7.055, that your client provide mine with the complete client file in the above-referenced case. I understand Mr. Simon (or someone on his behalf) previously provided portions of the file to Mr. Edgeworth, however, the file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

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

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

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

Sincerely, -



Rosa Solis-Rainey

AA0886

EXHIBIT 6

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

May 7, 2021

Via E-Mail

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

Re: Edgeworth v. Viking and related matters

Dear Ms. Solis-Rainey:

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

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

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

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

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

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

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

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

JAMES R. CHRISTENSEN

JRC/dmc
cc: Client(s)

EXHIBIT 7

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

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

EDGEWORTH FAMILY TRUST;
AND AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

Supreme Court Case

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

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,


vs.

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

Respondents.

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

APPELLANTS' OPENING BRIEF



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

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

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

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

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

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

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

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

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

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

G. The Amounts in Controversy

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

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

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

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

IV. PROCEDURAL OVERVIEW:

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

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

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

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

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

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

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

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

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

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

V. STANDARD OF REVIEW:

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

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

B. Motions to Dismiss – de novo Review

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

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

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

VI. SUMMARY OF ARGUMENTS:

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

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

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

VIII. CONCLUSION/ RELIEF SOUGHT:

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

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

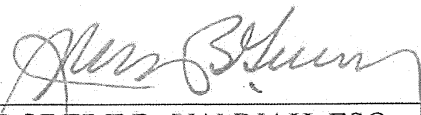
The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional \$200,000 in fees under the guise of the equitable remedy of quantum meruit and its plus one, an attorney's "charging" lien. The facts are clear that Simon was never discharged and never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

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

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

DATED this 8th day of August, 2019.

VANNAH & VANNAH



ROBERT D. VANNAH, ESQ.

Nevada Bar No. 002503

JOHN GREENE, ESQ.

Nevada Bar No. 004279

400 South Seventh Street, Fourth Floor

Las Vegas, Nevada 89101

(702) 369-4161

CERTIFICATE OF SERVICE

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

James R. Christensen, Esq.

JAMES R. CHRISTENSEN, P.C.

601 S. 6th Street

Las Vegas, NV 89101

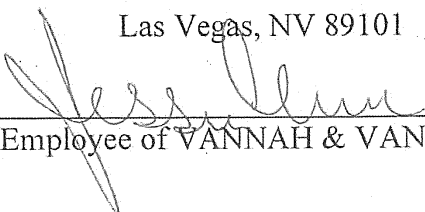

An Employee of VANNAH & VANNAH

EXHIBIT 8

AA0904

1 **ORD**

2
3
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

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 ADJUDICATE LIEN**

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

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

Hon. Tierra Jones
DISTRICT COURT JUDGE

DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

AA0905

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

7
8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

24 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 CONCLUSION OF LAW

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

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

23 NRS 18.015(1)(a) states:

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

18 Id.

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

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

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

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

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

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
26 paid in full and there was never any indication given that anything less than all the fees had been
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
28

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

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

26
27 ²There are no billing amounts from December 2 to December 4, 2016.
28

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

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

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

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

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

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

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

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

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

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

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

5
6 *Costs Owed*

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

14
15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) Whether the client is liable for expenses regardless of outcome;
2 (4) That, in the event of a loss, the client may be liable for the
3 opposing party's attorney fees, and will be liable for the opposing party's
4 costs as required by law; and
5 (5) That a suit brought solely to harass or to coerce a settlement may
6 result in liability for malicious prosecution or abuse of process.
7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
8 with a written statement stating the outcome of the matter and, if there is a
9 recovery, showing the remittance to the client and the method of its
10 determination.

11 NRCP 1.5.

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

23 CONCLUSION

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

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

9
10 **ORDER**

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

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

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

Tess Driver
Judicial Executive Assistant
Department 10

EXHIBIT 9

AA0928

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 EDGEWORTH FAMILY TRUST,

6 Plaintiff,

7 vs.

8 LANGE PLUMBING, LLC,

9 Defendant.

CASE NO. A-16-738444-C

DEPT. X

10 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

11 TUESDAY, FEBRUARY 20, 2018

12
13 **RECORDER'S PARTIAL TRANSCRIPT OF HEARING**
14 **STATUS CHECK: SETTLEMENT DOCUMENTS**
15 **DEFENDANT DANIEL S. SIMON D/B/A SIMON LAW'S MOTION TO**
16 **ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE DANIEL**
17 **SIMON PC; ORDER SHORTENING TIME**

18 APPEARANCES:

19 For the Plaintiff:

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

20 For the Defendant:

THEODORE PARKER, ESQ.

21 For Daniel Simon:

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

22 For the Viking Entities:

JANET C. PANCOAST, ESQ.

23 Also Present:

DANIEL SIMON, ESQ.

24 RECORDED BY: VICTORIA BOYD, COURT RECORDER
25

1 THE COURT: Okay.

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

4 THE COURT: Okay.

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

7 THE COURT: Okay.

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

15 THE COURT: Mr. Vannah?

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

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

19 MR. SIMON: Then if --

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

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

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

1 MR. PARKER: I do.

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

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

10 THE COURT: Right.

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

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

24 MR. PARKER: Exactly. And --

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

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MR. PARKER: Thank you, Your Honor.

MR. VANNAH: Thank you.

THE COURT: Thank you.

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

* * * * *

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


Brittany Mangelson
Independent Transcriber

EXHIBIT 10

AA0933

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

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

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

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

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

25 ///

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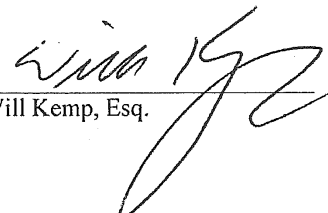
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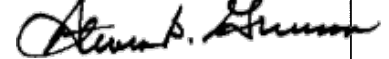
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The value of quantum meruit is easily supported in the amount of \$2,072,393.75 for the period of outstanding services due and owing at the time of discharge.

I make this declaration under the penalty of perjury.

Dated this 12th day of April, 2021.


Will Kemp, Esq.



RPLY

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Edgeworth Family Trust and
American Grating, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST;) Case No: A-16-738444-C
AMERICAN GRATING, LLC,) Dept. No: X

Plaintiffs,

v.

LANGE PLUMBING, LLC ET AL.,) Hearing Date: 5/27/21
Hearing Time: 9:30 A.M.

Defendants.

EDGEWORTH FAMILY TRUST;) Case No: A-18-767242-C
AMERICAN GRATING, LLC,) Dept. No. X

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

**REPLY ISO PLAINTIFFS' RENEWED
MOTION FOR RECONSIDERATION
OF AMENDED DECISION AND
ORDER GRANTING IN PART AND
DENYING IN PART SIMON'S
MOTION FOR ATTORNEYS FEES
AND COSTS, and MOTION FOR
RECONSIDERATION OF THIRD
AMENDED DECISION AND ORDER
ON MOTION TO ADJUDICATE
LIEN**

INTRODUCTION

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

The Third Lien Order does not adhere to the Supreme Court's mandate on remand and therefore is clearly erroneous. *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). This case was remanded to this Court for the sole purpose of entering "further findings regarding the basis of the [quantum meruit] award." Sup. Ct. Order at 10. This limited purpose is explained on pages 3 - 5 of the Supreme Court's decision. The Supreme Court *affirmed* this Court's finding that "the Edgeworths *constructively discharged Simon on November 29.*" *Id.* at 4 (emphasis added). The Supreme Court also affirmed that Simon "was entitled to *quantum meruit for work done after the constructive discharge.*" *id.* (emphasis added), but declared that the Court "failed to make findings" regarding the post-discharge work on or after November 30. The Supreme Court acknowledged that Simon's "super bill" was evidence "that Simon and his associates performed work after the constructive discharge," *id.* at 5, but said the Court erred by not describing how that work was used to come up with a quantum meruit fee of \$200,000 or how the fee would be reasonable for work done post-discharge, which at Simon's "court-approved" rate of \$550 per hour that he used to bill the Edgeworths *pre-discharge* would amount to less than \$34,000.

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

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

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

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

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

14 Simon mistakenly attempts to apply the "Notice in Lieu of Remittitur"
15 issued in his writ petition case (Case No. 79821), as applicable to the two
16 consolidated appeals that remained pending in the Supreme Court until
17 remittitur issued on April 12, 2021. Opp'n at 2; *compare* Ex. MM, Excerpts of
18 Docket for Writ Petition (NSC 79821) (attached hereto) *with* Ex. NN,
19 Excerpts of Docket for Appeal (NSC 77678); (attached hereto) and Ex. OO,
20 Excerpts of Docket for Appeal (NSC 77176); (attached hereto) *see also* Ex. PP,
21 Notice in Lieu of Remittitur in Writ Petition (attached hereto) in an infirm
22 attempt to reopen and enlarge the *quantum meruit* period this Court has
23 established and the Supreme Court has affirmed.
24
25
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27 ¹ The identical order referenced as the April 19, 2001 Amended Lien
28 Order in the motion and this reply was filed in the consolidated case, A-16-
738444-C, on April 28, 2021. For the sake of clarity, this motion is directed to
the substance of that Order, entered both on April 19 and April 28, 2021.

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

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

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

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

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

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

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

8
9 [w]e agree with the Edgeworths that the district court abused its
10 discretion in awarding \$200,000 in quantum meruit without
11 making findings regarding the work Simon performed after the
constructive discharge.

12 Sup. Ct. Order at 4.

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

20 3. *Scrivener Errors Are Appropriately Addressed on Reconsideration.*

21 Simon faults the Edgeworths' request that the Court correct what they
22 presumed was a clerical error in adding previously paid costs into the final
23 award. Simon acknowledges that the costs were paid, but contends that
24 having them added into a judgment is of no moment, because he *would never*
25 *seek to collect* on that portion of the judgment. Respectfully, given the nature
26 of this case and the over three years of contentious litigation the Edgeworths
27 have endured to resolve the amount Simon is owed, they cannot be faulted
28

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

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

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

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

23 SIMON: Yeah . . . I get back on . . . 11/27.

24

25 COURT: And you got the release on 11/27?

26 SIMON: Right in that range, yeah. It was – it was
27 before I got the Letter of Direction, and I was out of
28 the case.

. . . .

1 SIMON: . . . So right when I get back there was
2 probably the, you know, proposed release. And so, I
3 went over to the office with Mr. Henriod, who was
4 Viking counsel, and I have a great relationship with
5 him, and we basically just hammered out the terms
6 of the release right there. And then I was done, I was
7 out of it.

8 THE COURT: Okay, but you hammered out the
9 terms of the release of that final agreement?

10 SIMON: Before I was fired, yeah.

11 THE COURT: Okay, so this is before 11-30?

12 SIMON: Yes.

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

14 Simon's testimony on day 3 also confirms beyond reasonable doubt
15 that all terms of the Viking Settlement had been negotiated and were known
16 to him **before** he sent his new fee demand to the Edgeworths on November
17 27, 2017:

18 THE COURT: Yeah, Thanksgiving would have been
19 the 23rd, so that following Monday the 27th.

20 THE WITNESS: Okay, So when I got back from that,
21 obviously I went – hard to work on all aspects of the
22 Edgeworth case. I was, you know, negotiating that
23 (Confidentiality Clause) out, and **THEN** obviously
24 preparing my letter and the proposed retainer that I
25 sent to them [Edgeworths] attached to the letter.

26 THE COURT: But when you are negotiating the
27 removal of the confidentiality agreement in the
28 Viking Settlement, you have no—had you been made
aware of that point that they [Edgeworths] had
spoken with Mr. Vannah's office.

WITNESS: No.

Transcript: 218: 8-13; 219: 4-8

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

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

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

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

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

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

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

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

14 The Supreme Court recognized Simon submitted this evidence of
15 work performed after the discharge period, but found that valuing it at
16 \$200,000 was an abuse of discretion because the District Court "did not
17 explain how it used that evidence to calculate its [quantum meruit] award."
18 Nev. Sup. Ct. Order at 5.

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

26
27 ³ Simon's contention that Vannah did "not feel competent to close out
28 the case" is unsupported, and should not be considered, as is his reference to
a finding on that point that he attributes to the Court, but which is not in the
Court's order. Opp'n at 12:15-18.

1 Likewise, Simon's criticism about the certified checks issue misses the
2 point. The Edgeworths raised this issue as an example of how Simon slow-
3 walked the settlements and confirms that he was offered uncertified checks
4 by Viking on December 12 in time for the checks to clear by the agreed
5 payment date, a fact he did not share with the Edgeworths. Simon cannot
6 (legitimately) now complain that the Edgeworths did not raise this issue
7 earlier. Indeed, had Simon produced the complete case file the Edgeworths
8 requested—instead of stripping the attachments from the December 12,
9 2017, email he produced to the Edgeworths—they would have had an
10 opportunity to raise the issue earlier.

11 As to the Lange Plumbing settlement, Simon's reliance on the finding
12 that he "improv[ed] the position of his former clients" misses the point: even
13 if that were true, his work necessarily took place before November 30, when
14 he announced the result of his efforts. Ex. EE to 5/3/21 Mot. for Recon. The
15 District Court made a factual finding that the Edgeworths signed the
16 consent to settle the Lange claim for \$100,000 on December 7, 2017. Nov. 19,
17 2018 Order on NRCP 12(b)(5) Mot. to Dismiss at 5, Finding of Fact #23.

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

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

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

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

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

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

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

9 That issue, however, has been decided and affirmed by the Supreme
10 Court and is binding on Simon and this Court. Absent an extraordinary
11 showing that following the law of the case and honoring the Supreme
12 Court's mandate would result in a catastrophic manifest injustice, the issues
13 raised by Simon cannot be relitigated. *Hsu v. County of Clark*, 123 Nev. 625,
14 631, 173 P.3d 724, 729 (2007).

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

25 **E. Conclusion**

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

1 \$200,000 could be considered reasonable under the *Brunzell* factors or
2 otherwise, given that Simon's own testimony shows he was not truthful in
3 describing when and what he did to the Edgeworths, in a self-serving effort
4 to put pressure on them for more money. Under these circumstances, the
5 Edgeworths respectfully submit that Simon's own valuation of his *quantum*
6 *meruit* time at \$34,000 would be more than generous for his minimal *post-*
7 discharge services.

8 MORRIS LAW GROUP

9 By: /s/ STEVE MORRIS
10 Steve Morris, Bar No. 1543
11 Rosa Solis-Rainey, Bar No. 7921
12 801 S. Rancho Dr., Ste. B4
13 Las Vegas, Nevada 89106

14 Attorneys for Defendants
15 Edgeworth Family Trust and
16 American Grating, LLC
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of MORRIS LAW GROUP, and that I caused the following to be served via the Court's mandatory e-filing and service system to those persons designated by the parties in the E-Service Master list for the above-referenced matter: REPLY ISO PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF AMENDED DECISION AND ORDER GRANTING IN PART AND DENYING IN PART SIMON'S MOTION FOR ATTORNEYS FEES AND COSTS, and MOTION FOR RECONSIDERATION OF THIRD AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN.

DATED this 20th day of May, 2021.

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

EXHIBIT MM

Excerpts of Docket for Writ Petition
(NSC 79821)

5/17/2021

79821: Case View

Nevada
Appellate Courts

Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

Cases

Case Search

Participant Search

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Only filed documents can be viewed. Some documents received in a case may not be available.
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For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 688-1234.

Case Information: 79821

Short Caption:	LAW OFFICE OF DANIEL S. SIMON VS. DIST. CT. (EDGEWORTH FAMILY TRUST)	Court:	Supreme Court
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A738444, A767242	Related Case(s):	77678, 78176, 82031
Disqualifications:	Parraguirre, Silver	Classification:	Original Proceeding Mandamus/Prohibition
Replacement:	None for Justice Parraguirre None for Justice Silver	Case Status:	Notice in Lieu of Rehearing Closed
To SP/Judge:		Panel Assigned:	En Banc
Oral Argument:		SP Status:	
Submission Date:		Oral Argument Location:	
		How Submitted:	

+ Party Information

Docket Entries

Date	Type	Description
10/17/2019	Filing Fee	Filing fee paid. E-Payment \$250.00 from James R. Christensen. (SC)
10/17/2019	Petition/Writ	Filed Petition for Writ of Mandamus or Prohibition. (SC)
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 1 of 9. (SC)
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 2 of 9. (SC)
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 3 of 9. (SC)

5/17/2021

02/14/2020	Brief	79821; Case View Filed Appellant's Reply Brief, Answering Brief to Cross Appeal, Answer to Writ, and Response to Amicus Brief. Nos. 77678/78176/79821. (SC) Filed Respondent/Cross-Appellants' Motion for Extension of Time for Filing of Reply Brief on Cross-Appeal and Reply in Support of Writ Petition. Nos. 77678/78176/79821. (SC) Filed Order Granting Motion. The Law Office of Daniel S. Simon and Daniel S. Simon shall have until April 16, 2020 to file and serve a combined reply brief on cross-appeal and reply in support of the petition for a writ of mandamus. Nos. 77678/78176/79821. (SC).
03/05/2020	Motion	Filed Respondent's/Petitioner's Appendix to Reply. Nos. 77678/78176/79821 (SC) Filed Reply Brief on Cross-Appeal and Reply in Support of Petition for Writ of Mandamus. Nos. 77678/78176/79821 (SC)
03/16/2020	Order/Procedural	Briefing Completed/To Screening. Nos. 77678/78176/79821. (SC) Filed Order of Voluntary Recusal for Justice Silver. Pursuant to NCJC Rule 2.11(A), I recuse myself from participation in this matter based on my friendship with Daniel Simon and his family. Nos. 77678/78176/79821 (SC)
03/28/2020	Appendix	Filed Order. On April 3, 2019, this court entered an order consolidating these matters for all appellate purposes. Upon further consideration, we conclude that consolidation of No. 79821 with Nos. 77678 and 78176 is not warranted. Accordingly, we direct the clerk of this court to deconsolidate Docket No. 79821. Nos. 77678/78176/79821. (SC)
03/28/2020	Brief	Justice Abbi Silver disqualified from participation in this matter. Disqualification Reason: Voluntary Recusal. (SC)
03/30/2020	Case Status Update	Filed Order Denying Petition. "ORDER the petition DENIED." fn1 [The Honorable Ron Parraguirre, Justice and the Honorable Abbi Silver, Justice, did not participate in the decision of this matter.] EN BANC
09/24/2020	Order/Procedural	Issued Notice in Lieu of Remittitur. (SC)
12/28/2020	Order/Procedural	Notice in Lieu of Remittitur Issued/Case Closed. (SC)
12/30/2020	Other	
12/30/2020	Order/Dispositional	
01/25/2021	Remittitur	
01/25/2021	Case Status Update	

Combined Case View

EXHIBIT NN

Excerpts of Docket for Appeal (NSC 77678)

5/17/2021

77678: Case View

Nevada
Appellate Courts

Appellate Case Management System

C-Track, the browser-based CMS for Appellate Courts

Cases

Case Search

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Case Information: 77678

Short Caption:	EDGEWORTH FAMILY TR. VS. SIMON C/W 78176	Court:	Supreme Court
Consolidated:	77678*, 78176	Related Case(s):	78176, 79821, 82051
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A738444	Classification:	Civil Appeal - General
Disqualifications:	Silver	Case Status:	Remittitur Issued/C
Replacement:		Panel Assigned:	En Banc
To SP/Judge:	12/24/2018 / Nitz, Dana	SP Status:	Completed
Oral Argument:		Oral Argument Location:	
Submission Date:		How Submitted:	

+ Party Information

Docket Entries

Date	Type	Description
12/17/2018	Filing Fee	Filing Fee due for Appeal. (SC)
12/17/2018	Notice of Appeal Documents	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (SC)
12/17/2018	Notice/Outgoing	Issued Notice to Pay Supreme Court Filing Fee. No action will be taken on this matter until filing fee is paid. Due Date: 10 days. (SC)
12/20/2018	Filing Fee	Filing Fee Paid. \$250.00 from Robert D Vannah. Check no. 4960. (SC)
12/20/2018	Notice/Outgoing	Issued Notice of Referral to Settlement Program. This appeal may be assigned to the settlement program.

5/17/2021

77678: Case View

		Time and for Rehearing. Nos. 77678/78176 (SC)
		Filed Order Granting Motion. Appellants/cross-respondents shall have 7 days from the date of this order to file and serve any petition for rehearing. Any petition for rehearing must be accompanied by the required filing fee. No action will be taken on the petition for rehearing contained within the extension motion. Nos. 77678/78176 (SC)
01/26/2021	Order/Procedural	
01/26/2021	Filing Fee	Filing Fee/Rehearing Paid. \$150.00 from Robert D Vann Chartered. Check No. 8760. (SC)
01/29/2021	Post-Judgment Petition	Filed Appellants' Petition for Rehearing. Nos. 77678/78176 (SC)
01/29/2021	Filing Fee	Filing fee paid. E-Payment \$150.00 from John B. Green. Nos. 77678/78176 (SC)
02/08/2021	Order/Procedural	Filed Order Directing Answer to Petition for Rehearing. Respondents/Cross-Appellants' Answer due: 14 days. Nos. 77678/78176. (SC)
02/22/2021	Brief	Filed Respondent/Cross-Appellants' Answer to Appellants' Petition for Rehearing. Nos. 77678/78176 (SC)
03/18/2021	Post-Judgment Order	Filed Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). Nos. 77678/78176. EN BANC. (SC)
03/22/2021	Post-Judgment Order	Filed Corrected Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). fn1 [The Honorable Abbi Silver, Justice, did not participate in the decision in this matter. Nos. 77678/78176. (SC).
04/12/2021	Remittitur	Issued Remittitur. (SC)
04/12/2021	Case Status Update	Remittitur Issued/Case Closed. (SC)
05/07/2021	Remittitur	Filed Remittitur. Received by District Court Clerk on April 13, 2021. Nos. 77678/78176. (SC)

Combined Case View

EXHIBIT OO

Excerpts of Docket for Appeal (NSC 78176)

5/17/2021

78176: Case View

Nevada
Appellate Courts

Appellate Case Management System

C-Trick, the browser based CMS for Appellate Courts

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Case Information: 78176

Short Caption:	EDGEWORTH FAMILY TR. VS. SIMON C/W 77678	Court:	Supreme Court
Consolidated:	77678*, 78176	Related Case(s):	77678, 79821, 82081
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A738444	Classification:	Civil Appeal - General
Disqualifications:		Case Status:	Remittitur Issued/C
Replacement:		Panel Assigned:	En Banc
To SP/Judge:	03/05/2019 / Nitz, Dana	SP Status:	Completed
Oral Argument:		Oral Argument Location:	
Submission Date:		How Submitted:	

+ Party Information

Docket Entries

Date	Type	Description
02/25/2019	Filing Fee	Filing Fee due for Appeal. (SC)
02/25/2019	Notice of Appeal Documents	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (SC)
02/25/2019	Notice/Outgoing	Issued Notice to Pay Supreme Court Filing Fee. No action will be taken on this matter until filing fee is paid. Due Date: 10 days. (SC)
02/26/2019	Notice of Appeal Documents	Filed Copy of District Court Minutes. (SC)
03/04/2019	Filing Fee	Filing Fee Paid. \$250.00 from Robert D Vannah Chartered. Check no. 5355. (SC)

5/17/2021

78176: Case View

01/29/2021	Filing Fee	Filing fee paid. E-Payment \$150.00 from John B. Green Nos. 77678/78176 (SC)
02/08/2021	Order/Procedural	Filed Order Directing Answer to Petition for Rehearing. Respondents/Cross-Appellants' Answer due: 14 days. Nos. 77678/78176. (SC)
02/22/2021	Brief	Filed Respondent/Cross-Appellants' Answer to Appella Petition for Rehearing. Nos. 77678/78176 (SC)
03/18/2021	Post-Judgment Order	Filed Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). Nos. 77678/78176. EN BANC. (SC)
03/22/2021	Post-Judgment Order	Filed Corrected Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). fn1 [The Honorable Abbi Silver, Justice, did not participate in the decision in this matter. Nos. 77678/78176. (SC).
04/12/2021	Remittitur	Issued Remittitur. (SC)
04/12/2021	Case Status Update	Remittitur Issued/Case Closed. (SC)
05/07/2021	Remittitur	Filed Remittitur. Received by District Court Clerk on Ap 13, 2021. Nos. 77678/78176. (SC)

Combined Case View

EXHIBIT PP

Notice in Lieu of Remittitur in Case No. 79821,
Writ Petition

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAW OFFICE OF DANIEL S. SIMON,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK; AND THE
HONORABLE TIERRA DANIELLE JONES,
DISTRICT JUDGE,
Respondents,
and
EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Real Parties in Interest.

Supreme Court No. 79821
District Court Case No. A738444;A767242

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on December 30th, 2020, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: January 25, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc: James R. Christensen
Vannah & Vannah
Eglet Adams \ Robert T. Eglet
Steven D. Grierson, Eighth District Court Clerk

EXHIBIT QQ

Remittitur in Case No. 77678, issued on April
12, 2021

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants/Cross-Respondents,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION,
Respondents/Cross-Appellants.

Supreme Court No. 77678
District Court Case No. A738444

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION,
Respondents.

Supreme Court No. 78176
District Court Case No. A738444

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

Hon. Tierra Danielle Jones, District Judge
Vannah & Vannah
James R. Christensen
Christiansen Law Offices \ Peter S. Christiansen

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on APR 13 2021.

HEATHER UNGERMANN

Deputy District Court Clerk

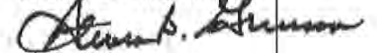
**RECEIVED
APPEALS**

APR 13 2021

CLERK OF THE COURT

EXHIBIT RR

Excerpts of 08-27-2018 Hearing Transcript



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.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

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

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

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Q -- I just mean in time, before the settlement checks with
2 Viking had even been deposited?

3 A Correct.

4 Q All right. And you heard Mr. Vannah give an opening
5 statement today, sir?

6 A Yes.

7 Q Do you recall how he told the Court he wasn't involved in
8 any of the settlement negotiations?

9 A I don't recall that. I'm sorry. I don't recall everything he said.

10 Q We just -- you and I can agree that he was the one advising
11 you of the Lange settlement, because you signed on his letterhead to
12 consent to settle December the 7th.

13 A He advised me why to do that, yes.

14 Q And I have your settlement agreement.

15 MR. CHRISTIANSEN: Which is Exhibit 5, John. And I'm
16 looking at page 4, Mr. Greene.

17 BY MR. CHRISTIANSEN:

18 Q This is the settlement agreement with Viking?

19 A You just asked about Lange, sir. The --

20 Q I did.

21 A Okay.

22 Q Now, I'm shifting gears. I want to talk to you about Viking,
23 too, because if you see paragraph E -- do you see that, sir?

24 A Yes, I do.

25 Q Who's the lawyers that advised you? Right in the document

1 you signed about settling with Viking?

2 A It says Robert Vannah, Esquire and John Green, Esquire.

3 Q Show me where it says Danny Simon.

4 THE COURT: This is the Viking settlement?

5 MR. CHRISTIANSEN: It is.

6 THE COURT: Okay.

7 BY MR. CHRISTIANSEN:

8 Q Go ahead.

9 A On the page that I'm looking at, the fractional page, I don't
10 see it.

11 Q And is that your settlement? You and your wife's
12 settlement? Sorry, signature?

13 A On the 1st of December, correct.

14 Q All right. So as early as December 1st, according to Exhibit 5,
15 you were not relying on Danny Simon's advice, but instead relying on
16 the advice of Vannah & Vannah when settling the Viking claims, correct?

17 A When signing contracts, correct.

18 Q Okay. And I think you've already told me that was the same
19 situation about five or six days thereafter, when you signed that consent
20 to settle with Lange on the Vannah & Vannah letterhead, right?

21 A They had advised me of other things than the settlement,
22 yes.

23 Q Okay. And, sir, let's look at Exhibit 90 again. This is your
24 retainer with Vannah & Vannah. Did you sign a separate retainer
25 agreement for the lawsuit, where they sued Danny Simon for you?

EXHIBIT SS

Second Amended Decision and Order Granting
in Part and Denying in Part, Simon's Motion for
Attorney's Fees and Costs

1 **AMOR**
2 MORRIS LAW GROUP
3 Steve Morris, Bar No. 1543
4 Rosa Solis-Rainey, Bar No. 7921
5 Email: sm@morrislawgroup.com
6 Email: rsr@morrislawgroup.com
7 801 S. Rancho Drive, Suite B4
8 Las Vegas, Nevada 89106
9 Telephone No.: (702) 474-9400
10 Facsimile No.: (702) 474-9422

11 Attorney for Plaintiff
12 Edgeworth Family Trust and
13 American Grating, LLC
14

15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 EDGEWORTH FAMILY TRUST;)
18 and AMERICAN GRATING, LLC,)

19 Plaintiffs,)

20 vs.)

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

21 LANGE PLUMBING, LLC; THE)
22 VIKING CORPORATION, a)
23 Michigan Corporation; SUPPLY)
24 NETWORK, INC., dba VIKING)
25 SUPPLYNET, a Michigan)
26 Corporation; and DOES 1through)
27 5; and ROE entities 6 through 10,)

28 Defendants)

Consolidated with

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

29 EDGEWORTH FAMILY TRUST;)
30 and AMERICAN GRATING, LLC,)

31 Plaintiffs,)

32 vs.)

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

1 DANIEL S. SIMON; THE LAW)
2 OFFICE OF DANIEL S. SIMON, a)
3 Professional Corporation d/b/a)
4 SIMON LAW; DOES 1 through 10;)
5 and, ROE entities 1 through 10,)
6 Defendants.)

7 **SECOND MENDEED DECISION AND ORDER ON ATTORNEY'S FEES**

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

18 The Court having considered the evidence, arguments of counsel and
19 being fully advised of the matters herein, the **COURT FINDS after review:**

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

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

1 maintained upon reasonable grounds, since it was an impossibility for Mr.
2 Simon to have converted the Edgeworth's property, at the time the lawsuit
3 was filed.

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

17 3. The court has considered all of the *Brunzell* factors pertinent to
18 attorney's fees and attorney's fees are GRANTED. In determining the
19 reasonable value of services provided for the defense of the conversion
20 claim, the COURT FINDS that 64 hours was reasonably spent by Mr.
21 Christensen in preparation and defense of the conversion claim, for a total
22 amount of \$25,600.00. The COURT FURTHER FINDS that 30.5 hours was
23 reasonably spent by Mr. Christiansen in preparation of the defense of the
24 conversion claim, for a total of \$24,400.00. As such, the award of attorney's .

25 ...

26 ...

27 ...

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

3 IT IS SO ORDERED this ____ day of May, 2021.

4

5

DISTRICT COURT JUDGE

6

7 Approved as to Form:

8 MORRIS LAW GROUP

9

10 By: /s/STEVE MORRIS
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
801 S. Rancho Drive, Suite B4
Las Vegas, NV 89106

13 Attorneys for Plaintiffs
14 Edgeworth Family Trust and
American Grating, LLC

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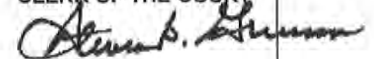
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EXHIBIT TT

Excerpts from 8/29/2018 Hearing Transcript



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.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 **WEDNESDAY, AUGUST 29, 2018**

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

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

1 BY MR. CHRISTENSEN:

2 Q And your vacation was right over Thanksgiving?

3 A Correct.

4 Q Okay.

5 A So, technically, I was back in the office on that Monday.

6 THE COURT: Which is the 27th? Monday is -- of November?

7 THE WITNESS: Yeah.

8 THE COURT: Yeah, Thanksgiving would have been the 23rd,
9 so that following Monday is the 27th.

10 THE WITNESS: Okay. So, when I got back from that,
11 obviously I went -- hard to work on all aspects of the Edgeworth case. I
12 was, you know, negotiating that out, and then obviously preparing my
13 letter and the proposed retainer that I sent to them attached to the letter.

14 THE COURT: Okay. But at this point, you have not had any
15 contact with the Edgeworths since the 17th?

16 THE WITNESS: I never -- no, I think -- I've had some phone
17 call -- I had some -- I had this meeting and I had a few phone calls after
18 this meeting, and then I tried to iron this out a few times over my
19 vacation with him.

20 I think the last full communication ever with -- verbally with
21 either one of them was the 25th when I was boarding a plane, because I
22 never had a lot of time to be available because I was always -- you know,
23 if I was on a plane for five hours, I'm unavailable.

24 So, I tried to get a hold of him, you know, when I could, and I
25 think the last time was when I was boarding the plane to come home.

1 THE COURT: And I think that's what he testified to is that it
2 was the 25th.

3 THE WITNESS: 25th, sounds right.

4 THE COURT: But when you are negotiating the removal of
5 this confidentiality agreement in the Viking settlement, you have no --
6 had you been made aware at that point that they had spoken with Mr.
7 Vannah's office?

8 THE WITNESS: No.

9 THE COURT: Okay. And, I'm sorry, Mr. Christensen, that
10 was just my question.

11 MR. CHRISTENSEN: It's your courtroom, Your Honor. You
12 have a question, you ask it.

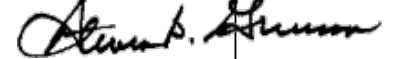
13 THE COURT: I think it's just a little different than a jury trial,
14 because if I have a question then --

15 MR. CHRISTENSEN: Absolutely, Judge.

16 BY MR. CHRISTENSEN:

17 Q What else did you talk about, if anything, at the November 17
18 meeting?

19 A We talked about quite a bit. We talked about the motions
20 that were on the calendar. We had a motion to compel. There was a
21 motion to de-designate all of these documents that they were trying to
22 make confidential in the case. We talked about the pending evidentiary
23 hearing, how that would be affected. We had all these notices of
24 depositions. We had depositions in Chicago of this United Laboratories
25 already set. We had depositions that were noticed by the defense that



JAMES R. CHRISTENSEN, ESQ.
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jim@jchristensenlaw.com
Attorney for Daniel S. Simon

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

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**OPPOSITION TO EDGEWORTHS'
MOTION FOR ORDER RELEASING
CLIENT FUNDS AND REQUIRING
PRODUCTION OF FILE**

Hearing date: 5.27.21

Hearing time: 9:30 a.m.

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 **I. Preface**

2 Years ago, the Edgeworths tried to wear the mantle of an aggrieved
3 client. The act has worn thin after the finding that the Edgeworths pursued
4 frivolous litigation against Simon was affirmed, after their courtroom
5 admission that they frivolously sued to punish Simon, and after they
6 received a windfall of \$4,000,000.00 from Simon's efforts. Unfortunately,
7 the barrage of baseless rhetoric from the Edgeworths continues as they
8 throw whatever they can think up against the wall in their unending search
9 for a *post hoc* excuse for their sanctioned conduct.
10

11 **II. Introduction**

12 The Edgeworths seek what they term as the "**complete**" (emphasis in
13 original) file pursuant to NRS 7.055(2). The problem for the Edgeworths is
14 that NRS 7.055 does not apply on its face because Simon has not yet been
15 paid. NRS 7.055(1). That said, in 2020 Simon voluntarily provided as
16 much of the file as could be agreed upon in the face of the binding non-
17 disclosure agreement (NDA), and other practical and legal concerns.
18

19 The Edgeworths did not raise the file issue after deliberate and
20 collaborative discussion in 2020 or 2021. Instead, in their rush to create
21 another dispute, new Edgeworth counsel made direct contact with Simon in
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1 an express violation of NRPC 4.2¹ (Mot., at Ex. C.), and insisted on an
2 immediate response to their demands - without any demonstration of what
3 the rush was all about or how undue prejudice could result if their latest
4 demands were not complied with immediately.
5

6 Simon is willing to act collaboratively on file transfer, but the
7 Edgeworths need to recognize there are legal and practical issues at play.
8 For example, things might go smoother if the Edgeworths and counsel
9 would sign Exhibit A to the NDA, as requested in 2020, *and* provide a
10 rationale on how disclosure today would comply with the NDA. The fact
11 that they refused to sign in 2020, and now act as if there is no NDA (Mot.,
12 at 4:18-19) establishes that Simon was right to be concerned. After all, as
13 things stand now, Simon is on the hook under the NDA if the Edgeworths
14 or their agents violate the NDA.
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19 In their second motion to release funds from the trust account the
20 Edgeworths try to avoid the reality that Simon has filed a counter motion
21 and that the money held in trust continues to be in dispute. The Simon
22 position is not unreasonable, it is supported by the pleadings, sound
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28 ¹ NRPC 4.2 does not have an efficiency exception. *Compare*, NRPC 4.2
with Declaration of Solis-Rainey at ¶7.

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

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

14 The Edgeworths ask this court to order Simon to produce the
15 complete file pursuant to NRS 7.055. NRS 7.055(1) states:
16

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

22 In the motion seeking the file, the Edgeworths admit Simon has not been
23 paid and that certain sums continue to be disputed by the Edgeworths.

24 Accordingly NRS 7.055 does not apply on its face.
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1 Even though the law is solidly on Simon's side and Simon can assert
2 a retaining lien over the complete file, Simon has cooperated to the extent
3 possible. For example, Simon provided tangible items to Vannah when
4 asked in 2019. (Mot., at Ex. F.)

6 In May of 2020 when a different Edgeworth counsel requested the file
7 under NRS 7.055, Simon promptly provided the NDA. (Mot., at G.)
8 Although the NDA was attached to the email found at Exhibit G to the
9 motion, it was not attached as an exhibit to the motion. The NDA is
10 attached hereto at Exhibit 1.
11

13 The NDA is quite restrictive. Under §7 of the NDA confidential
14 information may only be viewed by a limited pool of people, for limited
15 reasons. (Ex. 1, at 9-10.) To view confidential information per §7 of the
16 NDA, a person must sign an "Acknowledgement and Agreement to be
17 Bound" attached to the NDA as Exhibit A. (*Ibid.*) Even counsel must sign.
18 (See, e.g., Ex. 1, at 10:5-11.) The NDA survives the final disposition of the
19 case per §13 of the NDA. (Ex. 1, at 13-14.)
20
21

23 Instead of simply signing Exhibit A, the Edgeworths cherry pick and
24 highlight selected lines from emails sent in the spring of 2020. For
25 example, Simon agreed to deposit confidential items with the court *if a*
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1 *motion was filed per 7.055(3). (Compare, Ex. 2 at page 7 of the email*
2 *string ending May 27, & Mot., at 3:22-24.)*

3 Also, and more importantly, the Edgeworths completely ignore the
4 impact of the limiting language contained in §7 of the NDA which states
5 that the confidential material may only be provided to those:
6

7
8 ***“to whom disclosure is reasonably necessary for this litigation***
9 ***and who have signed the “Acknowledgement and Agreement to be***
10 ***Bound” (Exhibit A).” (Ex. 1 at 10.) (Emphasis added.)***

11 The case against Viking and Lange is over, thus there can be no disclosure
12 which is “reasonably necessary for the litigation”. The fact the litigation is
13 done which makes disclosure impossible under the NDA. The Edgeworths
14 did not justify their demand considering the limiting language of the NDA.
15

16 There is also a practical issue. Seemingly, the Edgeworths are
17 demanding production of every attachment to every email sent, no matter
18 whether the attachment occurs multiple times in a string, if the same
19 attachment was sent multiple times in different emails, or if the attachment
20 was already provided. The request harkens back to the first Edgeworth
21 motion for reconsideration in which the Edgeworths frivolously argued that
22 a stipulation had been intentionally withheld, when in fact the stipulation
23 had been signed by the court, was filed, and was a matter of public record.
24
25 (1st Mot. Recon., at 11:16-13:13 & Opp., at 12:6-14:9.) Simon does not
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1 believe there is any rule that requires production of multiple copies of file
2 documents, and the Edgeworths did not provide any authority that a
3 document must be copied and produced multiple times. That said, Simon
4 offered to work with new counsel if there was a specific email or area of
5 concern (Mot., at Ex. J), instead of taking a collaborative approach a
6 motion was filed.
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9 The disorganized and indecipherable claim is new. (Declaration of
10 counsel.) Further, the claim is vague and unsupported. Again, if a specific
11 question or area is identified, Simon is willing to work with any reasonable
12 request. At the current time, the Edgeworths have not disclosed with any
13 specificity how they believe the file is not complete (other than the materials
14 covered by the NDA). In fact, the declaration attached to the motion states
15 that the claim of incompleteness is based only on information and belief.
16 (Declaration of Ms. Solis-Rainey at ¶¶5 & 6.) Simon is willing to work with
17 new counsel, however, Simon is not able to guess at what counsel believes
18 is indecipherable, engage in make work by copying the same document
19 many times, or waste further time and money simply because the
20 Edgeworths are disgruntled with the \$4 million dollars they have received to
21 date.
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1 The "Finger for Edgeworth" comment is childish. Finger is another
2 slang term for a drive, just as "thumb" is. In fact, you can buy "finger"
3 drives on Amazon, shaped like index fingers. The finger file contains a list
4 of items on the drive sent to the Edgeworths.
5

6 The Edgeworths cannot prevail under NRS 7.055 and their motion
7 must be denied. However, Simon will continue to attempt to work with the
8 Edgeworths and will respond to any reasonable request.
9

10 **IV. Disputed Funds must be Held in Trust**

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

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

18 The funds held in trust are in dispute. (Opp. & Countermotion to the
19 2nd Mot. for Reconsideration.) Simon's position will not be restated here for
20 brevity's sake. It is enough to state that Simon's position is well based
21 under the law, the pleadings, and the opinion of expert Will Kemp.
22
23 Regardless, Simon will not dispute that the specific amount subject to
24 withholding is the face amount of the lien. If there is an overage it can be
25 withdrawn.
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1 The funds remain in dispute until the dispute ends with a final order
2 after the time to appeal has run. Normally this is not a difficult concept.
3
4 The Edgeworths have not provided this court with a legal basis upon which
5 it can order disbursal of contested funds. Therefore, the motion must be
6 denied.

7
8 It appears the Edgeworths have finally dropped their fight against the
9 sanction imposed upon them for frivolously suing Simon. However, the
10 sanction money is different from the disputed money held in trust and does
11 not impact this motion.
12

13 **V. Trust Transfer**

14
15 As Judge Allen Earl used to comment, “the devil is in the details”.
16 Simon does not have an objection in principle to moving the money to
17 movants’ trust account. However, Simon does object to the notion that the
18 Edgeworths have a right to immediately force a reversal of their own trust
19 agreement without some thought and discussion.
20
21

22 The motion must be denied, the Edgeworths have not provided a
23 legal basis upon which this court can order that the agreement between the
24 parties to deposit disputed money into a joint bank account can be set
25 aside on their say so alone. The parties entered into a bilateral agreement
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1 regarding disposition of the trust money, a unilateral demand to end the
2 agreement is not legally enforceable.

3 **VI. Conclusion**

4
5 NRS 7.055 does not apply thus the motion must be denied. Simon is
6 willing to cooperate on production of the file, but will not violate an NDA,
7
8 nor will Simon waste time on make work.

9 Disputed funds must be held in trust. The Edgeworths did not
10 provide authority upon which this court could order early disbursement of
11 funds held in dispute. Further, there is no undue prejudice because the
12 disputed funds are earning interest. Lastly, if the Edgeworths do not file
13 another appeal, then the end of the trust is in sight anyway.
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16 There is no legal ground upon which this court can repudiate the
17 bilateral agreement to hold the disputed money in an interest-bearing
18 account at the bank; therefore, the motion must be denied. Nevertheless,
19 there is no general objection to a transfer of the trust, even if there is no
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1 rational reason to do so. When the details are agreed upon and a new
2 bilateral agreement is reached, the transfer will occur.

3 DATED this ____ day of May 2021.

4
5 /s/ James R. Christensen
6 JAMES CHRISTENSEN, ESQ.
7 Nevada Bar No. 003861
8 601 S. 6th Street
9 Las Vegas, NV 89101
10 (702) 272-0406
11 (702) 272-0415
12 jim@jchristensenlaw.com
13 Attorney for Daniel S. Simon

14 **CERTIFICATE OF SERVICE**

15 I CERTIFY SERVICE of the foregoing Opposition to Motion for
16 Release of Funds and Production of File was made by electronic service
17 (via Odyssey) this ____ day of May 2021, to all parties currently shown on
18 the Court's E-Service List.
19

20 /s/ Dawn Christensen
21 an employee of
22
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DECLARATION OF COUNSEL JAMES R. CHRISTENSEN

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 Simon Defendant(s) in this matter.

3. In response to the Declaration of Solis-Rainey at ¶4: I sent the letter, not Peter Christiansen.

4. In response to the Declaration of Solis-Rainey at ¶7: I received the call, not Peter Christiansen. I informed counsel that collaborative resolution of the dispute was made difficult when the Edgeworths and counsel frivolously sued Simon, did not respond to my December 2017 offer to work collaboratively, made false statements regarding a so-called missing stipulation, and recently accused Simon of extortion when such a claim is made impossible by the law of the case. I also mentioned that acts such as violating NRPC 4.2 do not help. Counsel also leveled an accusation of *ex parte* contact with this Court, which was withdrawn after I read EDCR 7.74 to counsel.

5. In response to the Declaration of Solis-Rainey at ¶7 & 8: I informed counsel that the Simon counter motion seeking a different valuation under quantum meruit could not simply be ignored because the counter motion was based on reasonable grounds, including case law, a reasonable interpretation of the Supreme Court's orders and the declaration of Will Kemp. I do not recall counsel raising a contingency fee or a flat fee argument. However, even if made, the argument is a *non sequitur*. The issue presented to the court is determination of a reasonable fee under quantum meruit based on the market approach.

6. In response to the Declaration of Solis-Rainey at ¶9: We discussed the claim that the file produced in 2020 was incomplete. I advised that I was not involved in the 2020 discussions. I asked for specifics. I did not receive specifics beyond the confidential document issue. Counsel *did not* make the claim that parts of produced file was disorganized or indecipherable.

7. In response to the Declaration of Solis-Rainey at ¶10: During our call I asked what the sudden rush was and specifically asked for the rationale behind the short response window provided in counsel's first letter. I did not receive a meaningful response. I do not agree with the negative implications which arise from the word "excuses". The NDA is quite clear and clearly applies. Pretending the NDA does not exist needlessly extends this dispute without basis.

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

Dated this 20th day of May 2021.

1st James R. Christensen

James R. Christensen

EXHIBIT 1

Steven D. Grierson

SPO
JANET C. PANCOAST, ESQ.
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Attorney for Defendants/Third Party Plaintiffs
The Viking Corporation & Supply Network, Inc.
d/b/a Viking Supplynet

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan corporation;
SUPPLY NETWORK, INC. d/b/a VIKING
SUPPLYNET, a Michigan corporation; and
DOES I through V and ROE CORPORATIONS
VI through X, inclusive,
Defendants.

LANGE PLUMBING, LLC,
Cross-Claimant,

vs.

THE VIKING CORPORATION, a Michigan
corporation; SUPPLY NETWORK, INC. d/b/a
VIKING SUPPLYNET, a Michigan corporation;
and DOES I through V and ROE
CORPORATIONS VI through X, inclusive.
Cross-Defendants

CASE NO.: A-16-738444-C

DEPT. NO.: X

**STIPULATED PROTECTIVE
ORDER**

1 THE VIKING CORPORATION, a Michigan)
corporation; SUPPLY NETWORK, INC. d/b/a)
2 VIKING SUPPLYNET, a Michigan corporation)
LANGE PLUMBING, LLC,)
3 Counter-Claimant,)

4 vs.)

5 LANGE PLUMBING, LLC, and DOES I through)
V and ROE CORPORATIONS VI through X,)
6 inclusive.)
7 Counter-Defendant)

8 THE VIKING CORPORATION, a Michigan)
corporation; SUPPLY NETWORK, INC. d/b/a)
9 VIKING SUPPLYNET, a Michigan corporation,)
Defendants/Third Party Plaintiffs,)

10 v.)

11 GIBERTI CONSTRUCTION, LLC, a Nevada)
Limited Liability Company and DOES I through)
12 V and ROE CORPORATIONS VI through X,)
13 inclusive,)
14 Third Party Defendant.)

15 DEFENDANTS/CROSS-CLAIMANTS/CROSS-DEFENDANTS/THIRD PARTY

16 PLAINTIFFS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING
17 SUPPLYNET (hereinafter the "Viking Defendants"), by and through its counsel JANET C
18 PANCOAST, ESQ. of the law firm of CISNEROS & MARIAS; PLAINTIFFS EDGEWORTH
19 FAMILY TRUST, and AMERICAN GRATING, LLC, by and through their counsel of record
20 Daniel Simon, Esq. of SIMON LAW (hereinafter "Plaintiffs"); and DEFENDANT/CROSS-
21 CLAIMANT/CROSS-DEFENDANT LANGE PLUMBING, LLC's (hereinafter "Lange"), by and
22 through its counsel Athanasia E. Dalacas, Esq. of RESNICK & LOUIS, P.C. hereby agree to enter
23 into the following Stipulated Protective Order:
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1 WHEREAS documents, things and information may be furnished or disclosed in this action
2 which contain or constitute confidential, proprietary or trade secret information; and

3 WHEREAS Plaintiffs on the one hand, and Viking Defendants and Lange, agree that,
4 pursuant to Rule 26(c) of the Nevada Rules of Civil Procedure, this Protective Order is needed to
5 prevent the unnecessary disclosure or dissemination of such confidential, proprietary or trade secret
6 information;

7 IT IS HEREBY STIPULATED AND AGREED by and between the parties herein, through
8 their undersigned counsel, as follows:

9 GOOD CAUSE STATEMENT: The parties to this case may need to produce or rely upon
10 trade secrets, confidential agreements, and/or sensitive financial, customer, pricing, technical or
11 other proprietary information, among other things. While such material may be relevant to this
12 litigation, it may be damaging if competitors, licensees or others had full access to it. The terms of
13 this Order ensure the confidentiality of important and proprietary business information while placing
14 a minimal burden on the flow of discovery. The parties thus believe that there is good cause
15 supporting such an Order.

16 **1. PURPOSES AND LIMITATIONS**

17 Disclosure and discovery activity in this action are likely to involve production of
18 confidential, proprietary, or private information for which special protection from public disclosure
19 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
20 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
21 Order. The parties acknowledge that this Order does not confer blanket protections on all
22 disclosures or responses to discovery and that the protection it affords from public disclosure and
23 use extends only to the limited information or items that are entitled to confidential treatment under
24 the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
25 that this Stipulated Protective Order does not entitle them to file confidential information under
26 seal; Nevada Supreme Court Rules for Sealing & Redacting Court Records¹ sets forth the

27 ¹ http://www.leg.state.nv.us/Division/Legal/LawLibrary/CourtRules/SCR_RGSRCR.html

1 procedures that must be followed and the standards that will be applied when a party seeks
2 permission from the court to file material under seal.

3 **2. DEFINITIONS**

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
7 generated, stored or maintained) or tangible things that qualify for protection under Nevada Rule of
8 Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
10 as their support staff), including the parties insurance carriers and their claims representatives.

11 2.4 Designating Party: a Party or Non-Party that designates information or items that it
12 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

13 2.5 Disclosure or Discovery Material: all items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among other things,
15 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
16 responses to discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
18 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
19 consultant in this action, as well as expert support staff.

20 2.7 House Counsel: attorneys who are employees of a party to this action. House
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
23 entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
25 action but are retained to represent or advise a party to this action and have appeared in this action
26 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

27 //

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also

- (1) any information copied or extracted from Protected Material;
- (2) all copies, excerpts, summaries, or compilations of Protected Material; and
- (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information:

- (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and

- (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

11

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
5 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
6 and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this action, including the
7 time limits for filing any motions or applications for extension of time pursuant to applicable law.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
10 Non-Party that designates information or items for protection under this Order must take care to
11 limit any such designation to specific material that qualifies under the appropriate standards. The
12 Designating Party must designate for protection only those parts of material, documents, items, or
13 oral or written communications that qualify – so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept unjustifiably within
15 the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
17 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
18 encumber or retard the case development process or to impose unnecessary expenses and burdens
19 on other parties) expose the Designating Party to sanctions.

20 If it comes to a Designating Party's attention that information or items that it designated for
21 protection do not qualify for protection, that Designating Party must promptly notify all other
22 Parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
24 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
25 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
26 designated before the material is disclosed or produced.

27 //

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents,
3 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
4 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a
5 portion or portions of the material on a page qualifies for protection, the Producing Party also must
6 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). A
7 Party or Non-Party that makes original documents or materials available for inspection need not
8 designate them for protection until after the inspecting Party has indicated which material it would
9 like copied and produced. During the inspection and before the designation, all of the material
10 made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
11 identified the documents it wants copied and produced, the Producing Party must determine which
12 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
13 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page
14 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).

17 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
18 the Designating Party identify on the record, before the close of the deposition, hearing, or other
19 proceeding, all protected testimony.

20 (c) for information produced in some form other than documentary and for any
21 other than documentary and for any other tangible items, that the Producing Party affix in a
22 prominent place on the exterior of the container or containers in which the information or item
23 is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item
24 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
25 portion(s).

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
5 in accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
10 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
11 confidentiality designation by electing not to mount a challenge promptly after the original
12 designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
14 by providing written notice of each designation it is challenging and describing the basis for each
15 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
16 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
17 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
18 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
19 are not sufficient unless no response by party is received within 48 hours) within 14 days of the date
20 of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
21 confidentiality designation was not proper and must give the Designating Party an opportunity to
22 review the designated material, to reconsider the circumstances, and, if no change in designation is
23 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the
24 next stage of the challenge process only if it has engaged in this meet and confer process first or
25 establishes that the Designating Party is unwilling to participate in the meet and confer process in a
26 timely manner.

27 //

1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21
3 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
4 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
5 accompanied by a competent declaration affirming that the movant has complied with the meet and
6 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make
7 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall
8 automatically waive the confidentiality designation for each challenged designation.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating
10 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
11 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
12 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
13 retain confidentiality as described above, all parties shall continue to afford the material in question
14 the level of protection to which it is entitled under the Producing Party's designation until the court
15 rules on the challenge.

16 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
18 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
20 the categories of persons and under the conditions described in this Order. When the litigation has
21 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
22 DISPOSITION).

23 Sales, pricing and purchasing information shall be deemed and marked as
24 "CONFIDENTIAL" and shall not be disclosed to third parties not involved in this immediate
25 litigation without a written agreement with the party producing the information or a Court Order.
26 Any sale, pricing and/or purchasing information produced in this case shall be produced separately

1 from other documents, such as on a separate disk if produced electronically or in a separate file
2 folder if produced in hard copy.

3 Protected Material must be stored and maintained by a Receiving Party at a location and in a
4 secure manner that ensures that access is limited to the persons authorized under this Order.

5 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
6 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated "CONFIDENTIAL" only to:

8 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
10 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
11 Bound" that is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees (including House Counsel) of the
13 Designating Party or Receiving Party to whom disclosure is reasonably necessary for this litigation
14 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
16 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
17 Agreement to Be Bound" (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, mock
20 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
21 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (f) witnesses in the action to whom disclosure is reasonably necessary and who
23 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
24 agreed by the Designating Party or ordered by the court.

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information.

27 (h) any mediator assigned or selected by the parties and their staff.
28

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
2 **LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
5 must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue
9 in the other litigation that some or all of the material covered by the subpoena or order is subject to
10 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by
12 the Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the subpoena
14 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
15 before a determination by the court from which the subpoena or order issued, unless the Party has
16 obtained the Designating Party's permission. The Designating Party shall bear the burden and
17 expense of seeking protection in that court of its confidential material – and nothing in these
18 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
19 disobey a lawful directive from another court.

20 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
22 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
23 the Receiving Party must immediately (a) notify in writing the Designating Party of the
24 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
25 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
26 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
27
28

1 Agreement to Be Bound" that is attached hereto as Exhibit A.

2 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
3 **MATERIAL**

4 The inadvertent production by any of the undersigned Parties or non-Parties to the
5 Proceedings of any document, testimony or information during discovery in this litigation without a
6 "CONFIDENTIAL" designation, shall be without prejudice to any claim that such item is
7 "CONFIDENTIAL" and such Party shall not be held to waive any rights by such inadvertent
8 production. In the event that any document, testimony or information that is subject to a
9 "CONFIDENTIAL" designation is inadvertently produced without such designation, the Party that
10 inadvertently produced the document shall give written notice of such inadvertent production within
11 twenty (20) days of discovery of the inadvertent production, together with a further copy of the
12 subject document, testimony or information designated as "CONFIDENTIAL". Upon receipt of
13 such an inadvertent production notice, the Party that received the inadvertently produced document,
14 testimony or information shall promptly destroy the inadvertently produced document, testimony or
15 information and all copies thereof, or, at the expense of the producing Party, return such together
16 with all copies of such document, testimony or information to counsel for the producing Party and
17 shall retain only the "CONFIDENTIAL" materials. Should the receiving Party choose to destroy
18 such inadvertently produced document, testimony or information, the receiving Party shall notify the
19 producing Party in writing of such destruction within ten (10) days of receipt of any written notice of
20 the inadvertent production. This provision is not intended to apply to any inadvertent production of
21 any document, testimony or information protected by attorney client or work product privileges. In
22 the event that this provision conflicts with any applicable law regarding waiver of confidentiality
through the inadvertent production of documents, testimony or information, such law shall govern.

23 **12. MISCELLANEOUS**

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
25 its modification by the court in the future.

26 //

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
2 no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered by
5 this Protective Order.

6 12.3 Filing Protected Material. Without written permission from the Designating Party or
7 a court order secured after appropriate notice to all interested persons, a Party may not file in the
8 public record in this action any Protected Material. Protected Material may only be filed under seal
9 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Such -a
10 sealing order will issue only upon a request establishing that the Protected Material at issue is
11 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
12 Receiving Party's request to file Protected Material under seal is denied by the court, then the
13 Receiving Party may file the Protected Material in the public record unless otherwise instructed by
14 the court.

15 12.4 Deposition Transcripts. Pages of transcribed deposition testimony or exhibits to
16 depositions that reveal Protected Material must be separately bound by the court reporter and may
17 not be disclosed to anyone except as permitted under this Stipulated Protective Order.

18 13. FINAL DISPOSITION

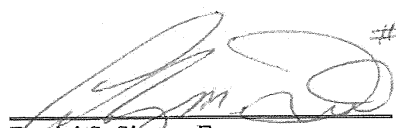
19 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
20 Receiving Party **must return** all Protected Material to the Producing Party or destroy such material.
21 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
23 the Protected Material is returned or destroyed, the Receiving Party must submit a written
24 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
25 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
26 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
27
28

1 abstracts, compilations, summaries or any other format reproducing or capturing any of the
2 Protected Material. Notwithstanding this provision, Counsel and insurance carriers are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
5 product, and consultant and expert work product, even if such materials contain Protected Material.
6 Any such archival copies that contain or constitute Protected Material remain subject to this
7 capturing any of the Protected Material. Any such archival copies that contain or constitute
8 Protective Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

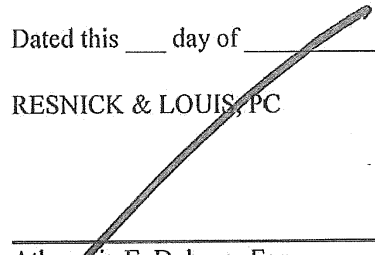
10
11 Dated this 15th day of June, 2017.

12 SIMON LAW

13  #12207 for
14 Daniel S. Simon, Esq.
15 810 South Casino Center Blvd.
16 Las Vegas, NV 89101
17 Fax: 702-364-1655
18 Attorney for Plaintiff


Dated this ___ day of ___, 2017.

RESNICK & LOUIS, PC


Athanasia E. Dalacas, Esq.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorney for Lange Plumbing, LLC

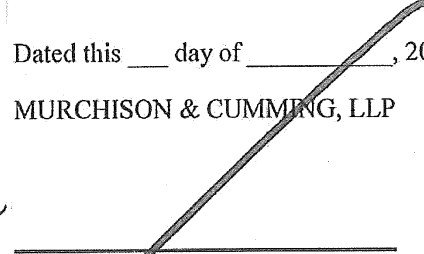
18
19 Dated this 21st day of June, 2017.

20 CISNEROS & MARIAS

21 
22 JANET C. RANCOAST, ESQ.
23 1160 Town Center Drive, Suite 130
24 Las Vegas, Nevada 89144
25 Attorney for Defendants/Third Party Plaintiffs
26 The Viking Corporation & Supply Network, Inc.
27 d/b/a Viking Supplynet

Dated this ___ day of ___, 2017.

MURCHISON & CUMMING, LLP


MICHAEL J. NUNEZ, ESQ.
6900 Westcliff Drive, Suite 605
Las Vegas, Nevada 89145
Attorney for Third Party Defendant
Giberti Construction, LLC

1 abstracts, compilations, summaries or any other format reproducing or capturing any of the
2 Protected Material. Notwithstanding this provision, Counsel and insurance carriers are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
5 product, and consultant and expert work product, even if such materials contain Protected Material.
6 Any such archival copies that contain or constitute Protected Material remain subject to this
7 capturing any of the Protected Material. Any such archival copies that contain or constitute
8 Protective Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10
11 Dated this ____ day of _____, 2017.

12 SIMON LAW

13
14 _____
15 Daniel S. Simon, Esq.
16 810 South Casino Center Blvd.
17 Las Vegas, NV 89101
18 Fax: 702-364-1655
19 Attorney for Plaintiff

Dated this 15 day of June, 2017.

RESNICK & LOUIS, PC

Athanasia E. Dalacas
Athanasia E. Dalacas, Esq.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorney for Lange Plumbing, LLC

19 Dated this ____ day of _____, 2017.

20 CISNEROS & MARIAS

21
22 _____
23 JANET C. PANCOAST, ESQ.
24 1160 Town Center Drive, Suite 130
25 Las Vegas, Nevada 89144
26 Attorney for Defendants/Third Party Plaintiffs
27 The Viking Corporation & Supply Network, Inc.
28 d/b/a Viking Supplynet

Dated this ____ day of _____, 2017.

MURCHISON & CUMMING, LLP

MICHAEL J. NUNEZ, ESQ.
6900 Westcliff Drive, Suite 605
Las Vegas, Nevada 89145
Attorney for Third Party Defendant
Giberti Construction, LLC

1 abstracts, compilations, summaries or any other format reproducing or capturing any of the
2 Protected Material. Notwithstanding this provision, Counsel and insurance carriers are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
5 product, and consultant and expert work product, even if such materials contain Protected Material.
6 Any such archival copies that contain or constitute Protected Material remain subject to this
7 capturing any of the Protected Material. Any such archival copies that contain or constitute
8 Protective Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10
11 Dated this ____ day of _____, 2017.

12 SIMON LAW

13
14
15 Daniel S. Simon, Esq.
16 810 South Casino Center Blvd.
17 Las Vegas, NV 89101
Fax: 702-364-1655
Attorney for Plaintiff

Dated this 5 day of June, 2017.

RESNICK & LOUIS, PC

Athanasia E. Dalacas
Athanasia E. Dalacas, Esq.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorney for Lange Plumbing, LLC

18
19 Dated this ____ day of _____, 2017.

20 CISNEROS & MARIAS

21
22
23 JANET C. PANCOAST, ESQ.
24 1160 Town Center Drive, Suite 130
25 Las Vegas, Nevada 89144
26 Attorney for Defendants/Third Party Plaintiffs
27 The Viking Corporation & Supply Network, Inc.
28 d/b/a Viking Supplynet

Dated this 14 day of June, 2017.

MURCHISON & CUMMING, LLP

Michael J. Nuñez
MICHAEL J. NUÑEZ, ESQ.
6900 Westcliff Drive, Suite 605
Las Vegas, Nevada 89145
Attorney for Third Party Defendant
Giberti Construction, LLC

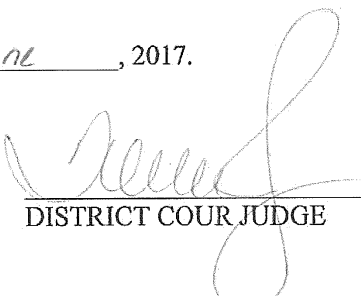
1 Edgeworth Family Trust, et. al. v. Lange Plumbing, LLC, et. al.

2 Case No.: A-16-738444-C

3 Stipulated Protective Order

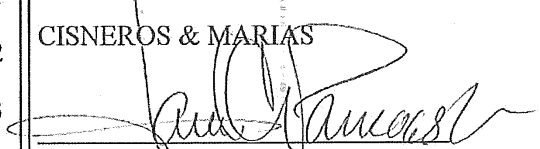
4 PURSUANT TO THE FOREGOING STIPULATION FOR PROTECTIVE ORDER, IT IS
5 SO ORDERED.

6 DATED this 28th day of June, 2017.

7
8 
9 DISTRICT COURT JUDGE

10 Submitted by:

11 CISNEROS & MARIAS

12 
13 JANET C. PANCOAST, ESQ.
14 1160 Town Center Drive, Suite 130
15 Las Vegas, Nevada 89144
16 Attorney for Defendants/Third Party Plaintiffs
17 The Viking Corporation & Supply Network, Inc.
18 d/b/a Viking Supplynet
19
20
21
22
23
24
25
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27
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____
4 [print or type full address], declares under the penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the Eighth Judicial District Court in Clark
6 County, Nevada, on June 29, 2017, in the case of Edgeworth Family Trust, et al. v. Lange Plumbing,
7 LLC, et al., Case No. A-16-738444-C. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose
9 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
10 any manner any information or item that is subject to this Stipulated Protective Order to any person or
11 entity except in strict compliance with the provision of this Order.
12

13 I further agree to submit to the jurisdiction of the Eighth Judicial District Court of Nevada,
14 County of Clark for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
15 enforcement proceedings occur after termination of this action.
16

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone number] as
19 my Nevada agent for service of process in connection with this action or any proceedings related to
20 enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____
23

24
25 Printed name: _____
26

27 Signature: _____
28

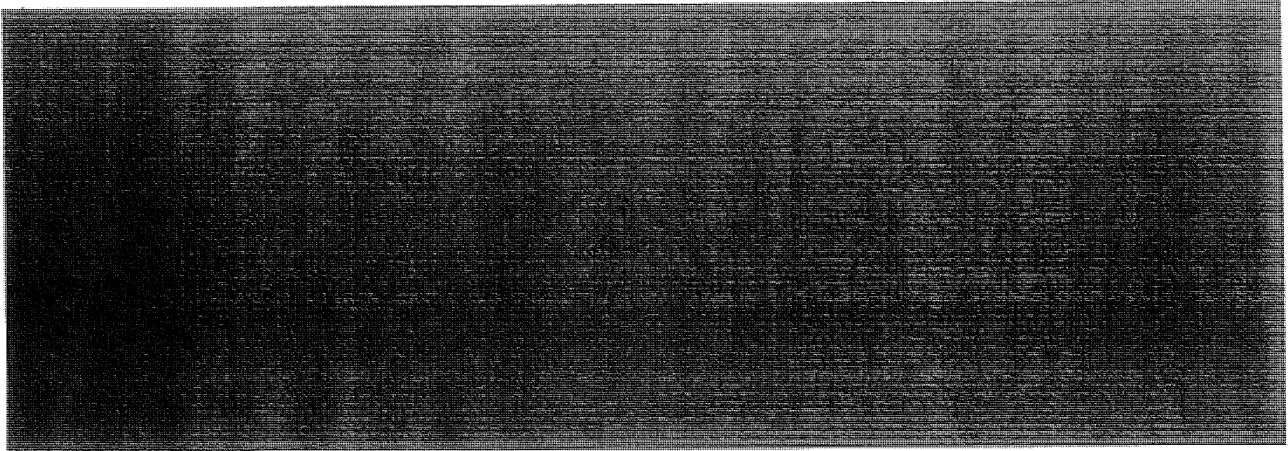
EXHIBIT 2

Ashley Ferrel

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

Patricia,

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



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

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

Best regards,

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

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

Patricia,

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

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

Patricia Lee

Partner

[HS

logo]<https://linkprotect.cudasvc.com/url?a=http%3a%2f%2fhutchlegal.com%2f&c=E,1,yo2RwmlI8Co8OZcSA6SulkkvOWcp3NX8qM2vvdHr914XRvvN5gUPB4NDjVTJbgdx_ITTyccrjyJeRQ8zPppho6bgVPkExU2ddXmAN8jih6_tzrWu&typo=1>

HUTCHISON & STEFFEN, PLLC

(702) 385-2500

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<https://linkprotect.cudasvc.com/url?a=http%3a%2f%2fwww.hutchlegal.com&c=E,1,3TXgyYy7g-PD4-eUB1t_oi-3GheG5gB_gVQouOEzbzZEbZUwcxggb6A5D0blhHeBbegA6OhVIIJ09SNGOku5B6neVVH1h2LorQQw9YpGSHF3Vgh2U1VxINee8,&typo=1>

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

Ashley Ferrel

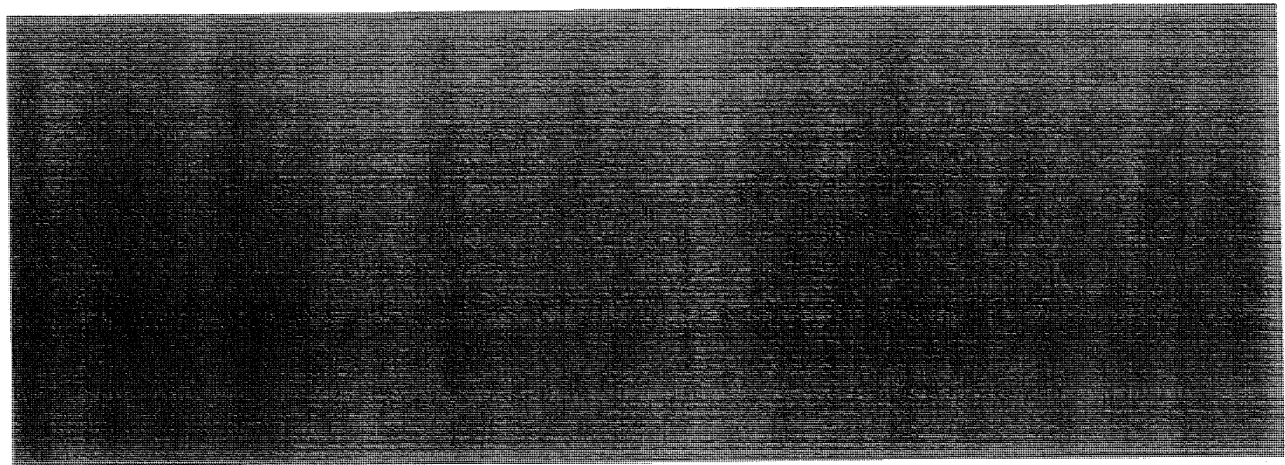
From: Kendelee Works <kworks@christiansenlaw.com>
Sent: Friday, May 22, 2020 9:40 AM
To: Patricia Lee
Cc: Peter S. Christiansen; Jonathan Crain
Subject: Re: Simon v. Edgeworth et al: underlying client file
Attachments: Exhibit A.pdf; ATT00001.htm

Patricia,

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

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

Thank you,
KLW



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

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

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

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

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

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

Best regards,

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

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

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

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

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

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

Best regards,

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

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

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

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

Best regards,

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

Patricia,

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

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

Thank you,
KLW

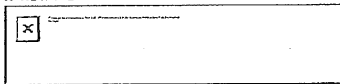
Patricia Lee
Partner



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

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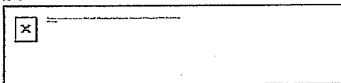
Patricia Lee
Partner



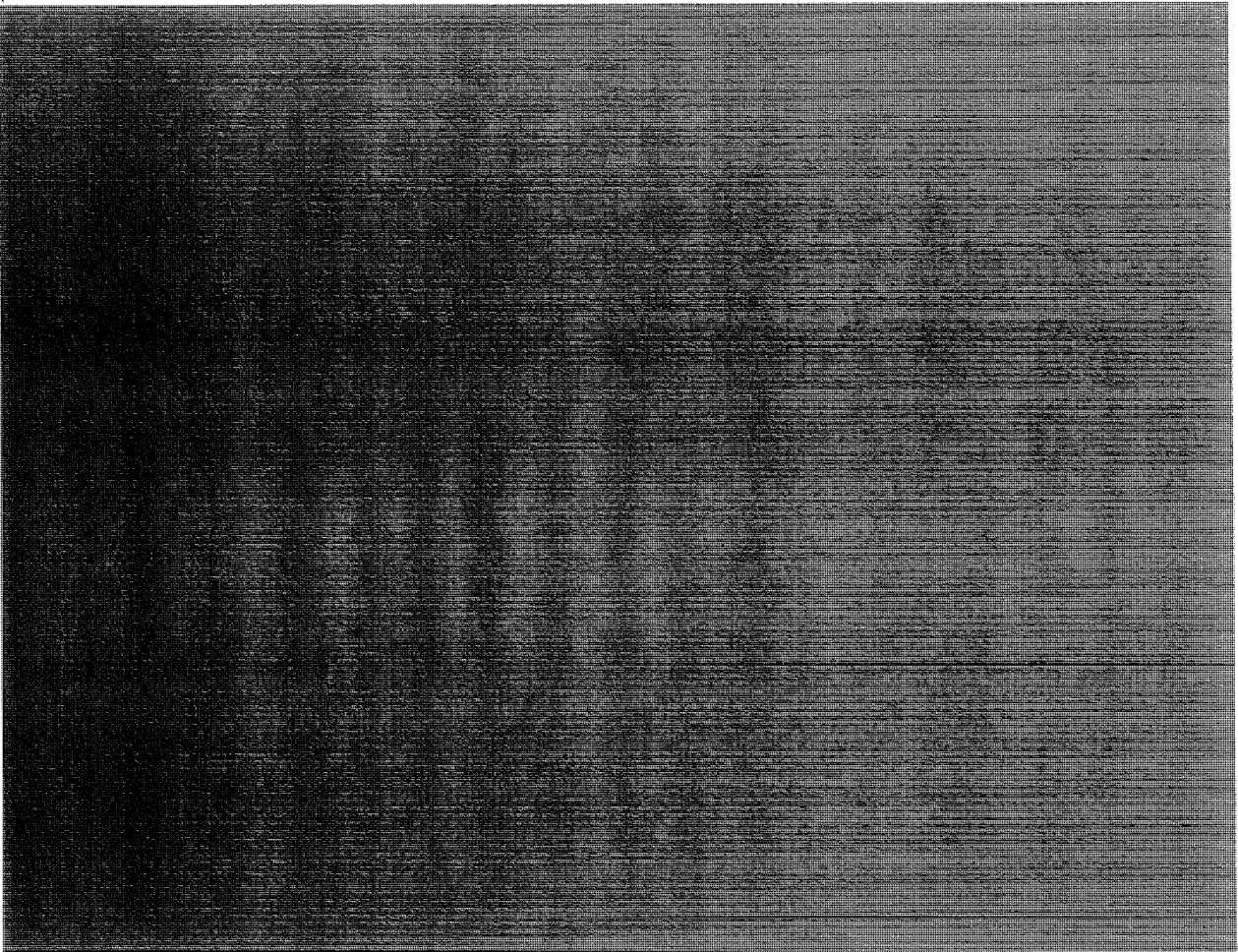
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Patricia Lee
Partner



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



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

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

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

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

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

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

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

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

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

Best regards,

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

Ms. Lee:

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

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

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

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

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

Thanks,

PSC

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

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

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

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

Best regards,

Sent from my iPhone

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

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

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

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

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

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

Best regards,

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

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

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

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

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

Best regards,

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

Patricia,

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

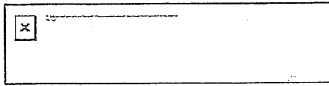
such documents for prosecuting, defending or attempting to settle the underlying litigation. Confidential protected material may only be disclosed to a party's counsel of record in the underlying litigation. See Section

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

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

Thank you,
KLW

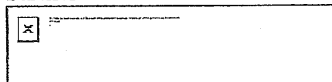
Patricia Lee
Partner



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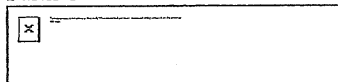
Patricia Lee
Partner



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Patricia Lee
Partner

Steven D. Grierson

RIS
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801 S. Rancho Dr., Ste. B4
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Telephone: (702) 474-9400
Facsimile: (702) 474-9422
Email: sm@morrislawgroup.com
Email: rsr@morrislawgroup.com

Attorneys for Defendant
Edgeworth Family Trust and
American Grating, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

v.

LANGE PLUMBING, LLC ET AL.,

Defendants.

) Case No: A-16-738444-C
) Dept. No: X

) HEARING DATE: 5/27/21
) HEARING TIME: 9:30 AM

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

) Case No: A-18-767242-C
) Dept. No. X

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

B. THE ENTIRE CLIENT FILE MUST BE RELEASED

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

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

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

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

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

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

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

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

25 **4. Simon's Other Excuses are also Wrong**

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

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

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

10 Simon's opposition now says that "Simon agreed to deposit
11 confidential items with the court *if* a motion was filed per 7.055(3)." Opp'n at
12 5 – 6. In support of that statement, Simon relies on an older portion of an
13 email thread where one of Pete Christiansen's colleagues said that, instead
14 of the later email in the thread where Mr. Christiansen abandons that
15 limitation. *Compare* 5/22/20 9:40 a.m. email from K. Works to P. Lee; to
16 5/27/20 2:37 p.m. email from P. Christiansen to P. Lee, both found in
17 Exhibit 2 to Plaintiff's Opposition (*not presented in chronological order*). The
18 May 27 exchanges between Mr. Christiansen and Ms. Lee were the last in
19 that thread and reflected the final agreement, as evidenced by the fact that a
20 portion of the file was produced soon after. *Id.* Simon's claim that emails
21 were cherry-picked is likewise false (Opp'n at 5:34); the email threads
22 concerning the back-and-forth in 2020 were excerpted from his own emails;
23 and Simon's entire exhibits on that point (in the order he offered them
24 previously) were also cited. *See* Mot. to Release Funds/File at 3:23. In fact,
25 Exhibit 2 to Simon's Opposition has the exact emails cited in the Motion, just
26 combined into one exhibit instead of three as Simon presented them
27 previously. The exhibits regarding this issue are also a good example of how
28

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

3 **C. CONCLUSION**

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

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

16
17 MORRIS LAW GROUP

18 By: /s/ STEVE MORRIS
19 Steve Morris, Bar No. 1543
20 Rosa Solis-Rainey, Bar No. 7921
21 801 S. Rancho Dr., Ste. B4
22 Las Vegas, Nevada 89106

23 Attorneys for Defendants
24 Edgeworth Family Trust and
25 American Grating, LLC
26
27
28

MORRIS LAW GROUP

801 S. RANCHO DR., STE. B4 · LAS VEGAS, NEVADA 89106
702/474-9400 · FAX 702/474-9422

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of MORRIS LAW GROUP, and that I caused the following to be served via the Court's mandatory e-filing and service system to those persons designated by the parties in the E-Service Master list for the above-referenced matter: **EDGEWORTHS' REPLY IN SUPPORT OF MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE**

DATED this 21st day of May, 2021.

By: /s/ TRACI K. BAEZ

An employee of Morris Law Group

EXHIBIT Q

May 13, 2021 Letter to Rosa Solis-Rainey from
James R. Christensen

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

May 13, 2021

Via E-Mail

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

Re: Edgeworth v. Viking and related matters

Dear Ms. Solis-Rainey:

Thank you for spending time on the phone with me on May 4 and for being flexible on the deadline expressed in your May 3rd letter.

As discussed, while I understand the position taken in your letter and most recent motion for reconsideration, it is not the only position. As explained during our call and as further explained in the counter motion to adjudicate the lien on remand, the state of the pleadings and the mandate can be reasonably interpreted such that the court could find along the lines offered by Will Kemp. In short, while you take the position the fees should be less, we take the position the fees should be higher. The funds remain in dispute.

However, as it appears clear that the court is confident in its current findings and the amount of the fee absent further order from the Supreme Court, I offered to move off our position and disburse funds per the court's existing orders, with a downward adjustment for the amount charged by Mr. Clark (as opposed to his retainer). While you were resistant to moving off your position during our call, please give it serious thought as a practical solution. Any further appeal keeps the funds in dispute.

As discussed, while the details need to be addressed, I do not see a fundamental problem with moving contested funds to your firm's trust account. It must be noted that because the contested funds are being moved from an interest-bearing account to an IOLTA account at your clients' request, Simon will not be responsible for any alleged delay claims/damages that would otherwise be offset by earned interest. I will contact you next week on this issue.

Thank you for your consideration of the above.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

JAMES R. CHRISTENSEN

JRC/dmc
cc: Client(s)

EXHIBIT R

May 13, 2021 Letter to James R. Christensen
from Rosa Solis-Rainey

MORRIS LAW GROUP
ATTORNEYS AT LAW

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

May 13, 2021

VIA EMAIL: jim@jchristensenlaw.com
James R. Christensen
601 S. 6th Street
Las Vegas, NV 89101

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

Dear Jim:

I am in receipt of your response, which you emailed to me shortly after my office filed the Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File. As I explained when we spoke on May 4th, the reason I requested a quick response from you was so that if we could not resolve the issue, we could file a timely motion and have the Court consider all issues in one proceeding.

While it was clear on May 4th that we would not reach agreement on disbursement, I waited for a response until the end of the week as agreed, in hopes we could resolve the transfer issue. Your offer to resolve the issue by accepting the Court's figures was not without strings. I understood that offer was contingent on my clients giving up their right to pursue the pending motion for reconsideration, and waiving all appeals, which was unacceptable.

Nonetheless, I appreciate that your client is now willing to transfer the funds into the Morris Law Group Trust account, which is also at Bank of Nevada. I understand that the transfer requires nothing more than a letter from Mr. Vannah and a letter from Mr. Simon authorizing the transfer. Given your client's contention that all funds are in dispute, we understand our obligation to maintain all funds in our Trust account pending receipt of Order from the Court authorizing disbursement.

Please send me the letter from your client authorizing the transfer as soon as possible. I look forward to working with you to get the transfer finalized. As always, if you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

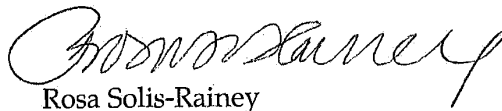

Rosa Solis-Rainey

EXHIBIT S

May 18, 2021 Follow-up Email to
James R. Christensen with Sample Letter

Rosa Solis-Rainey

From: Rosa Solis-Rainey
Sent: Tuesday, May 18, 2021 11:48 AM
To: 'jim@jchristensenlaw.com'
Subject: Edgeworth adv. Simon - Transfer of Funds
Attachments: 2021-05-18 Draft Letter to Bank of NV re Transfer Authorization.docx

Jim:

Following up on our exchange last week, and your agreement to transfer the funds, please provide me with a signed letter authorizing the transfer. I understand from our banker that the signed letter from your side and Mr. Vannah is all they need to effectuate the transfer, and that I may email the letters. For your convenience, attached is a draft listing Mr. Simon as the signer on the account, but if I am mistaken and if you are the signer on the account, please change the name.

This confirms that Morris Law Group agrees to hold all funds in our Trust account pending order from the court regarding the disposition of the funds.

Best regards,

Rosa Solis-Rainey
MORRIS LAW GROUP
801 S. Rancho Dr., Ste B4
LAS VEGAS, NEVADA 89106
(702) 474-9400 (Main)
(702) 759-8321 (Direct)
(702) 474-9422 (Fax)
rsr@morrislawgroup.com
www.morrislawgroup.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

May 18, 2021

Bank of Nevada
2700 West Sahara Avenue
Las Vegas, NV 89102

*Re: Edgeworth adv. Simon,
Clark County Case Nos. A-16-738444-C and A-18-767242-C*

Dear Sir or Madam:

This letter constitutes authorization to transfer all of the funds held in the Joint Trust Account ending in 4141 into Morris Law Group's Trust Account and to close the Joint Trust Account.

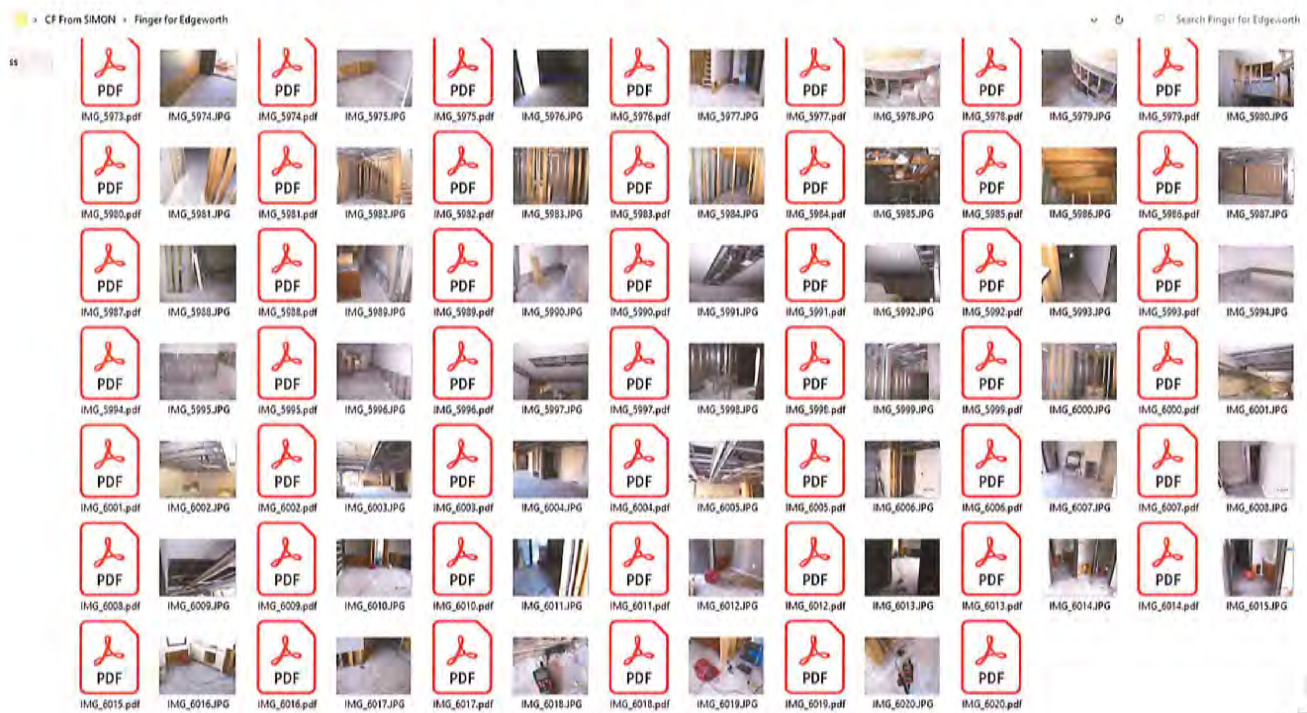
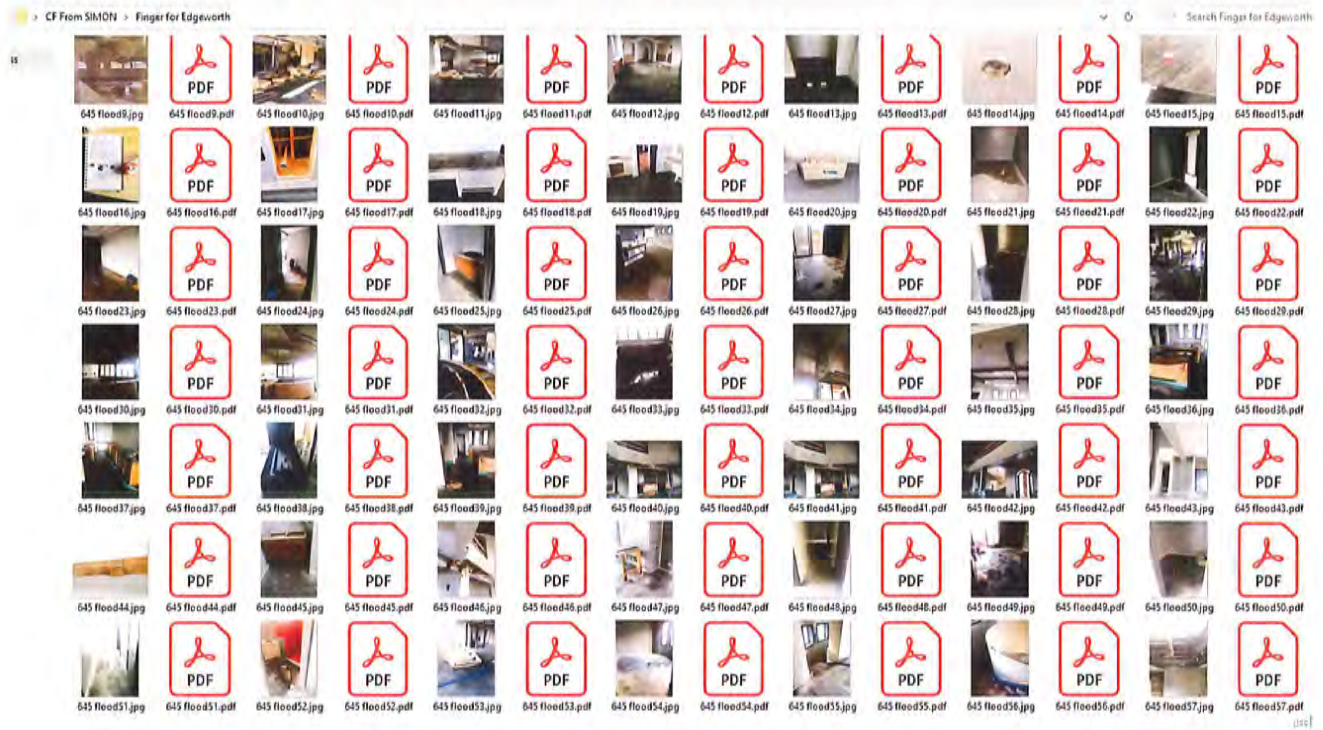
Sincerely,

Daniel S. Simon

cc: James Christensen
Rosa Solis-Rainey

EXHIBIT T

Snapshot of "Finger for Edgeworth" Folder
Content



CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that on the 4th day of December, 2023, a true and correct copy of the foregoing **EDGEWORTH APPELLANTS' APPENDIX TO OPENING BRIEF (VOLUME V)** was served by the following method(s):

☒ Supreme Court's EFlex Electronic Filing System

Peter S. Christiansen
Kendelea L. Works
CHRISTIANSEN LAW OFFICE
810 S. Casino Center Blvd., Ste 104
Las Vegas, NV 89101

and

James R. Christensen
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101

*Attorneys for Respondent Law Office
of Daniel S. Simon, A Professional
Corporation; and Daniel S. Simon*

DATED this 4th day of DECEMBER, 2023.

By: /s/ CATHY SIMICICH