

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.

Electronically Filed
Dec 04 2023 09:10 PM
Elizabeth A. Brown
Clerk of Supreme Court
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 IX
BATES AA1718-AA1784**

Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921

MORRIS LAW GROUP
801 South Rancho Dr., Ste. B4
Las Vegas, NV 89106
Phone: 702-474-9400
Fax: 702-474-9422

sm@morrislawgroup.com

rsr@morrislawgroup.com

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
SUPREME COURT CASE NO. 86676
APPELLANTS' APPENDIX***

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 |

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
SUPREME COURT CASE NO. 86676
APPELLANTS' APPENDIX***

CHRONOLOGICAL INDEX

| DATE | DOCUMENT TITLE | VOL | BATES NOS. |
|-------------|---|------------|-------------------|
| 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 |

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
SUPREME COURT CASE NO. 86676
APPELLANTS' APPENDIX***

CHRONOLOGICAL INDEX

| 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 |

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
SUPREME COURT CASE NO. 86676
APPELLANTS' APPENDIX***

CHRONOLOGICAL INDEX

| DATE | DOCUMENT TITLE | VOL | BATES NOS. |
|-------------|--|--------------|-------------------|
| 2023-02-09 | Simon's Motion for Adjudication Following Remand | VII | AA1352-1376 |
| 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 |

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON***
SUPREME COURT CASE NO. _____.
PETITIONERS' APPENDIX

ALPHABETICAL INDEX

| DATE | DOCUMENT TITLE | VOL. | BATES NOS. |
|-------------|---|-------------|-------------------|
| 2021-09-19 | Amended Docketing Statement | VII | AA1290-1301 |
| 2018-11-19 | Decision and Order on Motion to Adjudicate Lien (Amended) | I | AA0049-71 |
| 2018-10-11 | Decision and Order on Motion to Adjudicate Lien (original) | I | AA0023-48 |
| 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 |
| 2021-08-16 | Docketing Statement (83258) | VII | AA1278-1289 |
| 2021-08-13 | Docketing Statement (83260) | VII | AA1266-1277 |
| 2021-05-13 | Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of Complete Client File | IV | AA0758-832 |
| 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 |
| 2023-02-23 | Edgeworths' Response to Motion for Adjudication Following Remand | VII/VIII | AA1377-1649 |
| 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 |

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
SUPREME COURT CASE NO. _____ .
PETITIONERS' APPENDIX***

ALPHABETICAL INDEX

| DATE | DOCUMENT TITLE | VOL. | BATES NOS. |
|-------------|--|-------------|-------------------|
| 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 |
| 2020-12-30 | Nevada Supreme Court Order Affirming in Part, Vacating in Part Remanding | I | AA0072-86 |
| 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 |

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON***
SUPREME COURT CASE NO. _____.
PETITIONERS' APPENDIX

ALPHABETICAL INDEX

| DATE | DOCUMENT TITLE | VOL. | BATES NOS. |
|-------------|---|-------------|-------------------|
| 2021-04-13 | Opposition to Motion to Reconsider & Request for Sanctions; Counter Motion to Adjudicate Lien on Remand | III | AA0424-626 |
| 2021-05-13 | Opposition to the Second Motion to Reconsider Counter Motion to Adjudicate Lien on Remand | V | AA0833-937 |
| 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 |
| 2022-09-27 | Order to Release to the Edgeworth's Their Complete Client File | VII | AA1344-1347 |
| 2022-09-16 | Order Vacating Judgment and Remanding (Case No. 83258-83260) | VII | AA1313-1317 |
| 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 |
| 2022-12-15 | Remittitur (signed and filed) | VII | AA1348-1351 |
| 2021-05-21 | Reply ISO Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of Complete Client File | V | AA1028-1047 |
| 2023-03-14 | Reply ISO Motion for Adjudication Following Remand | VIII | AA1650-1717 |

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
SUPREME COURT CASE NO. _____ .
PETITIONERS' APPENDIX***

ALPHABETICAL INDEX

| DATE | DOCUMENT TITLE | VOL. | BATES NOS. |
|-------------|--|-------------|-----------------------|
| 2021-03-16 | Second Amended Decision and Order on Motion to Adjudicate Lien | I | AA0087-111 |
| 2023-02-09 | Simon's Motion for Adjudication Following Remand | VII | AA1352-1376 |
| 2021-04-19 | Third Amended Decision and Order on Motion to Adjudicate Lien | IV | AA0627-651 |
| 2021-05-27 | Transcript of 05-27-21 Hearing Re-Pending Motions | VI | AA1057-1085 |

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.: X

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.

**FIFTH AMENDED 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 **FIFTH AMENDED DECISION AND ORDER ON MOTION TO**
24 **ADJUDICATE LIEN**

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

24 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 26. On November 19, 2018, the Court entered a Decision and Order on Motion to
17 Adjudicate Lien.

18 27. On December 7, 2018, the Edgeworths filed a Notice of Appeal.

19 28. On February 8, 2019, the Court entered a Decision and Order Granting in Part and
20 Denying in Part, Simon's Motion for Attorney's Fees and Costs.

21 29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon
22 filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

23 30. On December 30, 2020, the Supreme Court issued an order affirming this Court's
24 findings in most respects.

25 31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

26 32. On March 16, 2021, this Court issued a Second Amended Decision and Order on
27 Motion to Adjudicate Lien.

1 33. On March 18, 2021, the Nevada Supreme Court denied the Motion for Rehearing.

2 34. On March 30, 2021, the Edgeworths filed a Motion for Reconsideration Regarding

3 Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for

4 Attorney's Fees and Costs and Second Amended Decision and order on Motion to Adjudicate Lien.

5 35. On April 13, 2021, the Nevada Supreme Court issued a Remittitur ordering that the

6 judgment of the district court was AFFIRMED in part and VACATED in part AND REMANDING

7 the matter for proceedings consistent with the order.

8 36. Also on April 13, 2021, Daniel Simon filed an Opposition to Motion to Reconsider

9 and Request for Sanctions; Countermotion to Adjudicate Lien on Remand.

10 37. On April 15, 2021, the Court issued a Minute Order denying the Defendant's Motion

11 for Reconsideration Regarding Court's Amended Decision and Order Granting in Part and Denying

12 in Part Simon's Motion for Attorney's Fees and Costs and Second Amended Decision and Order on

13 Motion to Adjudicate Lien. The Court also denied the Request for Sanctions. The Court granted the

14 Countermotion to Adjudicate Lien on Remand.

15 38. On April 28, 2021, the Court filed a Third Amended Decision and Order on Motion

16 to Adjudicate Lien, in accordance with the Supreme Court's Remand Order from April 13, 2021 and

17 in response to the Court's order of April 15, 2021,

18 39. On May 3, 2021, the Edgeworths filed a Renewed Motion for Reconsideration of

19 Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for

20 Attorney's Fees and Costs; and Motion for Reconsideration of Third Amended Decision and Order

21 on Motion to Adjudicate Lien.

22 40. On May 13, 2021, the Edgeworths filed a Motion for Order Releasing Client funds

23 and Requiring Production of Complete Client File.

24 41. Also on May 13, 2021, Daniel Simon filed an Opposition to the Second Motion to

25 Reconsider; Countermotion to Adjudicate Lien on Remand.

26 42. On May 20, 2021, Daniel Simon filed an Opposition to Edgeworth's Motion for

27 Order Releasing Client Funds and Requiring Production of File.

28

1 43. Also on May 20, 2021, the Edgeworths filed a Reply ISO Plaintiff's Renewed Motion
2 for Reconsideration of Amended Decision and Order Granting in Part Simon's Motion for
3 Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order
4 on Motion to Adjudicate Lien.

5 44. On May 21, 2021, the Edgeworths filed a Reply in Support of Motion for Order
6 Releasing Client Funds and Requiring the Production of Complete Client File.

7 45. On May 24, 2021, the Court issued a Second Amended Decision and Order Granting
8 in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs.

9 46. On May 27, 2021, the Court held a hearing on the Motion to Reconsider and
10 Countermotion to Adjudicate Lien on Remand.

11 47. Following the hearing, on June 3, 2021, the Court issued a minute order denying
12 Plaintiff's Motion for Reconsideration of Third Amended Decision and Order on Motion to
13 Adjudicate Lien. The Court granted in part, and denied in part, Plaintiff's Renewed Motion for
14 Reconsideration of Third Amended Decision and Order Granting in Part and Denying in Part
15 Simon's Motion for Attorney's Fees and Costs. The court also denied the Edgeworth's Motion for
16 Order Releasing Client Funds and Requiring Production of Complete File.

17 48. On June 17, 2021, the Court issued a Decision and Order Denying Plaintiff's
18 Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to
19 Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand.

20 49. On July 1, 2021, the Edgeworths filed a Motion for Reconsideration of Order on
21 Motion for Order Releasing Client Funds and Requiring the Production of Complete File and
22 Motion to Stay Execution of Judgments Pending Appeal.

23 50. On July 15, 2021, Daniel Simon filed an Opposition to Third Motion to Reconsider.

24 51. On July 17, 2021, the Edgeworths filed a Reply in Support of Edgeworth's Motion
25 for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the
26 Production of Complete Client File and Motion to Stay Execution of Judgments Pending Appeal.

27 52. On July 29, 2021, the Court issued a minute order denying Edgeworth's Motion for
28

1 Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring Production of
2 Complete Client File and Motion to Stay Execution.

3 53. On September 16, 2022, the Supreme Court Issued an Order Vacating Judgment and
4 Remanding the case to this Court for proceedings consistent with the order.

5 54. On September 27, 2022, the Court issued its Fourth Amended Decision and Order on
6 Motion to Adjudicate Lien.

7 55. On October 16, 2022, the Edgeworths filed a Verified Application to Retax Costs on
8 Appeal and a Motion to Exonerate Cost Bond.

9 56. On October 10, 2022, Daniel Simon filed a Motion to Retax Costs.

10 57. On October 18, 2022, Daniel Simon filed a Notice of Non Opposition to the
11 Edgeworth's Motion to Exonerate Cost Bond.

12 58. On October 19, 2022, Daniel Simon filed an Opposition to Edgeworth's Verified
13 Application to Tax Costs on Appeal.

14 59. On October 28, 2022, the Edgeworths filed an Opposition to Simon's Motion to
15 Retax Costs on Appeal.

16 60. On October 31, 2022, the Nevada Supreme Court issued an Order Denying the
17 Edgeworth's request for Rehearing.

18 61. On November 1, 2022, Daniel Simon filed a Reply to the Motion to Retax Costs.

19 62. On November 4, 2022, the Edgeworths filed a Motion for Order to Show Cause Why
20 Daniel Simon and the Law Firm of Daniel S. Simon Should Not Be Held in Contempt and Ex Parte
21 Application to Consider Same on OST.

22 63. On November 8, 2022, the Court held a hearing on Daniel Simon's Motion to Retax
23 and the matter was taken under advisement.

24 64. On November 14, 2022, Daniel Simon filed an Opposition to Edgeworth's Motion for
25 Order to Show Cause on OST.

26 65. Also on November 14, 2022, the Edgeworth's filed a Reply ISO Motion for Order to
27 Show Cause Why Daniel Simon and the Law Firm of Daniel S. Simon Should Not Be Held In
28

1 Contempt.

2 66. On November 16, 2022, the Nevada Supreme Court filed an Order Denying Daniel
3 Simon's Petition for Writ of Prohibition or Mandamus.

4 67. On November 28, 2022 the Nevada Supreme Court issued a Remittitur regarding its
5 ruling from September 16, 2022.

6 68. On November 29, 2022, the Court issued a minute order denying in part and granting
7 in part, the Edgeworth's Verified Application to Tax Costs on Appeal and Simon's Motion to Retax
8 Costs. The Court also granted the Edgeworth's Motion to Exonerate Cost Bond and denied the
9 Edgeworth's Motion for Order to Show Cause Why Daniel Simon and the Law Firm of Daniel S.
10 Simon Should Not Be Held in Contempt.

11 69. On December 20, 2022, the Nevada Supreme Court issued an Order Denying Daniel
12 Simon's request for Rehearing and the Remittitur issued on January 17, 2023.

13 70. On February 9, 2023, Daniel Simon filed a Motion for Adjudication Following
14 Remand.

15 71. On February 23, 2023, the Edgeworths filed a Response to Motion for Adjudication
16 Following Remand.

17 72. On March 14, 2023, Daniel Simon filed a Reply in Support of Motion for
18 Adjudication Following Remand.

19 73. On March 21, 2023, the Court held a hearing on the Motion for Adjudication
20 Following Remand.

21 74. The Court finds that this Court lacked jurisdiction to issue the Fourth Amended
22 Decision and Order on Motion to Adjudicate Lien on September 27, 2022 as the Supreme Court
23 Remittitur had not issued.

24 75. As such, the Motion for Adjudication Following Remand is GRANTED IN PART, as
25 the Court finds that there was ample foundation for the quantum meruit award of \$200,000.00. As
26 such, this Order follows:

1
2 **CONCLUSION OF LAW**

3 **The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The**
4 **Court**

5 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
6 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
7 738444-C under NRS 18.015.

8 NRS 18.015(1)(a) states:

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

10 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
11 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.

12 Nev. Rev. Stat. 18.015.

13 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
14 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
15 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
16 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
17 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
18 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
19 is enforceable in form.

20 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
21 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
22 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
23 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
24 under NRS 18.015, thus the Court must adjudicate the lien.

25
26 ***Fee Agreement***

27 It is undisputed that no express written fee agreement was formed. The Court finds that there
28

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

7 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
8 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
9 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
10 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
11 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
12 22, 2017 email, titled "Contingency," he writes:

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

23 (Def. Exhibit 27).

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

26 The Court finds that an implied fee agreement was formed between the parties on December
27 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
28

1 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
2 created with a fee of \$275 per hour for Simon’s associates. Simon testified that he never told the
3 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to “trigger
4 coverage”. When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
5 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
6 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
7 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

8 9 *Constructive Discharge*

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

- 11 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v.
12 Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 13 • Refusal to pay an attorney creates constructive discharge. *See e.g.*, Christian v. All Persons
14 Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 15 • Suing an attorney creates constructive discharge. *See* Tao v. Probate Court for the Northeast
16 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). *See also* Maples v.
17 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
2017 Nev. Unpubl. LEXIS 472.
- 18 • Taking actions that preventing effective representation creates constructive discharge.
19 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

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

24 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and
25 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement
26 agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was
27 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
28 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 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def. Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly identified as the firm that solely advised the clients about the settlement. The actual language in the settlement agreement, for the Viking claims, states:

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

Id.

Also, Simon was not present for the signing of these settlement documents and never explained any

1 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
2 Vannah and received them back with the signatures of the Edgeworths.

3 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
4 Though there were email communications between the Edgeworths and Simon, they did not verbally
5 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
6 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
7 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
8 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
9 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
10 working on this claim, but he had no communication with the Edgeworths and was not advising
11 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
12 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
13 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
14 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
15 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
16 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
17 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
18 Simon never signed off on any of the releases for the Lange settlement.

19 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
20 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
21 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
22 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
23 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
24 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
25 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
26 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
27 doesn't seem in his best interests." (Def. Exhibit 53).

1 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
2 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
3 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
4 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
5 was attached to the letter), and that Simon continued to work on the case after the November 29,
6 2017 date. The court further recognizes that it is always a client's decision of whether or not to
7 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
8 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
9 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
10 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
11 with him, making it impossible to advise them on pending legal issues, such as the settlements with
12 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
13 Simon from effectively representing the clients. The Court finds that Danny Simon was
14 constructively discharged by the Edgeworths on November 29, 2017.

15
16 **Adjudication of the Lien and Determination of the Law Office Fee**

17 NRS 18.015 states:

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

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

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

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

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

4. A lien pursuant to:

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

3 (b) Paragraph (b) of subsection 1 attaches to any file or other property
4 properly left in the possession of the attorney by his or her client, including,
5 without limitation, copies of the attorney's file if the original documents
6 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.

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

9 6. On motion filed by an attorney having a lien under this section, the
10 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.

11 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.

12
13 Nev. Rev. Stat. 18.015.

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

21 22 *Implied Contract*

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

27 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
28

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

9 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
10 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
11 paid in full and there was never any indication given that anything less than all the fees had been
12 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
13 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
14 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
15 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
16 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
17 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
18 Office retained the payments, indicating an implied contract was formed between the parties. The
19 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
20 date they were constructively discharged, November 29, 2017.

21
22 ***Amount of Fees Owed Under Implied Contract***

23 The Edgeworths were billed, and paid for services through September 19, 2017. There is
24 some testimony that an invoice was requested for services after that date, but there is no evidence
25 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
26 fees was formed, the Court must now determine what amount of fees and costs are owed from
27 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
28

1 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
2 billings, the attached lien, and all other evidence provided regarding the services provided during
3 this time.

4 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
5 that was prepared with the lien “super bill,” are not necessarily accurate as the Law Office went back
6 and attempted to create a bill for work that had been done over a year before. She testified that they
7 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
8 email that was read and responded to. She testified that the dates were not exact, they just used the
9 dates for which the documents were filed, and not necessarily the dates in which the work was
10 performed. Further, there are billed items included in the “super bill” that was not previously billed
11 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
12 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
13 indicated that there were no phone calls included in the billings that were submitted to the
14 Edgeworths.

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

22 Simon argues that he has no billing software in his office and that he has never billed a client
23 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
24 in this case, were billed hourly because the Lange contract had a provision for attorney’s fees;
25 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
26 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
27 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
28

1 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
2 emails or calls, understanding that those items may be billed separately; but again the evidence does
3 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
4 This argument does not persuade the court of the accuracy of the “super bill”.

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

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

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

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

25
26
27 ²There are no billing amounts from December 2 to December 4, 2016.

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

1 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
2 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
3 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
4 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
5 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
6 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
7 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
8 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
9 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

10 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
11 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
12 by the Edgeworths, so the implied fee agreement applies to their work as well.

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

15 *Costs Owed*

16
17 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
18 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
19 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
20 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
21 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
22 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
23 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

24
25
26 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

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

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

Quantum Meruit

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

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

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

1 after the constructive discharge.

2 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
3 case, the testimony at the evidentiary hearing, and the litigation involved in the case. In this case, the
4 evidence presented indicates that, after the constructive discharge, Simon received consent from the
5 Edgeworths, through the Vannah Law Firm, to settle their claims against Lange Plumbing LLC for
6 \$25,000. Simon continued to work with the attorneys for Lange Plumbing LLC to settle the claims
7 for more than \$25,000, and ultimately ended up settling the claims for \$100,000. The record
8 indicates that on December 5, 2017, Simon attempted an email to contact Brian Edgeworth
9 regarding settling of the Lange case, as he was continuing to have discussions with Lange's counsel,
10 regarding settling of the claims. However, Simon was told to contact Vannah's office as the
11 Edgeworths were refusing his attempts to communicate. He then, reached out to Vannah's office and
12 continued to work with Vannah's office to settle the Viking and the Lange claims. On December 7,
13 2017, Sion sent a letter advising Mr. Vannah regarding the Lange claim. Simon had advised the
14 Edgeworths on settling of the Lange claim, but they ignored his advice and followed the advice of
15 the Vannah & Vannah. Upon settlement of all the claims, the Edgeworths made the unusual request
16 to open a new trust account with Mr. Vannah as the signer to deposit the Viking settlement proceeds.
17 Mr. Simon complied with the request. Further, there were continued representations from the
18 Edgeworths and the Vannah Law Firm that Simon had not been terminated from representation of
19 the Edgeworths, and no motion to withdraw was filed in this case.

20
21 *1. Quality of the Advocate*

22 Brunzell expands on the "qualities of the advocate" factor and mentions such items as
23 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
24 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
25 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
26 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
27 Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's
28

1 work product and results are exceptional.

2
3 2. The Character of the Work to be Done

4 The character of the work done in this case is complex. This case was a very complex
5 products liability case, from the beginning. After the constructive discharge of Simon, the
6 complications in the case continued. The continued aggressive representation of Mr. Simon, in
7 prosecuting the case was a substantial factor in achieving the exceptional results. Even after the
8 constructive termination, Simon continued to work on the case. At one point, Simon said that he was
9 not going to abandon the case, and he didn't abandon the case. The lack of communication with the
10 Edgeworths made continuation of the case difficult, but Simon continued to work on the case and
11 ended up reaching a resolution beneficial to the Edgeworths.

12
13 3. The Work Actually Performed

14 Mr. Simon was aggressive in litigating this case. Since Mr. Edgeworth is not a lawyer, it is
15 impossible that it was his work alone that led to the settlement of the Viking and Lange claims, for a
16 substantial sum, in the instant case. The Lange claims were settled for four times the original offer,
17 because Simon continued to work on the case. He continued to make efforts to communicate with
18 the Edgeworths and even followed their requests to communicate with Vannah's office. He also
19 agreed to their request of opening a trust account, though in an unusual fashion. All of the work by
20 the Law Office of Daniel Simon led to the ultimate result in this case, and a substantial result for the
21 Edgeworths.

22
23 4. The Result Obtained

24 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
25 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
26 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
27 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
28

1 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
2 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
3 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
4 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
5 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
6 were made more than whole with the settlement with the Viking entities.

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

10
11 (a) A lawyer shall not make an agreement for, charge, or collect an
12 unreasonable fee or an unreasonable amount for expenses. The factors to be
13 considered in determining the reasonableness of a fee include the following:

14 (1) The time and labor required, the novelty and difficulty of the
15 questions involved, and the skill requisite to perform the legal service
16 properly;

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

19 (3) The fee customarily charged in the locality for similar legal
20 services;

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

22 (5) The time limitations imposed by the client or by the
23 circumstances;

24 (6) The nature and length of the professional relationship with the
25 client;

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

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

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

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

(c) A fee may be contingent on the outcome of the matter for which the
service is rendered, except in a matter in which a contingent fee is prohibited

1 by paragraph (d) or other law. A contingent fee agreement shall be in writing,
2 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:

3 (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
4 settlement, trial or appeal;

5 (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;

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

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

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

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

12
13 NRCP 1.5.

14 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
15 the Edgeworths, the character of the work was complex, the work actually performed was extremely
16 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
17 factors justify a reasonable fee under NRCP 1.5.

18 However, the Court must also consider the fact that the evidence suggests that the basis or
19 rate of the fee and expenses for which the client will be responsible were never communicated to the
20 client, within a reasonable time after commencing the representation. Further, this is not a
21 contingent fee case, and the Court is not awarding a contingency fee.

22 Instead, the Court must determine the amount of a reasonable fee. In determining this
23 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
24 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
25 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
26 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
27 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
28

1 continued to work on the Viking settlement until it was finalized in December of 2017, and the
2 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
3 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
4 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
5 himself were continuing, even after the constructive discharge. Though the previous agreement
6 between Simon and the Edgeworths was for \$550 per hour, the Court must take into consideration
7 that the Edgeworths' fee agreement with Vannah & Vannah was for \$925 per hour.

8 In considering the reasonable value of these services, under quantum meruit, the Court is
9 considering the previous \$550 per hour fee from the implied fee agreement, the fee for the Vannah
10 & Vannah Law Firm, the Brunzell factors, and additional work performed after the constructive
11 discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is entitled to a
12 reasonable fee in the amount of \$200,000, from November 29, 2017 to the conclusion of this case.

13 14 CONCLUSION

15 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
16 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
17 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
18 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
19 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
20 Simon as their attorney, when they ceased following his advice and refused to communicate with
21 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
22 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
23 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
24 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
25 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
26 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
27 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
28

1 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
2 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.

3
4 **ORDER**

5 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
6 of the Law Office of Daniel S. Simon was previously granted. The Court further finds that it lacked
7 jurisdiction to issue the Fourth Amended Decision and Order on Motion to Adjudicate Lien on
8 September 27, 2022, since the Supreme Court Remittitur had not issued. The Court further finds that
9 the Motion for Adjudication Following Remand is granted in part, as the Court finds that there was
10 ample foundation for the quantum meruit award of \$200,000.00. As such, the reasonable fee due to
11 the Law Office of Daniel Simon is \$556,577.43, which includes outstanding costs.

Dated this 28th day of March, 2023

12 IT IS SO ORDERED.

13
14 
15 _____
16 DISTRICT COURT JUDGE

17 **D39 E59 9E22 C62D**
18 **Tierra Jones**
19 **District Court Judge**
20
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Edgeworth Family Trust,
Plaintiff(s)

CASE NO: A-16-738444-C

7 vs.

DEPT. NO. Department 10

8
9 Lange Plumbing, L.L.C.,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/28/2023

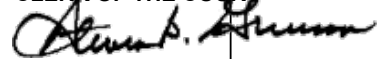
| | |
|----------------------------|------------------------------|
| 16 Peter Christiansen | pete@christiansenlaw.com |
| 17 Whitney Barrett | wbarrett@christiansenlaw.com |
| 18 Daniel Simon . | lawyers@simonlawlv.com |
| 19 Rhonda Onorato . | ronorato@rlattorneys.com |
| 20 Kendelee Leascher Works | kworks@christiansenlaw.com |
| 21 R. Todd Terry | tterry@christiansenlaw.com |
| 22 Keely Perdue | keely@christiansenlaw.com |
| 23 Jonathan Crain | jcraib@christiansenlaw.com |
| 24 Mariella Dumbrique | mdumbrique@blacklobello.law |
| 25 Chandi Melton | chandi@christiansenlaw.com |

| | | |
|----|-------------------------|----------------------------|
| 1 | John Greene | jgreene@vannahlaw.com |
| 2 | | |
| 3 | Tyler Ure | ngarcia@murchisonlaw.com |
| 4 | Nicole Garcia | ngarcia@murchisonlaw.com |
| 5 | Michael Nunez | mnunez@murchisonlaw.com |
| 6 | James Christensen | jim@jchristensenlaw.com |
| 7 | James Christensen | jim@jchristensenlaw.com |
| 8 | Michael Nunez | mnunez@murchisonlaw.com |
| 9 | Daniel Simon | dan@danielsimonlaw.com |
| 10 | Gary Call | gcall@rlattorneys.com |
| 11 | J. Graf | Rgraf@blacklobello.law |
| 12 | | |
| 13 | Robert Vannah | rvannah@vannahlaw.com |
| 14 | Esther Barrios Sandoval | esther@christiansenlaw.com |
| 15 | Christopher Page | chrispage@vannahlaw.com |
| 16 | Aileen Bencomo | ab@christiansenlaw.com |
| 17 | Steve Morris | sm@morrislawgroup.com |
| 18 | | |
| 19 | Rosa Solis-Rainey | rsr@morrislawgroup.com |
| 20 | Zeairah Marable | zmarable@vannahlaw.com |
| 21 | Laysha Guerrero | lguerrero@vannahlaw.com |
| 22 | Claudia Morrill | cam@morrislawgroup.com |
| 23 | | |

24 If indicated below, a copy of the above mentioned filings were also served by mail
25 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 3/29/2023

| | | |
|----|-----------------|------------------------------|
| 26 | Theodore Parker | 2460 Professional CT STE 200 |
| 27 | | Las Vegas, NV, 89128 |
| 28 | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



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

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC
Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF FIFTH
AMENDED DECISION AND
ORDER ON MOTION TO
ADJUDICATE LIEN**

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

1 PLEASE TAKE NOTICE that a Fifth Amended Decision and Order on
2 Motion to Adjudicate Lien was entered on the docket on the 28th day of
3 March, 2023. A true and correct file-stamped copy of the decision and
4 order is attached hereto.

5
6 DATED this 24th day of April 2023.

7 /s/ James R. Christensen

8 James R. Christensen Esq.
9 Nevada Bar No. 3861
10 James R. Christensen PC
11 601 S. Sixth Street
12 Las Vegas NV 89101
13 (702) 272-0406
14 (702) 272-0415 fax
15 jim@jchristensenlaw.com
16 Attorney for LAW OFFICE OF
17 DANIEL S. SIMON, P.C.

18
19
20
21
22
23
24
25
CERTIFICATE OF SERVICE

26 I CERTIFY SERVICE of NOTICE OF ENTRY OF FIFTH AMENDED
27 DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN was made
28 by electronic service (via Odyssey) this 24th day of April, 2023, to all parties
29 currently shown on the Court's E-Service List.

30 /s/ Dawn Christensen

31 an employee of James R. Christensen
32
33
34
35

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.: X

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.

**FIFTH AMENDED 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 **FIFTH AMENDED DECISION AND ORDER ON MOTION TO**
24 **ADJUDICATE LIEN**

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

24 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 26. On November 19, 2018, the Court entered a Decision and Order on Motion to
17 Adjudicate Lien.

18 27. On December 7, 2018, the Edgeworths filed a Notice of Appeal.

19 28. On February 8, 2019, the Court entered a Decision and Order Granting in Part and
20 Denying in Part, Simon's Motion for Attorney's Fees and Costs.

21 29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon
22 filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

23 30. On December 30, 2020, the Supreme Court issued an order affirming this Court's
24 findings in most respects.

25 31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

26 32. On March 16, 2021, this Court issued a Second Amended Decision and Order on
27 Motion to Adjudicate Lien.

1 33. On March 18, 2021, the Nevada Supreme Court denied the Motion for Rehearing.

2 34. On March 30, 2021, the Edgeworths filed a Motion for Reconsideration Regarding
3 Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for
4 Attorney's Fees and Costs and Second Amended Decision and order on Motion to Adjudicate Lien.

5 35. On April 13, 2021, the Nevada Supreme Court issued a Remittitur ordering that the
6 judgment of the district court was AFFIRMED in part and VACATED in part AND REMANDING
7 the matter for proceedings consistent with the order.

8 36. Also on April 13, 2021, Daniel Simon filed an Opposition to Motion to Reconsider
9 and Request for Sanctions; Countermotion to Adjudicate Lien on Remand.

10 37. On April 15, 2021, the Court issued a Minute Order denying the Defendant's Motion
11 for Reconsideration Regarding Court's Amended Decision and Order Granting in Part and Denying
12 in Part Simon's Motion for Attorney's Fees and Costs and Second Amended Decision and Order on
13 Motion to Adjudicate Lien. The Court also denied the Request for Sanctions. The Court granted the
14 Countermotion to Adjudicate Lien on Remand.

15 38. On April 28, 2021, the Court filed a Third Amended Decision and Order on Motion
16 to Adjudicate Lien, in accordance with the Supreme Court's Remand Order from April 13, 2021 and
17 in response to the Court's order of April 15, 2021,

18 39. On May 3, 2021, the Edgeworths filed a Renewed Motion for Reconsideration of
19 Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for
20 Attorney's Fees and Costs; and Motion for Reconsideration of Third Amended Decision and Order
21 on Motion to Adjudicate Lien.

22 40. On May 13, 2021, the Edgeworths filed a Motion for Order Releasing Client funds
23 and Requiring Production of Complete Client File.

24 41. Also on May 13, 2021, Daniel Simon filed an Opposition to the Second Motion to
25 Reconsider; Countermotion to Adjudicate Lien on Remand.

26 42. On May 20, 2021, Daniel Simon filed an Opposition to Edgeworth's Motion for
27 Order Releasing Client Funds and Requiring Production of File.

28

1 43. Also on May 20, 2021, the Edgeworths filed a Reply ISO Plaintiff's Renewed Motion
2 for Reconsideration of Amended Decision and Order Granting in Part Simon's Motion for
3 Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order
4 on Motion to Adjudicate Lien.

5 44. On May 21, 2021, the Edgeworths filed a Reply in Support of Motion for Order
6 Releasing Client Funds and Requiring the Production of Complete Client File.

7 45. On May 24, 2021, the Court issued a Second Amended Decision and Order Granting
8 in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs.

9 46. On May 27, 2021, the Court held a hearing on the Motion to Reconsider and
10 Countermotion to Adjudicate Lien on Remand.

11 47. Following the hearing, on June 3, 2021, the Court issued a minute order denying
12 Plaintiff's Motion for Reconsideration of Third Amended Decision and Order on Motion to
13 Adjudicate Lien. The Court granted in part, and denied in part, Plaintiff's Renewed Motion for
14 Reconsideration of Third Amended Decision and Order Granting in Part and Denying in Part
15 Simon's Motion for Attorney's Fees and Costs. The court also denied the Edgeworth's Motion for
16 Order Releasing Client Funds and Requiring Production of Complete File.

17 48. On June 17, 2021, the Court issued a Decision and Order Denying Plaintiff's
18 Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to
19 Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand.

20 49. On July 1, 2021, the Edgeworths filed a Motion for Reconsideration of Order on
21 Motion for Order Releasing Client Funds and Requiring the Production of Complete File and
22 Motion to Stay Execution of Judgments Pending Appeal.

23 50. On July 15, 2021, Daniel Simon filed an Opposition to Third Motion to Reconsider.

24 51. On July 17, 2021, the Edgeworths filed a Reply in Support of Edgeworth's Motion
25 for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the
26 Production of Complete Client File and Motion to Stay Execution of Judgments Pending Appeal.

27 52. On July 29, 2021, the Court issued a minute order denying Edgeworth's Motion for
28

1 Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring Production of
2 Complete Client File and Motion to Stay Execution.

3 53. On September 16, 2022, the Supreme Court Issued an Order Vacating Judgment and
4 Remanding the case to this Court for proceedings consistent with the order.

5 54. On September 27, 2022, the Court issued its Fourth Amended Decision and Order on
6 Motion to Adjudicate Lien.

7 55. On October 16, 2022, the Edgeworths filed a Verified Application to Retax Costs on
8 Appeal and a Motion to Exonerate Cost Bond.

9 56. On October 10, 2022, Daniel Simon filed a Motion to Retax Costs.

10 57. On October 18, 2022, Daniel Simon filed a Notice of Non Opposition to the
11 Edgeworth's Motion to Exonerate Cost Bond.

12 58. On October 19, 2022, Daniel Simon filed an Opposition to Edgeworth's Verified
13 Application to Tax Costs on Appeal.

14 59. On October 28, 2022, the Edgeworths filed an Opposition to Simon's Motion to
15 Retax Costs on Appeal.

16 60. On October 31, 2022, the Nevada Supreme Court issued an Order Denying the
17 Edgeworth's request for Rehearing.

18 61. On November 1, 2022, Daniel Simon filed a Reply to the Motion to Retax Costs.

19 62. On November 4, 2022, the Edgeworths filed a Motion for Order to Show Cause Why
20 Daniel Simon and the Law Firm of Daniel S. Simon Should Not Be Held in Contempt and Ex Parte
21 Application to Consider Same on OST.

22 63. On November 8, 2022, the Court held a hearing on Daniel Simon's Motion to Retax
23 and the matter was taken under advisement.

24 64. On November 14, 2022, Daniel Simon filed an Opposition to Edgeworth's Motion for
25 Order to Show Cause on OST.

26 65. Also on November 14, 2022, the Edgeworth's filed a Reply ISO Motion for Order to
27 Show Cause Why Daniel Simon and the Law Firm of Daniel S. Simon Should Not Be Held In
28

1 Contempt.

2 66. On November 16, 2022, the Nevada Supreme Court filed an Order Denying Daniel
3 Simon's Petition for Writ of Prohibition or Mandamus.

4 67. On November 28, 2022 the Nevada Supreme Court issued a Remittitur regarding its
5 ruling from September 16, 2022.

6 68. On November 29, 2022, the Court issued a minute order denying in part and granting
7 in part, the Edgeworth's Verified Application to Tax Costs on Appeal and Simon's Motion to Retax
8 Costs. The Court also granted the Edgeworth's Motion to Exonerate Cost Bond and denied the
9 Edgeworth's Motion for Order to Show Cause Why Daniel Simon and the Law Firm of Daniel S.
10 Simon Should Not Be Held in Contempt.

11 69. On December 20, 2022, the Nevada Supreme Court issued an Order Denying Daniel
12 Simon's request for Rehearing and the Remittitur issued on January 17, 2023.

13 70. On February 9, 2023, Daniel Simon filed a Motion for Adjudication Following
14 Remand.

15 71. On February 23, 2023, the Edgeworths filed a Response to Motion for Adjudication
16 Following Remand.

17 72. On March 14, 2023, Daniel Simon filed a Reply in Support of Motion for
18 Adjudication Following Remand.

19 73. On March 21, 2023, the Court held a hearing on the Motion for Adjudication
20 Following Remand.

21 74. The Court finds that this Court lacked jurisdiction to issue the Fourth Amended
22 Decision and Order on Motion to Adjudicate Lien on September 27, 2022 as the Supreme Court
23 Remittitur had not issued.

24 75. As such, the Motion for Adjudication Following Remand is GRANTED IN PART, as
25 the Court finds that there was ample foundation for the quantum meruit award of \$200,000.00. As
26 such, this Order follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

1. An attorney at law shall have a lien:

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

Nev. Rev. Stat. 18.015.

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

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

Fee Agreement

It is undisputed that no express written fee agreement was formed. The Court finds that there

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

7 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
8 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
9 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
10 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
11 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
12 22, 2017 email, titled "Contingency," he writes:

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

23 (Def. Exhibit 27).

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

26 The Court finds that an implied fee agreement was formed between the parties on December
27 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
28

1 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
2 created with a fee of \$275 per hour for Simon’s associates. Simon testified that he never told the
3 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to “trigger
4 coverage”. When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
5 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
6 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
7 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

8 9 *Constructive Discharge*

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

- 11 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v.
12 Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 13 • Refusal to pay an attorney creates constructive discharge. *See e.g.*, Christian v. All Persons
14 Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 15 • Suing an attorney creates constructive discharge. *See* Tao v. Probate Court for the Northeast
16 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). *See also* Maples v.
17 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
2017 Nev. Unpubl. LEXIS 472.
- 18 • Taking actions that preventing effective representation creates constructive discharge.
19 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

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

24 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and
25 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement
26 agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was
27 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
28 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 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def. Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly identified as the firm that solely advised the clients about the settlement. The actual language in the settlement agreement, for the Viking claims, states:

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

Id.

Also, Simon was not present for the signing of these settlement documents and never explained any

1 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
2 Vannah and received them back with the signatures of the Edgeworths.

3 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
4 Though there were email communications between the Edgeworths and Simon, they did not verbally
5 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
6 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
7 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
8 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
9 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
10 working on this claim, but he had no communication with the Edgeworths and was not advising
11 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
12 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
13 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
14 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
15 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
16 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
17 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
18 Simon never signed off on any of the releases for the Lange settlement.

19 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
20 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
21 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
22 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
23 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
24 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
25 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
26 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
27 doesn't seem in his best interests." (Def. Exhibit 53).

1 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
2 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
3 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
4 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
5 was attached to the letter), and that Simon continued to work on the case after the November 29,
6 2017 date. The court further recognizes that it is always a client's decision of whether or not to
7 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
8 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
9 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
10 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
11 with him, making it impossible to advise them on pending legal issues, such as the settlements with
12 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
13 Simon from effectively representing the clients. The Court finds that Danny Simon was
14 constructively discharged by the Edgeworths on November 29, 2017.

15
16 **Adjudication of the Lien and Determination of the Law Office Fee**

17 NRS 18.015 states:

- 18 1. An attorney at law shall have a lien:
- 19 (a) Upon any claim, demand or cause of action, including any claim for
20 unliquidated damages, which has been placed in the attorney's hands by a
21 client for suit or collection, or upon which a suit or other action has been
22 instituted.
- 23 (b) In any civil action, upon any file or other property properly left in the
24 possession of the attorney by a client.
- 25 2. A lien pursuant to subsection 1 is for the amount of any fee which has
26 been agreed upon by the attorney and client. In the absence of an agreement,
27 the lien is for a reasonable fee for the services which the attorney has rendered
28 for the client.
3. An attorney perfects a lien described in subsection 1 by serving notice
in writing, in person or by certified mail, return receipt requested, upon his or
her client and, if applicable, upon the party against whom the client has a
cause of action, claiming the lien and stating the amount of the lien.
4. A lien pursuant to:

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

3 (b) Paragraph (b) of subsection 1 attaches to any file or other property
4 properly left in the possession of the attorney by his or her client, including,
5 without limitation, copies of the attorney's file if the original documents
6 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.

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

9 6. On motion filed by an attorney having a lien under this section, the
10 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.

11 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.

12
13 Nev. Rev. Stat. 18.015.

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

21 22 *Implied Contract*

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

27 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
28

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

9 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
10 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
11 paid in full and there was never any indication given that anything less than all the fees had been
12 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
13 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
14 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
15 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
16 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
17 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
18 Office retained the payments, indicating an implied contract was formed between the parties. The
19 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
20 date they were constructively discharged, November 29, 2017.

21
22 ***Amount of Fees Owed Under Implied Contract***

23 The Edgeworths were billed, and paid for services through September 19, 2017. There is
24 some testimony that an invoice was requested for services after that date, but there is no evidence
25 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
26 fees was formed, the Court must now determine what amount of fees and costs are owed from
27 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
28

1 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
2 billings, the attached lien, and all other evidence provided regarding the services provided during
3 this time.

4 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
5 that was prepared with the lien “super bill,” are not necessarily accurate as the Law Office went back
6 and attempted to create a bill for work that had been done over a year before. She testified that they
7 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
8 email that was read and responded to. She testified that the dates were not exact, they just used the
9 dates for which the documents were filed, and not necessarily the dates in which the work was
10 performed. Further, there are billed items included in the “super bill” that was not previously billed
11 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
12 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
13 indicated that there were no phone calls included in the billings that were submitted to the
14 Edgeworths.

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

22 Simon argues that he has no billing software in his office and that he has never billed a client
23 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
24 in this case, were billed hourly because the Lange contract had a provision for attorney’s fees;
25 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
26 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
27 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
28

1 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
2 emails or calls, understanding that those items may be billed separately; but again the evidence does
3 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
4 This argument does not persuade the court of the accuracy of the “super bill”.

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

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

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

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

25
26
27 ²There are no billing amounts from December 2 to December 4, 2016.

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

1 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
2 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
3 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
4 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
5 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
6 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
7 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
8 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
9 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

10 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
11 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
12 by the Edgeworths, so the implied fee agreement applies to their work as well.

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

15 *Costs Owed*

16
17 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
18 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
19 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
20 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
21 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
22 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
23 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

24
25
26 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

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

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

Quantum Meruit

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

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

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

1 after the constructive discharge.

2 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
3 case, the testimony at the evidentiary hearing, and the litigation involved in the case. In this case, the
4 evidence presented indicates that, after the constructive discharge, Simon received consent from the
5 Edgeworths, through the Vannah Law Firm, to settle their claims against Lange Plumbing LLC for
6 \$25,000. Simon continued to work with the attorneys for Lange Plumbing LLC to settle the claims
7 for more than \$25,000, and ultimately ended up settling the claims for \$100,000. The record
8 indicates that on December 5, 2017, Simon attempted an email to contact Brian Edgeworth
9 regarding settling of the Lange case, as he was continuing to have discussions with Lange's counsel,
10 regarding settling of the claims. However, Simon was told to contact Vannah's office as the
11 Edgeworths were refusing his attempts to communicate. He then, reached out to Vannah's office and
12 continued to work with Vannah's office to settle the Viking and the Lange claims. On December 7,
13 2017, Sion sent a letter advising Mr. Vannah regarding the Lange claim. Simon had advised the
14 Edgeworths on settling of the Lange claim, but they ignored his advice and followed the advice of
15 the Vannah & Vannah. Upon settlement of all the claims, the Edgeworths made the unusual request
16 to open a new trust account with Mr. Vannah as the signer to deposit the Viking settlement proceeds.
17 Mr. Simon complied with the request. Further, there were continued representations from the
18 Edgeworths and the Vannah Law Firm that Simon had not been terminated from representation of
19 the Edgeworths, and no motion to withdraw was filed in this case.

20
21 *1. Quality of the Advocate*

22 Brunzell expands on the "qualities of the advocate" factor and mentions such items as
23 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
24 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
25 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
26 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
27 Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's
28

1 work product and results are exceptional.

2
3 2. The Character of the Work to be Done

4 The character of the work done in this case is complex. This case was a very complex
5 products liability case, from the beginning. After the constructive discharge of Simon, the
6 complications in the case continued. The continued aggressive representation of Mr. Simon, in
7 prosecuting the case was a substantial factor in achieving the exceptional results. Even after the
8 constructive termination, Simon continued to work on the case. At one point, Simon said that he was
9 not going to abandon the case, and he didn't abandon the case. The lack of communication with the
10 Edgeworths made continuation of the case difficult, but Simon continued to work on the case and
11 ended up reaching a resolution beneficial to the Edgeworths.

12
13 3. The Work Actually Performed

14 Mr. Simon was aggressive in litigating this case. Since Mr. Edgeworth is not a lawyer, it is
15 impossible that it was his work alone that led to the settlement of the Viking and Lange claims, for a
16 substantial sum, in the instant case. The Lange claims were settled for four times the original offer,
17 because Simon continued to work on the case. He continued to make efforts to communicate with
18 the Edgeworths and even followed their requests to communicate with Vannah's office. He also
19 agreed to their request of opening a trust account, though in an unusual fashion. All of the work by
20 the Law Office of Daniel Simon led to the ultimate result in this case, and a substantial result for the
21 Edgeworths.

22
23 4. The Result Obtained

24 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
25 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
26 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
27 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
28

1 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
2 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
3 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
4 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
5 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
6 were made more than whole with the settlement with the Viking entities.

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

10
11 (a) A lawyer shall not make an agreement for, charge, or collect an
12 unreasonable fee or an unreasonable amount for expenses. The factors to be
13 considered in determining the reasonableness of a fee include the following:

14 (1) The time and labor required, the novelty and difficulty of the
15 questions involved, and the skill requisite to perform the legal service
16 properly;

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

19 (3) The fee customarily charged in the locality for similar legal
20 services;

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

22 (5) The time limitations imposed by the client or by the
23 circumstances;

24 (6) The nature and length of the professional relationship with the
25 client;

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

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

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

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

(c) A fee may be contingent on the outcome of the matter for which the
service is rendered, except in a matter in which a contingent fee is prohibited

1 by paragraph (d) or other law. A contingent fee agreement shall be in writing,
2 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:

3 (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
4 settlement, trial or appeal;

5 (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;

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

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

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

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

12
13 NRCP 1.5.

14 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
15 the Edgeworths, the character of the work was complex, the work actually performed was extremely
16 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
17 factors justify a reasonable fee under NRCP 1.5.

18 However, the Court must also consider the fact that the evidence suggests that the basis or
19 rate of the fee and expenses for which the client will be responsible were never communicated to the
20 client, within a reasonable time after commencing the representation. Further, this is not a
21 contingent fee case, and the Court is not awarding a contingency fee.

22 Instead, the Court must determine the amount of a reasonable fee. In determining this
23 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
24 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
25 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
26 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
27 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
28

1 continued to work on the Viking settlement until it was finalized in December of 2017, and the
2 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
3 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
4 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
5 himself were continuing, even after the constructive discharge. Though the previous agreement
6 between Simon and the Edgeworths was for \$550 per hour, the Court must take into consideration
7 that the Edgeworths' fee agreement with Vannah & Vannah was for \$925 per hour.

8 In considering the reasonable value of these services, under quantum meruit, the Court is
9 considering the previous \$550 per hour fee from the implied fee agreement, the fee for the Vannah
10 & Vannah Law Firm, the Brunzell factors, and additional work performed after the constructive
11 discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is entitled to a
12 reasonable fee in the amount of \$200,000, from November 29, 2017 to the conclusion of this case.

13 14 **CONCLUSION**

15 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
16 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
17 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
18 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
19 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
20 Simon as their attorney, when they ceased following his advice and refused to communicate with
21 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
22 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
23 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
24 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
25 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
26 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
27 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
28

1 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
2 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.

3
4 **ORDER**

5 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
6 of the Law Office of Daniel S. Simon was previously granted. The Court further finds that it lacked
7 jurisdiction to issue the Fourth Amended Decision and Order on Motion to Adjudicate Lien on
8 September 27, 2022, since the Supreme Court Remittitur had not issued. The Court further finds that
9 the Motion for Adjudication Following Remand is granted in part, as the Court finds that there was
10 ample foundation for the quantum meruit award of \$200,000.00. As such, the reasonable fee due to
11 the Law Office of Daniel Simon is \$556,577.43, which includes outstanding costs.

Dated this 28th day of March, 2023

12 IT IS SO ORDERED.

13
14 
15 _____
16 DISTRICT COURT JUDGE

17 **D39 E59 9E22 C62D**
18 **Tierra Jones**
19 **District Court Judge**
20
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Edgeworth Family Trust,
Plaintiff(s)

CASE NO: A-16-738444-C

7 vs.

DEPT. NO. Department 10

8
9 Lange Plumbing, L.L.C.,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/28/2023

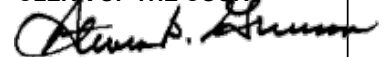
| | |
|----------------------------|------------------------------|
| 16 Peter Christiansen | pete@christiansenlaw.com |
| 17 Whitney Barrett | wbarrett@christiansenlaw.com |
| 18 Daniel Simon . | lawyers@simonlawlv.com |
| 19 Rhonda Onorato . | ronorato@rlattorneys.com |
| 20 Kendelee Leascher Works | kworks@christiansenlaw.com |
| 21 R. Todd Terry | tterry@christiansenlaw.com |
| 22 Keely Perdue | keely@christiansenlaw.com |
| 23 Jonathan Crain | jcraib@christiansenlaw.com |
| 24 Mariella Dumbrique | mdumbrique@blacklobello.law |
| 25 Chandi Melton | chandi@christiansenlaw.com |

| | | |
|----|-------------------------|----------------------------|
| 1 | John Greene | jgreene@vannahlaw.com |
| 2 | | |
| 3 | Tyler Ure | ngarcia@murchisonlaw.com |
| 4 | Nicole Garcia | ngarcia@murchisonlaw.com |
| 5 | Michael Nunez | mnunez@murchisonlaw.com |
| 6 | James Christensen | jim@jchristensenlaw.com |
| 7 | James Christensen | jim@jchristensenlaw.com |
| 8 | Michael Nunez | mnunez@murchisonlaw.com |
| 9 | Daniel Simon | dan@danielsimonlaw.com |
| 10 | Gary Call | gcall@rlattorneys.com |
| 11 | | |
| 12 | J. Graf | Rgraf@blacklobello.law |
| 13 | Robert Vannah | rvannah@vannahlaw.com |
| 14 | Esther Barrios Sandoval | esther@christiansenlaw.com |
| 15 | Christopher Page | chrispage@vannahlaw.com |
| 16 | Aileen Bencomo | ab@christiansenlaw.com |
| 17 | Steve Morris | sm@morrislawgroup.com |
| 18 | | |
| 19 | Rosa Solis-Rainey | rsr@morrislawgroup.com |
| 20 | Zeairah Marable | zmarable@vannahlaw.com |
| 21 | Laysha Guerrero | lguerrero@vannahlaw.com |
| 22 | Claudia Morrill | cam@morrislawgroup.com |
| 23 | | |

24 If indicated below, a copy of the above mentioned filings were also served by mail
25 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 3/29/2023

| | | |
|----|-----------------|------------------------------|
| 26 | Theodore Parker | 2460 Professional CT STE 200 |
| 27 | | Las Vegas, NV, 89128 |
| 28 | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 **NOA**

2 **MORRIS LAW GROUP**

3 Steve Morris, Bar No. 1543

4 Rosa Solis-Rainey, Bar No. 7921

5 801 S. Rancho Dr., Ste. B4

6 Las Vegas, NV 89106

7 Telephone: (702) 474-9400

8 Facsimile: (702) 474-9422

9 Email: sm@morrislawgroup.com

10 Email: rsr@morrislawgroup.com

11 Attorneys for Defendant

12 Edgeworth Family Trust and

13 American Grating, LLC

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

18 Plaintiffs,

19 v.

20 **LANGE PLUMBING, LLC ET AL.,**

21 Defendants.

) Case No: A-16-738444-C

) Consolidated with No: A-
18-767242-C

) Dept. No: X

) **NOTICE OF APPEAL**

22 Please take notice that Plaintiffs Edgeworth Family Trust, American
23 Grating, LLC hereby appeal to the Supreme Court of Nevada from the
24 district court's Fifth Amended Decision and Order on motion to Adjudicate
25
26
27
28

MORRIS LAW GROUP
801 S. RANCHO DR., STE. B4 · LAS VEGAS, NEVADA 89106
702/474-9400 · FAX 702/474-9422

1 Lien, filed on March 28, 2023, notice of entry filed April 24, 2023, and all
2 rulings made appealable by said order.

3
4 MORRIS LAW GROUP

5 By: /s/ STEVE MORRIS

6 Steve Morris, Bar No. 1543
7 Rosa Solis-Rainey, Bar No. 7921
8 801 S. Rancho Dr., Ste. B4
9 Las Vegas, Nevada 89106

10 Attorneys for Defendants
11 Edgeworth Family Trust and
12 American Grating, LLC
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: **NOTICE OF APPEAL**

DATED this 24th day of May, 2023.

By: /s/ CATHY SIMICICH

An employee of Morris Law Group

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 IX)** was served by the following method(s):

☒ Supreme Court's EFlex Electronic Filing System

Peter S. Christiansen
Kendele 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