IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC

Petitioners,

vs.

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

Respondents.

Supreme Court Case No. 86676

(District Court A-16-738444-C)

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VOLUME I OF II

JAMES R. CHRISTENSEN, ESQ.
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Attorney for Respondents

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Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Thu 12/28/2017 3:21 PM

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

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

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

Sent from my iPad

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

> Bob,
>
> I am available tomorrow for a call.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406
>
> ---
>
> **From:** Robert Vannah <rvannah@vannahlaw.com>
> **Sent:** Thursday, December 28, 2017 3:07:06 PM
> **To:** James R. Christensen
> **Cc:** John Greene; Daniel Simon
> **Subject:** Re: Edgeworth v. Viking
>
> I took the liberty of calling Bank Of Nevada and left a message for Sarah Guindy, asking her if we can do exactly what we seem to be agreeing to. I left her my phone number, and am expecting a call back. If she thinks we can do that, we can set up a conference call between you and me and work out the details with her. This seems to be the best way to get this money distributed to Danny and to the clients.
>
> Sent from my iPad
>
> On Dec 28, 2017, at 2:03 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Bob,

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

How about Bank of Nevada?

Jim

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

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

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

Sent from my iPad

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

> Please see attached
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

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

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

Sent from my iPad

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

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

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

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

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

Sent from my iPad

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

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
>
> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
>
> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.

Happy Holidays!

Jim

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

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

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

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

Danny:

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

John

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

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

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

<image001.jpg>

--
John B. Greene, Esq.
VANNAH & VANNAH
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Phone: (702) 369-4161
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--
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jgreene@vannahlaw.com

<Ltr to Mr. Vannah.pdf>

<Zurich_Check[1].pdf>

<Zurich_Check[1].pdf>

<Email string.pdf>

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

January 4, 2018

VIA EMAIL: sguindy@bankofnevada.com

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

Re: Joint Trust Account

Dear Ms. Guindy:

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

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

Sincerely,

VANNAH & VANNAH

JOHN B. GREENE, ESQ.

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

ACPT
ROBERT D. VANNAH, ESQ.
Nevada Bar. No. 002503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
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jgreene@vannahlaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

ACCEPTANCE OF SERVICE OF THE SUMMONS AND COMPLAINT

I, James R. Christensen, Esq., am authorized to and hereby accept service of the Summons and Complaint on behalf of Defendant DANIEL S. SIMON, d/b/a SIMON LAW.

DATED this 9th day of January, 2018.

JAMES R. CHRISTENSEN, ESQ.

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

Electronically Filed
2/20/2018 3:49 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-116-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

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

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ. (Via telephone)
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

Las Vegas, Nevada, Tuesday, February 06, 2018

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

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

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

[THEODORE PARKER, APPEARING TELEPHONICALLY]

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

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

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

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

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

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

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

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

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

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

MR. CHRISTENSEN: I can do it.

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

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

THE COURT: And --

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

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

MR. CHRISTENSEN: It's in the works.

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

MR. CHRISTENSEN: I think it's appropriate.

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

MR. VANNAH: No.

THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Well did --

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

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

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

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

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

MR. PARKER: Yeah.

THE COURT: Okay.

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

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

MR. PARKER: -- what someone just --

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

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

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

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

THE COURT: Okay.

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

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

MR. PARKER: Sounds great.

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

THE CLERK: February 20th at 9:30.

THE COURT: Okay.

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

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

MR. VANNAH: I have, Your Honor.

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

MR. CHRISTENSEN: Yes, Your Honor.

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

In this situation we have common issues of fact. The common issues of fact are the litigation of the case against Viking and Lange and the facts of that underlying litigation, the house flood, et cetera. Common issues of fact are the work of the law office. Common issues of fact are the reasonable fees due the law office.

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

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

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

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

THE COURT: Sorry.

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

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

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

THE COURT: Right.

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

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

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

MR. CHRISTENSEN: Correct.

THE COURT: Yes.

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

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

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

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

MR. CHRISTENSEN: Right.

THE COURT: Yes.

MR. CHRISTENSEN: Exactly.

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

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

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

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

THE COURT: Okay.

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

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

MR. CHRISTENSEN: Right.

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

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

THE COURT: Right.

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

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

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

THE COURT: Uh-huh.

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

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

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

THE COURT: Well, that's --

MR. CHRISTENSEN: -- address it.

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

MR. CHRISTENSEN: There are --

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

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

THE COURT: Okay.

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

MR. SIMON: Higher.

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

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

THE COURT: Yes.

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

documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The case obviously grew into a major litigation, contentious,

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

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

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

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

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

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

THE COURT: This is November of 2017, right?

MR. CHRISTENSEN: Correct, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

So, they made the decision to knowingly abandon that

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

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

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

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

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

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

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

THE COURT: Right.

MR. CHRISTENSEN: -- of the experts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Your Honor.

THE COURT: Okay. Thank you.

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

THE COURT: No, I do not.

Mr. Vannah?

MR. VANNAH: Thank you, Your Honor.

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

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

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

MR. VANNAH: Yes.

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

MR. VANNAH: For his associate.

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

MR. VANNAH: Right. And he --

THE COURT: Okay.

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

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

MR. VANNAH: It's in the --

THE COURT: -- because they both say 275.

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

MR. VANNAH: So for --

MR. GREENE: -- at 550 an hour.

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

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

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

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

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

MR. VANNAH: It's 275 for her.

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

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

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

MR. VANNAH: Sure.

MR. CHRISTENSEN: So that you can move forward.

MR. VANNAH: Sure.

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

THE COURT: 19, okay.

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

THE COURT: Uh-huh.

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

THE COURT: Okay.

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

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

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

THE COURT: Okay. Okay, I see it.

MR. CHRISTENSEN: Okay.

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

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Thank you.

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

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

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

THE COURT: Okay.

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

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

worth and they send you a check.

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

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

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

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

oral -- orally.

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

THE COURT: The e-mail from August?

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

THE COURT: Okay.

MR. VANNAH: -- 2017.

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Right, but it --

MR. VANNAH: It's a done deal.

THE COURT: But the fee dispute --

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

THE COURT: -- is about the settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Right.

MR. VANNAH: It's two million dollars.

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

MR. VANNAH: Then --

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

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

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

THE COURT: Right.

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

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

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

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

THE COURT: But it's for an expert?

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

THE COURT: Oh, okay.

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

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

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

THE COURT: Okay.

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

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

Mr. Christensen, your response.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: It was not.

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

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

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

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

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

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

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

Thank you.

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

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

MR. CHRISTENSEN: Yes, Your Honor.

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

THE CLERK: February 8th at no appearance.

THE COURT: Thank you.

MR. VANNAH: Thank you, Your Honor.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Thank you.

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

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

chambers.

MS. PANCOAST: Okay, great.

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

And thank you, Mr. Parker.

MR. CHRISTENSEN: Teddy's gone.

THE COURT: Teddy's been gone.

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

* * * * * * *

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

Brittany Mangelson
Independent Transcriber

Electronically Filed
3/6/2018 10:26 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-16-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

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

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ.
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

Las Vegas, Nevada, Tuesday, February 20, 2018

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

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

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

THE COURT: Okay.

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

MR. SIMON: I have two --

THE COURT: Mr. Simon?

MR. SIMON: Yes and no, Your Honor.

THE COURT: Okay.

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

THE COURT: Okay.

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

THE COURT: Okay.

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

THE COURT: Mr. Vannah?

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

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

MR. SIMON: Then if --

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

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

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

MR. PARKER: I do.

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

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

THE COURT: Right.

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

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

MR. PARKER: Exactly. And --

THE COURT: And that was my understanding from the last

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

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

THE COURT: Okay.

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

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

MR. VANNAH: It's trivial --

THE COURT: Yes.

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

THE COURT: Okay.

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

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

THE COURT: Well, Mr. Parker --

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

THE COURT: -- if you just giving --

MR. PARKER: -- the --

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

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

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

MR. PARKER: And here's the --

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

MR. PARKER: -- receipt of check.

THE COURT: -- providing the check?

MR. VANNAH: The only problem I have with it Teddy, is it says, Simon Law, I don't think --

MR. PARKER: You can --

MR. VANNAH: -- I should --

MR. PARKER: -- scratch that out.

MR. VANNAH: Okay.

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

MR. VANNAH: You do, you do.

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

MR. VANNAH: No problem.

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

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

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

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

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

THE COURT: Okay.

MR. PARKER: -- believe.

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

MR. PARKER: And I have no problems signing it. But I think I spoke with Ms. Pancoast and --

THE COURT: Okay.

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

MS. PANCOAST: Yes.

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

THE COURT: Okay. And I think it was sent while Mr. Parker was out of town--

MS. PANCOAST: Yes --

MR. PARKER: That's correct.

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

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

THE COURT: -- contacted you.

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

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

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

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

THE COURT: Yes.

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

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

THE COURT: Yes.

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

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

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

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

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

THE COURT: Okay.

MS. PANCOAST: -- Your Honor.

THE COURT: Okay.

MS. PANCOAST: And just call your chambers --

THE COURT: Okay.

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

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

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

MR. SIMON: I just want to --

MS. PANCOAST: Does anybody have objection to that?

MR. SIMON: I just want to make sure that Mr. Vannah does not have an objection to --

MS. PANCOAST: Okay.

MR. SIMON: -- the stip. --

THE COURT: Okay.

MR. SIMON: -- and it's ok.

THE COURT: Mr. Vannah are you comfortable reviewing that right now or do you need more time?

MR. VANNAH: No. That's fine. It's just a straight dismissal right, Janet?

MS. PANCOAST: Yes. It's just dismissal, but there's all sorts of cross claims and it's got all the cross claims and everything --

MR. VANNAH: Everything's fine?

MS. PANCOAST: -- it just --

MR. VANNAH: Fine, I'm fine with it.

MR. SIMON: The entire action now --

MR. VANNAH: Yes. I'm happy with it --

MR. SIMON: -- is what this is.

THE COURT: Okay.

MR. VANNAH: -- that's great.

THE COURT: Okay, so you're ok with that Mr. Vannah?

MR. VANNAH: Sure. Sure.

THE COURT: Okay, so --

MR. PARKER: May I approach?

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

MR. VANNAH: Yes.

THE COURT: Okay.

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

THE COURT: No, if Mister --

MR. PARKER: If you --

THE COURT: -- Parker's --

MR. PARKER: -- have it -- if you have it with you, I will sign it right now. If the Court has it, I will sign it right now.

THE COURT: And let me see if I can -- can you email Sarah and ask her? We'll get --

MR. PARKER: I'll sign it right here.

THE COURT: -- my law clerk to bring that in here, --

MR. PARKER: No problem.

THE COURT: -- and then we'll get you to sign it while you are here --

MR. PARKER: Sounds great --

THE COURT: -- Mr. Parker.

MR. PARKER: -- Your Honor.

THE COURT: Okay. The next thing is Mister -- Defendant Daniel -- as Simon doing business as Simon Law's Motion to Adjudicate the Attorney Lien of the Law Office of Daniel Simon PC on the Order Shorting Time. I did receive a supplement, Mr. Christensen that you filed. Mr. Vannah, have you had an opportunity to review that? Mine is not file stamped, I believe this was my courtesy copy, but I read it.

MR. VANNAH: Mr. Greene reviewed it, and can --

THE COURT: Okay, so you guys have had an opportunity to review that?

MR. GREENE: Correct, Judge.

MR. CHRISTENSEN: It was electronically filed February 16th, 11:51 in the a.m. --

THE COURT: Okay.

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

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

MR. CHRISTENSEN: -- it was served.

THE COURT: -- it was Friday. I appreciate the courtesy copy just to make sure that I got it because sometimes there's a little bit of a delay in Odyssey. So, I appreciate it and I have read it.

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

THE COURT: Well, I mean, this is -- that's up to you Mr. Vannah did you want to respond to the supplement?

MR. VANNAH: We could as quickly, orally.

THE COURT: Okay.

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

THE COURT: Okay, Mr. Greene.

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

MR. GREENE: We just believe it's -- of course it's a rehash, it's a -- it's just repainting the same car, Your Honor. We believe the arguments have been adequately set forth. But even with the case law seminar, it's different. This is a motion to seek attorney's fees for a prevailing party, following litigation in which the parties decided to have a bench trial.

Ours is different. Ours is a independent case seeking damages from Mr. Simon and his law firm, for the breech of contract for conversion, and it's based upon a Constitutional right to a trial by jury. Article I, Section 3. Different apples and oranges, distinguishable case,

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

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

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

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

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

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

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

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

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

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

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

Mister --

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

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

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

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

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

THE COURT: Okay.

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

MS. PANCOAST: And --

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

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

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

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

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

MS. PANCOAST: -- I'm done.

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

MR. PARKER: That's exactly

THE COURT: -- you were saying.

MR. PARKER: -- exactly right.

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

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

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

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

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

THE COURT: Well --

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

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

MR. VANNAH: Agreed.

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

MR. VANNAH: That's fine.

THE COURT: Okay.

MR. CHRISTENSEN: Your Honor, I --

THE COURT: Thank you.

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

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

MR. CHRISTENSEN: -- as quickly as possible.

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

MR. CHRISTENSEN: Okay.

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

MR. CHRISTENSEN: Okay.

THE COURT: And Judge Wiese will accommodate anything.

MR. CHRISTENSEN: Well --

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

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

THE COURT: Right.

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

THE COURT: Sure.

MR. CHRISTENSEN: -- NSC?

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

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

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

MR. PARKER: Yes.

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

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

THE COURT: Yes, Mr. Christiansen.

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

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

THE COURT: Okay.

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

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

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

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

MR. VANNAH: Me too.

MR. CHRISTENSEN: And --

MR. VANNAH: About 40 years.

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

THE COURT: Okay --

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

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

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

MR. VANNAH: I understand.

THE COURT: Okay?

MR. CHRISTENSEN: Thank you, Your Honor.

MR. PARKER: Thank you, Your Honor.

THE COURT: Ms. Pancoast?

MR. CHRISTIANSEN: Thank you, Your Honor.

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

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

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

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

MR. PARKER: Oh --

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

MR. PARKER: -- okay, perfect.

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

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

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

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

THE COURT: Okay.

MS. PANCOAST: -- because this is attorney client communications, what was said in Court is, you know -- we're out of it.

THE COURT: No, and I understand, and so we will have the same objections from Mr. Parker logged in on behalf of your client.

MS. PANCOAST: Thank you, Your Honor.

THE COURT: You're welcome.

Okay.

MR. SIMON: Hold on a second.

THE COURT: Uh-oh.

MR. SIMON: Your Honor, just while --

THE COURT: Yes, Mr. Simon.

MR. SIMON: While we're still on the record, I'm giving Mr. Vannah the settlement check from Mr. Parker. He's going to have his clients endorse it and then return it to my office, where I can endorse it and put it in the Trust account.

THE COURT: In the --

MR. VANNAH: Yes.

THE COURT: -- Trust account that's already been established.

MR. SIMON: Yes.

MR. VANNAH: That will be just fine, sure. --

THE COURT: Okay. That --

MR. VANNAH: -- that will work.

THE COURT: -- record will be made, thank you.

MR. SIMON: Thank you, Thank you Your Honor.

MR. PARKER: Thank you, Your Honor.

MR. VANNAH: Thank you.

THE COURT: Thank you.

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

* * * * * * *

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

Brittany Mangelson
Independent Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

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

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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thing left in the case, at that point, was to do the releases. They looked at the release and signed them, the case was settled, so I --

THE COURT: But this is prior to the Lange settlement, but this is the settlement with --

MR. VANNAH: But there was an offer --

THE COURT: -- Viking?

MR. VANNAH: -- there was an offer on the table in Lange.

THE COURT: Okay. So, the offer was still pending, but Lange had -- Lange hadn't settled?

MR. VANNAH: It hadn't settled.

THE COURT: Okay.

MR. VANNAH: It was on the table, and there was an offer. The clients asked me to look at it. Mr. Simon gave me the information. We talked. I looked at it and I concluded that the best interests in the clients, in my opinion, was -- my advice to them was, you know what, if I were you, rather than to continue with Danny on this case and bring in somebody else, just take the settlement; accept it. That was it, that was my advice, accept the settlement. They wanted me to put that in writing, I put it in writing, and I explained it to the client and, based on everything we're looking at, they wanted to accept it; please accept the settlement.

The communication had broken down really badly between the clients, you know, the client and the other lawyer. So, I said, look, you know, it doesn't seem to me a great idea for you guys to be having meetings and stuff. My clients don't want to meet with you anymore, but you are counsel of record, go ahead and finish it up, do the releases,

and sign whatever you have to do to get the Lange settlement done. Just accept it. Accept it and whatever you have to do, that's it. Do what you have to do with the Judge, and you do that.

I'm not -- I'm not substituting in as counsel. I'm not associating as counsel. I made that very clear. You guys are counsel of record. If you want to withdraw -- if that's your threat, you're going to withdraw from the case, you can withdraw, but if you withdraw from the case at the last minute, and I have to come into the case because you withdraw and spend 40, 50 hours bringing myself up to speed, you know, I -- the client is not going to be very happy about that. And I'm not even sure Your Honor would allow them to withdraw with that going on. The case was over. I mean, the $600,000 settlement had been made. It was over, signed and gone --

THE COURT: Six million, Mr. Vannah? Six million?

MR. VANNAH: Six million, I'm sorry. And the settlement for the 100- was on the table, and my sole part in that was to say my clients want to accept it, do whatever you got to do to accept it, which is his obligation. And he did, accepted it, and then we came to court because you wanted me to be in court when this thing went down to just express our opinions that we're happy with that. We had that settlement agreement with Teddy Parker who was hearing everybody, and then I wasn't going to say anything, but I asked to say that -- stand up and say that's what the client wants to do, and I said, yeah, I'm communicating, they're here too, but that's what they want to do. They want to settle the case. Now that's it.

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

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

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

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

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

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

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

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

Q What were you billing at per hour?
A $150 --
Q That's what I said. I'm sorry, I said buck-fifty.
A That's not what you said that I was doing. You said I billed on the case on $150 an hour. Just to clarify what I billed on.
Q And in fact -- and if you want to look at what you think attorneys should be paid at, I mean, you're paying very fine lawyers, Mr. Greene and Mr. Vannah 975 bucks an hour, right?
THE COURT: 925, Mr. --
MR. CHRISTIANSEN: 925. Sorry. My eyes are terrible, Judge. I apologize.
THE WITNESS: Correct.
MR. CHRISTIANSEN: Mr. Vannah wishes it was 975.
MR. VANNAH: Probably should be, but I'm not trying to get quantum meruit here.
BY MR. CHRISTIANSEN:
Q Now, you're willing to pay lawyers to come sort of button up a settlement at 925 an hour, fair?
A When somebody threatens me, yes.
Q Okay. And that wasn't litigating a complex product case, fair?
A Pardon me?
Q Mr. Vannah and Mr. Greene didn't come in to litigate a complex products defect case. Isn't that true?
A They're litigating a pretty complicated case.

Q And for that they're fudging or disputing with you what Mr. Vannah's worth. You're willing to pay him 925 an hour?

A I had little choice.

Q And Mr. Greene as well?

A Correct.

Q And as I read your first affidavit, Mr. Edgeworth -- because you took it out of the second two -- in your first affidavit, you told Her Honor that the case blossomed in the fall of 2017, right?

A Late summer.

Q I'm sorry?

A Yeah, later summer, early fall.

Q That's not what you said. You said fall.

A Okay.

Q Did you say fall, or did you say summer?

A I don't know. Why don't we look? I'm not sure.

Q I mean, it's convenient today you're trying to make it summer, because in the affidavit, you said fall, right?

A Can I see the words, please?

Q Just tell me if you remember what you said.

A No, I do --

Q I'll show them to you.

A -- not remember.

Q All right. Paragraph 11, I think is the --

THE COURT: And which affidavit, is this Mr. Christiansen.

MR. CHRISTIANSEN: This -- the February 2nd one, Your

A I didn't want 5, I wanted 5 in the proposal, that's correct.
Q All right. Now, let's fast forward, I'm going to leave some of this here, and try to get you through the timeline, Mr. Edgeworth, before the end of today. And your last estimate was October the 5th, and your case was worth, in your view, $3,764,000 and change. The case settles, on or near November the 10th, right, within about a week?
A About, yeah.
Q Like when I say settle so I'm being technical with you, the figure was agreed to? The mediator's proposal was accepted?
A November 15th.
Q And after that you went to Mr. Simon's office and had a meeting. On the day he had court he had to come see Judge Jones, and do some things in your case?
A Yeah. He texted me.
Q And you brought your wife?
A Correct. Well, I didn't bring her, she came.
Q Well, your wife was in attendance with you?
A Correct, yes.
Q And this is the meeting that you felt threatened?
A Definitely.
Q Intimidated?
A Definitely.
Q Blackmailed?
A Definitely.
Q Extorted?

A Definitely.
Q How big are you?
A 6' 4".
Q How much do you weigh?
A Two-eighty.
Q Danny goes about a buck-forty soaking wet, maybe with nickels in his pocket. He was extorting and blackmailing you?
A Definitely.
Q He threatened to beat you up?
A I didn't say that.
Q Because you write a letter, an email to him saying, you threatened me, why did you treat me like that?
A No.
Q Did you tell him in the meeting, you're threatening us, stop it, you're scaring me?
A I didn't say I was scared, sir.
Q And at the meeting Danny is trying to come to terms with what you told me had never been -- terms have never been come to, which is the value of his services for a punitive damage award, correct?
A I'm not really sure what he was trying to do. He kept saying, I want this, I want that. He said, very many things, but he never defined them all.
Q All right.
A It was a very unstructured conversation.
Q And you told the Court that he tried to force you to sign

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: See you guys tomorrow.

[Proceedings concluded at 4:33 p.m.]

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

_____

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

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

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

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A I have no idea.

Q And, sir, remember right before or sometime in my last session with you we talked about the volleyball emails that we've sort of all referred to that way, and then how it came about you felt the way you felt. Remember those discussions?

A Yes.

Q And you told the Court on questions from Mr. Greene that you felt threatened when you got Mr. Simon's November 27th response to your November 21st email; do you remember that?

A Correct.

MR. CHRISTIANSEN: And just so I'm clear, John, this is exhibit -- Mr. Greene, this is Exhibit 40.

MR. GREENE: Okay.

MR. CHRISTIANSEN: Okay.

BY MR. CHRISTIANSEN:

Q And that's -- so we're all clear, this is -- Mr. Simon's November 27th letter is exactly what you had told him you wanted; something in writing, fair?

A Something in writing, correct.

Q In response to your November 21st breakdown that you could evaluate yourself?

A Correct.

Q And this was -- you told him that on the, I think you recalled specifically, the November 25th phone call where you said, I've had enough?

A Correct.
Q Give it to me in writing?
A Correct.
Q And the way it ends, and Mr. Greene shows you this, it says, if you're not agreeable, then I cannot continue to lose money to help you. I'll need to consider all options available to me.
A Correct.
Q Did it say in this letter that he would try to ruin your settlement?
A Yes, I think that does.
Q That says I'm going to try to ruin your settlement?
A In context with what was said in his office, definitely.
Q That's sort of like when you made yourself fill out an application to get checked at the volleyball club, right? That's like a self-imposed distress, because that's not what the words say, right, sir?
A No. The implication is clear.
Q The words don't say that, right?
A Yes, they do, sir.
Q Does it say withdraw?
A No.
Q That was something you were worried about?
A Yes.
Q That was another self-imposed distress, correct?
A No.
MR. CHRISTIANSEN: I'm sorry, Your Honor. I'm almost

trying to be obstructive. Il was just trying to make sure I understood.

THE COURT: No, I think you were trying to clarify things in case Mr. Christiansen was confused, but I think I understood you to say --

MR. VANNAH: Yeah.

THE COURT: -- did you previously pay for the reading of these emails in any of those previous bills that you know.

BY MR. CHRISTIANSEN:

Q And I think, Mr. Edgeworth, your answer was you don't know?

A No. My answer would be yes, because they're detailed all the way -- thousands of lines above every single email.

Q Okay. And you would agree because of all the things we've talked about, there's never been, to your knowledge, a conversation from Mr. Greene to Mr. Simon saying, hey, explain this stuff to me. I mean, clearly, there's still some discrepancy, right?

A I don't know what Mr. Greene said.

Q All right. And the document -- I'm trying to grasp -- I'm trying to talk to you just about the last thing Mr. Greene did, which was the November 17th meeting that when we start, you had told me a document was placed in front of you, and you were asked to sign it.

A It was on his desk, and he insisted that we come to an agreement, sign the agreement before we leave. We asked for the document, he had never given to us until we got the email 10 days later.

Q Do you agree that just now, you told Mr. Greene you never actually saw what he wanted you to sign?

A No, I couldn't like grasp it. I couldn't grab it.
Q Okay. So, you couldn't tell the Judge what it looked like?
A No.
Q You couldn't tell the Judge details of it?
A No.
Q You couldn't tell the Judge what it was entitled?
A No.
Q All right. And then your testimony over lunch became that you were prevented from leaving with it, correct?
A Prevented? Maybe not -- that's not the right term. We weren't allowed to have it. He would not give it to us until we agreed --
Q So, in other words, you asked? You said, Danny, can I have those documents on your desk and take them with us?
A My wife insisted on we having something driving home to read, yes.
Q You asked and he refused. He said, you can't have these documents.
A He said not until we come to an agreement.
Q Okay, but you don't know what the documents were?
A Well, the new fee agreement would be my assumption.
Q Okay. So, you're just assuming, again?
A Yes.
Q Thanks, sir.
THE COURT: Any follow-up on that, Mr. Greene?
MR. GREENE: No, Your Honor.

MR. VANNAH: Thank you, Your Honor.

THE COURT: Thank you.

[Proceedings concluded at 4:29 p.m.]

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

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Jessica B. Cahill, Transcriber, CER/CET-708

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

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

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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pressing me, right. There's an email from -- while Brian's in -- well, Brian's in China, unavailable, no phone calls, no emails with me. He now has Angela stepping up, typing all these emails, saying hey, where's the Viking Settlement Release, where is it, where is it, where is it, get it to us. And I just got back in town from a vacation over Thanksgiving.

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

THE COURT: Okay. But you hammered out the terms of the release of that final agreement?

THE WITNESS: Before I was fired, yeah.

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

THE WITNESS: Yes.

THE COURT: And then were you present when the Edgeworth's signed that document?

THE WITNESS: Nope.

THE COURT: Okay. So, when did you see the signed copy?

THE WITNESS: When Mr. Vannah's office delivered it to me to then forward it to Viking counsel.

THE COURT: But you received it from Vannah's office?

THE WITNESS: Correct.

THE COURT: Okay.

THE WITNESS: And just one other note. I didn't explain any

A Right. But I'm just trying to clarify a timeline --

Q No, I understand.

A -- for everybody.

Q And I just don't have that.

THE COURT: Okay. Do you know when you received the letter, Mr. Simon?

THE WITNESS: Yeah. So, how this letter is going to come about, just so the Court and Mr. Vannah understands the mediator proposal, so Mr. Hale sends the mediator proposal to both parties at the same time.

THE COURT: Right.

THE WITNESS: Ms. Pancoast then responded at some point in time to Mr. Hale only.

THE COURT: Okay.

THE WITNESS: She doesn't copy me on that.

THE COURT: Right.

THE WITNESS: Right. And so, she has these conditions attached, in addition to his mediator's proposal.

THE COURT: Okay.

THE WITNESS: Right. So then at some point in the future Mr. Hale calls me up and says, hey, did you get my mediator's proposal? What do you want to do with that? Which kind of gives me the big red flag that Viking's going to do it. So, when I let Mr. Hale know that we're going to move forward on that, there was no discussion really about confidentiality clauses and all this other stuff with the Lange claims stuff.

So, I said I didn't understand all that, so I think he forwarded me Ms. Pancoast's stipulations to accepting the mediator proposal.

THE COURT: Okay.

THE WITNESS: So, she's only accepting the mediator proposal technically in theory, with some additional terms.

THE COURT: Okay. But this proposal --

THE WITNESS: Is that fair?

THE COURT: -- when did you receive this letter from Floyd Hale, do you know?

THE WITNESS: It would have been after we agreed in principle, to the number.

THE COURT: Okay.

THE WITNESS: Because there were additional terms that were a lot different, I think than what was suggested. And so, I wanted Brian to know immediately --

MR. VANNAH: Well, let me -- there's no question --

THE WITNESS: -- about the confidentiality stuff.

MR. VANNAH: -- pending at this time, right? I've got some questions.

THE WITNESS: Okay. Fair enough.

THE COURT: Okay. Go ahead, Mr. Vannah. I just wanted to know, because I believe you were about to talk about something that occurred on the 16th, and I didn't know that they were related.

MR. VANNAH: They are. Well, they are, Judge.

BY MR. VANNAH:

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

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

THE COURT: Is it somehow related to these texts?

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

THE COURT: The Viking settlement?

MR. VANNAH: Yes.

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

MR. VANNAH: Okay.

MR. GREENE: Okay.

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

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

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

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

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

MR. CHRISTENSEN: It was just handed to me.

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

[Counsel reviews document]

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

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

resolve--

MR. CHRISTENSEN: -- last week.

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

MR. VANNAH: Yes.

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

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

THE COURT: Okay.

MR. GREENE: That's the --

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

THE COURT: Is this Number 11?

MR. GREENE: Yes, Your Honor.

MR. VANNAH: It is.

THE COURT: Okay.

[Court and Clerk confer]

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

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

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

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

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

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

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

MR. CHRISTENSEN: Let me just get through this.

MR. VANNAH: Okay.

[Counsel reviews document]

MR. CHRISTENSEN: Okay.

THE COURT: Do you have any objection to 12?

MR. CHRISTENSEN: No, Judge.

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

[Plaintiff's Exhibits 11 and 12 received]

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

MR. VANNAH: All right.

BY MR. VANNAH:

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

A Yeah.

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

agreement regarding Viking, right?

A Yeah.

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

A Yes.

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

A It must have been after that.

Q The next day or so, right?

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

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

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

Q Well --

A Yes.

Q Thank you.

A Yes. I get you.

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

A Okay.

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

A Okay.

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

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

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

A I don't do that.

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

MR. VANNAH: Okay.

THE COURT: -- Mr. Vannah --

MR. VANNAH: All right.

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

is what it is.

BY MR. VANNAH:

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

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

A Be added to the check?

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

A Oh.

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

A Okay.

Q Okay?

A I don't disagree with that.

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

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

Q No, I --

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

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

A I'm sorry, what?

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

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

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

A Yes.

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

A I guess so.

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

A I'm with you.

Q It says:

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

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

> 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 herby assume full

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

Did I read that right?

A You did.

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

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

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

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

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

A Yeah.

Q Okay.

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

Q Got you. So --

[Counsel confer]

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

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

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

MR. VANNAH: Thank you.

BY MR. VANNAH:

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

A Can you slide it over just a hair?

Q I sure can, I'm sorry.

A There we go.

Q Yeah.

A Yeah. It looks like it.

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

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

Q That is dated November 30th --

A Oh, okay. You're involved now.

Q -- 5:30, right.

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

MR. VANNAH: Help me.

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

MR. CHRISTENSEN: Your Honor, may I approach the

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

THE COURT: Okay.

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

THE COURT: Sure.

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

UNIDENTIFIED SPEAKER: Almost there? Oh, yes.

THE COURT: This might assist you.

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

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

MR. GREENE: All right. Beautiful.

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

BY MR. VANNAH:

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

A Yes.

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

A Correct.

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

Vannah and Vannah, right?

A Right.

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

Right? Is that what you're saying?

A Through your office.

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

A Oh, through my office, okay.

Q Through your office.

A Oh, yes. Okay.

Q We're going to finalize --

A I'm with you.

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

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

A Yep.

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

modifications, right?

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

Do you see that? Did I read that right?

A Yep.

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

A I guess, based on

Q What --

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

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

A Yep.

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

Do you see that?

A Yes.

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

A Yep.

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

Do you see that?

A Yes.

Q Lange would then dismiss their claims against Viking,

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

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

Do you see that?

A Yes.

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

A Based on your direction, yes.

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

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

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

Grating vs. Daniel Simon d/b/a Simon Law.

Mr. Simon, I'll just remind you that you are under oath. You can have a seat. You don't have to be sworn again. We just do it by the day in this -- by the day.

MR. SIMON: Thank you, Your Honor.

THE COURT: Mr. Vannah, whenever you are ready.

MR. VANNAH: I am ready.

BY MR. VANNAH:

Q Before the break, I just had a couple things I just wanted to wrap up and so -- because the Judge had asked about them yesterday, to make it clear.

Going back to the two settlements. I call it the Viking settlement and the Lange settlement. You're familiar with who I'm talking about, right?

A Yes, sir.

Q That's where all that money came from, right? Those two people?

A Yes.

Q All right. With the emails that we went through, you were first notified by my office that we were going to assist the clients with their personals questions on November 30th, that's when we first told you that, right?

A Correct.

Q That morning, before you found out that they had come to see us, that morning, you had gotten a -- sort of a draft of a settlement

agreement with Viking and presented it to the client. Do you remember that?

A Correct.

Q And then that same day, the first -- the day that you said here's the settlement agreement, you presented it and then that's after you presented the settlement agreement, you found out that we were going to be participating with giving them advice, right?

A Correct.

Q Then, at that point in time, when you realized we were going to be participating, the first thing we told you is, hey, you know what, that proposed settlement agreement's fine, wrap it up, right? The Viking settlement agreement. We don't have any objections to it. I can go back over that, but I mean I just want to make sure that's clear with the Judge.

A You had no objections to it?

Q Yeah. I can show you. I said to you, clients are agreeable, wrap it up. I'll show it to you.

THE COURT: And that's in an email, right, Mr. Vannah?

MR. VANNAH: Yes.

THE COURT: Yeah, that we saw earlier this morning.

Do you remember the email we saw earlier right before we went to lunch?

THE WITNESS: I understand. The Gmail email?

THE COURT: Yes.

BY MR. VANNAH:

Q Yeah. Well, whatever it is, yeah.

A Okay. All right.

Q I call it the email, but it's Gmail. Is that fair to say?

A That's fine.

Q All right. So, you get a proposed settlement agreement, you show it to the clients, you don't know we have any involvement at that point. We had been retained the day before, I think. Well, that's the 29th. Is that all -- that's all in 29, so I guess we were retained that day.

THE COURT: The email's on the 30th, Mr. Vannah.

MR. VANNAH: We were retained the day before, the 29th.

THE COURT: Yes.

MR. VANNAH: Thank you, Judge.

BY MR. VANNAH:

Q So we were retained on the 29th, the 30th, you don't know we're retained yet because you haven't gotten a retainer -- you haven't gotten our email from us yet, or whatever it is. We, however, we communicated with you.

When you first went over and got the settlement agreement with the Viking and presented it to the client, it was after that we called and said, hey, we're going to be helping the client execute this settlement agreement, right?

A You confirmed that you were going to advise the client about the terms of the settlement.

Q Right.

A And the release.

Q Right. So, what happened is right after that, after we got the

settlement agreement that you had negotiated, the first one, I said, the clients are fine with it. They don't care about the -- just go ahead, they're willing to sign it as is, right? I told you that?

A I guess I would like to see the email.

Q I have no problem with that.

A Just so we know what we're talking about.

Q Yeah. No, because it seems to be a point that the Court intervened, so I'm going to make sure we're clear on the time, so.

A You have to hunt it down. I'm sorry about that.

Q No, that's no problem.

A You want to move on to something else, I'll photograph that.

Q No, I don't. I want to wrap this -- I want to nail this thing down.

THE COURT: It's the Gmail, it's going to be your 12.

MR. GREENE: It is. It is, Your Honor, and I'm trying to find out where in the heck it was stashed. We had that from last year.

THE COURT: Well, I have mine. Mr. Vannah, do you want to just approach and get mine?

MR. VANNAH: Do you mind?

THE COURT: That will be easier.

MR. VANNAH: Yeah, if you don't mind. Thanks, Judge.

THE COURT: Uh-huh.

MR. GREENE: Like I said --

THE COURT: Sorry, I think our equipment took a lunch break, too, so it has to warm up.

MR. VANNAH: Okay.

MR. GREENE: I think goes together.

MR. VANNAH: It just zooms in [indiscernible] now.

THE COURT: It usually starts after it warms up, Mr. Vannah.

MR. VANNAH: That's how I feel in the morning, actually. It's pretty much what I see.

THE WITNESS: Is it out of focus, Your Honor?

MR. VANNAH: You have no idea. So, I'm stepping aside there.

MR. GREENE: You're not pushing anything?

MR. VANNAH: I'm touching nothing. I'm sorry I'm spending a lot of time on this, but I just want to get it straight as --

MR. GREENE: Okay.

MR. VANNAH: -- so we're once and for all clear.

BY MR. VANNAH:

Q All right. So, stay with me here a minute.

MR. GREENE: You have to push up that minus so the full page can get in, and that will --

MR. VANNAH: Just stay here. Just stay here, don't go away.

MR. GREENE: Okay.

BY MR. VANNAH:

Q So this is from Danny Simon to John Greene, and to Brian and Angela Edgeworth. Remember? All right. And this is dated November 30th at 5:30 p.m., right?

A I'm with you.

Q All right. I know you are. Okay. I just want to -- I want to get to a question. That's when you say, please find attached the final settlement agreement. Please have clients sign as soon as possible to avoid any delay. And it was signed the next day, right, December 1st? I would show it to you, but it was.

A Yes.

Q Okay. So, you sent over the final at 5:30 in the afternoon on November 30th. The next day we got the clients to sign it, and they sent -- we sent it back to you, right?

A Yes.

Q All right. At that point, Viking's -- that is a completed settlement agreement, right?

A On December 1st?

Q December 1st.

A Yes.

Q Okay. And that's when it says, this shall confirm that your office is advising them about the effects of the release and representing them to finalize settlement through my office. Also, I first received a call from you this morning, advising the clients wanted to sign the original draft of the settlement agreement as is.

Do you see that?

A Yes.

Q So on the morning of November 30th, our office said, look, you know what? Our clients don't care, they will sign the original draft, so send it over. Then you went out and were able to secure what you

felt were better terms.

A Correct.

Q And sent it over and said, I even did a better job. Here it is, get them to sign it. And the next day it's signed and returned to you, right?

A Yep.

Q Okay. There was a Paragraph E in there.

A Yes.

Q And paragraph E talked about the fact that Vannah and Vannah, instead of personal counsel, is advising the clients on the effects of the settlement and they understand it, right?

A Correct.

Q I had nothing to do with any part of drafting the settlement agreement to your knowledge, right? I mean I didn't even know who Joel Henriod was. You did that, you and Mr. Henriod put that paragraph in there?

A Right. You were new counsel of record and you had to go in there.

Q Yeah. Well, I don't have a problem with that --

A Okay.

Q -- but I didn't put it in there?

A No. I don't think you put it in there.

Q Okay. I mean I --

A But you reviewed it when they signed it.

Q Sure. No, I reviewed the first one and said they will sign it.

A That's true.

Q Did the economics of the case make any sense at $550 an hour, at the outset?

A No.

Q Why not?

A Because it's a $500,000 property damage claim. And if you read my first email chain, I make it abundantly clear that this case did not make any sense to me. I didn't really want to be involved, and he wanted -- he met with Mr. Marquis, but he didn't want to pay Mr. Marquis. Mr. Marquis wanted a lot of money, and he knew that he was going to go off to the races and start billing him a lot of money, which didn't make sense for this type of case. And so that's why I got involved.

Q So if it didn't make sense from either the client's perspective, or the lawyer's perspective to pursue the case if Mr. Edgeworth didn't have a friend to turn to, there's no $4 million recovery so far, correct?

A I would agree with that.

Q Well, what was your risk of loss?

A Substantial.

Q Can you explain that?

A My lost opportunity to work on other cases, which could have yielded cumulatively probably more than I'm asking for here in this court. My risk of loss is proven in those binders right there, that are emails, over 2,000 emails that Mr. Edgeworth was just peppering our office with, all day, all night, all weekends, all holidays. It was a relentless -- a relentless abuse of our time. And those were not included,

and that represents my risk of loss right there.

Because during the pendency of the case -- I mean, there's at least 200 hours that could not be recovered in trying to recreate the bills in this super bill, to show this Court our time expended, and that was not included. And even at 550 an hour, that's $700,000 that Mr. Edgeworth was not billed for during the case. That's some skin in the game, that's risk of loss to me. Because if this case doesn't turn out, that's time I ate.

But now that there is a recovery I expected to be paid a reasonable value of my service, which they refuse to do, which is why we're here today.

Q Let me give you a hypothetical. If you had fully billed Mr. Edgeworth for all the time expended in the case, including emails, what have you, at $925 an hour, would you have suffered a risk of loss?

MR. VANNAH: Object as irrelevant, at $925 an hour? There's been no evidence that he had an agreement for that amount.

MR. CHRISTENSEN: Judge, we're trying to set a reasonable fee here. We already have evidence in the case that the client's willing to pay 925. We have evidence in the case from their fee agreement, that working on the case, at least from some, at least from one point-of-view is worth 925 an hour, and I'm asking a question of Mr. Simon to determine where his risk of loss would end; 925 is a --

MR. VANNAH: And my --

MR. CHRISTENSEN: -- fair number.

MR. VANNAH: My objection, 925 an hour, there's been no evidence whatsoever --

THE COURT: Well, they have in evidence that they're paying 925.

MR. VANNAH: Yeah. They're paying me 925 an hour, and I'm not Danny Simon.

THE COURT: Right.

MR. VANNAH: And I'm not doing what Danny Simon was supposed to be doing. I'm in a completely different situation. There's lots of reasons my hourly fee is what it is, and it has nothing to do with him.

THE COURT: Okay.

MR. VANNAH: Whatever I'm charging, and why I'm charging that, and whatever -- you know, for example, it's not great being here, Mr. Simon is a friend of mine, I've always considered him a friend. I don't think that -- I think our friendship has been damaged by this. I get referrals from other lawyers. I doubt I'd ever get a referral from Mr. Simon, they never would have anyway, but bottom line is, there are reasons I charge what I charge.

So, to take my fee, in this case, which shouldn't have been given to him anyway, but taking my fee in this case and saying that's a reasonable fee, because that's what I charge, I'm in a totally different situation. And it just it's -- it is not relevant to anything. There's no evidence that he ever was billing 925 an hour.

THE COURT: Right.

MR. VANNAH: He's --

THE COURT: He billed 550 an hour.

MR. VANNAH: Yeah. So, the idea to get my fee agreement was to show when they hired me, and now I see it being used in every way possible, that's way beyond what was relevant.

THE COURT: Okay.

MR. VANNAH: I meant, it's just not relevant. Why not pick $10,000 an hour, what maybe O.J. Simpson might have paid for somebody to get him off from killing somebody. Why not pick any number at all? But the bottom line there's no relevancy to those numbers, the number is 550 an hour, that's the only number we've got to work with.

THE COURT: Okay.

MR. CHRISTENSEN: May I, Your Honor?

THE COURT: Yes.

MR. CHRISTENSEN: Thank you, Your Honor.

It's not only Mr. Vannah being paid at 925 an hour, it's also Mr. Greene. So, it's a little bit broader than what he says. The issue concerning the relevancy at the outset upon production was that it had to do with timing and the issue of constructive discharge. Now that the document is produced and we were able to read the document, it's now apparent that the document has broader relevancy.

Because the agreement states that they were going to work on the Viking case. It's not just suing Danny Simon, and as a matter of fact that's not even mentioned in the agreement.

THE COURT: I've read the agreement.

MR. CHRISTENSEN: What's mentioned in the agreement is

working on the Viking case, and that's what we're here to talk about.

THE COURT: Okay. I'll allow it. Mr. Vannah, your objection is overruled. Mr. Simon, do you remember what the question was?

THE WITNESS: He was referencing what my risk of loss would be if I was able to apply the 925 an hour.

BY MR. CHRISTENSEN:

Q May I repeat it?

A You may.

Q Okay. If you had fully billed your time, all of your time, including late night phones that weren't captured, emails, everything, at the rate of $925 an hour, would you have suffered a risk of loss?

A I think if I was able to include my time, even the several hundred hours that I could not have recovered, it would be well over $2.4 million.

Q Would you have suffered a risk of loss?

A No.

Q Okay. There was some confusing questions concerning a Federal tax burden that might be placed on any liquidation of Bitcoin holdings by Mr. Edgeworth; do you recall that?

A I recall the question.

Q Are you familiar with the long-term capital gains' rate?

A Not so much.

Q Okay. The interest rate was 30 percent on the loans taken out by Mr. Edgeworth?

A Closer to 35, 36 percent.

Q We have a little bit of a timeline issue, that I'd like to address, if I could. I believe this is the Edgeworths' new Exhibit 11. This is the email where you send the release?

A Yes.

Q And the time and date on that is November 30, 2017 at 8:38 a.m.?

A Yes.

Q And then you receive notice, I'm going to show the Court exhibit -- Office Exhibit 43, Bate 420. This is the, as you can see from here, this is the fax from Brian Edgeworth, saying he's hired Vannah & Vannah?

A Yes.

Q And this fax came in at -- boy, it says 11/30/2017, 9:35 a.m.?

A Yes.

Q Do you get all the faxes immediately upon them hitting your office?

A When I -- they come in immediately, but whether I look at them immediately is another question.

Q Right. Well, take a look at Exhibit 12. It indicates later on throughout that day at some point in time you got some better terms for the Edgeworths?

A Yes.

Q Despite maybe any conversations that you had with Mr. Greene, or that fax that you received; is that correct?

A Right.

Q When you receive that fax and/or when you received the call did you just drop everything on the file?

A What do you mean?

Q Did you stop work on the file?

A No, of course not.

Q Could stopping work place the clients in jeopardy?

A It depends on the situation.

Q But at any rate you continued to do some work on the file and actually increased offers for them, correct?

A Yes.

Q Now that work all occurred on November 30th, correct?

A Yes.

Q We were shown, this is Edgeworth Exhibit 3, this is Bate 1, this is that infamous contingency email of August 22, 2017?

A Yes.

Q And the forward on this indicates that you sent it to me on December 1, 2017?

A Yes.

Q So you went out and consulted your own lawyer?

A Yes.

Q Why did you do that?

A Because I felt that I was terminated, when he's meeting with other lawyers, and I'm getting letters that I'm supposed to be talking to other lawyers about a case that I had been representing on for a substantial time and did amazing work on and gave amazing advice.

And the only reason for that would -- for another law firm to get involved is if I'm out.

Q And you were in an awkward position, weren't you? As I think Mr. Vannah made abundantly clear you never did move to withdraw?

A Right.

Q Why not.

A Number one, I'm not going to just blow up any settlements, number one. I've never done that, never will. I continue to work, and I always put the client's interest above mine, which I did in this case, even after I'm getting all of these letters.

Number two, even later, Mr. Vannah was making it abundantly clear that they were coming after me, if I decided to do something that might even remotely be considered adverse to the client.

So, I'm in an awkward position, I'm going to fulfill my duties regardless, and it was clear they didn't want to pay me. But I'm still going to do it, and do my job for the client regardless, and payment is going to be an issue that we deal with later.

Q And that's the same day I believe you filed your first attorney's lien?

A Yes.

THE COURT: And what was the first day you consulted with Mr. Christensen to represent you? Do you remember?

THE WITNESS: I don't , but it would have been around that time, or a few days or more, before, when I felt that I wasn't getting

appropriate responses from clients that I've had communication with at all hours a day for the last six months, who stopped communicating with me.

THE COURT: So around that November 30th timeframe?

THE WITNESS: Probably.

MR. CHRISTENSEN: Just one moment, Your Honor.

THE COURT: Okay.

MR. CHRISTENSEN: We're through, Your Honor.

THE COURT: Okay. Mr. Vannah, do you have any follow-up recross?

MR. VANNAH: Briefly.

RECROSS-EXAMINATION

BY MR. VANNAH:

Q So you took that letter, we talked about it, the one where you told me, go to talk to other attorneys, that you thought it was fair, that they should sign this new fee agreement, right?

A Sure.

Q What was the date of that?

A November 27.

Q Now you had talked to Mr. Christensen, and got your attorney, Mr. Christensen not long necessarily, but before you ever heard from me, right?

A Possibly, yeah. I don't disagree with it.

Q So --

A I don't have exact timeframes.

Q All right. It looks like you start to address the Brunzell factors at paragraph 15 --

A Right.

Q -- page 5 of your report?

A Right. You know, Brunzell is kind of a funky case, it's really kind of an off-chute V-case. So, when you read Brunzell they really don't elaborate on these factors much, but these are the four factors.

Q And it sounded like at least in general the four Brunzell factors were very similar to the factors that you applied in the tobacco litigation and maybe in other contexts?

A Yeah. What happened in, you know, the old days, and Mr. Vannah will remember too, we used to call this the Lindy Lodestar factors after the Lindy case, and then that kind of got changed, and then each State court had their case, and so it's now the Brunzell cases, but basically the Lindy Lodestar factors.

Q Okay. So, the first one is the qualities of the advocate?

A Right.

Q So what is your opinion concerning the qualities of Mr. Simon and the rest of his office?

A You know, I really started with 4, results, so can we start --

Q Okay.

A -- there perhaps. You know, there --

Q Let's start with number 4.

A Yeah. the result of this case, I don't think anybody involved can dispute it's amazing. You know, that we have a single house that

has a defective sprinkler that has flooding; as I understand it the house wasn't occupied at the time, they were building it. But we don't have any personal injury, we don't have any death, we have property damage.

You know, we can get into the amount of property damage, but, I mean, you know, like I say in my affidavit, we probably wouldn't take this case unless it was a friends and family situation, which I understand to be the case here.

But we probably wouldn't take this case because it -- it is really hard to do a products liability case and make everything add up, if you have a limited amount of damages in one point. So, the result in this case, you know, when you have this kind of property damage, 500 to 750, you know, depending on how you want to characterize it, and they get $6 million, 6.1, it's just -- it's just phenomenal.

You know, I'm not saying it was all Mr. Simon. It sounds like they had a pretty bad sprinkler. You know, Mr. Edgeworth obviously contributed, he did a lot of work, but it is a pretty fantastic result for what they did.

Q What's the highest trial verdict that you've been involved in?

A A verdict? Well, we got 505 million in the hepatitis case, which was tried in this courtroom, by the way. We got five hundred twenty-four and twenty-eight in an HMO case, and then I think we got 205 in some other case.

Q Okay.

A So those are the three highest, and two out of three were products' cases.

MR. VANNAH: There's nothing in the report about any discussion with Floyd Hale. I just don't feel that would appropriate to bring up that as any part of this; that's wrong. Considering it's never been disclosed to me. If it had been disclosed I'm not going to -- no problem.

THE COURT: Yes.

MR. VANNAH: But that did not get disclosed to me.

THE COURT: Okay. Mr. Christensen, I don't see that in the report that I have, that I've read.

BY MR. CHRISTENSEN:

Q May I ask a couple of foundational questions?

A Yeah.

Q Did your conversation with Mr. Hale change or alter your opinion in anyway?

A No. The reference to what Mr. Hale said is in Mr. Simon's letter, dated November 27th, where he says that the mediator gave 2.4 million for fees. It says that on page 2 of the letter, in the middle. So that's the only point that I was going to make that the mediator confirmed. This in Mr. Simon's letter, it's not --

MR. VANNAH: Well, I don't have any problem talking about whatever documents you reviewed, just conversations --

THE COURT: Okay.

MR. VANNAH: -- that I wasn't privy to that --

THE WITNESS: Let's --

MR. VANNAH: -- had never been disclosed.

THE WITNESS: Let's just put it this way. It was my understanding that the mediation 2.4 million was for fees. Is that --

THE COURT: Okay.

THE WITNESS: -- fair?

MR. VANNAH: No, I don't understand that. I actually don't understand that, what does that mean?

THE COURT: Okay. Mr. Kemp, what does that mean?

THE WITNESS: That means that the mediator threw in an extra 2.4 for fees out of the 6 million, because he wanted to get Edgeworth 3 million, plus some money for costs, and they knew that Mr. Simon, like most people, typically have around 40 percent, so that's why it's 6 million, not 3.6 million, or something like that.

MR. VANNAH: Thank you.

THE WITNESS: Yeah.

MR. VANNAH: That makes no sense.

THE COURT: Okay. Mr. Christensen.

BY MR. CHRISTENSEN:

Q Mr. Kemp, did we cover your opinions?

A Give me one second.

Q I think I referenced it, but there were a lot of emails, you know. A lot of communication with the client, so I got to commend Mr. Simon for, you know, responding. You know, sometimes he responds in a minute, it's unbelievable. And I don't want to make it sound like Mr. Edgeworth was being frivolous. I mean, there was a lot of important emails from him. You know, he had a list of questions that I thought

MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

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

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

_____

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 18, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 5

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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number, John.

THE WITNESS: 415.

MR. CHRISTENSEN: Thank you, ma'am.

MR. GREENE: Yeah. But that was --

THE COURT: And what was Mr. Katz?

THE WITNESS: $250 an hour.

THE COURT: 250.

BY MR. GREENE:

Q In your business lives, or life, under what circumstances have you needed to reach out and retain legal counsel in the past?

A Yes. On many occasions. We have occasional things come up such as business contracts, patents, trademarks, attorneys with different patents that we hold in litigation.

Q What law firms -- you mentioned Mark, you mentioned Lisa. What law firms have you retained in the past to assist in your business dealings?

A Baker Hostetler, Luis Rocha and probably 20 or more so attorneys throughout our years doing business.

Q Do you have an understanding as to what the highest hourly rate that you would pay an attorney or a law firm prior to getting involved in this flood litigation?

A Yes. The highest rate we ever paid was $475 an hour.

Q And who was that for?

A That was for an IT litigator who was a specialist. She was based out of their St. Louis office and she was a trademark specialist in

litigation. And then also Gary Rinkerman who was a trademark specialist out of the D.C. office, and he worked for the U.S. Trade Commission. So, he had a lot of expertise when we were in a patent and trademark litigation case.

Q You've heard a lot about fee agreements as you've been sitting in the gallery in this case. What type of fee agreements have you entered into in the past with these law firms you just mentioned to the judge?

A All hourly.

Q Did you ever have a contingency fee agreement presented to you prior to this flood litigation?

A Never.

Q So when you understood from your friendship with Alaina that Danny was an attorney, walk us through the steps that led to the suggestion of Danny becoming legally involved in this case.

MR. CHRISTENSEN: Objection; to the extent it calls for hearsay or spousal communications.

BY MR. GREENE:

Q Do you have an independent understanding as to how Danny --

A I do, yes. I had suggested to Brian that he call Danny.

MR. CHRISTENSEN: Judge, objection. I just asserted the spousal -- we can't talk about what they instructed their other client to not talk about to me last week.

MR. GREENE: No, no, no, no. The spousal privilege is what

Brian would have said to her. That's the whole point that he just spent all the time on. She just said she has an independent understanding and she suggested to her husband.

THE COURT: She can testify to what she did. She suggested he call Danny.

BY MR. GREENE:

Q Is that what happened?

A Correct.

Q Do you have an understanding as to what fee was eventually reached?

A I do.

Q What is that understanding?

A It was $550 an hour.

Q When did you gain the understanding that Danny was going to be charging 550 an hour for the work that he performed on this case.

Brian and I had a conversation before the lawsuit was actually filed about the fee. And I remember it because I wasn't happy about the fee. It was high in my estimation. $550 was really expensive in my mind, but we agreed because Alaina was a friend of mine and also because he had already started working on the case. And at the time I thought it would be maybe $5,000, $10,000 and then we'd be done.

THE COURT: This is before the original lawsuit, or the lawsuit against Danny Simon?

THE WITNESS: No. The very first lawsuit when we filed against Viking.

BY MR. GREENE:

Q Do you have an independent recollection Angela, as to what month and what year these concerns became up on your frontal lobe?

A Yeah. It was in June of 2016.

Q Despite those concerns what happened?

A Despite those concerns we decided to proceed based on friendship. And you know, I would agree with Mr. Christensen that no good deed goes unpunished. I mean, that's what we were thinking. I just thought like we would, you know, write a few letters and then we'd be done with it. And you know, we'd get our money for the damages.

Q Why did you believe Angela, that this was going to be resolved with spending five to tenish thousand dollars on Mr. Simon to get this thing wrapped up?

A I thought it would just be when you just send a few letters to the insurance company to kind of let you know that they're -- we're serious, and we wanted them to just wrap it up and that we -- you know, that we had legal representation that could help us. And so, I just thought it would be a few letters. I had no idea what was about to happen.

Q At any time that you had be in the presence of Danny, or received emails from Danny, did he ever suggest to you prior to November of 2017 that any work was being performed on a contingency fee basis?

A No, never.

Q If, knowing your business background and the way you work,

if a contingency fee would have been suggested back in June of 2016 what would you have decided to do?

A No. There's no way.

Q Why not?

A Because it was a property damage case. There was no upside to this case. I mean, we were just hoping to get our damages claim back, which was around half a million dollars. So, it didn't make sense to do any type of contingency fee at that time.

Q Do you know whether -- we're so loose, sorry. Did Danny ever present an hourly fee agreement for either you or Brian to sign?

A He didn't, but he should have.

Q Why do you say that?

A Because usually in -- you know, when we start working with attorneys, but maybe smaller firms don't do this, but at least the large firms that I've worked at we will generally sign an engagement letter of some type and they'll go over, you know, a range of fees. So, I'm used to that. Sometimes with the smaller attorneys, if they're just one or two person offices they might just verbally tell me what the rate is, and then we agree to it, and then they send me a bill.

Q And then what happens?

A And then I get a bill, and then I pay the bill. I review it to make sure that it's okay and I pay it.

Q Knowing you as you know you, with your business background if -- would you have ever entered into -- or let me just strike that. Knowing you as you know and the business that you've done in the

A I don't recall.
Q Okay. And do you remember Mr. Edgeworth telling me that you felt threatened?
A Yes.
Q And you know, if we were to compare sizes, Mr. Simon's probably closer to you than to Brian's size, right?
A Fair.
Q So Danny Simon wasn't physically threatening anybody, was he?
A Physically, no.
Q All right. And the words. I wrote down -- you had lots of words for that meeting and let me get to them. Terrified. I'm just going to go through them with you, okay? Terrified. Fair?
A Fair.
Q Shocked?
A Yes.
Q Shaken?
A Yes.
Q Taken aback?
A Yes.
Q Threatened?
A Yes.
Q Worried?
A Yes.
Q Blackmailed?

with Danny, right?

A Yes.

Q At the time you put that in the email, you knew you weren't going to, correct?

A I didn't know that for sure, but I was stalling.

Q Ma'am, that's not what you told the Judge this morning. You told the Judge you made the determination after you talked to your friend on the 17th or 18th of November -- I forgot that lady's name. The out of state lawyer.

A Lisa Carteen [phonetic].

Q Carteen. T with a T? Carteen?

A Uh-huh.

Q Ms. Carteen -- that you were in no way going to sit in Danny's office without a lawyer, right?

A No. I said I wasn't going to go there by myself and sit in front of Danny Simon and get bullied into signing something.

Q Okay. Bullied. That's another term you used, right? Do you remember Brian -- Mr. Edgeworth's testimony that he was never shown a document on that day of the 17th that he was to sign? Do you remember that?

A Yes.

Q Okay. Do you remember your testimony? Yes?

A Yes.

Q Tell me what the document Mr. Simon presented to you to sign looked like?

A I didn't see the document. He alluded to the document behind him on a desk like this that he was -- he had it, if we were ready to sign it, so I didn't see the actual document.

Q So in the opening -- you were here for the opening?

A Yes.

Q When your lawyer stood up and said that there was a document that Mr. Simon put in front of you, tried to force you to sign it, that factually was a little bit off?

A I didn't hear that, but yes, that would be factually off. There wasn't a document presented to us there, no.

Q It's a little bit like -- do you know what the word outset means, ma'am?

A Yes.

Q Outset means the beginning, correct?

A Correct.

Q Correct. You saw all of Brian's affidavits, correct?

A Yes. Which ones? I don't know which ones you're referring to.

Q 2/2, 2/12 and 3/15. He signed three affidavits in support of the -- this litigation for attorney's fees. You've seen them all?

A I've seen them at some point.

Q And you know that in each one of them, he said at the outset of the arrangement with Mr. Simon, Danny agreed to 550 an hour, correct?

A Correct.

A Yes, Brian put it together.
Q He did those spreadsheets you saw me show him three weeks ago?
A Yes.
Q All right. And the calculation included line items like John Olivas' [phonetic] $1.5 million for stigma damage to the house?
A Yes.
Q You heard your husband say that was a line item that Mr. Simon was solely responsible for, correct?
A Correct.
Q Do you agree with that?
A Yes.
Q Now, do you agree with $4 million for a $500,000 property claim as being made whole?
A Yes.
Q Okay. So, you've been made whole, correct?
A Yes.
Q All right. And once you were made whole or about the same time you were made whole, you sued Mr. Simon rather than pay him, correct?
A No.
Q When were you made whole? When did you get the check? Tell me the date. You knew it earlier.
A January 21st.
Q You sued Mr. Simon what date? January 4th?

A Yes.
Q So before you even had your money, you sued Mr. Simon? Yes?
A Yes.
Q You accused him of converting your money, correct?
A Yes.
Q Before you even had the money, correct?
A Yes.
Q Before the money was in a bank account, right?
A Yes.
Q Okay. And in that lawsuit, you sought to get from him personally and individually, from his and his wife Elaina, your friend, you want punitive damages, right?
A Yes. I didn't --
Q Just yes.
A -- ask to be in this position.
Q Just yes.
A Yes.
MR. GREENE: Your Honor, object. We didn't --
MR. CHRISTIANSEN: Sure -- most certainly did.
MR. GREENE: Elaina wasn't sued.
MR. CHRISTIANSEN: Well, it was his family.
MR. GREENE: Well --
THE COURT: Well, I mean, if Danny Simon as an individual and the Law Office of Danny Simon, isn't it?

MR. GREENE: Yes, but we didn't name his wife --

MR. VANNAH: That's not his wife.

MR. GREENE: -- as a defendant.

THE COURT: Okay.

BY MR. CHRISTIANSEN:

Q Is Elaina married to Danny?

A Yes.

Q Okay. So, if you're trying to get punitive damages from a husband individually, you're trying to get their family's money, right?

MR. GREENE: Same objection.

THE COURT: Mr. Christiansen, the lawsuit is against Danny Simon as an individual and the Law Office of Danny Simon, so that's who they sued.

BY MR. CHRISTIANSEN:

Q You made an intentional choice to sue him as an individual, as opposed to just his law office. Fair?

A Fair.

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

A Fair.

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

A Yes.

Q And he hadn't even cashed a check yet, correct?

A No.

Q Right. He couldn't cash the check, because Mr. Vannah and him had to make an agreement. Mr. Vannah figured out to do it, I think at a bank, right? How to do like a joint --

MR. VANNAH: Yeah, we -- it's just we opened a trust account --

THE COURT: Right.

MR. VANNAH: -- that both he and I are on, so neither one of our trust accounts got it, but it went into a trust account to comply with the Bar rules.

THE COURT: Okay.

MR. CHRISTIANSEN: So --

MR. VANNAH: If that helps.

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

MR. VANNAH: Sure.

BY MR. CHRISTIANSEN:

Q That's what happened, right? That's where the money got deposited?

A Yes.

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

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

MR. GREENE: Me, too, but go ahead, Bob.

THE COURT: Okay.

MR. VANNAH: The 6 million dollars went into the trust account.

THE COURT: Okay.

MR. VANNAH: Mr. Simon said this is how much I think I'm owed. We took the largest number that he could possibly get --

THE COURT: Okay.

MR. VANNAH: -- and then we gave the clients the remainder.

THE COURT: So, the 6 --

MR. VANNAH: In other words, he chose a number that -- in other words, we both agreed that look, here's the deal. Obviously can't take and keep the client's money, which is about 4 million dollars, so we -- I asked Mr. Simon to come up with a number that would be the largest number that he would be asking for. That money is still in the trust account.

THE COURT: Okay.

MR. VANNAH: And the remainder of the money went to the Edgeworth's.

THE COURT: Okay. So, there's about $2.4 million or something along those lines --

MR. VANNAH: Yeah.

THE COURT: -- in the trust account.

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

THE COURT: Okay.

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

THE COURT: Okay. Just so --

MR. CHRISTIANSEN: Oh, that's true --

THE COURT: Yeah. Just so --

MR. CHRISTIANSEN: -- Mr. Kimball said --

THE COURT: -- I was sure about what happened. I mean, the rest of the money was disbursed, because I heard her testifying about paying back the in-laws and all this stuff. So, they paid that back out of their portion, and the disputed portion is in the trust account?

MR. VANNAH: Right. So, they took that money and paid back the in-laws, so they wouldn't keep that interest running --

THE COURT: Right.

MR. VANNAH: -- and then the money that we're disputing --

THE COURT: Is in the trust account.

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

THE COURT: Okay.

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

THE COURT: Okay.

MR. VANNAH: That's correct.

MR. CHRISTENSEN: Any -- and, also, any interest that accrues on the money held in the trust inures to the benefit of the clients.

THE COURT: Right. I was aware of that, yes. It would go to the Edgeworth's, right?

MR. VANNAH: Exactly.

MR. CHRISTENSEN: That's correct.

MR. VANNAH: That's what we all agreed to, yes.

get Judge Herndon mad at me.

MR. CHRISTIANSEN: Oh, he'll take it out on me. Don't worry about it.

THE COURT: Yeah. My goal is to not get Judge Herndon mad at me. I was very nice to him when I called him.

[Proceedings concluded at 4:29 p.m.]

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

_____

Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708

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Steven D. Grierson
CLERK OF THE COURT

ORD

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

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

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

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

FINDINGS OF FACT

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

2. The case involved a complex products liability issue.

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

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

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

dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately $500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

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

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

(Def. Exhibit 27).

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

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and costs through April 4, 2017 for a total of $46,620.69, and was billed at a "reduced" rate of $550 per hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no

indication on the first two invoices if the services were those of Mr. Simon or his associates; but the bills indicated an hourly rate of $550.00 per hour.

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

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

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

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

13. On the evening of November 15, 2017, the Edgeworth's settled their claims against the Viking Corporation ("Viking").

14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the open invoice. The email stated: "I know I have an open invoice that you were going to give me at a mediation a couple weeks ago and then did not leave with me. Could someone in your office send

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

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

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

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

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

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

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

CONCLUSION OF LAW

Breach of Contract

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

Declaratory Relief

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

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

Conversion

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

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

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

Breach of the Implied Covenant of Good Faith and Fair Dealing

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

Breach of Fiduciary Duty

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

Punitive Damages

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

CONCLUSION

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

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ORDER

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

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

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

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

Tess Driver
Judicial Executive Assistant
Department 10

DISTRICT COURT
CLARK COUNTY, NEVADA

Product Liability	**COURT MINUTES**	**February 05, 2019**

A-16-738444-C Edgeworth Family Trust, Plaintiff(s)
vs.
Lange Plumbing, L.L.C., Defendant(s)

February 05, 2019 **9:30 AM** **Motion**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT: Christensen, James R. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Mr. Peter Christiansen Esq., present on behalf of Daniel Simon, robert Vannah Esq., and Brandonn Grossman Esq., on behalf of Edgeworth Family Trust.

Following arguments by counsel. COURT ORDERED, Motion DENIED. This Court does not have Jurisdiction as this case has been bean appealed to the Supreme Court, and the a main issue is the funds. Plaintiff's counsel to prepare the order and submit to opposing counsel for review before submission to the Court.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

Supreme Court Case

No. 77678 consolidated with No. 78176

APPEAL FROM FINAL JUDGMENTS ENTERED FOLLOWING

EVIDENTIARY HEARING

THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA

THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

*****

APPELLANTS' OPENING BRIEF

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

II. STATEMENT OF THE CASE

A. PROCEDURAL POSTURE

This is an appeal from a final judgment entered before the Eighth Judicial District Court (hereinafter "District Court") and Order Adjudicating Simon's Attorney's Lien entered November 19, 2018; Order Dismissing the Appellants' Amended Complaint entered November 19, 2018; and, Order awarding Simon $50,000 in attorney's fees and $5,000 in costs entered February 8, 2019.

Appellants filed their Notice of Appeal of the District Court's Order Adjudicating Simon's Attorney's Lien and Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5) on December 7, 2018, and filed their Notice of Appeal of the District Court's Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs on February 15, 2019.

B. PUBLIC POLICY IMPLICATIONS OF THE SO-CALLED "SIMON RULE"

This appeal concerns issues involving great public importance: specifically, attorney's liens and fees, but more generally, when greed and coercion can cripple client trust and soil society's expectations of attorney transparency. Unfortunately, throughout the years, the legal profession has amassed a public perception of dishonesty, untowardness, and avarice. Sissela Bok, "Can Lawyers Be Trusted," Univ. of Penn. L. Rev. Vol. 138:913-933 (1990). When the behavior of attorneys

becomes marred by opportunism, dishonesty, and abuse, there is a real risk that society's distrust of lawyers will continue to worsen.

This appeal is about Simon, a Nevada attorney, and the conduct he foisted on Appellants as their attorney. Simon's conduct is called "The Simon Rule." Here it is: 1.) Agreed to represent Appellants for an hourly fee of $550, but then, in contravention of NRPC 1.5(b), failed to ever reduce the fee agreement to writing. *Appellants' Appendix (AA), Vol. 2 000278-000304; 000354-000374.* 2.) Billed and collected over $367,000 in fees for eighteen months by sending periodic invoices to Appellants at that agreed upon rate of $550/hour. *Id., 000278-000304.* 3.) When it was certain that the value of the case increased (from a property damage case worth $500,000 to a products liability matter valued over $6,000,000), demanded more money from Appellants. *Id.* 4.) Couple the demand with threats that caused Appellants to believe that if they didn't acquiesce, he would stop working on their case. *Id.* 5.) When Appellants would not acquiesce and modify the hourly fee agreement to a contingency fee/bonus, used his failure to reduce the fee agreement to writing as a basis to get more money from Appellants via the equitable remedy of quantum meruit and its plus one, a "charging lien. *Id.*

This Court needs to stop The Simon Rule dead in its tracks and prevent all lawyers from behaving this way then, now, and in the future. The Simon Rule incentivizes lawyers to act in a manner that lacks transparency and encourages

practices in direct violation of NRPC 1.5(b) & (c). It also leaves clients with two awful options: acquiesce or litigate. Neither the facts, nor the law, nor practical nor common sense, support The Simon Rule, or the rulings of the District Court that would allow it to either exist or flourish.

III. STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW:

A. The Simon Invoices:

Appellants retained Simon to represent their interests following a flood at a residence they owned. *AA, Vol. 2 page 000296, lines 10 through 14; 000298:10-12; 000354-000355.* The representation began on May 27, 2016. *AA, Vol. 2 000278:18-20; 000298:10-12; 000354.* Simon billed Appellants $550 per hour for his work from that first date to his last entry on January 8, 2018. *AA, Vols 1 and 2 000053-000267; 000296-000297; 000365-000369.* Damage from the flood caused in excess of $500,000 of property damage, and litigation was filed in the 8th Judicial District Court as Case Number A-16-738444-C. *AA, Vol. 2 000296.* Appellants brought suit against entities responsible for defective plumbing on their property: Lange Plumbing, LLC, The Viking Corporation, and Supply Network, Inc. (Lange and Viking). *AA, Vol. 2 000278:24-27; 000354.*

The District Court held an evidentiary hearing to adjudicate Simon's attorney's lien over five days from August 27, 2018, through August 30, 2018, and

concluded on September 18, 2018. *AA, Vol. 2* 000353-000375. The Court found that Simon and Appellants had an implied agreement for attorney's fees. *Id., at, 000365-000366;000374.* However, Appellants asserted that an oral fee agreement existed between Simon and Appellants for $550/hour for work performed by Simon. *AA, Vols. 2 & 3 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon admitted that he never reduced the hourly fee agreement to writing. *AA, Vol. 3 000515-1:8-25.* Regardless, Simon and Appellants performed the understood terms of the fee agreement with exactness. *AA, Vol. 2 000297:3-9; AA, Vol. 3 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.* How so? Simon sent four invoices to Appellants over time with very detailed invoicing, billing $486,453.09 in fees and costs, from May 27, 2016, through September 19, 2017. *AA, Vols. 1 & 2 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon always billed for his time at the hourly rate of $550 per hour ($275 per hour for associates). *AA, Vols. 1 & 2 000053-000267; 000374.* It is undisputed Appellants paid the invoices in full, and Simon deposited the checks without returning any money. *AA, Vol. 2 000356:14-16.* And Simon did not express any interest in taking the property damage claim on a contingency basis with a value of $500,000. *AA, Vol. 2 000297:1-5.*

Simon believed that his attorney's fees would be recoverable as damages in the underlying flood litigation. *AA, Vol. 2 000365-000366.* To that end, he provided computations of damages pursuant to NRCP 16.1, listing how much in fees he'd charged. *Id., 000365:24-26.* At the deposition of Brian Edgeworth on September 29, 2017, Simon voluntarily admitted that "[the fees have] all been disclosed to you" and "have been disclosed to you long ago." *AA, Vol. 2 000300:3-16; 000302-000304; 000365:27, 000366:1.* Those were hourly fees spoken of and produced by Simon. *Id., 000365:24-27, 000366:1.* Thus we see that through Simon's words and deeds he clearly knew and understood that his fee agreement with Appellants was for $550 per hour…until he wanted more. *Id.*

B. Simon's Inflated Attorney's ("Charging") Lien

Despite having and benefiting from an hourly fee agreement, Simon wanted more and devised a plan to get it. *Id., 000271-000304.* In late Fall of 2017, and only after the value of the flood case skyrocketed past $500,000 to over $6,000,000, Simon demanded that Appellants modify the hourly fee contract so that he could recover a contingency fee dressed poorly as a bonus. *AA, Vol. 2 000298:3-17.*

Simon scheduled a meeting with Appellants in mid-November of 2107. At that meeting, Simon told Appellants he wanted to be paid far more than $550.00 per hour and the $367,606.25 in fees he'd already received from Appellants. *Id.*

Simon said he was losing money and that Appellants should agree to pay him more, like 40% of the $6 million settlement with Viking. *AA, Vols. 2 & 3* 000299:13-22; *000270; 000275*; *000515-1*. Simon then invited Appellants to contact another attorney and verify that "this was the way things work." *AA, Vol. 3 000000515-1, 000515-2, 000516:1-7, 000517:13-25.*

Appellants refused to bow to Simon's pressure or demands. *AA, Vol. 2 000300:16-23*. Simon then refused to release the full amount of the settlement proceeds to Appellants. *Id.* Instead, Simon served two attorney's liens on the case: one on November 30, 2017, and an Amended Lien on January 2, 2018. *Id; AA, Vol. 1 000001; 000006*. Simon's Amended Lien was for a net sum of $1,977,843.80. *Id.* This amount was on top of the $486,453.09 in fees and costs Appellants already paid in full to Simon for all his services and time from May 27, 2016, through September 19, 2017. *AA, Vol. 2 000301:12-13.*

C. Simon's Transparent Attempt to Circumvent NRPC 1.5(b) and NRPC 1.5(c):

Appellants accepted Simon's invitation to consult other attorneys and contacted Robert D. Vannah, Esq. *AA, Vol. 3 000515-2:22-25, 516:1-7.* Thereafter, Mr. Vannah contacted Simon and explained that since the settlement with Viking was essentially completed, it would not be expeditious for Mr. Vannah to substitute into the case or to associate with Simon. *AA, Vol. 3 000490-000491.*

Mr. Vannah told Simon that he was to continue on the case until the

settlement details were all ironed out. *Id.* And those details were clearly minimal, as the lion's share of rigorous and time-consuming work had already been completed: a successful mediation with Floyd Hale, Esq.; an offer from Viking of $6 million to resolve those claims (*Id)*; and, an offer from Lange to settle for $25,000, to which Appellants had consented to accept both no later than November 30, 2017. *AA, Vol. 2 000357:22-23*. The only tasks remaining on the case were ministerial, i.e., signing releases and obtaining dismissals of claims. *Id., 000517:13-25, 000518.*

At the evidentiary hearing, Simon finally admitted that he could not charge a 40% contingency fee because he had not obtained a written contingency fee agreement. *AA, Vol. 3 000515-1*. Regardless, Simon pushed the District Court to adopt The Simon Rule, arguing that since he, the lawyer, didn't reduce the fee agreement to writing, let alone a written contingency fee agreement as required by NRPC 1.5(c), he could get a 40% fee via the equitable remedy of quantum meruit because 40% is the normal charge if a contingent fee agreement existed. *AA, Vol. 1 000045*.

Rather than own up to his mistakes and invited errors in failing to comply with NRPC 1.5(b) by not reducing the fee agreement with Appellants to writing, Simon turned on the spin cycle and blamed Appellants. *Carstarphen v. M*ilsner, 270 P.3d 1251, 128 Nev. 55 (2012). This Court should not reward Simon's invited

errors with an equitable windfall of a $200,000 fee/bonus. *Id.*

D. The Purported Constructive Discharge:

The District Court held that Appellants constructively discharged Simon on November 29, 2017. *AA, Vol. 2 000369:22-25.* The basis was a purported "breakdown in attorney-client relationship," and the lack of communication with regard to the pending legal issues, i.e., the Lange and Viking Settlements. *Id.*, 000361-000364.

Yet, it was Simon who: 1.) Demanded that Appellants change the terms of the fee agreement from hourly to contingent when the case value increased; 2.) Told Appellants he couldn't afford to continue working on their case at $550 per hour; 3.) Threatened to stop working on Appellants' case if they didn't agree to modify the fee agreement; 4.) Encouraged Appellants to seek independent legal counsel; 5.) Sought legal counsel, as well; 6.) Continued to work on Appellants' case through its conclusion with Viking and Lange; and, 7.) Billed Appellants for all of his time from November 30, 2017 (the date after the alleged constructive discharge), through January 8, 2018 (the conclusion of the underlying case). *AA, Vols. 1, 2, & 3 000298:13-24; 0000159-000163, 000263-000265; 000515-2:22-125, 000516:1-7.*

The District Court determined the appropriate method to award attorney fees after November 30, 2017, would be via quantum meruit. *AA, Vol. 2 000369:16-27.*

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

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

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

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

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

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

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

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

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

G. The Amounts in Controversy

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

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

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

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

IV. PROCEDURAL OVERVIEW:

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

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

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

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

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

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

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

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

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

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

V. STANDARD OF REVIEW:

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

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

B. Motions to Dismiss – *de novo* Review

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

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

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

VI. SUMMARY OF ARGUMENTS:

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

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

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

and $5,000 in costs, the District Court provided absolutely no reason or justification for awarding those amounts. *AA, Vol. 2 000481-000484.*

The District Court's finding that there was a constructive discharge was inapposite of the record, ignored material facts, was based on clearly erroneous factual determinations, and was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016). The District Court's $200,000 quantum meruit award of attorney's fees was also an abuse of discretion as it was based on an erroneous finding of constructive discharge: there was a clear contract between Simon and Appellants and no one was discharged. *Golightly v. Gassner,* 125 Nev. 1039 (2009). *AA, Vol. 2 000277-000304.* To the contrary, Simon continued to represent Appellants and bill them handsomely for his time. *Id.*

Further, there was no connection between the District Court's $200,000 award and any of the labor Simon actually did or any value he added after the date of the purported constructive discharge. *AA, Vol.* 2 *000369-000373.* As Appellants' Opposition to Simon's Motion for Fees and Simon's "super bill" clearly shows, Simon's (and Ms. Ferrel's) actual work performed for Appellants from November 30, 2017, through January 8, 2018, added up to **$33,811.25**. *AA, Vols. 1 & 2 000159-000163; 000263-000265; 000428-000438.*

Finally, quantum meruit is an equitable remedy that requires clean hands to obtain its benefits. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272

(1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008). Here, Simon's hands are anything but clean. *AA Vol. 2 000277-000303*. He, the lawyer, is the one who agreed to represent Appellants at the rate of $550 per hour yet failed to reduce the terms of the fee agreement to writing. *AA, Vol. 2 000290:3-18;000296-000301; 000359:15.* He's the one who billed Appellants $550 per hour for nearly 18 months and collected over $367,606 in fees over that time. *Id., at 000290:3-18; 000296-000301*. He's the one who wanted a higher fee, or a bonus, when the value of the case went up. *Id.*

He's the one who pressured Appellants to agree to a higher fee, or bonus. *Id.* He's the one who told Appellants that he was losing money on their case and couldn't afford to keep working, thus causing deep concern with Appellants that he would, in essence, quit their case before it had concluded. *Id.* He's the one who encouraged Appellants to seek the advice of independent counsel. *AA, Vol. 3 000515-2:22-25; 516:1-7.* He's the one who, despite not having a written contingency fee agreement, served an amended attorney's lien in an amount that's awfully close to 40% (aka a contingency fee) of the Viking settlement.

He's also the one who had weeks to prepare and submit a "super bill" in an amount that measured up to the amount of his lien, yet the amount of his "super bill" ($692,120) fell far short of that lien ($1,977,843.80). *AA, Vols. 1 & 2 000159-000163; 000263-000265*. Despite knowing that he can't have a contingency fee,

and despite the fact that the amount of his "super bill" had come up WAY short, it was Simon who refused, and continues to refuse, to release Appellants' money, even after his lien was adjudicated. With his egregious conduct, with his invited errors, (*see Carstarphen,* 270 P.3d 1251, 128 Nev. 55, 66 (2012)), and with his unclean hands, (*see In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008)), Simon is not entitled to the equitable remedy of quantum meruit, let alone a huge bonus.

VII. ARGUMENTS:

A. The District Court Erred When It Dismissed Appellants' Amended Complaint

A district court's order granting a motion to dismiss for failure to state a claim upon which relief can be granted faces a rigorous standard of review on appeal because the Appellate Court must construe the pleadings liberally, accept all factual allegations in the complaint as true, and draw all inferences in its favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). Further, the complaint should be dismissed "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Pankopf v.*

Peterson, 124 Nev. 43, 175 P.3d 910 (2008). As set forth in NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires "a short and plain statement of the claim showing that the pleader is entitled to relief."

Upon reviewing the District Court's decision to dismiss *de novo,* this Court should reverse the District Court's ruling, as the District Court clearly applied the wrong standard when analyzing Appellants' Amended Complaint. In their Amended Complaint, Appellants included twenty (20) detailed paragraphs outlining Simon's words and deeds supporting each of their claims for relief. *AA, Vol. 2 000305-000316.* Appellants left no doubt as to the basis for their claims, who and what they're against, and why they are making them. Certainly, there could have been no reasonable dispute that Appellants met that minimum standard.

The Amended Complaint alleged that a fee agreement was reached between the parties at the beginning of the attorney/client relationship; that the agreement provided for Simon to be paid $550 per hour for his services; that Simon billed $550 per hour in four invoices for his services; that the Edgeworth's paid Simon's four invoices in full; that Simon demanded far more from the Edgeworth's than the $550 per hour that the contract provided for; and, that Simon breached the contract when he demanded a bonus from the Edgeworth's that totaled close to 40% of a financial settlement, then liened the file when the Edgeworth's wouldn't agree to modify the contract. *Id.*

The District Court erred when it failed to take the Amended Complaint on its face, failed to take the allegations therein as true, and instead relied on external evidence in adopting Simon's version of the facts. *AA, Vol. 2 000376-000384*. The District Court's misuse of the proper standard and this external proof and evidence contravened Nevada law. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). As such, Appellants respectfully ask this Court to reverse the District Court's dismissal of the Amended Complaint.

B. The District Court Abused Its Discretion When It Awarded $50,000 in Attorney's Fees and $5,000 in Costs

Pursuant to NRS 18.010, district courts are to interpret the provisions of the statute to award fees "in all appropriate situations,"—that is, *appropriate* situations. NRS 18.010(2)(b). Fees under this section are limited to where a district court finds "that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass..." NRS 18.010(2)(b). And the district court's award of fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian*, 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). District courts are further

limited: when determining the reasonable value of an attorney's services, the court is to consider the factors under *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 33-34 (1969). *Hornwood v. Smith's Food King No. 1,* 807 P2d 209 (1991); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 834 (1985).

In fact, this Court has held that it is an abuse of discretion when district courts fail to consider the *Brunzell* factors when awarding fees. *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427-28, (2006) (Finding that a district court's mere observation of certain *Brunzell* elements and mention of the factors is insufficient: the district court must actually consider the *Brunzell* factors when determining the amount of fees to award under NRS 40.655). Further, a district court's award of costs *must* be reasonable. NRS 18.005; *U.S. Design & Const. Corp. v. International Broth. of Elec. Workers*, 118 Nev. 458, 463(2002).

Here, the District Court's $50,000 award of fees was an abuse of discretion as it was predicated on a clearly errant finding that the Appellants' conversion claim was not maintained on reasonable grounds, was unreasonable, and was made without consideration of the *Brunzell* factors. Further, the District Court's award of $5,000 in Costs was unreasonable, as it was made with absolutely no explanation or justification for the amount awarded. As such, this Court should reverse the District Court's $50,000 fee award and $5,000 in costs.

C. The District Court Abused Its Discretion When It Awarded $200,000 in Attorney's Fees Under Quantum Meruit

A district court's determination of the amount of attorney's fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.,* 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). Here, the District Court's award of $200,000 in attorney's fee based on quantum meruit was predicated on the clearly erroneous determination that Appellants constructively discharged Simon. *AA, Vol. 2 000360:23-28, 361-364:1-2.* That finding was improper and an abuse of discretion, as the District Court based its determination on a clearly erroneous factual determination which was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

For example, Simon conceded that: 1.) He never withdrew from representing Appellants; 2.) Simon *himself* encouraged Appellants to speak with other attorneys; 3.) Simon spoke with an attorney either before or after he met with Appellants on November 17, 2017; 4.) Mr. Vannah instructed Simon that Appellants needed Simon to continue working on the case through its conclusion; and, 5.) Simon continued to work on behalf of Appellants and billed them an additional $33,811.25 in fees from November 30, 2017, through January 8, 2018. *AA Vols 1 & 2 000159-000163; 000263-000265.*

Under no logic or reason whatsoever could Simon's and Appellants' relationship be viewed as having "broken down" to the point where Simon was "prevented from effectively representing" them. *See Rosenberg v. Calderon Automation, Inc.*, 1986 WL 1290 (Court of Appeals, Ohio 6th Dist. 1986). He DID continue to represent Appellants effectively and billed them accordingly and handsomely...at $550 per hour. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* The District Court's quantum meruit analysis, which stemmed from an erroneous finding of constructive discharge, was unwarranted, an abuse of discretion, and should be reversed.

An award of fees must also be tempered by "reason and fairness." *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). This $200,000 award is not fair or reasonable under any circumstances. The District Court had already twice looked to Simon's invoices and utilized $550 per hour to determine Simon's reasonable fee (the four original invoices and from September 20 to November 29, 2017). *AA Vol. 2 000353-000374.* For the adjudication for any fee from November 30, 2017, through January 8, 2018, the only fair and proper analysis would consistently focus on the *actual work performed and billed* by Simon (and Ms. Ferrel). Yet, as one can clearly see, the District Court didn't even glance in that direction. *Id., 000353-000374.*

The District Court was also silent on the *timing* of Simon's labor. *AA Vol. 2 000370-000372.* The District Court must describe the work Simon performed following the alleged discharge, and that didn't happen. *AA Vol. 2 000371.* Rather, the "ultimate result" referenced (the litigation and settlements) had already been completed, or either agreed to in principle, before any alleged constructive discharge, or merely required ministerial tasks to complete. *Id., 000356:22-24, 000357:12-24.*

In the section of the Order labelled "Quantum Meruit," there is also no evidence offered or reasonable basis given that Simon did anything of value for the case after November 29, 2017, to justify an additional $200,000 "fee" for five weeks of work. Clearly, the District Court's award of fees was not tempered by "reason and fairness." Instead, it was a gift to one with unclean hands.

The fair, reasonable, and appropriate amount of Simon's attorney's lien in this case from November 30, 2017, through January 8, 2018, should be calculated in a consistent manner ($550 per hour worked/billed) as previously found from May 27, 2016, through November 29, 2017. *Id., 000353-000374.* Instead, the District Court came up with the $200,000 number seemingly out of nowhere, rather than awarding the $33,811.25 in fees for the actual work performed during that time frame. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* Therefore, this Court should reverse the $200,000 fee/bonus award.

VIII. CONCLUSION/ RELIEF SOUGHT:

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

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

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

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

Truck Ins. Exchange v. Palmer, 124 Nev. 59 (2008). As argued throughout, Simon's hands are filthy, as The Simon Rule (and conduct) clearly demonstrates.

Appellants respectfully request this Court to: 1.) REVERSE the District Court's decisions to Dismiss Appellants' Amended Complaint issued on November 19, 2018, and allow Appellants to move on with discovery and jury trial; 2.) REVERSE the District Court's award of $50,000 in fees and $5,000 in costs in its Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs from February 8, 2019; and, 3.) REVERSE the District Court's award of fees of $200,000 in its Decision and Order on Motion to Adjudicate Attorney's Lien on November 19, 2018.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6), because: This brief has been prepared in a proportionally spaced typeface using Word 2019, in 14 point Times New Roman font; and, complies with NRAP 32(a)(7)(c), in not exceeding 30 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which

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

DATED this 8th day of August, 2019.

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CERTIFICATE OF SERVICE

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

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Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

DECISION AND ORDER DENYING PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF THIRD-AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN AND DENYING SIMON'S COUNTERMOTION TO ADJUDICATE LIEN ON REMAND

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

DECISION AND ORDER DENYING PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF THIRD- AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN AND DENYING SIMON'S COUNTERMOTION TO ADJUDICATE LIEN ON REMAND

This matter came on for hearing on May 27, 2021, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, James Christensen, Esq. and Peter Christiansen, Esq.; and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Morris Law Group, Steve Morris, Esq. and Rosa Solis-Rainey, Esq. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS** after review:

The Edgeworths' Renewed Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien is DENIED.

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Simon's Countermotion to Adjudicate the Lien on Remand is DENIED.

IT IS SO ORDERED.

Dated this 17th day of June, 2021

DISTRICT COURT JUDGE

478 B49 725D 8E26
Tierra Jones
District Court Judge

Submitted By:

JAMES R. CHRISTENSEN PC

/s/ James R. Christensen
James R. Christensen Esq.
Nevada Bar No. 3861
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Attorney for SIMON

Approved as to Form and Content:

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Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

DECISION AND ORDER DENYING EDGEWORTH'S MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING PRODUCTION OF COMPLETE FILE

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case Number: A-18-767242-C

DECISION AND ORDER DENYING EDGEWORTH'S MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING PRODUCTION OF COMPLETE FILE

This matter came on for hearing on May 27, 2021, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, James Christensen, Esq. and Peter Christiansen, Esq.; and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Morris Law Group, Steve Morris, Esq. and Rosa Solis-Rainey, Esq. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS** after review:

The Motion for Order Releasing Client funds and Requiring Production of Complete file is DENIED.

The Court finds that the Motion is premature regarding the releasing of client funds, as the litigation in this case is still ongoing at this time because the Court has not issued a final order in this matter and the time for appeal has not run.

The Court further finds and orders that there is a bilateral agreement to hold the disputed funds in an interest-bearing account at the bank and until new details are agreed upon to invalidate said agreement and a new agreement is reached, the

bilateral agreement is controlling and the disputed funds will remain in accordance with the agreement.

The Court further finds that the issue of requiring the production of the complete file is prevented by the Non-Disclosure Agreement (NDA) and the request is DENIED.

IT IS SO ORDERED.

Dated this 17th day of June, 2021

DISTRICT COURT JUDGE

D0B 497 4775 23BB
Tierra Jones
District Court Judge

Submitted By:

JAMES R. CHRISTENSEN PC

/s/ James R. Christensen
James R. Christensen Esq.
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09/09/2021 2:42 PM
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Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORTATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5; and, ROE entities 6 through 10; Defendants.	Case No.: A-18-767242-C Dept No.: 26 **Consolidated with** Case No.: A-16-738444-C Dept No.: 10 **DECISION AND ORDER DENYING EDGEWORTHS' MOTION FOR RECONSIDERATION OF ORDER ON MOTION FOR ORDER RELEASING CLIENT FUNDS AND REQUIRING THE PRODUCTION OF COMPLETE CLIENT FILE AND MOTION TO STAY EXECUTION OF JUDGMENTS PENDING APPEAL**

Case Number: A-18-767242-C

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC
Plaintiffs,

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

Defendants.

This matter came on for hearing on July 29, 2021, in chambers, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, James Christensen, Esq., and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Morris Law Group, Steve Morris, Esq. and Rosa Solis-Rainey, Esq. The Court having considered the evidence,

arguments of counsel and being fully advised of the matters herein, the **COURT FINDS** after review:

The Edgeworths' Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring Production of Complete Client File and Motion to Stay Execution is DENIED.

The COURT FINDS that the Edgeworths have failed to demonstrate any error of law or any new facts, as required for reconsideration.

The COURT FURTHER FINDS that the excessive security agreement does not apply to the instant case.

The COURT FURTHER FINDS that there is no basis to reconsider the bilateral agreement finding.

The COURT FURTHER FINDS that there is no basis to reconsider the order regarding the client file.

The COURT FURTHER FINDS that the Motion to Stay Execution is premature.

IT IS SO ORDERED.

Dated this 9th day of September, 2021

DISTRICT COURT JUDGE

49A 98C F62C A2A4
Tierra Jones
District Court Judge

Submitted By:

JAMES R. CHRISTENSEN PC

/s/ James R. Christensen
James R. Christensen Esq.
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Approved as to Form and Content:

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No response received
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Attorney for EDGEWORTHS

IN THE SUPREME COURT OF NEVADA

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC, Appellants, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, Respondents,	Supreme Court Case No. 83258 Consolidated with 83260 Dist. Ct. Case No. A-18-767242-C Consolidated with A-16-738444-C

EDGEWORTH APPELLANTS' OPENING BRIEF

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the district court was that all of the settlement negotiations were complete before the discharge date found by the court. AA0655 (testifying terms of settlement were "hammered out" . . . "before he was fired"); AA0653-54 (placing the date of these negotiations at 11/27/17). Simon emailed the "proposed" Viking settlement agreement to the Edgeworths at 8:39 a.m. on November 30, 2022 (AA0627), approximately an hour before he learned the Edgeworths had retained Vannah to assist them with finalizing the settlement. AA0624 - 25. Simon emailed the "final" draft of the settlement agreement at 5:31 p.m. that same day. AA0635. The Viking settlement was signed the next day. AA0009:27 – AA0010:1 And although his November 30th email said he spent "substantial time" negotiating terms in the few hours between his conversation with a Vannah attorney and his 5:31 p.m. email, those efforts are not credible given repeated and un-contradicted testimony to the district court that all negotiations were complete by November 27, 2017. AA0655. The "superbill" Simon submitted to the court (AA0680 – 84 and AA0686 – 88) includes time he claims he and his firm spent on negotiations he clearly testified had been completed days previously. AA0655. But even if this questionable work is considered, it is included in the 71.10 post-discharge hours Simon claims to have worked and thus does not change the fact he is not entitled to more than $34,000 for that work. *See* AA680 - 81; AA00686; AA0690.

The Lange settlement was also fully negotiated by November 30, 2017 (A0635), which the district court found was signed on December 7,

2017, just eight days after Simon's discharge. AA0006 ¶23; AA00010:26 - 11:5 (". . . it was established that the Law Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon and . . . Vannah gave different advice on the Lange claim, and the Edgeworths followed the advice of . . . Vannah to settle the Lange claim. The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange Plumbing").

The district court should have considered the evidence in the record (AA0680 – 84; AA0686 – 88) and explained how she used that evidence to determine the reasonableness and value of Simon's post-discharge work at $2,800 per hour. *See also* AA0689 – 94. Even ignoring the fact that some of the time Simon billed as post-discharge work is facially unreasonable, the district court does not explain how an award that is six times the calculated value of the alleged services performed -- based on the rates she says she considered – is reasonable under *Brunzell*. Merely stating that she considered the *Brunzell* factors is not sufficient to show how she did so to justify paying Simon $2,800 per hour, especially when the analysis the district court set forth in her post-remand order is nothing more than her analysis for Simon's pre-discharge work. AA0581 - 85.

The Court should reverse the district court's findings and instruct her to enter an order awarding no more than $34,000 for Simon's post-discharge services.

IX. CONCLUSION

The Edgeworths respectfully ask this Court to REVERSE and VACATE the district court's order awarding Simon $200,000 in quantum meruit and instruct her to enter an order for no more than the $34,000 supported by the post-discharge work Simon himself submitted for the record.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

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Attorneys for Defendant
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, v. LANGE PLUMBING, LLC ET AL., Defendants.	Case No: A-16-738444-C Dept. No: X EDGEWORTHS' MOTION FOR ORDER TO SHOW CAUSE WHY DANIEL SIMON AND THE LAW FIRM OF DANIEL S. SIMON SHOULD NOT BE HELD IN CONTEMPT AND *EX PARTE* APPLICATION TO CONSIDER SAME ON OST
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, v. DANIEL S. SIMON, AT AL., Defendants.	Case No: A-18-767242-C Dept. No. X HEARING REQUESTED

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The Edgeworth Plaintiffs respectfully move this Court for an order to show cause why Daniel S. Simon and the Law Office of Daniel S. Simon should not be held in contempt of court for failure to turn over to his former clients their complete client file, as this Court and the Nevada Supreme Court ordered. The Edgeworths also apply for an order shortening time to hear this motion under EDCR 2.26. These requests are based on the declaration of counsel below and the points and authorities that follow.

The Supreme Court has determined Simon has no just cause to withhold the Edgeworths' client file. This Court has expressly ordered Simon to produce the Edgeworths ***complete client file***. The deadline for Simon to comply with the order is long past, with Simon doing little other than again producing the portion of the file he previously produced, and another piece of the file that he gathered in 2020 and withheld under a sham excuse. Given Simon's continued disobedience along with his repeated excuses for not producing substantial portions of the file, the Edgeworths are concerned that spoliation has occurred or is occurring. For these reasons, they respectfully ask the Court to consider this motion on shortened time.

This motion is based on the record before the Court, the declaration of counsel and points and authorities below, and any argument permitted by the Court.

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By: /s/ STEVE MORRIS
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Attorneys for Edgeworth Family Trust and American Grating, LLC

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DECLARATION OF ROSA SOLIS-RAINEY IN SUPPORT OF EDGEWORTHS' MOTION FOR AN ORDER TO SHOW CAUSE WHY DANIEL SIMON AND THE LAW FIRM OF DANIEL S. SIMON SHOULD NOT BE HELD IN CONTEMPT FOR DISOBEYING THE COURT'S ORDER and EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO CONSIDER SAME

1. I am an attorney at Morris Law Group, counsel for the Edgeworths in this matter. I make this declaration upon my own personal knowledge except where stated on information and belief, and as to those matters, I believe them to be true. I am competent to testify to these matters.

2. On September 16, 2022, the Nevada Supreme Court issued a Writ Directing this Court to order Daniel Simon and his firm to turn over the Edgeworths complete case file.

3. On September 27, 2022 this Court entered an Order directing "Daniel Simon and the Law Office of Daniel S. Simon d/b/a Simon Law to release to the Edgeworths the complete client file for case A-16-738444-C." Daniel Simon and the Law Office of Daniel S. Simon are collectively referred to as Simon herein.

4. The Court ordered Simon to produce the complete file "within 14 days of the entry of this Order." Notice of Entry was given on September 27, 2022, and thus the deadline for compliance was October 11, 2022.

5. On October 11, 2022, the deadline set by this Court, Simon Law produced a hard drive described as containing the "Documents Subject to Protective Order." *See* ROC attached hereto as Exhibit A. Notably, the "last modified date" on all of the folders in the hard drive Simon produced on October 11, 2022 demonstrates that this production was all compiled on or before May 26, 2020.

6. On the same day this partial production was received, I notified Simon's counsel, James Christensen, that this partial production did not

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comply with the Court's Order. See Ex. B, October 11, 2022 email to J. Christensen.

7. On October 13, 2022, Mr. Christensen responded, saying the file was quite large and would be produced in a rolling production. *See* Ex C, October 13, 2022 Email from J. Christensen. His response acknowledged that the production was not complete but suggested it would be produced "in a rolling fashion" albeit after the Court's deadline.

8. Given that the partial production Simon made on October 11, 2022 was all compiled in May, 2020, there was no reason for Simon to wait until the last day to begin *partial* production of the client file he was ordered to produce in full by that date. I therefore asked that Simon immediately provide the date by which he anticipated complete production. *See* Ex. D, October 13, 2022 email to J. Christensen.

9. Five days later on October 18, 2022, Mr. Christensen sent me a letter that entirely avoided the question of when Simon's production would be complete. Instead, Mr. Christensen offered baseless excuses for not complying with the Court's order. Ex. E, October 18, 2022 Ltr. from J. Christensen.

10. I responded to Mr. Christensen that same day to reiterate what a "complete file" entails and gave examples of missing portions of the file. Ex. F, October 18, 2022 Ltr. to J. Christensen.

11. On October 24, 2022, I called Mr. Christensen in an effort to bring this issue and a related issue about release of the excess funds to a close. Mr. Christensen was unavailable and I left a voicemail.

12. On October 25, 2022, Mr. Christensen sent another letter, responding to my October 18, 2022 letter and my previous day's voicemail. Ex. G, October 25, 2022 Ltr from J. Christensen.

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13. Again, Mr. Christensen did not respond to the question of when production would be complete. He continued to profess the Court's order is ambiguous as to what Simon must produce.

14. Later, on October 25, 2022, Mr. Christensen called to discuss his letter. I rejected his efforts to spin our discussions as an indication that there was ambiguity in the term, and made clear I saw no ambiguity in the Court's Order: "complete file" means just that. During this call, Mr. Christensen said that he may have "misspoken" about the "rolling production" and would need to speak to his client to see if Simon intended to produce anything more.

15. Again, I asked that he either immediately provide a list of what remained to be produced and a date by which it would be tendered, or confirm that production was complete so we could move forward. Mr. Christensen said he could neither confirm production was complete nor provide a list of what remained as no file index was maintained.

16. During the October 25, 2022 call, Mr. Christensen confirmed that Simon printed and Bates numbered the portions of the email he produced in .pdf form in his 2020 partial production – as opposed to printing the email with its corresponding attachments and chose to omit all attachments referenced in the emails.

17. Mr. Christensen specifically referenced the fact that had attachments been printed, the size of the file referenced in his client's 2018 testimony would have been much larger than the 25 boxes they brought to the Court during the evidentiary proceeding four years ago. I understood his reference to be to the 2018 evidentiary hearing on Simon's lien and the very detailed testimony Mr. Christensen elicited about the contents of the Edgeworths' file. That testimony in 2018 unequivocally confirms that the complete file has not been produced.

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18. On October 26, 2022, Simon Law produced another hard drive that contained the same portion of the file produced in 2020, as well as another copy of the portion of the file he produced on October 11, 2022. Ex. H, ROC of 10/26/22 Production. The only "new" piece appears to be a 107-page chart outlining the general content his 2020 production by bates number. A sample of this chart is attached hereto as Exhibit I.

19. On October 27, 2022, I again wrote to Mr. Christensen to notify him that despite the duplicate production of the pieces previously produced, the complete file had still not been tendered. I renewed my previous requests that he identify the portions of the file withheld, and provide a date by which production would be complete. A copy of this letter is attached hereto as Exhibit J.

20. I informed Mr. Christensen that if we did not receive his response by end of day Monday October 31, 2022, we would proceed with a motion. I have not received any response to my October 27, 2022 letter.

21. Mr. Simon's persistent excuses for not complying with the Court's order raise concerns that spoliation has occurred or is occurring. Simon's admission that he did not produce email attachments alone demonstrates that he has not produced the complete file.

22. Furthermore, the examples of items that should have been in the file, but which cannot be located, such as letters or emails transmitting the initial draft of the Viking or Lange settlement agreements, negotiating the terms therein, and transmitting the signed copies suggests that communications were selectively omitted. With respect to research, Simon has not produced any portions of the file to demonstrate that his office independently "researched" the Viking activations. The portion of the produced file also does not include the expected back and forth communications demonstrating when most of the Edgeworths' experts were

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retained or the terms of their retention. These substantial gaps further suggest that Simon has selectively omitted portions of the file.

23. The omitted portions of the file would confirm whether Mr. Simon was truthful in his testimony to the Court, and to his clients, which is directly relevant to the *Brunzell* analysis that the Court must undertake to properly evaluate the quality of Simon's advocacy in the lien adjudication hearing that he initiated.

24. The foregoing demonstrates that there is good cause to hear this motion on shortened time at the Court's earliest convenience, pursuant to EDCR 2.26.

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

Dated this 2nd day of November, 2022.

_/s/ Rosa Solis-Rainey_____

ORDER SHORTENING TIME

On application and the above declaration of counsel and good cause appearing,

IT IS HEREBY ORDERED that the EDGEWORTHS' MOTION FOR ORDER TO SHOW CAUSE WHY DANIEL SIMON THE LAW FIRM OF DANIEL S. SIMON SHOULD NOT BE HELD IN CONTEMPT shall be heard on the 15th day of November, 2022 at 9:00 a.m. a.m./p.m. in Department X of this Court.

Dated this 4th day of November, 2022

_____
DISTRICT COURT JUDGE

DATED this 4th day of November, 2022.

60A CA0 382E 1315
Tierra Jones
District Court Judge

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MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT BACKGROUND AND FACTS

The relevant facts that support this Motion are set forth in the foregoing declaration of Rosa Solis-Rainey, the Edgeworths' counsel who has been dealing with James Christensen to obtain their complete file from their former attorney, Daniel Simon. It has now been more than one month past the deadline set by this Court for Simon to turn over his complete file to the Edgeworths. He has not complied.

The Court's September 27, 2022 Order is not ambiguous, Simon had a duty to produce his "***release to the Edgeworths the complete client file for case A-16-738444-C***"by October 11, 2022. He did not do so. NRS 7.055 is equally clear and says:

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

(Emphasis Added). The latest portion of the file first-produced by Simon on October 11, 2022 was compiled in 2020. Simon offered no explanation as to why he waited until the final day of the generous two-week period the Court gave him to *begin* producing records he's had compiled for over two years.

The Supreme Court confirmed that Simon had a duty to turn over the complete file to the Edgeworths in 2020 when they made formal demand for it. He had no just cause for withholding it two years ago, and he has none now. His continued excuses to evade the Court's Order should be rejected.

LEGAL STANDARD

Acts or omissions constituting contempt include "[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.010(3). "Courts have inherent power to enforce

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their decrees through civil contempt proceedings, and this power cannot be abridged by statute." *In re Determination of Relative Rights of Claimants and Appropriators of Waters of Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 909, 59 P.3d 1226, 1231 (2002).

A court may issue a bench warrant for the arrest of a person guilty of contempt. NRS 22.040. The person guilty of contempt may be imprisoned until he performs the ordered act. NRS 22.110; *see Warner v. Second Judicial Dist. Ct.*, 111 Nev. 1379, 1383, 906 P.2d 707, 709 (1995) (recognizing that "[i]mprisonment for civil contempt is usually coercive and, as was said in the case of *In re Nevitt*, (8th Cir.) 117 F. 488 [448], 461, he [the contemnor] carries the key of his prison in his own pocket.").

II. ARGUMENT

By his own admission, Simon has not produced his complete file. *See* Decl. of Rosa Solis-Rainey, ¶16. Simon admits he chose to omit attachments, apparently because it would make production too voluminous. This is merely an evasive excuse. The email could be easily produced electronically with its corresponding attachments on the same hard-drives that Simon has used for this partial productions. Of course Simon is free to print and produce the file email in .pdf format if he chooses, but he cannot point to the burden that choice creates as an excuse for not complying with the Court's Order.

The Edgeworths' motion papers both before this Court and the Nevada Supreme Court have identified the portions of the file that they believe has been kept from them. *See, e.g.,* Ex. K, Reply in Support of Edgeworths' Writ Petition ("Writ Reply") at 6. To avoid Simon's continued gamesmanship tactics and his continued efforts to expand these costly proceedings to further punish the Edgeworths for rejecting his 2017 fee demands, the Edgeworths set out in detail what they expected in the

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complete file in the proposed order sent to the Court and to Simon. *See* Ex. J at 2 – 5 (repeating proposal). Simon's contention that there is ambiguity as to what "complete client file" means and what the Edgeworths expect is thus also false. He knows that having the emails with their corresponding attachments is necessary to evaluate the veracity of the testimony and statements Simon made to the Court and to the Edgeworths. *See* Writ Reply at 7 (explaining "Simon knows the Edgeworths have requested their complete file and are particularly interested in communications between him and the Edgeworths and communications between him and third parties about the timing of certain aspects of the underlying case, including settlement and expert retention because those communications are likely to impeach the representations (or misrepresentations) he made to the district court").

Simon avoided answering the simple questions regarding items that should have been in the file: Where is the copy of the printout he told the Court he handed to the Edgeworths on November 17, 2017? Aug. 29, 2018 Hrg. Tr. at 220. Where is the exchange by which Simon received the first draft of the Viking or Lange settlement agreements? Where are the exchanges negotiating the changes to said agreements?

Testimony Simon gave or elicited confirm that the portions of the file he produced are not his complete client file. On August 29, 2018 Simon's counsel referred to "six, seven, or eight" boxes of email. Simon testified in very specific terms as to the size of the file. Aug. 29, 2018 Hrg. Tr. at 57 – 58. He also elicited testimony that confirmed that each box would hold 5,000 pages. *Id.* Mr. Christensen confirmed on October 25, 2022 that the email was printed without exhibits, or the box count would have been significantly greater. The partial productions Simon has made include less than 6,000 pages (or barely over one box) in the "email" folder. *See* Ex. I at 39 (email

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folder with Bates No. LODS014448 – LODS020292). Where are the other 5 – 7 boxes?

Simon's office testified very specifically that "discovery alone [was] 122,458 pages." Aug. 29, 2018 Hrg. Tr. at 108. Simon's office testified that those 24 ½ boxes of discovery were just a fraction of the file, and specifically said that number did not include pleadings, motions, deposition, exhibits to depositions, research or email. *Id.* The partial portions of the file Simon has produced thus far, with what appears to be the same emails printed more than once, is a total of 139,995 pages. *See* Ex. I (last page showing ending Bates No. LODS139995). If Simon's testimony as to the size of the file is credited, email and discovery ***alone*** should have been 152,458 – 162,458 (depending on whether it was the 6, 7 or 8 boxes of email as discussed). With pleadings, motions, depositions, deposition exhibits, and research added in, the file size testified by Simon is much greater. It is entirely reasonable after years of excuses and blatant disregard of the Court's order to be concerned about spoliation. Why does Simon continue to withhold the rest of the file, especially those portions that would discredit the testimony he gave to the Court and the representations he was making to his clients?

III. CONCLUSION

Simon has not complied with the Court's order. He is in contempt of court. The Edgeworths respectfully ask that the Court grant this motion for

an order to show cause why Simon should not be held in contempt for his contumacious misconduct.

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING 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 **OPPOSITION TO EDGEWORTHS' MOTION FOR ORDER TO SHOW CAUSE ON OST** Hearing date: 11.15.22 Hearing time: 9:00 a.m.
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	

I. Introduction

Simon did not willfully violate a court order. Prior to and following the Order of September 27, 2022, Simon provided the Edgeworths with a CD of email, three external drives, multiple copies of documents, videos, cell phone records, tangible evidence, and newly created case file indexes. (Appendix, Ex. 1 – 8, at p. 1-122.) Simon continues to offer to work collaboratively with the Edgeworths. Unfortunately, the Edgeworths appear intent to use this issue as a pretext to unreasonably extend litigation.

The Edgeworths have routinely asserted they are missing documents which they already have, and the practice is repeated in the current motion. A basic problem is that the Edgeworths have not meaningfully reviewed what they already have, as is apparent from their inaccurate claims and as confirmed by their counsel on October 25, 2022.

Nevada law requires that when an alleged contempt occurs outside of the immediate view of the court, that the facts of the alleged contempt must be described via affidavit (or declaration). NRS 22.030(2). As demonstrated below, the declaration submitted by the Edgeworths contains subjective and vague accusations regarding documents and information which the Edgeworths already have. Further, the declaration is facially deficient

because it does not describe the Edgeworths review of the case file to lay a foundation for their claims.

Simon believes that the production of the case file to date has satisfied this Court's Order. However, if the Court disagrees, Simon wants to identify the deficiency so Simon can comply with the Order, without further debate from the Edgeworths.

II. Legal Standard

A contempt finding can be direct (in the view of the court) or indirect (outside of the view of the court), and civil (coercive) or criminal (punitive) in nature. The Edgeworths seek an indirect civil contempt finding. The procedure for indirect civil contempt is described by statute and case law.

The procedure for indirect contempt is codified in NRS 22.030(2)[1]. The statute requires that the facts of the contempt be set forth in an affidavit/declaration. NRS 22.030(2); and, *Awad v. Wright*, 106 Nev. 407, 409, 794 P.2d 713, 714 (1990) (explaining and providing authority for the affidavit/declaration requirement for indirect contempt); *abrogated on other*

[1] NRS 22.030(2). If a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the masters or arbitrators.

grounds by, *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 106 Nev. 407, 794 P.2d 713 (2000).

An affidavit/declaration is "critical" in an indirect contempt proceeding. *Awad*, 106 Nev. at 409-10, 794 P.2d 714-15. There is no jurisdiction to proceed unless a sufficient affidavit/declaration is presented. *Ibid; quoting*, *Whittle v. Seehusen*, 113 Idaho 852, 748 P.2d 1382, 1387 (Ct. App. 1987)(a "court presiding over indirect contempt proceedings acquires no jurisdiction to proceed until a sufficient affidavit is presented.").

The required affidavit/declaration *must describe all the essential facts which demonstrate the alleged indirect contempt*. *Awad*, 106 Nev. at 409-10, 794 P.2d at 715. ***Thus, a deficiency in the affidavit/declaration cannot be cured at a later hearing***. *Ibid, citing, Jones v. Jones*, 428 P.2d 497, 500 (Idaho 1967).

The affidavit/declaration must stand on its own, a court may not take judicial notice of the record to cure a deficiency. *Ibid.* Also, "no intendments or presumptions may be indulged to aid the sufficiency of the affidavit." *Ibid*.

If the affidavit/declaration is sufficient to confer jurisdiction, then the court must review the subject order. A court may issue an order to show cause and find contempt *only when* there is a violation of clear and unambiguous order. *In the Matter of the Determination of the Relative*

Rights of the Claimants and Appropriators of the Waters of the Humboldt River Stream System and Tributaries, 118 Nev. 901, 59 P.3d 1226 (2002)("*Waters of the Humboldt River*"); *Southwest Gas Corporation v. The Flintokote Company-U.S. Lime Division*, 99 Nev. 127, 131, 659 P.2d 861, 864 (1983):

- A contempt finding "must be grounded" on an order with "clear, specific and unambiguous terms". *Southwest Gas*, 99 Nev., at 131, 659 P.2d at 864.

- The order must spell out clear and specific terms such that a person "will readily know exactly what duties or obligations are imposed on him." *Ibid*.

- An order which does not spell out the exact act which a person is asserted to have disobeyed is "unenforceable due to vagueness". *Waters of the Humboldt River*, 118 Nev., at 907, 59 P.3d at 1230.

- A finding of contempt which is not based upon clear, unambiguous language that describes exactly what act(s) are required, is an abuse of discretion and is subject to reversal. *Ibid*; and, *Southwest Gas*, 99 Nev., at 131, 659 P.2d at 864.

The Edgeworths seek to jail Simon for an alleged indirect contempt based on a vague, inaccurate, and incomplete declaration for violation of an order of which the parties have different understandings. Simon requests denial of the motion and the assistance of the Court to resolve this dispute.

If the Court considers granting the motion, then Simon requests an evidentiary hearing (*Awad*, 106 Nev. at 411-12, 794 P.2d at 716), and if the request for an evidentiary hearing is denied and the motion granted then Simon requests a stay to allow for an appellate challenge.

III. Facts

Prior to the beginning of the evidentiary hearing on August 27, 2018, Simon provided 89 exhibits to the Edgeworths. Exhibit 80 was a CD holding over five thousand pages of emails.

On day 4 of the evidentiary hearing, Thursday August 30, 2018, the Edgeworths moved their Exhibits 11 & 12 into evidence. The Edgeworths' Exhibits 11 & 12 contained email strings with the Viking draft and final releases. (*See, e.g.*, App., Ex. 9 at p.131-145 and in its entirety.)

At the 2018 hearing, Simon answered questions posed by this Court and all parties regarding the settlements with Viking and Lange and the releases. In direct contradiction of the Edgeworths' missing "expected" email claim:

- The Viking release was worked on by Simon and defense counsel Joel Henriod during an in-person meeting at Joel Henriod's office. (App., Ex. 9 at p. 126-30.)

- Negotiation with Lange occurred between Simon and defense counsel Teddy Parker on the phone or in-person. (*E.g*. App., Ex. 9 at p. 140-56.)

On September 10, 2018, per the request of Edgeworths' counsel Vannah, Simon voluntarily produced cell phone records, which are not part of the case file. (App., Ex. 3 at p. 111-112.)

On June 10, 2019, Simon provided physical evidence and documents including Viking sprinkler pieces, blueprints, job files, "Mark's sprinkler emails", etc. (App., Ex. 4 at p. 113-114.)

In May of 2020, the Edgeworths informally sought a copy of the case file in the defamation case[2] during which the parties debated the applicability of the stipulated protective order (SPO) entered in this case.

On May 26, 2020, Simon copied the case file to an external drive. (*See, e.g.*, App., Ex. 1 at p. 1-5, Ex. 2 at p. 6-110 & Ex. 6 at p. 118-120.) Documents believed to be subject to the SPO were redacted. The folders, sub folders and files of the copied electronic case file were "clearly identified". For example, the main folders on the drive were titled with common identifiers such as "PLEADINGS", "Research", and "Depositions". (App., Ex. 10 at p. 161.)

On May 28, 2020, Simon delivered the external hard drive to the Edgeworths by Federal Express. (App., Ex. 5 & 6 at p. 115-120.)

[2] Peter Christiansen represents Simon in the defamation case.

On May 3, 2021, almost one year after delivery of the case file, Morris Law Group entered the case for the Edgeworths. Morris Law Group immediately contacted Simon directly in violation of NRPC 4.2 with a demand and a shortened deadline. (App., Ex. 11 at p. 162-164.)

On May 4, 2021, during a phone call, the Edgeworths requested a second production of the file due to purported issues in the first production. The Edgeworths were asked for specifics about the issues.

On May 4, the Edgeworths sent a letter claiming that among the missing portions of the file "are all attachments to emails included in the production." (App., Ex. 12 at p. 165; *contra*, App., Ex. 13 at p. 166-168, at which the Edgeworths concede that at least some email attachments were provided but argue the provided attachments were out of place, etc.)

In the May 4 letter, the Edgeworths claimed that Simon did not provide research. (App., Ex. 12 at p. 165.) In fact, the year before, Simon had produced over 300 pages of research bated LODS37786-38104. (App., Ex. 2 at p. 6-110.)

In the May 4 letter, the Edgeworths claimed that Simon did not provide emails with experts. (App., Ex. 12 at p. 165.) In fact, most emails (excepting those retained under the SPO) had been produced the year

before. For example, the emails with Kevin Hastings of Ivey Engineering were produced at LODS016597-788. (App., Ex. 2 at p. 6-110.)

On May 7, 2021, Simon replied to the May 4 letter. Simon asked if copies of every attachment to every email every time the email appeared in an email string were sought. Simon also asked for clarification because the missing item claims were groundless. (App., Ex. 14 at p. 169-170.)

On May 11, 2021, the Edgeworths responded by email. Of note, new counsel did not have the SPO and *acknowledged possession of the Viking and Lange settlement drafts and releases*. (App., Ex. 15 at p. 171-172.)

On May 13, 2021, the Edgeworths filed a motion seeking production of the "complete" client file pursuant to NRS 7.055. The attached declaration was based on information and belief only:

> 5. I am *informed and believe* that the Edgeworths have still not received their complete client file from Simon, though portions were produced in 2018 and in 2020.
>
> 6. I am *informed and believe* that the portions of the file received were disorganized and often indecipherable, which made review very difficult and time consuming.

(Italics added.)(App., Ex. 16 at p. 173-175.) The declaration reasserted the inaccurate May 4 claim of missing documents. (App., Ex. 16 at p. 173-175.)

On May 20, 2021, Simon opposed the May 13 motion and continued to offer to work with the Edgeworths.

On May 21, the Edgeworths filed their reply. Notably, the Edgeworths pointed to how emails were attached *as an exhibit to the Simon May 20 opposition* as "a good example of how the files were disorganized and often indecipherable…" The argument was a *non sequitur* because how Simon's counsel handles an exhibit to an opposition is different from case file production. The claim also exposed a basic misunderstanding. The question of whether a file has been produced does not turn on whether the recipient is comfortable with the organization of the file.

At the May 27, 2021, motion hearing Simon described a basic problem with the motion, "They allege there's a problem, but they won't tell us what it is, and then they tell us to fix it." (App., Ex. 17 at p. 176-181.)

At the hearing, the Edgeworths admitted to receiving a drive with "tens of thousands of documents on it" and then repeated the conclusory claim that the case file was incomprehensible and disorganized, without providing detail or foundation to their claims. (App., Ex. 17 at p. 176-181.) The Edgeworths also complained of having no common guideposts but did not explain how the common identifiers used by Simon such as "Pleadings" and "Research" were inadequate. (App., Ex. 17 at p. 176-181.) Nor did the Edgeworths explain why the Simon office could possibly be obligated to change the case file nomenclature. (App., Ex. 17 at p. 176-181.)

On June 17, 2021, this Court denied the motion.

On July 1, 2021, the Edgeworths filed a motion seeking reconsideration. In the single paragraph in the body of the motion which addressed the case file, nothing new was offered regarding the case file.

On July 15, 2021, Simon opposed the motion. To end any uncertainty raised by the vague claims of the Edgeworths, Simon offered the declaration of Ashley Ferrel Esq., who prepared the case file for delivery over a year prior. (App., Ex. 6 at p. 118-120.)

On July 17, 2021, the Edgeworths replied and made new claims.

On September 9, 2021, this Court denied the motion.

On December 13, 2021, the Supreme Court dismissed the Edgeworths' attempt to appeal the case file order.

On February 1, 2022, the Edgeworths filed a petition for writ of mandamus challenging the district court's case file order. In the Petition the Edgeworths tried a new argument for re-production of the case file by claiming without citation or foundation that Simon did not turn over:

> [O]r even the fully executed settlement agreements that resulted in the settlement funds on which Simon based his charging lien.

(App., Ex. 18 at p. 182-184.) The Edgeworths posited the claim of the missing final settlement agreement even though the final settlement

agreements were signed *after Simon was fired by the Edgeworths* and Vannah had been hired.

The Supreme Court directed Simon to respond to the petition. The debate before the Supreme Court concentrated on the effect of the SPO.

On September 16,2022, the Supreme Court issued an order granting the Edgeworths petition. The decision clearly focused on the information withheld pursuant to the SPO. (App., Ex. 19 at p. 185-190.)

On September 22, 2022, the Edgeworths submitted a proposed order to this Court. (App., Ex. 20 at p. 191-194.) The Edgeworths did not provide the order for review as per customary practice. The proposed order was notable because it listed items to be produced that were never mentioned before, such as email metadata. The Court did not sign the proposed order.

On September 27, 2022, the Court issued an order, requiring complete file production in 14 days. (App., Ex. 21 at p. 195-201.)

On October 11, 2022, Simon timely hand delivered another external drive which contained the material withheld per the SPO. (App., Ex. 7 at p. 121.) Also, although not obligated to do so, Simon created and provided an index of the information contained on the drive. (App., Ex. 1 at p. 1-5.)

On October 13, 2022, the Edgeworths emailed and implied that the previously provided file had to be re-sent to comply the Order. For the first

time, the Edgeworths requested email in a native format. (App., Ex. 22 at 202-205.)

On October 18, 2022, Simon replied to the email of the 13th. Simon asked for the basis of the claim that previously supplied material had to be re-sent to comply with the Order. Simon also asked for clarification on the native email request. (App., Ex. 23 at 206-207.)

On October 18, 2022, the Edgeworths responded. The Edgeworths did not directly address Simon's inquiry about the need to provide materials twice, but the Edgeworths withdrew the request for a native email production. (App., Ex. 24 at p. 208-213.)

On October 24, 2022, the Edgeworths called and emailed with the threat of sanctions.

On October 25, 2022, Simon sent a letter asking specific questions regarding the Edgeworths' expectations. For example, Simon again asked if it was the Edgeworths position that a previously provided document had to be sent again to comply with the Order. (App., Ex. 25 at p. 214-216.)

On October 25, 2022, counsel spoke on the phone. The Edgeworths did not provide a yes or no on the double production question. Instead, the Edgeworths indicated, that Simon did not have to produce a document again if the Edgeworths knew the location of the document in the first

production. (How Simon was supposed to know that information was not offered by counsel.) However, counsel for the Edgeworths did not describe their review and acknowledged that the Edgeworths did not know the entirety of what had been produced by Simon. (Declaration of counsel.)

On the call of the 25th, the Edgeworths took a contradictory position on email. The Edgeworths again indicated that they did not expect a native email production, but that they wanted a production in the form the emails were kept by Simon (which is "native" form), then stated that the production format was up to Simon. (Declaration of counsel.)

On October 26, 2022, Simon delivered another external drive which contained over 130,000 documents and provided a newly created 105-page index. (App., Ex. 2 at p. 6-110 & Ex. 8 at p. 122.) The production on the 26th contained all documents previously produced on an external drive. The index was not part of the Simon case file. The Simon office spent days creating the index in the hope of ending debate.

On October 27, 2022, within a day of receiving over 130,000 documents and the 105-page index, the Edgeworths sent another complaint letter. (App., Ex. 26 at p. 217-222.) The letter contained insults. The Edgeworths made arguments based on the proposed order that was *not signed* by this Court. The letter continued the theme of contradictory

positions. 7 categories of documents were listed which the Edgeworths apparently believe are missing. The first category is illustrative of this dispute. The first category requested was: "*(1) all documents evidencing Simon's engagement;"* (Italics in original.) (App., Ex. 26 at p. 217-222.)

As this Court is acutely aware from the testimony and exhibits at the evidentiary hearing, and as this Court discussed in its orders, the engagement of Simon began on a friends and family basis and beyond a few emails there are no documents evidencing Simon's engagement.

The point of the Edgeworths' request for engagement documents appears geared toward creating a dispute because the Edgeworths have the relevant emails, the emails were admitted as hearing exhibits, and have been provided by Simon several times now. Further, this Court ruled on the nature of Simon's engagement and the findings were upheld by the Supreme Court. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (table) 2020 WL 7828800 (Nev. 2020) (unpublished)(upholding this Court's dismissal of A-18-767242-C, award of sanctions, and the finding that the engagement began between friends and an express written or oral contract was not formed).

On the issue of double production, the Edgeworths stated:

> Responding to your question as to whether we expected you to reproduce materials previously provided, the answer is that we did

> expect you would reproduce the entire file, principally because it would be simpler than you trying to intermix the missing pieces into your prior incomplete production. However, if you wish to omit any portion of the content previously provided, you do so omit so long as you provide us with a specific reference of where the omitted portion can be found in your prior production (by bates number and complete path of where the bates number was stored since your partial production was not made in bates number sequence).

(App., Ex. 26 at p. 217-222.) The Edgeworths expectations on case file production are beyond a reasonable interpretation of the Order. No part of the Order requires Simon to draft a "complete path" of document location.

The October 27 letter shows the Edgeworths' position: The Edgeworths want to litigate the production of the case file, therefore, the Simon case file production is willfully inadequate. Simon did not respond to the letter, instead, work began on Simon's own motion. However, the subject motion was filed first.

IV. Argument

Simon did not willfully violate this Court's September 27 Order. Much of the case file was produced on June 10, 2019 & Mary 28, 2020. As ordered, on October 11, 2022, Simon timely provided the case file withheld pursuant to the SPO. On October 26, Simon re-produced the case file. Simon also spent days of work to provide 2 case file indexes, spanning 110 pages. (*See*, App., Ex. 1-8 p. 1-122.)

The contempt motion must be denied. The Edgeworths did not provide this Court with a sufficient declaration which details all facts surrounding the alleged in-direct contempt as required by statute. NRS 22.030(2); and *Awad*, 106 Nev. at 409, 794 P.2d at 714 (describing and providing authority for the declaration requirement for indirect contempt). The Declaration does not describe the Edgeworths' review of the case file and/or lay a foundation for the conclusion that documents are missing. For example, the Declaration at para 22 states in conclusory terms that the "expected" expert retention documents were not provided, required details are not provided.

The Declaration did not describe where, when, or how the Edgeworths looked for expert retention documents. The Declaration did not name the experts for whom retention documents are allegedly missing. The Declaration did not describe the basis for what retention documents are expected or what the expected documents themselves are. Finally, the vague claims in the Declaration are inaccurate. Retention agreements and related emails were produced for four of the six experts (of which five were disclosed in the underlying case). Two experts never had a retention agreement to provide. In short, the Declaration does not satisfy NRS 22.030(2) therefore the motion must be denied.

The Edgeworths interpretation of the Order is not clear. Contempt cannot be founded on an unclear order. Simon has encountered resistance at reaching an understanding of the Order with the Edgeworths. For example, Simon, just as Morris Law, does not typically consider as part of a case file, or retain, such things as drafts when there is an end-product document. However, the Edgeworths at times appear to seek drafts. Further, every email is not typically part of any lawyer's case file due to the practical administrative burden which would result. In sum, the Order does not require re-production, creation and disclosure of document paths, or a native production of email (which the Edgeworths may or may not be seeking), all of which require denial of the motion.

A. The Declaration

The Declaration submitted in support of the bid to find Simon in contempt and jailed, must provide all facts necessary to demonstrate willful contempt of the Order to produce the case file. Declaration deficiencies cannot be cured, and any deficiency requires denial of the motion. *Awad*, 106 Nev. at 409-10, 794 P.2d at 715; *citing, Jones*, 428 P.2d at 500 (a deficiency cannot be cured).

The Declaration is facially deficient because the Edgeworths did not provide foundation for their claims of missing documents by describing

their efforts to locate the sought-after documents in the case file. The declaration is also facially deficient because the claim of missing information is based upon a subjective understanding of "expected" information, rather than objective fact. (*See, e.g.*, Declaration at para 22.)

1. The Declaration is deficient because it does not describe the Edgeworths' review of the case file.

The Declaration does not describe a review of the case file. In fact, when the Edgeworths began raising inaccurate claims of missing documents in May of 2021, the Edgeworths argued they could not review the file because of the file's organization. (App., Ex. 17 at p. 176-181.)

Before the Edgeworths can claim that a document is missing from the case file, they must lay a proper foundation by describing their search for the document. Because the Edgeworths are seeking to find Simon in contempt, their search must be described in the Declaration.

The Edgeworths' attempt to hold Simon in contempt must fail because the Declaration does not describe efforts made by the Edgeworths to locate the allegedly missing information. This is not just a technical violation of the indirect contempt procedure - which would require denial of the motion. As demonstrated in the following section, the Edgeworths have documents they claim to be missing.

2. Paragraph 22

Declaration paragraph 22 states the bulk of the claims of missing documents:

> 22. Furthermore, the examples of items that should have been in the file, but which cannot be located, such as letters or emails transmitting the initial draft of the Viking or Lange settlement agreements, negotiating the terms therein, and transmitting the signed copies suggests that communications were selectively omitted. With respect to research, Simon has not produced any portions of the file to demonstrate that his office independently "researched" the Viking activations. The portion of the produced file also does not include the expected back and forth communications demonstrating when most of the Edgeworths' experts were retained or the terms of their retention. These substantial gaps further suggest that Simon has selectively omitted portions of the file.

Paragraph 22 can be broken into three areas of complaint. None have merit.

a. The Edgeworths have draft and final releases.

The Edgeworths promote a vague expectation of available information, then complain without foundation that their subjective expectation was not met by what was provided. The declaration is deficient because subjective expectation fails in the face of facts.

First, the Edgeworths already have the draft and final releases the declaration vaguely alludes to. On day 4 of the evidentiary hearing, Thursday August 30, 2018, the Edgeworths moved Exhibits 11 & 12 into

evidence. (App., Ex. 9 at p.131-134.) The Exhibits contained email and the Viking draft and final release. (*See, e.g.*, App., Ex. 9 at p. 123-160.)

At the 2018 evidentiary hearing, Simon answered questions regarding the settlements with Viking and Lange and the releases. In direct contradiction of the missing "expected" information claims:

- Simon worked on the Viking release during an in-person meeting at Joel Henriod's office. (App., Ex. 9 at p. 126-30.)
- Negotiation with Lange occurred between Teddy Parker and Simon on the phone or during in-person meetings. (*E.g.*, App., Ex. 9 at p. 140-56.)
- After he was fired, Simon received an email from Vannah with the Edgeworths signed Viking release and forwarded it to Viking counsel. (*E.g.*, App., Ex. 9 at p. 127.)
- Vannah agreed to sign the Lange release in open court. (App., Ex. 27 at p. 223-27.)

The declaration is not accurate, therefore, the motion for contempt must be denied.

b. The Edgeworths have Simon's work product.

In May of 2020, Simon provided a drive with over 300 pages of research, contained in a folder entitled "Research". (App., Ex. 2 at p. 6-110.) Yet, on May 27, 2021, the Edgeworths told this Court that Simon did not provide research. (App., Ex. 17 at p. 176-181.)

In October of 2022, Simon again confronted the Edgeworths on the accuracy of claims of missing documents, in response the Edgeworths shifted the missing research claim in paragraph 22 to the following:

> With respect to research, Simon has not produced any portions of the file to demonstrate that his office independently "researched" the Viking activations.

In sum, the Edgeworths now claim that "research" refers to Simon work product concerning analysis of Viking discovery. First, the Edgeworths did not provide any showing that such information must be provided to a client. *See, e.g.*, Ill. State Bar Ass'n Advisory Op., 144 (1988)(and cases cited therein indicating that legal research and other memorandum need not be provided).

Moving past the lack of legal support for the Edgeworths claim, *the information has been provided*. For example, the chart reflecting the Simon activation analysis was provided in the drive containing confidential documents at LODS 1352727 – 746. The chart is confidential but will be provided to the Court at the hearing of this matter.

c. Simon produced expert agreements and email.

The Edgeworths failure to review what has been provided is again apparent from the inaccurate claims regarding missing expert retention agreements and related email.

The Edgeworths motion is deficient on its face because the Edgeworths did not describe how they concluded that documents were missing, nor did they describe how they determined what "expected" documents are. The motion must also be denied because the claim of missing expert retainer documents is not accurate.

i. Kevin Hastings

The retainer agreement is found at LODS134860-65. Related email is found at LODS16618-19.

ii. Gerald Zamiski

The retainer agreement is found at LODS 134909-12. Related email is found at 16892-94.

iii. Crane Pomerantz

The retainer agreement is found at LODS134805-08. Related email is found at LODS 16858-59.

iv. Don Koch

The retainer agreement is found at LODS1348256. Related email is found at LODS19912-14.

v. Brian Garelli

Brian Garelli and Simon are acquaintances, and they did not have a written agreement.

vi. John Olivas

John Olivas is the brother-in-law of Simon, there is no written agreement.

3. Email attachments

The Declaration makes vague claims about email attachments. However, the Declaration does not detail case file review, what is missing or if drafts are wanted. This area of complaint is also set against the backdrop of the changing and contradictory requests of the Edgeworths.

The members of the Simon office searched and printed their own emails for messages related to the case for the evidentiary hearing. The documents were then scanned into pdf files and produced. (Declaration of counsel.) The email review was time consuming. Attachments were not typically printed because they are voluminous and can typically be found in other parts of the file. (Declaration of counsel.) Simon does not usually retain e-mails, drafts and end-product documents can typically be found in the case file. (Declaration of counsel.) Further, it appears that the Edgeworths already have draft attachments of interest, for example, Exhibits 11 & 12. (App., Ex. 9 at p. 123-60.)

In the past, the Edgeworths requested a “native” production of email. A native production would be time consuming and costly. When asked directly about a native production, the Edgeworths retreated from their request. However, the Edgeworths continued to request email in the format held by Simon, the definition of a native production, but then reversed and stated the choice of production format was Simon’s. (Declaration of counsel.)

At the current time, Simon has chosen to produce email in pdf format. That said, Simon is willing to assist the Edgeworths in locating attachments of interest, which they cannot find after a reasonable search.

4. The size of the file

The size of the file argument does not track. There are 122,458 pages of discovery, which is 24.5 boxes at 5,000 pages a box. There are 5,543 pages of emails and 5,426 pages of depositions. Pleadings and other documents make up the remainder. The paucity of the file size argument is telling in this context.

5. The "modified date"

The modified date argument which begins at paragraph 5 of the Declaration is below threshold. The timely SPO production was made up of documents which were redacted from the May 2020 production. Redacted documents are compiled at the time of redaction…in May of 2020. The modified date is what should be "expected".

B. The Edgeworths interpretation of the Order is not clear.

To hold a party in contempt, the subject order must specifically and explicitly explain what a party is required to do to comply. *Waters of the Humboldt River*, 118 Nev. 901, 59 P.3d 1226; *Southwest Gas Corp.,* 99 Nev. at 131, 659 P.2d at 864. The motion must be denied because the Order does not require Simon to meet the production expectations of the Edgeworths.

The Edgeworths at least lean towards an expectation of duplicate production of case file materials. The Order on its face does not require Simon to produce again material the Edgeworths already have.

The Edgeworths floated a request for draft documents. The Order on its face does not compel production of draft documents and does not compel Simon to go to the lengths required to produce drafts. (*See, e.g.*,

Utah State Bar Ass'n Advisory Op., 06-02 (2006)(an attorney may not have to provide drafts of documents).)

The Edgeworths have complained about file organization and have requested such items as documents paths. On its face, the Order does not require Simon to create new material or guides for the Edgeworths.

The Edgeworths have complained about missing information. Unfortunately, the claims are often inaccurate. On its face the Order does not require Simon to guess at the wholesale complaints of the Edgeworths. Simon will respond in the normal course to a case file inquiry that is reasonable and grounded on a review of the provided file, but the Order does not require a response to inaccurate claims of missing documents.

The phrase complete file was likely understood on appeal to encompass the materials withheld under the SPO, based on the briefing and the Supreme Court Order. The difficulty arises when the Edgeworths argue their changing expectations are encompassed within the Order, when the specifics of their requests were not raised or briefed.

As it currently stands, the Order does not clearly encompass the production requests of the Edgeworths in a clear fashion sufficient to

reach a contempt finding, especially in light of the amount of material already provided.

V. Conclusion

Simon has not acted willfully to violate this Court's Order. It is wrong to bring such an accusation based on a deficient declaration, vague subjective expectations, and inaccurate claims of missing documents. The Simon office has put in many days of work and has produced the case file, some parts have been produced multiple times. Simon has gone beyond the required and produced work product and created case indexes for his former friends and clients.

The motion must be denied. The Edgeworths did not provide this Court with a sufficient declaration which details all facts surrounding the alleged indirect contempt as required by statute. NRS 22.030(2); and, *Awad*, 106 Nev. 407, 409, 794 P.2d 713, 714 (describing and providing authority for the declaration requirement for indirect contempt). The Edgeworths did not provide a foundation for their claims, the claims of missing documents are incorrect, and the Edgeworths seek information beyond what is normally kept in a case file, and which is not explicitly stated in the Order.

Simon agrees that the Edgeworths may request their case file and that due to the size and scope of the file, it is entirely possible that a document(s) may be misfiled or may not have been produced. Simon will respond when and if such issues arise. However, it is not appropriate for the Edgeworths to present added work projects or to make inaccurate claims. Simon respectfully requests that the Edgeworths review what has been provided before claiming that documents are missing. Also, that any inquiries about case file production be made in a clear and specific manner, without insult or shortened deadlines.

DATED this 14th day of November 2022.

/s/ James R. Christensen

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