

# Martinez v. Excel Corporation

**Case Number**

S-15-0420

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December 3, 2015

**Court Number**

Douglas

**Case Summary**

S-15-0420 Juan Martinez-Ceja v. Excel Corporation

Workers' Compensation Court, Judge Tom Stine

Attorneys: Maria A. Vera (Vera Law Firm) --- Defendant waived submission of brief

Civil: Attorney lien for fees and costs

Proceedings below: The trial court granted in part and denied in part Plaintiff Attorney's motion for attorney lien for fees and costs based on quantum meruit. Plaintiff's attorney filed this appeal.

Issues: The trial court erred in 1) finding that under the quantum meruit, attorney fees cannot be awarded to Appellant for her legal representation of the Plaintiff on Defendant's Appeal to the Court of Appeals of the Review Panel's Affirmance because Appellant did not file an application for attorney's fees, pursuant to Neb. Rev. Stat. '48-125((2)(b), 2) making findings inconsistent with the evidence presented concerning a \$500.00 cash medical advance by Appellant to the Plaintiff to seek a medical evaluation to determine if the medications the Plaintiff was taking for his industrial back injury were casually connected to a resulting kidney tumor, 3) finding that Appellant made a \$500.00 "loan" to the Plaintiff, notwithstanding the testimony of the Plaintiff and of Appellant that Plaintiff used the \$500.00 to seek a medical evaluation for a kidney tumor that developed after the Plaintiff had been on much back pain medication, 4) finding that Appellant secured a \$500.00 "repayment through future proceeds" notwithstanding the fact that Plaintiff made five payments to Appellant in the total amount of \$550.00 from his own funds that include Social Security Benefits; not identified to be from benefit checks, 5) finding that it is "abundantly clear" that the \$500.00 advance to the Plaintiff is not an attorney's fee or litigation expense notwithstanding the testimony of the Plaintiff and of Appellant that Plaintiff sought a medical evaluation with the \$500.00 he received from Appellant to have a kidney tumor checked after the Plaintiff had been taking many medications for his back industrial injury involved in the matter litigated, specifically naming a pain drug called Vioxx which was taken off the market, 6) finding Appellant testified she was informed that she "probably should not have advanced him the money" notwithstanding the absence of any evidence or testimony to that effect, 7) finding Plaintiff should not repay

Appellant the \$500.00 advanced for a medical evaluation because the Court deemed it to be a loan and such repayment "should not be the subject of an action for an attorney's lien pursuant to '48-108," 8) abusing its discretion when it lacked jurisdiction to make a direct

finding or reach a conclusion of law in matters of disciplinary proceedings, specifically, that Appellant obtained a financial interest in the litigation pursuant to Neb. Ct. R. of Prof. Cond. '3-501.8(i), the result of this finding being highly prejudicial to Appellant in self-serving disciplinary proceedings commenced by Judge Stine, presiding trial judge of the Compensation Court, and 9) failing to reconsider the above errors contained in its Order of April 8, 2015, in its subsequent Court Order of April 21, 2015.

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