NOT DESIGNATED FOR PUBLICATION

JOHNNY ALBERT, JR.	*	**NO. 2002-CA-0754**
VERSUS	*	**COURT OF APPEAL**
WILLIAM L. MACTINO, DEGEORGE GLASS COMPANY, INC., THEIR LIABILITY INSURANCE CARRIER, TRANSPORTATION INSURANCE COMPANY AND ST. PAUL FIRE & MARINE INSURANCE AS THE UNDERINSURED MOTORIST CARRIER FOR CIRRUSAIR AGAMEMNON COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-12028, DIVISION "H-12"
Honorable Michael G. Bagneris, Judge
* * * * * *

Judge David S. Gorbaty
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(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones, Judge David S. Gorbaty)

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AFFIRMED

Fred DeFrancesh, plaintiff's prior counsel in the underlying proceeding, appeals the dismissal with prejudice of his claims for attorneys' fees and costs. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

Fred DeFrancesh represented Johnny Albert, Jr. in his personal injury claim. He filed suit on his behalf on April 1, 1999 in proceeding number 99-5350 in Civil District Court for the Parish of Orleans. No action was taken in that lawsuit other than the filing of the petition.

DeFrancesh was subsequently discharged as Albert's attorney, and Albert retained Robert R. Faucheux, Jr. Faucheux filed suit on behalf of Albert on October 27, 1999 in proceeding number 99-12028 in Civil District Court for the Parish of Orleans. Albert's claims were compromised and settled on November 13, 2000, and a motion to dismiss the proceeding and any claims of prior counsel was filed on February 2, 2001 by defendants

William L. Mactino, De George Glass Company, Inc., and their insurer, Transportation Insurance Company.

Claiming that he was entitled to a portion of the attorneys' fees received by Faucheux, DeFrancesh filed a Motion to Set Attorneys' Fees on February 15, 2001. Faucheux opposed the motion, arguing that DeFrancesh did not perfect his alleged fee interest by filing and recording it prior to settlement of the matter, in accordance with La. R.S. 37:218. Subsequently, defendants Transportation, De George Glass Company, and William Mactino filed a motion to dismiss. After a hearing on November 9, 2001, the trial judge granted the motion, finding no evidence of a fee splitting arrangement between DeFrancesh and Faucheux, and ruling that DeFrancesh failed to perfect a valid attorney's lien. The trial court further declared DeFrancesh's Motion to Set Attorneys' Fees moot. DeFrancesh subsequently filed this appeal.

DISCUSSION

In his Motion to Set Attorneys' Fees, DeFrancesh asserted there was an agreement between him and CNA Insurance Companies that his name would be placed on any check issued as a result of the claims of Albert. DeFrancesh attached to his motion a copy of the letter dated August 23, 1999 to Kate Liddle of CNA stating that he no longer represented Albert,

and he would appreciate her placing his name on any settlement check given to Albert. DeFrancesh claims that Liddle agreed to do so, and in failing to include his name on the check was negligent, and therefore CNA or Transportation is responsible to him for his fee.

A court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." *Rosell v. ESCO*, 549 So.2d 840 (La. 1989). In *Mart v. Hill*, 505 So.2d 1120 (La. 1987), the Louisiana Supreme Court posited a two-part test for the reversal of a factfinder's determinations:

1) The appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and
2) The appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). *Id*. at 1127 (quoting *Arceneaux v. Domingue,* 365 So.2d at 1333 (La. 1978)).

There is no objective evidence in the record confirming any agreement that DeFrancesh had with anyone to include his name on the settlement check. All that his August 23 letter does is ask for his name to be placed on the check. DeFrancesh offers no explanation of how the alleged agreement was confected. Accordingly, we find that there was a reasonable factual basis for the trial court's ruling, and that the trial judge was not clearly wrong in concluding that there was no evidence of a fee splitting arrangement.

La. R.S. 37:218 accords an attorney certain protection with respect to his fee when he has entered into a written contract with his client, provided he files and records the contract with the clerk of court in the parish in which the suit is pending or is to be brought, or with the clerk of court in the parish of the client's domicile. If an attorney fails to record his contract, he forfeits his right to impose any obligation on third parties with respect to that contract, and there is no basis for an intervention against a third-party obligor of the client or his insurer. *Francis v. Hotard,* 2000-0302, pp. 3-4 (La. App. 1 Cir. 3/30/01), 798 So.2d 982, 985-986; *Hawthorne v. National Union Fire Ins.*, 562 So.2d 473, 473 (La. App. 3 Cir. 1990). Absent recordation, a lawyer cannot impose an obligation upon a defendant in a lawsuit by the lawyer's client or his insurer for any fee that might otherwise be due. *Id.*

Although DeFrancesh claims he properly recorded his contract, it was filed only after the settlement was completed and judgment rendered by the trial court on November 9, 2001. Not only was it not timely recorded, it was not recorded in the proper place. Recordation of the contract in the mortgage records of Orleans Parish satisfies the recordation requirements of La. R.S. 37:218 in Orleans Parish. *Ruiz v. Williams,* 425 So.2d 929, 931. However, DeFrancesh recorded the contract with the clerk of court for

Orleans Parish and placed in the suit record of the proceeding initiated by DeFrancesh. It was never recorded in the mortgage records. Further, there is no evidence that the contract was recorded in St. John the Baptist Parish, where Albert is domiciled. As such, we find that the trial court correctly held that DeFrancesh failed to perfect a valid attorney's lien.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED