NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 1453

PRESTON PAYTON

VERSUS

REPUBLIC VANGUARD INSURANCE COMPANY, TEXAS GENERAL AGENCY, AND RANDY ANNY

Judgment rendered JUN 15 2015

* * * * * *

Appealed from the
23rd Judicial District Court
in and for the Parish of Ascension, Louisiana
Trial Court No. 96505
Honorable Ralph Tureau, Judge

* * * * * *

DANIEL FRAZIER, JR.
BATON ROUGE, LA

ATTORNEY FOR
PLAINTIFF-APPELLANT
PRESTON PAYTON

BRADLEY J. LUMINAIS, JR.
METAIRIE, LA

ATTORNEY FOR
DEFENDANTS-APPELLEES
REPUBLIC VANGUARD
INSURANCE COMPANY, TEXAS
GENERAL AGENCY, AND JOHN
WILLIAMS, SR.

RANDY T. ANNY
SORRENTO, LA

IN PROPER PERSON
DEFENDANT-APPELLEE

* * * * * *

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

PETTIGREW, J.

In this appeal, plaintiff challenges the trial court's judgment, granting summary judgment in favor of defendants and dismissing his claims against defendants with prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

The history of this case dates back to February 2012, when we issued a ruling concerning a judgment rendered in favor of defendants, Republic Vanguard Insurance Company ("Republic Vanguard"), Texas General Agency ("Texas General"), and John Williams, Sr., and against plaintiff, Preston Payton. **Payton v. Republic Vanguard Ins. Co.**, 2011-0940 (La. App. 1 Cir. 2/3/12) (unpublished opinion) (**Payton I**). While the underlying facts of this case are well known to both this court and the parties herein, a brief review of the procedural history that has brought us to this point is necessary for a complete understanding of the court's analysis that follows.

This action commenced on May 28, 2010, with a "Petition To Enforce Settlement Agreement/For Damages For Breach Of Agreement/And For Statutory Penalties," filed by Mr. Payton to recover settlement proceeds, following a dredge accident that occurred on March 11, 2006. Named as defendants were Mr. Williams, the owner of the tanker truck that caused the alleged accident; Republic Vanguard, Mr. Williams' insurer; Texas General, Republic Vanguard's adjusting agency; and Randy Anny, who was leasing the gravel pit where the alleged accident took place. According to the record, a tanker truck belonging to Mr. Williams was delivering fuel to Mr. Payton's dredging operation near Independence, Louisiana, when the tanker truck picked up a cable and/or rope securing the dredge in the gravel pit, causing the dredge to sink in approximately 45 feet of murky water.

Mr. Payton's original petition alleged that the defendants had entered into a settlement agreement with him whereby they agreed to pay him $256,714.86 as replacement for his dredge. Mr. Payton asserted that instead of paying him directly, Republic Vanguard and Texas General made the settlement check payable to Mr. Anny, who was allegedly obligated to pay Mr. Payton. However, Mr. Payton maintained, the

check used by Mr. Anny to pay him was drawn on an account with insufficient funds to cover the check. Thus, having never received the settlement funds, Mr. Payton sought damages, including the original settlement amount, loss of income, interest, attorney fees, and litigation costs.

Mr. Anny filed an answer to Mr. Payton's petition, generally denying the allegations therein. In addition, Mr. Anny stated that he paid Mr. Payton, by check, $256,714.86 "in an attempt to facilitate a compromise" between Mr. Williams and Mr. Payton. In exchange, Mr. Anny was to receive the insurance check from Republic Vanguard and Texas General as reimbursement for the money he had paid to Mr. Payton. According to Mr. Anny, after the settlement agreement was signed, Mr. Payton contacted him and informed him that he wanted another dredge instead of the check. Thus, Mr. Anny claimed, he acquired another dredge of equal or greater value and transferred it to Mr. Payton. Mr. Anny maintained that in exchange for receipt of the dredge, Mr. Payton had agreed to destroy the check that Mr. Anny had previously given to him.[1]

In response to Mr. Payton's petition, Republic Vanguard, Texas General, and Mr. Williams filed a peremptory exception raising the objections of no cause of action, no right of action, and prescription. They alleged that Mr. Payton had no right of action or cause of action against them as no contractual relationship existed between them and that any delictual action Mr. Payton might have had against them and/or Mr. Williams prescribed, as Mr. Payton did not file the present action until more than four years after the underlying dredge accident.

The trial court sustained all three of the objections and dismissed Mr. Payton's claims against them. Mr. Payton appealed[2] asserting that the release agreement he signed, along with Mr. Anny's personal check to him, the check from Texas General made payable to Mr. Anny, the letter from Texas General to its insured that the matter had

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[1] In his answer, Mr. Anny averred that Mr. Payton was fully compensated for the loss of his dredge as he received another dredge at Mr. Anny's expense. However, Mr. Williams testified in his deposition that Mr. Anny told Mr. Payton the check was to pay for his dredge. Mr. Williams further testified that Mr. Anny told Mr. Payton to hold the check for a couple of days and then he could cash it.

[2] **Payton I.**

been settled, and an affidavit executed by Mr. Williams established an enforceable settlement agreement between him and defendants. In the alternative, Mr. Payton contended he should have been allowed to amend his petition to allege facts supporting an agency relationship between defendants and Mr. Anny.

On appeal, this court concluded that based on the well-pleaded facts in the petition, along with the evidence introduced at the hearing before the trial court, Mr. Payton failed to state a cause of action against defendants for breach of contract or settlement agreement. However, because Mr. Payton's attorney argued that during the settlement negotiations with Mr. Payton, Mr. Anny was acting as defendants' agent, this court found it possible that the grounds for defendants' objections of no cause of action and no right of action may be removed by Mr. Payton's amendment of his petition. As such, this court ordered the matter remanded to the trial court to allow Mr. Payton an opportunity to amend his petition to set forth the necessary factual allegations concerning the agency relationship between defendants and Mr. Anny to state a cause of action against defendants. **Payton I**, 2011-0940 at 3.

Thereafter, on February 22, 2012, Mr. Payton filed an amended petition alleging, in pertinent part, as follows:

> VIII.
>
> That [Mr. Williams'] insurer, [Republic Vanguard], thru [sic] it[s] adjusting agency, [Texas General], investigated the accident, determined liability and range of loss.
>
> IX.
>
> That after completing it[s] investigation and estimating plaintiff's loss, [Republic Vanguard] allowed defendant, [Mr.] Anny, to negotiate with plaintiff to arrive at a settlement amount ($256,714.86) that was agreed to by [Republic Vanguard] and plaintiff.
>
> X.
>
> That [Republic Vanguard] wanted a receipt and release agreement executed by Plaintiff prior to releasing the settlement check.
>
> XI.
>
> Defendant, [Mr.] Anny, had the Settlement of Claims Agreement and Release prepared according to [Republic Vanguard's] specifications and had the agreement executed by plaintiff.
>
> XII.
>
> To facilitate the transaction, Defendant, [Mr.] Anny, wrote plaintiff a personal check for the amount of the settlement as security which was

to be held until plaintiff received the insurance check from [Republic Vanguard] or its adjuster.

XIII.

Defendant, [Mr.] Anny, sent the executed Settlement of Claims Agreement to defendants, [Republic Vanguard] and [Texas General], who after reviewing the agreement, prepared a check in the amount of the settlement and sent it to defendant, [Mr.] Anny.

XIV.

That the Settlement of Claims Agreement executed by plaintiff and accepted by defendants, [Republic Vanguard] and [Texas General], provided a full release of all claims against these defendants in addition to providing said defendants with full indemnity against all EPA and Cleans Water Act violations.

XV.

That all acts of defendant, [Mr.] Anny, taken for the benefit of defendants, [Republic Vanguard] and [Texas General], were ratified by these defendants when after receiving and reviewing the executed settlement agreement, they prepared and sent a check in the full amount of the settlement to [Mr.] Anny.

XVI.

That all acts of defendant, [Mr.] Anny, taken at all pertinent times referred to herein were acts as agent for defendants, [Republic Vanguard] and [Texas General].

XVII.

That all acts of defendant, [Mr.] Anny, taken for the benefit of defendants, [Republic Vanguard] and [Texas General], were ratified by said defendants therein confirming the agency between the parties.

XVIII.

That the executed settlement agreement and the signed check in the full amount of the settlement constituted an enforceable settlement agreement between plaintiff and all defendants.

XIX.

That instead of paying your plaintiff directly, defendants, [Republic Vanguard] and [Texas General] made the settlement check payable to defendant, [Mr.] Anny, who they assumed would pay plaintiff.

In response to the amended petition, Republic Vanguard and Texas General moved for summary judgment, arguing that Mr. Payton's amended petition lacked factual support for the allegation that Mr. Anny was acting as their agent. In support of their motion for summary judgment, Republic Vanguard and Texas General submitted the affidavit of Ed Milstead, a claims adjuster and litigation supervisor with Texas General. Mr. Milstead stated that Mr. Anny was not employed by either Republic Vanguard or Texas General and was never authorized to act on their behalf. He further indicated that

Mr. Anny had never been given authorization to negotiate a settlement agreement with Mr. Payton on behalf of Republic Vanguard or Texas General.

To the contrary, Mr. Payton asserted that the evidence supported his position that the settlement agreement was prepared according to the specifications of Republic Vanguard and was agreed to by all parties. He further argued that Republic Vanguard and Texas General knowingly chose to accept the benefits of the agreement when they reimbursed Mr. Anny and thereby became obligated under the agreement.

In support of his position, Mr. Payton submitted the deposition of Christopher Bridges, the attorney who prepared the settlement agreement. Mr. Bridges testified that, as best as he could recall, Mr. Anny, Mr. Williams, and Mr. Payton appeared in his office for him to prepare the settlement. During his deposition, Mr. Bridges produced a document ("the memo") he contended detailed what "they" wanted in terms of requirements in the settlement.[3] Republic Vanguard and Texas General objected to inclusion of the memo and moved to strike it from being admitted. In support of their motion to strike, Republic Vanguard and Texas General submitted an affidavit of Mr. Milstead. Mr. Milstead stated that he neither created nor sent the memo and had no knowledge of who may have created the memo. Mr. Milstead further testified that neither Republic Vanguard nor Texas General had any record of creating or sending the memo. Mr. Milstead concluded by stating that the memo could not have been created or sent by anyone associated with Texas General, as the document did not contain any company letterhead as required by company policy and procedure.

On September 12, 2013, the trial court denied the motion to strike, as well as the motion for summary judgment. Republic Vanguard and Texas General sought supervisory review of the trial court's rulings, and on February 27, 2014, this court issued the following:

> **WRIT GRANTED IN PART, DENIED IN PART.** The trial court's ruling of September 12, 2013, denying Republic Vanguard Insurance

[3] Although the memo is clearly addressed to Mr. Bridges, it appears to come from Texas General, with Mr. Milstead as a contact, and includes handwritten notations at the bottom of the page. The memo is neither dated nor signed, and there is no letterhead at the top of the document.

> Company and Texas General Agency's motion to strike hereby is reversed and judgment is entered granting their motion to strike. A document that is not an affidavit or sworn to in any way, or is not certified or attached to an affidavit, does not satisfy the requirements of La. C.C.P. art. 967A and is not competent summary judgment evidence. In all other respects the writ is denied.

Payton v. Republic Vanguard Ins. Co., 2013-1921 (La. App. 1 Cir. 2/27/14) (unpublished writ action) (**Payton II**).

On May 30, 2014, Republic Vanguard and Texas General filed a second motion for summary judgment, again alleging that Mr. Payton had failed to produce any admissible evidence to show that Mr. Anny ever acted as their agent. They noted this court's ruling concerning the memo referred to in Mr. Bridges' deposition and maintained that they were entitled to judgment as a matter of law. In support of their motion for summary judgment, Republic Vanguard and Texas General introduced the following exhibits: 1) a copy of Mr. Payton's original petition; 2) a copy of this court's judgment in **Payton I**; 3) a copy of Mr. Payton's amended petition; 4) excerpts from the deposition of Mr. Williams; 5) excerpts from the deposition of Mr. Anny; 6) excerpts from the deposition of Mr. Bridges; 7) a copy of this court's decision (referenced above) in **Payton II**; and 8) the affidavit of Mr. Milstead.

Mr. Payton filed a memorandum in opposition to the second motion for summary judgment. Mr. Payton noted that no new documents or other evidence had been introduced by Republic Vanguard and Texas General in support of their second motion for summary judgment. Mr. Payton alleged further that the issues raised, which were not new issues, had been fully addressed by the trial court's denial of the first motion for summary judgment and this court's affirmance of same. Thus, Mr. Payton alleged, the second motion for summary judgment was barred by the doctrine of *res judicata*.[4]

[4] It is well settled that the denial of an initial motion for summary judgment does not bar a second motion for summary judgment. The denial of a motion for summary judgment is an interlocutory judgment, which the trial court may change at any time up to final judgment. An interlocutory judgment cannot serve as the basis for a plea of *res judicata*. Furthermore, the jurisprudence specifically allows a trial court to consider a second motion for summary judgment after a first motion for summary judgment on the same issue has been denied. **Honor v. Tangipahoa Parish School Bd.**, 2013-0298, p. 4 (La. App. 1 Cir. 11/1/13), 136 So.3d 31, 34, writ denied, 2014-0008 (La. 2/28/14), 134 So.3d 1181.

With regard to the memo that this court, in **Payton II**, had determined did not satisfy the requirements of La. Code Civ. P. art. 967(A), Mr. Payton pointed out that in support of his opposition, he submitted Mr. Bridges' entire deposition with the memo attached thereto. Mr. Payton noted that not only did Mr. Bridges identify the memo, but that he also stated he used the memo as a guide to draft the settlement agreement at issue herein. Mr. Payton further argued that in addition to sending Mr. Anny a check in the exact amount of the settlement, Republic Vanguard and Texas General sent a letter to Mr. Williams stating, "We have settled this claim with total payout of $256,714.86[.] Our file is now closed." Thus, Mr. Payton maintained, these actions by Republic Vanguard and Texas General constituted "clear and unequivocal proof that [they] had accepted the benefit of the settlement agreement" and "at the very least, ratified the acts of ... [Mr. Anny] on their behalf." Mr. Payton alleged there were disputed issues of material fact that could only be resolved at a trial on the merits. In support of his position, Mr. Payton introduced the following exhibits: 1) a copy of this court's decision in **Payton II**; 2) a copy of the trial court's September 12, 2013 judgment denying the first motion for summary judgment and the motion to strike; 3) the deposition of Mr. Bridges; 4) a copy of the settlement agreement; 5) a copy of the check Mr. Anny wrote to Mr. Payton for $256,714.86; 6) a copy of the check from Texas General to Mr. Anny for $256,714.86; 7) Republic Vanguard's June 13, 2006 letter to Mr. Williams; 8) Mr. Anny's answer to the amended petition; 9) excerpts from the deposition of Mr. Anny; and 10) the deposition of Mr. Williams.

On July 7, 2014, the trial court heard arguments on the motion for summary judgment. At the conclusion of the hearing, the trial court ruled in favor of Republic Vanguard and Texas General, granting the motion for summary judgment to that effect. Judgment was signed by the trial court on July 7, 2014. It is from this judgment that Mr. Payton has appealed, assigning the following specifications of error for our review:

> 1. The Lower Court erred in failing to find that Appellant had submitted sufficient evidence to carry his burden at trial of showing that Appellees, Republic Vanguard Insurance Company and Texas General Agency[,] ratified the settlement agreement and thereby became parties thereto and

obligated for the performance thereof. It was legal error for the Lower Court to require an agency relationship in order for ratification to occur.

2. The [L]ower Court erred in failing to find that Appellees' allegations of subrogation as their motive for paying defendant, Randy Anny, the $256,714.86 that was due Appellant pursuant to the settlement agreement was legally impossible under Louisiana Law and under the facts known to Appellees at the time the payment was made.

RULE TO SHOW CAUSE

After Mr. Payton appealed, this court issued a rule to show cause order indicating the July 7, 2014 judgment appeared to lack appropriate decretal language disposing of and/or dismissing the claims of Republic Vanguard and Texas General. On November 10, 2014, the trial court signed an amended judgment, which stated, in pertinent part:

> For the written reasons previously submitted by this Court on July 7, 2014, the Motion for Summary Judgment on behalf of the defendants, Republic Vanguard Insurance Company and Texas General Agency, is **GRANTED.**
>
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that plaintiff's claims in the above captioned matter against defendants, Republic Vanguard Insurance Company and Texas General Agency be and are hereby dismissed with prejudice.

The appellate record was supplemented with the amended judgment. In a January 12, 2015 order signed by this court, the appeal was maintained; however, the final determination as to whether the appeal was to be maintained was referred to this appellate panel for disposition, along with the merits of the appeal.

The July 7, 2014 judgment, as amended by the November 10, 2014 judgment, contains the appropriate decretal language to be a valid final judgment, *i.e.,* it names the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted. See **Jenkins v. Recovery Technology Investors**, 2002-1788, pp. 3-4 (La. App. 1 Cir. 6/27/03), 858 So.2d 598, 600. Therefore, we declare the existence of a final, appealable judgment, and maintain the appeal. See La. Code Civ. P. art. 2088; see also **Henkelmann v. Whiskey Island Preserve, LLC**, 2011-0304, p. 3 (La. App. 1 Cir. 6/1/12), 2012 WL 1965853 (unpublished). We now address the merits of Mr. Payton's appeal.

SUMMARY JUDGMENT[5]

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. **All Crane Rental of Georgia, Inc. v. Vincent**, 2010-0116, p. 4 (La. App. 1 Cir. 9/10/10), 47 So.3d 1024, 1027, writ denied, 2010-2227 (La. 11/19/10), 49 So.3d 387. A motion for summary judgment should only be granted if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment,[6] show that there is no genuine issue as to material fact, and that the movant is entitled to summary judgment as a matter of law. La. Code Civ. P. art. 966(B)(2).

The burden of proof on a motion for summary judgment remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. La. Code Civ. P. art. 966(C)(2); **Janney v. Pearce**,

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[5] The summary judgment in this case was signed on April 8, 2014; thus, it is governed by the version of La. Code Civ. P. art. 966 in effect after its amendment by 2013 La. Acts, No. 391, § 1, effective August 1, 2013. See **Ciolino v. First Guaranty Bank**, 2012-2079, p. 6 n.3 (La. App. 1 Cir. 10/30/13), 133 So.3d 686, 690 n.3. Changes implemented by a later amendment to Article 966 are not implicated in this appeal. See 2014 La. Acts, No. 187, § 1, effective August 1, 2014. **Smith v. Northshore Regional Medical Center, Inc.**, 2014-0628, p. __ n.3 (La. App. 1 Cir. 1/26/15), ___ So.3d ___, ___ n.3.

[6] Louisiana Code of Civil Procedure article 966 was recently amended by Acts 2013, No. 391, § 1, to provide for submission of evidence and objections to evidence for motions for summary judgment. Under the amended version of the article, evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for purposes of the motion for summary judgment unless excluded in response to an objection made in accordance with Article 966(F)(3). Only evidence admitted for purposes of the motion for summary judgment may be considered by the court in its ruling on the motion. La. Code Civ. P. art. 966(F)(2). Moreover, a summary judgment may be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time. La. Code Civ. P. art. 966(F)(1).

2009-2103, p. 5 (La. App. 1 Cir. 5/7/10), 40 So.3d 285, 288-289, writ denied, 2010-1356 (La. 9/24/10), 45 So.3d 1078.

Thus, once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. La. Code Civ. P. art. 967(B); **Pugh v. St. Tammany Parish School Bd.**, 2007-1856, p. 2 (La. App. 1 Cir. 8/21/08), 994 So.2d 95, 97 (on rehearing), writ denied, 2008-2316 (La. 11/21/08), 996 So.2d 1113. Moreover, when a motion for summary judgment is made and supported as provided above, an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided above, must set forth specific facts showing that there remains a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be rendered against him. La. Code Civ. P. art. 967(B).

In determining whether summary judgment is proper, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Sanders v. Ashland Oil Inc.**, 96-1751, p. 7 (La. App. 1 Cir. 6/20/97), 696 So.2d 1031, 1035, writ denied, 97-1911 (La. 10/31/97), 703 So.2d 29. Material facts are those that potentially ensure or preclude recovery, affect the litigant's success, or determine the outcome of a legal dispute. **Populis v. Home Depot, Inc.**, 2007-2449, p. 3 (La. App. 1 Cir. 5/2/08), 991 So.2d 23, 25, writ denied, 2008-1155 (La. 9/19/08), 992 So.2d 943.

On appeal, Mr. Payton argues that the evidence is such that a reasonable fact finder could conclude he would be able to satisfy his evidentiary burden of proof at trial regarding the issue of agency and ratification. Mr. Payton maintains that the documentary evidence and deposition testimony, along with the actions of Republic Vanguard and Texas General after the settlement agreement was signed by Mr. Payton, clearly show that there was a valid settlement agreement and that Republic Vanguard and Texas General ratified the acts of Mr. Anny on their behalf. We find no merit to Mr. Payton's arguments on appeal.

Although the initial burden of proof was on Republic Vanguard and Texas General, they will not bear the burden of proof at trial on the issue of agency and/or ratification. As such, they did not need to negate these elements of Mr. Payton's claim. In order to shift the burden to Mr. Payton, Republic Vanguard and Texas General only had to point out that there was an absence of factual support for these elements. The burden then shifted to Mr. Payton, as the non-moving party, to produce factual support sufficient to establish that he would be able to satisfy his burden of proof at trial. La. Code Civ. P. art. 966(C)(2); **Janney**, 2009-2103 at 5, 40 So.3d at 288-289.

"A mandate is a contract by which a person, the principal, confers authority on another person, the mandatary, to transact one or more affairs for the principal." La. Civ. Code art. 2989. "The contract of mandate is not required to be in any particular form. Nevertheless, when the law prescribes a certain form for an act, a mandate authorizing the act must be in that form." La. Civ. Code art. 2993.[7] The question of a mandate/agency is a factual determination that should not be reversed on appeal absent a finding of manifest error. See **Terito v. Wall-Vaughn Motors, Inc.**, 2007-0627, p. 3 n.2 (La. App. 1 Cir. 12/21/07), 978 So.2d 403, 404 n.2.

Ratification is a declaration whereby a person gives his consent to an obligation incurred on his behalf by another without authority. La. Civ. Code art. 1843.[8] Tacit ratification results when a person, with knowledge of an obligation incurred on his behalf by another, accepts the benefit of that obligation. **Snyder v. Belmont Homes, Inc.**, 2004-0445, p. 10 (La. App. 1 Cir. 2/16/05), 899 So.2d 57, 64, writ denied, 2005-

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[7] As noted in Comment (c) to Article 2993, the law requires a written act for a compromise pursuant to La. Civ. Code art. 3071. Thus, under Article 2993, a mandate authorizing the mandatory to enter into a compromise agreement must be in writing.

[8] Article 1843 provides as follows:

> Ratification is a declaration whereby a person gives his consent to an obligation incurred on his behalf by another without authority.
>
> An express act of ratification must evidence the intention to be bound by the ratified obligation.
>
> Tacit ratification results when a person, with knowledge of an obligation incurred on his behalf by another, accepts the benefit of that obligation.

1075 (La. 6/17/05), 904 So.2d 699. The burden of proving ratification is upon the party asserting it, and to find ratification of an unauthorized act, the facts must indicate a clear and absolute intent to ratify the act, and no intent will be inferred when the alleged ratification can be explained otherwise. **Florida v. Stokes**, 2005-2004, p. 7 (La. App. 1 Cir. 9/20/06), 944 So.2d 598, 603.

Mr. Anny testified in his deposition that he was never given written or verbal authority to settle claims from Republic Vanguard or Texas General. According to Mr. Williams' deposition testimony, Mr. Anny told Mr. Payton the $256,714.86 check was to pay for his dredge. Mr. Williams further testified that Mr. Anny told Mr. Payton to "hold the check for a couple of days and then it should go through." Mr. Williams added further that Mr. Anny never purchased a new dredge to give to Mr. Payton. In fact, Mr. Williams testified at length in his deposition about a dredge that he and Mr. Anny rebuilt together. However, according to Mr. Williams, that dredge was sold to another man named Randy Lafarge.

Mr. Bridges testified that at all times during the settlement transaction, Mr. Anny was his client. He emphatically stated that he had never been given authority to negotiate a settlement on behalf of Republic Vanguard or Texas General. With regard to the memo, Mr. Bridges identified it as being in his file, but could not recall receiving it. Mr. Bridges did say that he "probably" used the memo in connection with the drafting of the settlement agreement, although he had no particular memory of the memo otherwise. Mr. Bridges did not know who wrote the memo but testified that it appeared to have been written by Mr. Milstead.

After hearing argument from the parties at the hearing on the motion for summary judgment, the trial court offered the following reasons for judgment:

> After considering the law on the issues, reviewing the written pleadings of the parties, and listening to the parties' oral arguments, this Court finds that no genuine issues of material fact remain concerning the relationship between the defendants and their attorney with Randy Anny. This Court agrees with the defendants. Randy Anny, when executing the settlement with the plaintiff, did not act as an agent on behalf of the defendants. Furthermore, the defendants' actions subsequent to the execution of the settlement agreement between Anny and the plaintiff did not amount to ratification of the agreement. The defendants did not

become obligated to the terms of the agreement between the plaintiff and Anny through the act of ratification.

Applying the above legal precepts to this case, and having thoroughly reviewed the evidence in the record, we agree with the trial court's conclusion that summary judgment was warranted. Republic Vanguard and Texas General having established their burden of proof on the motion, it was incumbent upon Mr. Payton to produce factual support sufficient to establish that he would be able to satisfy his evidentiary burden of proof at trial. Mr. Payton failed to do so. Accordingly, summary judgment in favor of Republic Vanguard and Texas General was appropriate, and all claims by Mr. Payton against them were properly dismissed by the trial court below.

DECREE

For the above and foregoing reasons, we affirm the trial court's judgment granting summary judgment in favor of Republic Vanguard Insurance Company and Texas General Agency and dismissing, with prejudice, Preston Payton's claims against them. All costs associated with this appeal are assessed against Preston Payton.

AFFIRMED.