SIXTH DIVISION
November 21, 2014

No. 1-14-0241

RANDY M. BROWN, Individually and On Behalf of RANDY M. BROWN, INC., d/b/a HAROLD'S CHICKEN SHACK 76, an Illinois Corporation,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellees,	)	
v.	)	No. 2010 L 008953
UNIVERSAL REALTY GROUP, an Illinois Corporation, TAP INVESTMENTS, L.L.C., an Illinois Corporation, JOHN ARGIANAS, an Individual, ANDREW PETRUS, an Individual, and GEORGE TAVOULARIS, an Individual,	)	Honorable Margaret Ann Brennan,
Defendants-Appellants.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER

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¶ 1 ***Held***: We affirmed the circuit court's order adjudicating the attorney's lien of Brooks, Tarulis and Tibble to zero because the lien was not perfected in accordance with the Attorneys Lien Act as it was served on defendants' attorney and not on defendants themselves.

¶ 2 The circuit court adjudicated the attorney's lien of Brooks, Tarulis & Tibble (BT&T) to zero, finding the lien was not perfected in accordance with the Attorneys Lien Act (Act) (770 ILCS 5/1 (West 2012)) as it was served on defendants' attorney and not on defendants themselves. On appeal, BT&T argues that it properly served its notice of attorney's lien by

certified mail on defendants' counsel because Rule 4.2 of the Rules of Professional Conduct of 2010 (Ill. S. Ct. R. of Prof. Conduct 4.2 (eff. Jan. 1, 2010)), prohibited it from serving the notice of attorney's lien directly on defendants as they were represented by counsel and, in any event, defendants had actual notice of the lien. We affirm.

¶ 3 Plaintiffs-appellees, Randy M. Brown, individually. and on behalf of Randy M. Brown, Inc., d/b/a Harold's Chicken Shack 76, an Illinois corporation, operated a restaurant in a building in Broadview, Illinois (the building). Defendant, TAP Investments, L.L.C. (TAP), leased the building to plaintiffs. Defendant Universal Realty Group (Universal) managed the building; defendants, John Argianas and Andrew Petrus, were principals of Universal and TAP. On January 15, 2009, the roof of the building collapsed and destroyed plaintiffs' restaurant. Plaintiffs filed suit seeking damages against defendants.

¶ 4 Plaintiffs' complaint was filed on August 4, 2010, and signed by Elizabeth R. Bacon of Experlex, LLC, under a signature line indicating she was "one of [plaintiffs'] attorneys." Ms. Bacon later joined the law firm of BT&T.

¶ 5 On December 4, 2012, BT&T, by certified mail, served a notice of attorney's lien on the attorney representing all defendants in the suit. The notice of attorney's lien stated that Randy Brown, on or about September 12, 2011, had "placed in our hands" the suit against defendants relating to the collapse of the building on January 15, 2009. The notice of attorney's lien further stated plaintiffs had agreed to pay BT&T "for all legal services rendered from whatever amount may be recovered," and to reimburse BT&T's costs. The notice of attorney's lien was served on December 5, 2012, as evidenced by a signed certified mail receipt contained in the record.

¶ 6 In March 2013, plaintiffs discharged BT&T and retained Baugh Dalton Carlson & Ryan, LLC to represent them in their suit for damages.

¶ 7 Thereafter, plaintiffs and defendants, during mediation on October 14, 2013, signed a settlement agreement which provided that plaintiffs would be paid $230,000. The agreement also stated that payment would be made to plaintiffs after plaintiffs provided defendants with "check payee information, tax payer identification [numbers], and/or letter from [the] Brook, Tarulis & Tibble [BT&T] law firm."

¶ 8 On December 5, 2013, defendants TAP and Universal presented a motion to enforce the settlement. In the motion, defendants stated they had obtained the settlement funds and had forwarded a release to plaintiffs. The motion provided:

> "Although it is not known by the defendants whether plaintiffs or their counsel have negotiated the lien issue with plaintiffs' former counsel, nonetheless that is an issue over which defendants have no control. That issue was known by plaintiffs and their counsel when they signed the Settlement Agreement and that is an issue for which plaintiffs can request assistance from this Court if they wish."

Defendants asked the circuit court to dismiss the suit, with prejudice, and retain jurisdiction to enforce or resolve "any and all lien disputes." On December 5, 2013, the circuit court continued the matter and set December 23, 2013, as a status date for finalization of the settlement.

¶ 9 On December 19, 2013, plaintiffs filed a pleading entitled "plaintiffs' joinder in defendants' motion to adjudicate purported attorney[s] lien." Plaintiffs asserted that "[f]or the reasons stated in the [d]efendants' motion and for the reasons [p]laintiffs mentioned in open court during the previous two status hearings, [p]laintiffs agree with and support the [d]efendants' position that there is no relevant effective [attorney's] lien." Plaintiffs asked the court to direct defendants to issue the settlement check with plaintiffs and Baugh Dalton Carlson & Ryan, LLC as the only payees. The record on appeal does not contain defendants' motion to adjudicate the

attorney's lien, nor transcripts of the proceedings of December 5 and December 19, 2013. On December 23, 2013, the circuit court entered an order allowing BT&T to respond to defendants' motion to adjudicate the purported attorney's lien and plaintiffs' joinder in the motion.

¶ 10 In its written opposition to defendants' motion to adjudicate its lien, filed on January 21, 2014, BT&T made the following assertions: (1) plaintiffs retained Ms. Bacon in June 2009 to pursue their claims to recover damages against defendants; (2) in September 2011, Ms. Bacon joined BT&T "and brought this representation to BT&T with full disclosure to [p]laintiffs;" (3) in December 2012, BT&T served its attorney's lien on defendants' counsel; and (4) after the parties reached the settlement through mediation, defendants' attorney sent Ms. Bacon an email dated October 15, 2013. In the email, defendants' attorney notified Ms. Bacon that the suit had been settled. The email (which was attached to BT&T's pleading and is contained in the record on appeal) further stated:

> "Please forward me your firm's Tax ID Number if you are able to be included on the settlement draft. If not, please provide me written confirmation by either a Release of Attorney's Lien (if any) or simply written confirmation that you are making no further claim for fees or other reimbursement on this matter."

¶ 11 Also in its written opposition to defendants' motion to adjudicate its lien, BT&T conceded that although defendants' counsel was served notice of the attorney's lien, defendants themselves were not served with the notice. BT&T argued, though, that it did not send defendants the notice of attorney's lien directly, because such a communication would have violated Rule 4.2 of the Rules of Professional Conduct of 2010 (Ill. S. Ct. R. of Prof. Conduct 4.2 (eff. Jan. 1, 2010)), which prohibits direct communication with a party represented by counsel. BT&T, therefore, contended its certified mail service on defendants' attorney satisfied

the Act and, in any event, defendants had actual notice of its lien as evidenced by: (1) the reference to the lien in the mediated settlement agreement; (2) the October 15, 2013, email from defense counsel to Ms. Bacon; and (3) defendants' counsel's acceptance of service of the notice of lien by certified mail.

¶ 12 Additionally, BT&T separately filed the affidavit of Ms. Bacon, with exhibits. Ms. Bacon stated that in June 2009, she had been retained by plaintiffs to pursue claims for damages which resulted from the roof collapse against defendants at an agreed rate of $300 per hour. She stated that the terms of their retainer agreement was set forth in her June 29, 2009, email to Mr. Brown which was attached to her affidavit. The email provided that Ms. Bacon had met with Mr. Brown to discuss "representation by our firm" in connection with the roof collapse and "other attendant issues." Ms. Bacon stated that "[o]ur work will begin upon receipt of your acceptance of this letter and its terms *via* email conditioned upon receipt of the retainer fees." In her affidavit, Ms. Bacon further stated that because Mr. Brown developed financial hardships, they later agreed that Mr. Brown would make partial monthly retainer payments equal to five (5) hours per month ($1,500), and that the additional accrued fees as to this suit would then be due upon its resolution. According to the affidavit, in September 2011, Ms. Bacon joined BT&T "and brought this representation to BT&T with full disclosure to [p]laintiffs." Mr. Brown and Ms. Bacon agreed to continue the modified fee arrangement with BT&T. Ms. Bacon averred that BT&T represented Mr. Brown in this suit from September 2011 until March 2013. From September 2011, until March 2013, BT&T billed Mr. Brown on a monthly basis showing the services rendered, the agreed monthly amount due of $1,500 and the accrued unpaid fees. Mr. Brown never objected to BT&T's invoices. According to Ms. Bacon, plaintiffs had paid BT&T $26,100 in fees, and the unpaid fees at that time were $80,909.14.

¶ 13 Ms. Bacon attested she served the notice of attorney's lien upon defendant's counsel with a copy of a redacted December 5, 2012, invoice from BT&T to Mr. Brown for services rendered as to this suit. The December invoice showed a balance due of $71,819.14. Attached to Ms. Bacon's affidavit was a similar March 13, 2013, invoice with a balance due of $80,909.14.

¶ 14 Plaintiffs filed a reply in support of defendants' motion to adjudicate the lien and argued that the Act specifically requires that a notice of an attorney's lien must be served on defendants, and such service here would not have violated Rule 4.2. Plaintiffs contended that BT&T had not proved, and could not prove that plaintiffs had agreed to pay BT&T the claimed fees, or any fees. Plaintiff Randy Brown's affidavit attached to the reply averred that he "never signed *** individually nor on behalf of Randy Brown, Inc., any written retainer agreement with Elizabeth Bacon, her prior firm Experlex, LLC, or the [BT&T] law firm for services related to the claims involved in this litigation." Mr. Brown, however, stated he had paid fees to Ms. Bacon and her firms totaling $70,500 for "investigation, negotiation and litigation activities" from June 2009 through December 2012.

¶ 15 After a hearing, the circuit court, on January 21, 2014, entered an order finding BT&T had not perfected its attorney's lien, directing that its lien be adjudicated to zero, and dismissing the suit, with prejudice, pursuant to the settlement. The circuit court directed defendants "to issue settlement proceeds to plaintiffs without the BT&T firm listed as payee." On January 29, 2012, BT&T filed a notice of appeal from the January 21, 2014, order. On February 18, 2014, we entered an order staying the portion of the January 21, 2014, order directing defendants to pay the entire proceeds of the settlement to plaintiffs. We ordered defendants to hold $80,909.14 of the settlement proceeds in escrow until further order of this court.

¶ 16 BT&T, on appeal, argues that the circuit court erred in adjudicating its lien to zero because service of the notice of lien on defendants' counsel was proper where defendants had actual notice of the lien, and where BT&T was prohibited by Rule 4.2 from direct communication with defendants who were represented by counsel. Plaintiffs respond that the Act requires service on defendants, and such service would not have violated Rule 4.2.

¶ 17 The Attorneys Lien Act (Act) provides, in pertinent part:

> "Attorneys at law shall have a lien upon all claims, demands and causes of action, including all claims for unliquidated damages, which may be placed in their hands by their clients for suit or collection, or upon which suit or action has been instituted, for the amount of any fee which may have been agreed upon by and between such attorneys and their clients, or, in the absence of such agreement, for a reasonable fee, for the services of such suits, claims, demands or causes of action, plus costs and expenses. ***
>
> To enforce such lien, such attorneys shall serve notice in writing, which service may be made by registered or certified mail, upon the party against whom their clients may have such suits, claims or causes of action, claiming such lien and stating therein the interest they have in such suits, claims, demands or causes of action. Such lien shall attach to any verdict, judgment or order entered and to any money or property which may be recovered, on account of such suits, claims, demands or causes of action, from and after the time of service of the notice. On petition filed by such attorneys or their clients any court of competent jurisdiction shall, on not less than 5 days' notice to the adverse party, adjudicate the rights of the parties and enforce the lien." 770 ILCS 5/1 (West 2012).

¶ 18 Because an attorney's lien "is a creature of statute, the Act must be strictly construed, both as to establishing the lien and as to the right of action for its enforcement." *People v. Phillip Morris, Inc.*, 198 Ill. 2d 87, 95 (2001). As a result, "[a]ttorneys who do not strictly comply with the Act have no lien rights." *Id.*

¶ 19 A court of competent jurisdiction, including the circuit court hearing the underlying action, may consider a petition to adjudicate the lien. *Id.* at 96; 770 ILCS 5/1 (West 2012). "At a hearing on a petition to enforce the lien, the attorney [asserting the lien] bears the burden of making a *prima facie* showing that he has complied with the Act, both in establishing and enforcing the lien." *Kovitz Shifrin Nesbit, P.C. v. Rossiello*, 392 Ill. App. 3d 1059, 1064 (2009).

¶ 20 We will review the order adjudicating BT&T's attorney's lien *de novo* as it involves questions of statutory construction. *Roach v. Coastal Gas Station*, 363 Ill. App. 3d 674, 676 (2006) (citing *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002)). Furthermore, the order adjudicating the lien was based solely on the circuit court's review of the face of documents, and was made without determining credibility or weighing the evidence. Under such circumstances, our review is, also, *de novo*. *Roach*, 363 Ill. App. 3d at 676 (citing *E.A. Cox Co. v. Road Savers International Corp.*, 271 Ill. App. 3d 144, 148 (1995)).

¶ 21 First, "[i]n order to create an effective [attorney's] lien there must be an attorney-client relationship and notice of the [attorney's] lien must be served during that relationship." *In re Chicago Flood Litigation*, 289 Ill. App. 3d 937, 943 (1997). Thus, BT&T was required to make a *prima facie* showing that it was retained by plaintiffs to assert their claim against defendants. *Crabb v. Robert R. Anderson, Co.*, 117 Ill. App. 2d 271, 276-77 (1969). In the absence of such a showing, BT&T must be found to have no lien rights. *Id.*

¶ 22 The attorney-client relationship arises only when both the attorney and client consent to its formation. *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 13 (2009). A client must manifest his authorization for an attorney to act on his behalf and the attorney must indicate his acceptance of the authorization to represent the client's interests. *Kehoe v. Saltarelli*, 337 Ill. App. 3d 669, 676 (2003). An attorney-client relationship may be formed orally, unless the retainer is for a contingency. *Lee v. Ingalls Memorial Hospital*, 232 Ill. App. 3d 475, 478 (1992).

¶ 23 On appeal, plaintiffs and BT&T dispute only whether the service of the notice of attorney's lien by certified mail on defendants' attorney of record satisfied the Act's requirement that service be made on the parties against whom the applicable claims are made. Plaintiffs, on appeal, have not argued that BT&T failed to establish the required attorney-client relationship. In the proceedings below, plaintiffs did argue that there was no signed written retainer agreement with BT&T or Ms. Bacon. Plaintiffs, however, did not contend below that an attorney-client relationship did not exist. Plaintiffs have forfeited any challenge to BT&T's lien on this basis. *ING Bank, FSB v. Tanev*, 2014 IL App (2d) 131225, ¶ 24. Forfeiture aside, BT&T made a *prima facie* showing that an attorney-client relationship existed.

¶ 24 In the notice of attorney's lien, BT&T asserts that Mr. Brown, on or about September 12, 2011, "placed in our hands" the suit against defendants. The evidence presented during proceedings leading to the adjudication of lien does support such a conclusion.

¶ 25 The complaint against defendants was filed on August 4, 2010 by Ms. Bacon, an attorney, and the law firm listed was Experlex, LLC. Ms. Bacon, in her affidavit, states that her initial attorney-client agreement with plaintiff and the terms of that agreement, including fees of $300 per hour, are evidenced by her June 29, 2009, email to Mr. Brown. In her affidavit, Ms.

Bacon says that this fee arrangement was later modified, by agreement, to require plaintiffs to pay $1,500 per month and the remaining accrued fees would be paid upon disposition of the suit. After the complaint was filed in September 2011, Ms. Bacon joined the BT&T law firm, and brought representation of plaintiffs in this suit to BT&T with full disclosure to plaintiffs. BT&T, thereafter, represented plaintiffs as to their suit against defendants. Ms. Bacon asserted in her affidavit that plaintiffs agreed to continue the modified fee arrangement with BT&T. These statements were not contradicted by any evidence presented by plaintiffs.

¶ 26 Mr. Brown's affidavit states he never signed a written retainer agreement with Ms. Bacon, Experlex, LLC, or BT&T. We note there is no signed attorney-client agreement between plaintiffs, Ms. Bacon, Experlex, LLC, or BT&T, in the record. Mr. Brown, however, never disputed that BT&T represented plaintiffs in their suit. Mr. Brown, in his affidavit, also acknowledged that he paid Ms. Bacon, Experlex, and BT&T's attorney fees totaling $70,500 for "investigation, negotiation and litigation activities" from June 2009 through December 2012. There was a sufficient showing of an attorney-client relationship. *People v. Simms*, 192 Ill. 2d 348, 382 (2000) (where "the [attorney-client] relationship 'is only created by a retainer or an offer to retain or a fee paid' " (quoting *Corti v. Fleisher*, 93 Ill. App. 3d 517, 521 (1981)).

¶ 27 The Act also requires that service of the notice of lien must be accomplished during the existence of the attorney-client relationship, *i.e.*, before plaintiffs discharged BT&T in March 2013. *Department of Public Works of the State of Illinois v. Exchange National Bank*, 93 Ill. App. 3d 390, 394 (1981). This element was satisfied because BT&T served notice of the attorney's lien on December 4, 2012, during the existence of the attorney-client relationship between plaintiffs and BT&T.

¶ 28 The remaining issue is whether the notice of lien was served in accordance with the Act.

¶ 29 "An [attorney's] lien is perfected from and after the time of service of the notice on the party against whom the client has a claim." *TM Ryan Co. v. 5350 South Shore, L.L.C.*, 361 Ill. App. 3d 352, 356 (2005) (citing *Watkins v. GMAC Financial Services*, 337 Ill. App. 3d 58, 62, (2003)). Under the Act, an attorney's lien " 'is a lien upon the proceeds, only, of the litigation or settlement of the claim.' " *Phillip Morris, Inc.*, 198 Ill. 2d at 97 (quoting *Baker v. Baker*, 258 Ill. 418, 421 (1913)). Once the notice of lien is properly served on the client's adversary, that party must respect the lien, or become liable for the attorney fees. *Phillip Morris, Inc.*, 198 Ill. 2d at 98. Once served, " 'the attorney [asserting the lien] in effect becomes a joint claimant with his client *** in the proceeds of any settlement that may be made by the client, and to the extent of the amount of his fee has the same interest in such proceeds *** as his client and is entitled to his *pro rata* share thereof.' " *Id.* at 97-98 (quoting *Baker*, 258 Ill. at 421).

¶ 30 The plain language of the Act states that the notice of attorney's lien "may be made by registered or certified mail, upon the party against whom their clients may have such suits, claims or causes of action." 770 ILCS 5/1 (West 2012). As discussed, this language must be strictly construed. *Phillip Morris, Inc.*, 198 Ill. 2d at 95.

¶ 31 In *Cazalet v. Cazalet*, 322 Ill. App. 105 (1944), we held that service on the attorney representing the persons against whom the claim is brought is not sufficient under the Act. The attorney in *Cazalet* had represented Mable K. Spaulding in a personal injury suit against Leon Cazalet, who was then a minor. *Id.* at 106. The suit resulted in a judgment against Leon. *Id.* Upon the death of his father, Leon became part-owner of land which became subject to a partition proceeding. *Id.* The attorney intervened in the partition action seeking to enforce his attorney's lien. *Id.* Leon, in answer to the petition, denied that he had been served with the notice of lien, and the attorney's petition was dismissed. *Id.* On appeal, the attorney argued that

he had served the notice of lien on Leon's court-appointed counsel, who represented Leon as "guardian *ad litem* at trial" on the personal injury suit. *Id*. at 109. We affirmed the dismissal of the attorney's petition to enforce the lien, concluding there was no "*prima facie* proof of legal or actual notice" to Leon, as to the lien, in the record. *Id*. at 111; *Accord In re Del Grosso*, 111 B.R. 178 (Bankr. N.D. Ill. (1990)) (citing *Cazalet*'s holding that "[s]ervice on a party's attorney is insufficient to perfect the statutory lien."). In reaching our decision, we recognized the Act must be strictly construed and rejected the argument that "the knowledge of the attorney is knowledge of his client." *Cazalet*, 322 Ill. App. at 108. We relied on a line of cases where prior courts had construed the Act to mean "that notice to the attorney is not sufficient nor binding upon the defendant, but proof of actual notice to the defendant is necessary." *Id*. (citing *Reynolds v. Alton, Granite & St. Louis Traction Co.*, 211 Ill. App. 158 (1918); *Moore v. New York, Chicago & St. Louis R.R. Co.*, 245 Ill. App. 8 (1927); *Mayer et al. v. Yellow Cab Co.*, 247 Ill. App. 42 (1927); and *Jackson v. Toledo, St. Louis & Western R.R. Co.*, 186 Ill. App. 531 (1914)).

¶ 32 The decision in *Cazalet* supports a conclusion that, under the plain and strict reading of the Act, service on defendants' attorney did not satisfy the Act's service requirement. In construing the service requirement of the Act, courts have continued to find that "a lien arises under the Act only if notice is served by personal service or certified or registered mail on the party against whom the lien is sought." *TM Ryan Co.*, 361 Ill. App. 3d at 356 (concluding a "majority of cases" had so concluded) (citing *Unger v. Checker Taxi Co.*, 30 Ill. App. 2d 238, 241 (1961)); *Cazalet*, 322 Ill. App. at 111-12; *McKee-Berger-Mansueto, Inc. v. Board of Education of City of Chicago*, 691 F. 2d 828, 834-35 (7th Cir.1982); *Preferred Management Installations, Inc. v. L.F.D. Holding Co.*, No. 99 C 4849, 2001 WL 863579, slip op. at 4-5 (N.D. Ill. July 12, 2001); *Benvenuto v. Action Marine, Inc.*, No. 91 C 7365, 1993 WL 124777, slip op.

at 5 (N.D. Ill. April 20, 1993); *Williams v. State of Illinois*, 49 Ill. Ct. Cl. 109, 114-15, 1996 WL 1063814 (1996)). See also *Rhoades v. Norfolk & Western Railway Co.*, 78 Ill. 2d 217, 227 (1979) (lien attaches from and after the time of service of notice required by the statute).

¶ 33 BT&T argues we should not follow the line of cases holding that service on defendants' attorneys is insufficient to perfect the statutory lien. BT&T contends that Rule 4.2 requires represented parties (such as defendants here) must be served through their counsel and provides no exception for the service of notice of attorney's liens under the Act.

¶ 34 Rule 4.2 provides:

> "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Ill. S. Ct. R. of Prof. Conduct 4.2 (eff. Jan. 1, 2010)).
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> This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation." *Id.*, Comment 1.

Under Rule 4.2, "a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so." *Id.*, Comment 4. "A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order." *Id.*, Comment 6.

¶ 35 BT&T argues that "service of an [attorney's] [l]ien directly on a represented party is the very type of contact that [Rule 4.2] prohibits. The service of a lien directly on a represented party would enable an attorney for an adverse party to overreach his proper representation, interfere with the [d]efendants' attorney/client relationship and allow the uncounseled disclosure of potentially intimidating or threatening information relating to that party's exposure regarding pending claims. Direct service of an [attorney's] lien on a represented party could have a more prejudicial effect on and more greatly undermine the parties' relationship with its counsel than service of discovery or pretrial motions, yet service of those notices related to the litigation or underlying claim directly on a represented client are clearly prohibited by [Rule 4.2]. Therefore, [Rule 4.2] compelled BT&T to serve the [l]ien on [d]efendants' counsel of record."

¶ 36 We reject BT&T's contention that the provisions of Rule 4.2 prohibited it from serving notice of the attorney's lien directly on defendants. Although Rule 4.2 provides that a lawyer generally "shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter." Ill. S. Ct. R. of Prof. Conduct 4.2 (eff. Jan. 1, 2010)). Rule 4.2 further states that an exception exists when the lawyer "is authorized to do so by law." *Id.* As the Act required service on defendants which "may be made by registered or certified mail" (770 ILCS 5/1 (West 2012)), and, as well-established case law held that such service be made on defendants as opposed to defendants' counsel, service of the notice of attorney's lien by registered or certified mail on defendants would not have contravened Rule 4.2. Also, if BT&T had any doubt, it could have sought a court order specifically permitting the service of the notice of lien on defendants. Ill. S. Ct. R. of Prof. Conduct 4.2, Comment 6 (eff. Jan. 1, 2010)).

¶ 37 BT&T next argues that regardless of any deficiencies in the service of the notice, defendants had actual notice of the lien and therefore the error in service was not material and the circuit court erred by invalidating the lien. In support, BT&T cites: *Cazalet*, 322 Ill. App. at 108, which held that the Act requires "proof of actual notice [of the attorney's lien] to the defendant;" *Beesen-Dwars v. Duane Morris LLP*, 2010 WL 551461 (N.D. Ill. Feb. 12, 2010), which held "where the defendant acknowledges actual notice [of the attorney's lien], lack of proof of service by personal service or by registered or certified mail does not defeat the lien;" and *Cirrincione v. Johnson*, 184 Ill. 2d 109, 113-14 (1998), a case involving a lien under the Physician's Lien Act (770 ILCS 80/1 (West 1996)), in which the supreme court held that to invalidate the lien due to certain "technical deficiencies" (*id*. at 113), where defendant had actual notice of the lien "would serve no purpose;" (*id*.), "would worship form over substance;" (*id*. at 113-14), and would be "contrary to the purpose of the lien, which is to lessen the financial burden on those who treat nonpaying accident victims." (*Id*. at 114).

¶ 38 BT&T argues that defendants "demonstrated their actual knowledge" of the attorney's lien in eight ways and therefore, pursuant to *Cazalet*, *Beesen-Dwars*, and *Cirrincione*, we should reverse the circuit court and hold that BT&T's lack of service on defendants does not defeat the lien. We proceed to examine the ways in which defendants allegedly demonstrated their actual knowledge of the attorney's lien.

¶ 39 First, BT&T contends defendants admitted their actual knowledge of the attorney's lien by "[h]aving their counsel sign and return the receipt of BT&T's certified letter enclosing the [l]ien." We disagree. The signed certified mail receipt indicates only that defendants' counsel was served with notice of the attorney's lien. As discussed earlier in this order, counsel's knowledge of the attorney's lien is not imputed to his clients under the Act; well-established case

law has held that the Act's requirement that notice of the attorney's lien be served on defendants must be strictly construed and that defendants' knowledge of the lien must be shown separately from counsel's knowledge. See *e.g.*, *Cazalet*, 322 Ill. App. at 108; *Unger*, 30 Ill. App. 2d at 242. Thus, contrary to BT&T's argument, defendants' counsel's signed acknowledgment of his receipt of BT&T's certified letter does not prove defendants had actual notice thereof for purposes of the Act.

¶ 40 Second, BT&T contends defendants admitted their actual knowledge of the lien by "[s]pecifically referring to BT&T's lien" in the first paragraph of their parties' settlement agreement. The first paragraph of the settlement agreement states that plaintiffs would be paid $230,000 and that payment would be made after plaintiffs provided defendants with "check payee information, tax payer identification [numbers], and/or letter from [the BT&T] law firm." Contrary to BT&T's argument, the first paragraph of the settlement agreement contains no explicit reference to BT&T's attorney's lien. We further note that there is no indication in the record that defendants were present at the mediation leading to the settlement agreement or that the lien was specifically discussed during the mediation. Accordingly, the mediation and resulting settlement agreement does not prove any actual knowledge of the attorney's lien by defendants.

¶ 41 Third, BT&T contends defendants admitted their actual knowledge of the attorney's lien by "[s]ending BT&T an email [on October 15, 2013] announcing the settlement, acknowledging the [l]ien and asking for BT&T's tax identification number, so it could pay the [l]ien." Fourth, BT&T contends defendants admitted their actual knowledge of the attorney's lien by referencing the lien in their motion to enforce settlement, which stated that "[a]lthough it is not known by the

defendants whether plaintiffs or their counsel have negotiated the lien issue with plaintiffs' former counsel [BT&T], nonetheless that is an issue over which defendants have no control."

¶ 42 We do not agree with BT&T's argument that the October 15, 2013, email and the motion to enforce settlement show defendants' actual knowledge of the attorney's lien. The October 15, 2013, email was sent by defendants' attorney and contains only his name at the bottom of the email. The motion to enforce settlement also is signed only by defendants' attorney. Counsel's signatures on the email and motion to enforce settlement indicate *his* knowledge of the lien. However, as counsel's knowledge of the attorney's lien is not imputed to his clients under the Act (see *Cazalet*, 322 Ill. App. at 108), the email and motion to enforce settlement, signed only by defendants' counsel, does not prove any actual knowledge of the attorney's lien by defendants.

¶ 43 Fifth, BT&T contends defendants admitted their actual notice of the attorney's lien by presenting and arguing a motion to adjudicate the lien. Initially, we note that the motion to adjudicate the lien is attached in an appendix to BT&T's brief but is not included in the record on appeal and thus is not properly before us. See *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000) ("Attachments to briefs that are not included in the record are not properly before this court and cannot be used to supplement the record."). Even if we were to consider the motion to adjudicate the lien, we note that it was signed only by defendants' counsel, not by any of defendants, and therefore under the well-established case law discussed earlier in this opinion, the motion to adjudicate does not show actual notice of the attorney's lien by defendants.

¶ 44 As to BT&T's argument that defendants admitted their actual knowledge of the attorney's lien by arguing the motion to adjudicate at the hearing thereon, the transcript of the hearing shows defense counsel argued the motion and defendants did *not* personally appear. Defense

counsel's knowledge of the attorney's lien is not imputed to defendants under the Act. *Cazalet*, 322 Ill. App. at 108.

¶ 45 Sixth, BT&T contends defendants admitted their actual knowledge of the attorney's lien by "[r]efusing to disburse the portion of the settlement funds subject to the [l]ien and acknowledging that they held the [$80,909.14] subject to the [l]ien." BT&T is referencing the motion to enforce settlement and motion to adjudicate the lien, which we have already held did not provide actual notice to defendants.

¶ 46 In their seventh and eighth contention, BT&T argue defendants admitted their actual knowledge of the attorney's lien by "[c]ontinuing to refuse to disburse the portion of the settlement funds subject to the [l]ien pending the outcome of this [a]ppeal," and by "[h]olding the funds subject to the [l]ien in escrow subject to the uncontested order of this [c]ourt." These actions were taken subsequent to the January 21, 2014, circuit court order adjudicating the attorney's lien to zero, and do not show any actual knowledge of the lien by defendants prior to the entry of the order.

¶ 47 In conclusion, BT&T has not shown that defendants had actual notice of its attorney's lien and, thus, the circuit court did not err in finding that the lien was not perfected in accordance with the Act.

¶ 48 BT&T argues that by affirming the circuit court's order invalidating its attorney's lien, we would be unjustly enriching plaintiffs by allowing them to avoid paying for the legal services provided to them by BT&T. We disagree, as BT&T may still file a lawsuit against plaintiffs to collect the reasonable fees incurred.

¶ 49 For the foregoing reasons, we affirm the circuit court's order of January 21, 2014, which found BT&T had not perfected its attorney's lien, and which directed the lien be adjudicated to

zero, and ordered defendants to issue the settlement proceeds to plaintiffs without BT&T being listed as payee. We lift the stay entered on February 18, 2014, which ordered defendants to hold $80,909.14 of the settlement proceeds in escrow until further order of this court.

¶ 50 Affirmed; stay lifted.