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MAY 14 1992
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5-26

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,600

ARTHUR GREEN,

Petitioner,

v.

DENIS RETY

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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OTHER AUTHORITIES

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INTRODUCTION

Petitioner Arthur Green invokes this Court's discretionary jurisdiction to review the decision from the Third District Court of Appeal which certified the following question to be of great public importance:

> Does Florida Rule of Appellate Procedure 9.340(c) apply where an appellate court-ordered remittitur requires entry of judgment in an amount less than the full amount of the jury's verdict? (App. 9).[1]

In a 2-1 decision, the Third District held that Rule 9.340(c) applied to the circumstances of this case, and that Respondent Denis Rety therefore was entitled to interest from the date of the jury's verdict in his favor. The Third District came to this conclusion even though the court had previously described the jury's award as a "haywire" and "runaway" verdict which was "so grossly excessive and contrary to the manifest weight of the evidence as to shock the conscience of the court," Rety v. Green, 546 So.2d 410 (Fla. 3d DCA), rev. denied, 553 So.2d 1165 (Fla. 1989) (Rety I), and even though the judgment filed after remand was the first and only judgment entered in this cause.

Green agrees with the Third District that the issue involved in this case indeed is one of great public importance with far reaching ramifications and that this Court accordingly should accept jurisdiction. However, Green also contends that the two-

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[1] "App." refers to the appendix attached to this brief, and "R." refers to the record on appeal. All emphasis has been supplied by counsel unless otherwise noted.

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judge majority erroneously ruled that Rule 9.340(c) applies in this case and that interest on the award in favor of Rety therefore accrued as of the date of the verdict and not upon entry of judgment.

STATEMENT OF THE CASE AND FACTS

1. The Verdict

Rety sued Green and his corporation, Southern Commodity Corporation ("SCC") for publishing a defamatory letter. On February 20, 1986, the jury returned a $22,500,000 verdict against Green and SCC which was apportioned as follows: $10,000,000 in compensatory damages against both defendants: $10,000,000 in punitive damages against Green; and $2,500,000 in punitive damages against SCC. Rety I, 546 So.2d at 427.

The trial court did not enter judgment on the jury's verdict. The trial court, in the words of the Third District, was so "stunned" by the verdict that it instead sua sponte entered an order of remittitur or new trial on damages in which the compensatory award was reduced to $2,500,000; the punitive award against Green was reduced to $50,000; and the punitive award against SCC was reduced to $500,000. Rety I, 546 So.2d at 427. The trial court's order gave Rety ten days within which to choose between the reduced award of $3,050,000 or a new trial on darnages only. Id. at 417. In the meantime, post-trial defensr motions for directed verdict or new trial on damages and liability were filed.

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Rety refused to accept the remittitur while the defense motions were pending. The trial court thereafter granted the motions for a new trial on'all issues. Id. at 417. Rety appealed from the post-trial orders and Green and SCC cross-appealed.

2. Rety I

In Rety I, the Third District reversed the trial court's order granting a new trial on all issues. Rety I, 546 So.2d 410. However, the Third District agreed with the trial court, Green, and SCC that the jury's **$22,500,000** award was **a** "grossly excessive," "shocking," "haywire," "runaway" verdict which simply could not stand. Id. at 418-421. The Third District therefore affirmed the original remittitur order except for the amount of punitive damages against Green. The Third District held that these damages should have been set at $2,500,000, not $10,000,000, as the jury found, or $50,000, as the trial court held. Rety I, 546 So.2d at **421**. The cause was remanded with directions to enter a remittitur which -- when all **was** said and done **--** amounted to $17,000,000. Id. at 421-422, 426. Pursuant to the Third District's opinion in **Rety I**, there would be a new trial on damages unless **Rety** accepted the remittitur as modified by the appellate court.

3. Proceedings on Remand From Rety I

On remand, the trial court entered its "Order Upon the Mandate" which gave Rety the choice of either accepting $5,500,000 ($17,000,000 less than the amount awarded **by** the jury) **or** having a new trial solely on damages. **(R.3-4).** This time, by

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notice and amended notice dated August 15 and August 18, 1989, Rety accepted the remittitur. (R.6-9).

Rety next submitted a proposed final judgment to be entered nunc pro tunc to February 20, 1986, the date of the jury verdict. (R.19-26,32-33). Green and SCC objected on the ground that interest could not begin to run on Rety's award until the proposed final judgment was signed and filed of record since no judgment had previously been entered in the cause. (R.11-16).

The trial court disagreed with both sides and held that Rety was entitled to interest from the date of the Third District's opinion in Rety I. The trial court accordingly entered final judgment in favor of Rety and against Green and SCC nunc pro tunc to February 14, 1989. (R.86-87). Rety appealed from the final judgment, and Green and SCC cross-appealed.

4. The Present Proceedings

In its original opinion in this appeal, the Third District reversed the trial court's ruling on the interest issue and held "that the final judgment entered following remand relates back to the date of the original final judgment; Rety is entitled to receive interest pursuant to section 55.03(1), Florida Statutes (1985), from that date." (App. 3). Since the first and only final judgment in the case was entered after the remand ordered in Rety I, Rety moved for clarification of the Third District's opinion and Green and SCC moved for rehearing.[2/]

2/ SCC and Rety settled while these motions were pending. (App. 5)

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The Third District subsequently issued the opinion now before this Court which withdrew and replaced the original opinion, and certified the question set forth above. (App. 4-14). The two-judge majority held that judgment should be entered as of the date of the jury's verdict. (App. 9). The majority recognized that interest accrues on a judgment, not on a verdict, under section 55.03(1), but concluded that Fla. R. App. P. 9.340(c) was applicable. In this connection, the majority was heavily influenced by this Court's decision in Atlantic Coast Line R. R. Co. v. Watkins, 99 Fla. 395, 126 So. 489 (1930). (App. 6-9).

In her dissent, Judge Baskin stated that the analogy drawn by the majority to the Watkins case was inapt and the majority's reliance on Rule 9.340(c) was misplaced. According to Judge Baskin, Watkins was not applicable because, unlike the present case, in Watkins a judgment had been entered by the trial court which was modified on appeal and therefore a predicate existed for the commencement of interest, to run from the date of rendition. (App. 10-13). Judge Baskin furthermore stated that Rule 9.340(c) was not applicable because the Third District in Rety I did not reinstate the jury verdict and did not reverse a judgment so as to require the entry of a money judgment on the verdict. (App. 13-14). Since Rety I did not modify an original judgment or order a remittitur of an original judgment, Judge Baskin would have held, pursuant to section 55.03(1), that Rety was entitled to interest from December 20, 1989 -- when the first

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and only judgment in this cause was filed. (14).

RELEVANT RULE AND STATUTE

Rule 9.340(c), Fla.R.App.P.

Entry of Money Judgment. When a judgment of reversal is entered which requires the entry of a money judgment on a verdict, the mandate shall be deemed to require such money judgment to be entered as of the date of the verdict.

Section 55.03(1), Fla.Stat.

Judgments; rate of interest, generally. (1) a judgment or decree entered on or after after October 1, 1981, shall bear interest at the rate of 12 percent a year unless the judgment or decree is rendered on a written contract or obligation providing for interest at a lesser rate, in which case the judgment or decree bears interest at the rate specified in such written contract or obligation.

SUMMARY OF ARGUMENT

A final judgment was not entered in this case until December 15, 1989, because the jury's verdict was wildly excessive and Rety rejected the trial court's remittitur. Furthermore, the Third District concluded in Rety I that $17,000,000 of the jury's award could not be sustained under any proper view of the evidences. Under these circumstances, no basis exists for granting Rety interest from the date of the verdict.

Rety's entitlement to interest on what was left of the jury's verdict is governed by section 55\03, Fla.Stat., which provides that interest runs on judgments, not verdicts. The limited exception to this rule found in Rule 9.340(c) does not apply

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Rule 9.340(c) is applicable only where the appellate court enters a "judgment of reversal'' which "requires the entry of a money judgment on a verdict", When an appellate court orders a remittitur and the resulting judgment is for an amount less than the full amount awarded by the jury, a judgment is not entered "on a verdict" within the meaning of the rule.

Rule 9.340(c) also is inapplicable here because Rety I was not a "judgment of reversal." Rety I affirmed the trial court's order of remittitur or new trial in all respects except for the amount of punitive damages against Green.

The requirements of the rule are not met here for the additional reason that Rety I did not require that **a** money judgment be entered on remand. Instead, Rety I required the trial court to enter a modified remittitur and to give Rety the choice of either accepting the remittitur or having another trial on damages.

The analogy drawn by Rety and the Third District's majority between the present case and this Court's decision in Watkins is inapt. Watkins and its progeny hold that interest runs from the date of the original judgment when a judgment is modified on appeal. Here, the first and only judgment was entered after Rety I.

Post-judgment interest begins to run when a written judgment is filed with the clerk and not before, even where the plaintiff is not responsible for the delay in the entry of judgment. Judgment was not entered until December 15, 1989. And interest,

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under Florida law, only runs from the time an award is finally adjudicated. Payment was not due in any amount in this case until Rety accepted the remittitur as modified by Rety I and judgment was entered. Consequently, only then did interest begin to run.

Green submits that the question certified by the Third District should be answered in the negative in the context of this case, and the Third District's decision should be quashed.

ARGUMENT

The right to interest on judgments is controlled by statute because judgments did not bear interest under the common law. Parker v. Brinson Construction Co., 78 So.2d 873 (Fla. 1955) (in personal injury actions "interest accumulates only from the date of the judgment and then by virtue of the applicable statute"); In re Estate of Lunga, 360 So.2d 109, 111 (Fla. 3d DCA), rev. denied, 366 So.2d 882, 883 (Fla. 1978).

The applicable statutory provision in Florida is section 55.03(1), which provides in pertinent part that "a judgment or decree . . . shall bear interest at the rate of 12 percent a year. . . ." The courts have consistently ruled that a prerequisite to the accrual of interest under the statute is the actual entry of judgment. Allstate Insurance Co. v. Powell, 513 So.2d 802, 803 (Fla. 4th DCA 1987), rev. denied, 520 So.2d 585 (Fla. 1988).[3/] As this Court noted in Atlantic Coast Line R. Co. v. Watkins, 99 Fla. 395, 126 So. 489, 490 (1930):

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> The matter of interest is taken care of by the statute, which provides that all judgments shall bear interest. . . , which means of course from the date of their rendition.

See also McNitt v. Osborne, 371 So.2d 696, 697 (Fla. 3d DCA 1979).

Despite the foregoing, Rety claimed entitlement to interest from the date of the outrageous and excessive verdict. To support his position, Rety relied on (1) Rule 9.340(c), which provides that when a judgment is reversed on appeal with directions to enter a money judgment on the verdict, interest is calculated from the date of the verdict; and (2) decisions which hold that when a judgment is modified on appeal interest runs from the pre-appeal judgment. The two-judge majority of the Third District essentially agreed with Rety, holding that Rule 9.340(c), when read in conjunction with this Court's decision in Watkins, applied in this case and that judgment should be entered against Green effective the date of the verdict. As will be shown, the Third District misapplied both Rule 9.340(c) and this Court's Watkins decision.

3/ Merchant v. Merchant, 433 So.2d 633, 634 (Fla. 1st DCA 1983), illustrates the strictness with which the rule is applied. In that case, the trial court announced his ruling on January 7, 1982 but neglected to file the judgment until November 24, 1982. The First District held that interest began to run on the latter date, reasoning that "[i]nterest on a judgment does not begin to run until the judgment is entered and even a written judgment which has been signed by the court is not entered until it has been filed with the clerk." Id. at 634.

1. **Rule 9.340 Does Not Apply**

Rule 9.340(c) states:

> When a judgment of reversal is entered which requires the entry of a money judgment on a verdict, the mandate shall be deemed to require such money judgment to be entered as of the date of the verdict.

By its plain terms, this narrow exception to the general rule that post-judgment interest accrues from the time judgment actually is entered applies only where (1) there is a "judgment of reversal" which (2) requires entry of a money judgment on a verdict. Here both elements are missing, as Judge Baskin correctly pointed out in her dissent.

In Rety I, 546 So.2d 410, the Third District did not reverse the trial court's remittitur or new trial order and direct entry of a money judgment on the $22,500,000 jury verdict. Rety I instead affirmed the trial court's order in all respects except for the amount of punitive damages against Green. Id. at 421. The Third District agreed with the trial court that the jury's award was a "runaway" "haywire" verdict which was so outrageous as to shock the judicial conscience, but found that the $10,000,000 punitive award against Green should have been reduced to $2,500,000, not $50,000 as the trial court ruled. Since the Third District in Rety I substituted an amount entirely different from that awarded by either the jury or the trial court, there was no "judgment of reversal" within the meaning of Rule 9.340(c).

In addition, Rety I did not "require" the trial court to

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enter "a money judgment on the verdict." First of all, Rety I merely modified the trial court's rernittitur of the punitive award against Green and gave Rety the choice of a new trial on damages or accepting a new remittitur in an amount $17,000,000 less than the jury's verdict. Consequently, Rety I did not direct entry of a "money judgment on the verdict."

Secondly, Rety I did not require the trial court to enter any judgment at all. Rather, it only required the trial court to enter a new remittitur, and a money judgment would not have been necessary unless and until Rety elected to accept the new remittitur. Had he rejected it, there would have been a new trial on damages. Thus, the mandate from Rety I did not require entry of money judgment under Rule 9.340(c).

The law is clear that interest cannot be extended beyond the terms of its regulation because it is creature of statute and in derogation of the common law rule. 47 C.J.S. Interest & Usury §22 (1982); Rudolph v. Unger, 417 So.2d 1095 (Fla. 3d DCA 1982). Rule 9.340(c) is clear: interest is authorized from the date of the verdict only where a "judgment of reversal is entered which requires the entry of a money judgment on a verdict." Since two elements of the rule are absent in this case, Rety is not entitled to interest from the date of the verdict.

Rule 9.340(c), Green submits, is properly applied only where the appellate court reinstates a jury's verdict ~~in toto~~ and directs the trial court on remand to enter judgment for the full amount of the verdict. Only under these circumstances is there

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"a judgment of reversal . . . which requires the entry of a money judgment on a verdict." Here, Rety I did not reinstate the jury's outrageous $22,500,000 verdict and it did not reverse the trial court's order so as to require the entry of a judgment on the verdict. Instead, Rety I modified the trial court's post-trial order, and gave Rety the choice of accepting $17,000,000 less than the jury awarded or having a new trial on damages. Rule 9.340(c) therefore does not apply.

2. **Watkins and Similar Cases Are Not Applicable**

In ruling that interest should be calculated from the date of the verdict, the Third District's majority agreed with Rety that this result was consistent with this Court's holding in Atlantic Coast Line R. Co. v. Watkins, 99 Fla. 395, 126 So. 489 (1930). Green submits that reliance on Watkins is misplaced since the first and only judgment in this case was entered after the appeal was concluded in Retv I.

In Watkins, the trial court entered judgment in plaintiff's favor for $10,000. On appeal, this Court held that the award was excessive and ordered a remittitur to $5,000 or new trial. On remand, the plaintiff accepted the remittitur. This Court framed the issue on the second appeal as "whether the unremitted portion of the original judgment bears interest from the date of the rendition of the judgment, or from the date on which the mandate of the court was issued.'' Id. at 490. In discussing an appellate court's use of remittitur as an alternative to reversal or a condition of affirmance, this Court said:

> [I]f the plaintiff will remit such designated excess portion of the original judgment, as of the date of its rendition, said judgment as thus voluntarily reduced, will stand affirmed as of the date of its original rendition; otherwise the judgment will be reversed. The matter of interest is taken care of by the statute, which provides that all judgments shall bear interest . . . from the date of their rendition.

126 So.2d at 490.

This Court's decision in Watkins, Green submits, recognizes that a prerequisite to the application of the rule governing the commencement of interest when a judgment is modified on appeal is an original judgment. Watkins is but a specific application of the general rule that the event which triggers the accrual of interest under section 55.03, Fla.Stat., is the entry of judgment. This Court's decision in Watkins certainly does not support Rety's contention, accepted by the Third District's two-judge majority, that the general rule regarding post-judgment interest should be discarded in favor of a rule allowing interest from the time an outrageous (and subsequently reduced) verdict is returned by the jury. As Judge Baskin aptly observed in her dissenting opinion:

> The court concluded [in Watkins] that a remittitur would cause the original judgment to be reduced by the specified amount, "thus leaving such judgment, if remittitur were entered, to stand for the remaining [amount], with interest thereon from the date of its rendition. . . ." Watkins, 99 Fla. at 400, 126 So. at 491.
>
> The existence of the original judgment when modified, served as a predicate for the commencement of interest, to run from the date of rendition; however, where, as here, no judgment was entered prior to appeal, nothing yields interest. The entry of judgment triggering the accrual of

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interest did not take place until after remand from the first appeal in Rety, a circumstance not analogous to modification or remittitur of a preexisting final judgment. (App. 12-13).

3. Rety is Entitled to Interest As of the Date the Final Judgment Was Entered

Since Rule 9.340(c) does not apply here, the Third District erroneously ruled that judgment should be entered against Green effective the date of the verdict. Instead, Rety is entitled to interest from December 15, 1989, when the first and only judgment was entered in this case.

A party is not entitled to post-judgment interest pursuant to section 55.03 until a judgment is entered and filed with the clerk. Merchant v. Merchant, 433 So.2d 633 (Fla. 1st DCA 1983); Allstate Ins. Co. v. Powell, 513 So.2d 802 (Fla. 4th DCA 1987). Furthermore, this Court held in Novack v. Novack, 210 So.2d 215, 217 (Fla. 1968), that post-judgment "interest only runs from the time payment is due, that is from the time the award is finally adjudicated."

In the present case, payment did not become due until Rety accepted the remittitur as modified by Rety I and a judgment was entered. Payment was not due on the jury verdict since judgment was never entered on it -- both the trial court and the Third District in Rety I ruled the verdict was grossly excessive. Moreover, payment never became due on the lower amount conditionally set by the trial court (i.e., $2,550,000) prior to the appeal in Rety I because Rety rejected the remittitur and no judgment was entered on it. Until such time as Rety elected to

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accept the remittitur as modified in Rety I, Green did not owe either the $20,000,000 assessed by the jury or the $2,550,000 set by the trial court in its post-trial order. Instead, Green owed either the $5,000,000 conditionally set by the Third District or some unknowable amount to be determined by another jury. Only when Rety finally accepted the remittitur after remand was there a sum certain Green owed Rety, and only when judgment was entered was payment due on that amount. Consequently, under Novack and section 55.03, it was only then that interest could begin to run.

A signed, written judgment was not filed with the clerk in this case until December 15, 1989. This Court accordingly should hold that Rety is entitled to interest as of that date and not before.

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CONCLUSION

Green respectfully submits that this Court should accept jurisdiction in this case. Trial courts and litigants are frequently confronted with uncertainty regarding when interest commences in cases involving appellate remittiturs. A decision from this court would go a long way toward removing some of this confusion and providing all concerned with guidance.

In addition, Green respectfully submits, based on the facts and authorities set forth above, that the question certified by the Third District should be answered in the negative in the context of this case, and the final judgment should be modified to provide interest from the date of its rendition.

Respectfully submitted,

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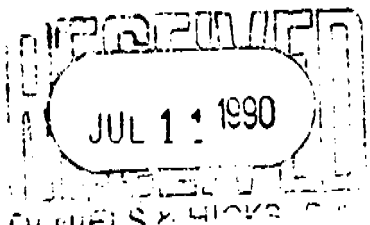
APPENDIX

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.



IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1990

DENIS RETY, **

Appellant, **

vs. ** CASE NO. 89-2936

ARTHUR GREEN and SOUTHERN ** COMMODITY CORPORATION,

Appellees. **

opinion filed July 10, 1990.

An Appeal from the Circuit Court for Dade County, Jack Turner, Judge.

Kelly, Black, Black, Byrne, Craig & Beasley and Lauri Waldman Ross: Lisa Bennett, for appellant.

Cooper, Wolfe & Bolotin and Sharon Wolfe and Maureen E. Lefebvre; Daniels & Hicks and Ralph O. Anderson, for appellees.

Before HUBBART, BASKIN and COPE, JJ.

BASKIN, Judge.

At issue in Denis Rety's appeal from the entry of a final judgment on remittitur and from appellees' cross-appeal is the date from which interest is to accrue.

APP. 1

In Rety's appeal, Rety v. Green, 556 So.2d 410 (Fla. 3d DCA), review denied, 553 So.2d 1165 (Fla. 1989), 553 So.2d 1166 (Fla. 1989), this court affirmed the trial court's order of remittitur or new trial on compensatory damages, but decreased the amount of remittitur as to punitive damages against Arthur Green. We remanded the cause with instructions to afford Rety a reasonable time to accept or reject the modified remittitur or to choose a new trial on damages. On remand, Rety chose the decreased remittitur and sought entry of a final judgment nunc pro tunc to the date of the original verdict. Green and Southern Commodity maintained that interest should not commence on that date because the eventual judgment had not been entered prior to appeal. The trial court disagreed with both positions and entered final judgment nunc pro tunc to the date of this court's published opinion. As a result, Rety instituted this appeal, and Green and Southern Commodity filed their cross-appeal. We reverse in accordance with the weight of authority.

An order of remittitur signifies:

> the Court considers that the plaintiff was entitled to recover, but it deems the verdict and judgment excessive, to a certain ascertained extent; that, therefore, if the plaintiff will remit such designated excess portion of the original judgment, as of the date of its rendition, said judgment as thus voluntarily reduced, will stand affirmed as of the date of its original rendition . . . .

Atlantic Coast Line R.R. Co. v. Watkins, 99 Fla. 395, 398, 126 So. 489, 490 (1930). Where the court "requires a remittitur of a stated portion of a judgment as an alternative to a reversal and

APP. 2

the holder enters the remittitur, the unremitted portion of the original judgment remains intact and bears interest from its date and not from the time of remittitur," Smith v. Goodpasture, 189 So.2d 265, 267 (Fla. 4th DCA 1966); Novack v. Novack, 210 So.2d 215 (Fla. 1968); Atlantic Coast Line; St. Cloud Util. v. Moore, 355 So.2d 446 (Fla. 4th DCA 1978); see also Tallahassee Memorial Regional Medical Center, Inc. v. Poole, 547 So.2d 1258 (Fla. 1st DCA 1989), review denied, 558 So.2d 19 (Fla. 1990), whether the remittitur is ordered by the trial or by the appellate court. Goodpasture,

Here, the trial court ordered a specific remittitur or a new trial. When this court affirmed the trial court's order but modified the amount of remittitur, no further judicial labor was required of the trial court, other than the ministerial entry of a judgment reflecting Rety's choice. St. Cloud Util.; Goodpasture. Rety "retains the full benefit of [the] original judgment as . . . modified." Atlantic Coast Line, 99 Fla. at 398, 126 So. at 490-91. We therefore hold that the final judgment entered following remand relates back to the date of the original final judgment; Rety is entitled to receive interest pursuant to section 55.03 (1), Florida Statutes (1985), from that date.

Reversed and remanded with instructions.

APP. 3

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1992

MAR 2

DENIS RETY,

Appellant,

vs.

ARTHUR GREEN,

Appellee.

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**

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CASE NO. 89-2936

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**

Opinion filed March 10, 1992.

An Appeal from the Circuit Court for Dade County, Jack M. Turner, Judge.

Kelly, Black, Black, Byrne, Beasley, Bales & Ross and Lauri Waldman Ross; Lisa Bennett, for appellant.

Daniels & Hicks and Ralph O. Anderson, for appellee.

On Motions for Rehearing and Clarification

Before HUBBART, BASKIN and COPE, JJ.

PER CURIAM.

Upon consideration of the motion *of* Denis Rety for clarification and the motion of Arthur Green for rehearing, the

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court's previous opinion is withdrawn and the following opinion is substituted:

The question presented by this appeal is the date from which appellant Denis Rety's judgment against appellee Arthur Green will bear interest.[1] We conclude that the judgment should be entered as of the date of the jury's verdict,

Rety obtained a libel verdict against Green for $12,500,000 in compensatory and punitive damages.[2] No judgment was entered thereon. The trial court sua sponte entered an order of remittitur and alternative order for a new trial on damages. The remitted amount was $2,550,000 in compensatory and punitive damages.[3] When Rety refused to accept a remittitur, the trial court ordered a new trial on damages and Rety appealed. Rety v.

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[1] During the pendency of this appeal, appellee Southern Commodity Corporation settled with Rety. That judgment will not be discussed further.

[2] The jury award was composed of:

Compensatory damages (jointly and severally with codefendant Southern Commodity Corporation)	$10,000,000
Punitive damages (Green individually)	$ 2,500,000

[3] The trial court's award was composed of:

Compensatory damages (jointly and severally with Southern Commodity Corporation)	$ 2,500,000
Punitive damages (against Green only)	$ 50,000

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Green, 546 So.2d 410, 417 (Fla. 3d DCA), review denied, 553 So.2d 1165, 1166 (Fla. 1989).

This court agreed that a remittitur was appropriate, but found that the trial court's remittitur had been excessive. 546 So.2d at 421. This court concluded that the award should be $5,000,000[4] instead of $2,550,000. The trial court was directed to enter a modified remittitur accordingly, and to allow Rety a reasonable time within which to accept or reject it. Id. at 421-22. On remand Rety accepted the modified remittitur.

After acceptance, Rety contended that the judgment should be entered as of the date of the original verdict, while Green and Southern argued that the final judgment should be dated when actually entered, and not as of any earlier date. The trial court disagreed with both positions and entered final judgment effective the date of this court's published opinion in the earlier appeal. From that ruling both sides appealed.

Under section 55.03, Florida Statutes (1989), interest accrues on a judgment, not on a verdict. Under ordinary principles, interest would run from the date of entry of judgment.

To this general principle the Rules of Appellate Procedure recognize an exception. As amended in 1984, Rule 9.340(c) granted

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[4] This court's award was:

Compensatory damages (unchanged)	$ 2,500,000
Punitive damages (against Green only)	$ 2,500,000

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authority to the trial court in some circumstances to enter judgment as of an earlier date.

Rule 9.340(c) provides: "When a judgment of reversal is entered which requires the entry of a money judgment on a verdict, the mandate shall be deemed to require such money judgment to be entered as of the date of the verdict."[5] The theory of the rule is that, but for the erroneous failure to enter judgment on the jury's verdict, judgment would have been entered, and interest would have begun to run, at the time of the verdict. See P. Padovano, Florida Appellate Practice § 14.9, at 242 (1988). When judgment is entered pursuant to Rule 9.340(c), interest runs from the date of the verdict.[6]

The question before us is the application of Rule 9.340(c) to the present case. Green contends that the Rule comes into play only if, after reversal, a judgment is entered in the exact amount of the jury's verdict. Rety argues that the Rule also applies in a case of remittitur.

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[5] This was "a repromulgation of former Rule 3.15(a) which was deleted in 1977 as being unnecessary. Experience proved it to be necessary." Committee Notes to 1984 Amendment to Fla. R. App. P. 9.340.

[6] By its terms Rule 9.340(c) does not require that a judgment have previously been entered in the case. The decision in Mabrey v. Carnival Cruise Lines, Inc., 438 So.2d 937, 939 n.2 (Fla. 3d DCA 1983), is not to the contrary. Mabrey illustrates one application of the rule, but not the only one. Nor is there any significance in the fact that in Mabrey, a judgment had been entered in favor of defendant. Upon reversal, judgment was entered for plaintiff. Interest ran from the date of the verdict. The date of the reversed defense judgment was immaterial.

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The jury awarded $20,000,000 in compensatory and punitive damages against Green. The trial court's order of remittitur reduced the award to $2,550,000. On appeal this court held that the remittitur was too large and the resultant damage award was too low. This court set the aggregate award against Green at $5,000,000 and remanded with directions to give Rety a reasonable time within which to accept or reject the remittitur. Rety timely accepted.

As a threshold matter, the judgment against Green fits within the definitional scope of Florida Rule of Appellate Procedure 9.340(c). This court's ruling was indisputably a "judgment of reversal," id., which reversed the trial court's order of remittitur or new trial. The unresolved question is whether entry of judgment on the reduced amount constitutes "entry of a money judgment on a verdict" for purposes of the Rule. Reasoning by analogy to Atlantic Coast Line Railroad Co. v. Watkins, 99 Fla. 395, 126 So. 489 (1930), we conclude that it does.

In Atlantic Coast Line Railroad Co. v. Watkins, the plaintiff obtained a verdict. Unlike the present case, the trial court entered judgment in plaintiff's favor. On appeal, the Florida Supreme Court ordered a remittitur or new trial, and on remand the plaintiff accepted the remittitur. 99 Fla. at 398, 126 So. at 490. The supreme court ruled that for purposes of computing interest, the "judgment as thus voluntarily reduced, will stand affirmed as of the date of its original rendition . . . ." Id. The court held that the judgment would bear interest from the date of its original rendition, rather than the date of the remittitur.

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Id.; see also Gorman v. Largo Hospital Owners, Ltd., 435 So.2d 872 (Fla. 2d DCA 1983), review denied, 446 So.2d 99 (Fla. 1984). See generally Guy v. Kight, 431 So.2d 653, 656 (Fla. 5th DCA), review denied, 440 So.2d 352 (Fla. 1983).

We conclude that we should follow, by analogy, Atlantic Coast Line Railroad Co. v. Watkins. The instant case is essentially the same as Watkins. The result should be the same regardless of whether judgment was entered by the trial court prior to remittitur (as in Atlantic Coast Line R. Co. v. Watkins) or whether no such judgment was entered (as is the case here).[7] we conclude that the entry of judgment on the reduced jury verdict should "be deemed to require such judgment to be entered as of the date of the verdict." Fla. R. App. P. 9.340(c).

For the reasons stated, the judgment against Green must be reversed insofar as it was entered as of February 14, 1989, and remanded with directions to enter judgment against Green effective the date of the verdict.

We certify that we have passed on a question of great public importance:

> Does Florida Rule of Appellate Procedure 9.340(c) apply where an appellate court-ordered remittitur requires entry of judgment in an amount less than the full amount of the jury's verdict?

Reversed and remanded; question certified.

HUBBART and COPE, JJ., concur.

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[7] This approach is consistent with the underlying purpose of the rule, for the delay in entry of final judgment occurred because of Rety's rightful refusal to accept an excessive remittitur.

BASKIN, Judge (dissenting).

I disagree with the majority holding that interest on Denis Rety's award accrues as of the date of the jury's verdict, a result I find to be contrary to the explicit rule it purports to apply. Furthermore, I find the majority's analogy to Atlantic Coast Line R.R. Co. v. Watkins, 99 Fla. 395, 126 So. 489 (1930), unpersuasive.

At the conclusion of the trial, the court did not enter a judgment on the verdict returned by the jury. Instead, it entered an order of remittitur or new trial on damages. The only judgment entered in this cause is the judgment recorded on December 20, 1989, after appellate remand in Rety v. Green, 546 So.2d 410 (Fla. 3d DCA), review denied, 553 So.2d 1165 (Fla. 1989). Interest could not begin to accrue prior to December 20, 1989, when judgment was entered. § 55.03(1), Fla. Stat. (1987). The majority departs from settled sound principles in holding that the accrual of interest commences on the date of the jury verdict, Interest accrues only on the entry of judgment; no other event invokes the accrual of interest. § 55.03(1), Fla. Stat. (1987).

Section 55.03(1), Florida Statutes (1987), provides that "[a] judgment or decree entered on or after October 1, 1981, shall bear interest at the rate of 12 percent a year . . . ." Interest accrues on a judgment only by virtue of the applicable statute. Parker V. Brinson Constr. Co., 78 So.2d 873, 875 (Fla.

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1955); Watkins, 99 Fla. at 398, 126 So. at 490("The matter of interest is taken care of by the statute, which provides that all judgments shall bear interest . . . which means of course from the date of their rendition.")(Emphasis supplied). In a tort action, interest accrues from entry of judgment. Parker; Skinner v. Ochiltree, 148 Fla. 705, 5 So.2d 605 (1941); McNitt v. Osborne, 371 So.2d 696 (Fla. 3d DCA 1979); Merchant v. Merchant, 433 So.2d 633 (Fla. 1st DCA 1983); Smith v. Goodpasture, 189 So.2d 265 (Fla. 4th DCA 1966); see Roberts v. Askew, 260 So.2d 492 (Fla. 1972)(section 55.03 creates obligation to pay interest on judgments rendered); Allstate Ins. Co. v. Powell, 513 So.2d 802 (Fla. 4th DCA 1987)(error to award interest on attorney's fees award from date of judgment when the award was not a part of that judgment), review denied, 520 So.2d 585 (Fla. 1988); McCoy v. Rudd, 367 So.2d 1080 (Fla. 1st DCA)(interest on unliquidated damages begins to run upon entry of final judgment), dismissed, 370 So.2d 461 (Fla. 1979). "A judgment is commonly an order which will support a writ of execution, as for example, the levying on the assets of a judgment debtor," In re Lunga's Estate, 360 So.2d 109, 111 (Fla. 3d DCA), cert. denied, 366 So.2d 883 (Fla. 1978); compare Bank of Central Fla. v. Department of Banking & Finance, 470 So.2d 742 (Fla. 1st DCA 1985)(final order lacking the force or effect of a money judgment does not accrue interest under section 55.03).

Because no judgment was rendered prior to the initial appeal in Rety, no justification exists for analogizing Rety's peculiar circumstances to cases where an appellate court (1) modifies a

judgment or reduces a judgment by remittitur, or (2) reverses a judgment requiring the entry of a money judgment on a jury verdict. For example, where a final judgment is modified or remitted on appeal, the unremitted portion of the judgment bears interest from the date of the original judgment. Watkins, 99 Fla. at 398, 126 So. at 490; Gorman v. Largo Hosp. Owners, Ltd., 435 So.2d 872 (Fla. 2d DCA 1983), review denied, 446 So.2d 99 (Fla. 1984); St. Cloud Utilities v. Moore, 355 So.2d 446 (Fla. 4th DCA 1978); Gilmore v. Morrison, 341 So.2d 779 (Fla. 4th DCA 1976); Smith v. Goodpasture, 189 So.2d 265 (Fla. 4th DCA 1966). The foregoing cases conclude that, on remand after appeal of a judgment, the prevailing party is entitled to interest on the unremitted portion of the judgment as of the date of the original judgment. Watkins; Gorman; St. Cloud Utilities; Gilmore; Smith.

The judgment is the impetus for the commencement of interest. In Watkins, a $10,000 judgment was entered in plaintiff's favor. On appeal, the judgment was deemed excessive and remitted to $5,000. Thus, the issue before the Florida Supreme Court was "whether the unremitted portion of the original judgment bears interest from the date of the rendition of the judgment, or from the date on which the mandate of the court was issued." Watkins, 99 Fla. at 397, 126 So. at 490 (emphasis supplied). The court concluded that a remittitur would cause the original judgment to be reduced by the specified amount, "thus leaving such judgment, if remittitur were entered, to stand for the remaining [amount], with interest thereon from the date of its rendition. . . ." Watkins, 99 Fla. at 400, 126 So. at 491.

The existence of the original judgment, when modified, served as a predicate for the commencement of interest, to run from the date of rendition; however, where, as here, no judgment was entered prior to appeal, nothing yields interest. The entry of a judgment triggering the accrual of interest did not take place until after remand from the first appeal in ~~Rety~~, a circumstance not analogous to modification or remittitur of a preexisting final judgment.

Contrary to the majority's contention, rule 9.340(c), Florida Rules of Appellate Procedure, does not have the effect of providing an alternate date for the accrual of interest — it specifies the date for reinstating a money judgment following appellate reversal. Rule 9.340(c)[1] states that "[w]hen a judgment of reversal is entered which requires the entry of a money judgment on a verdict, the mandate shall be deemed to require such money judgment to be entered as of the date of the verdict." Rule 9.340(c) does not create an exception to section 55.03, or establish a different event from which interest may accrue. The rule merely establishes the date on which to

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[1] Mabrey v. Carnival Cruise Lines, rnc., 438 So.2d 937 (Fla. 3d DCA 1983), illustrates the appropriate application of rule 9.340(c), formerly Florida Appellate Rule 3.15(a). In Mabrey, the jury returned a verdict for plaintiffs. The trial court granted defendant's motion for directed verdict and entered a final judgment in defendant's favor. This court reversed the trial court's judgment and remanded the case with instructions to enter a money judgment for the amount of the jury's verdict. "Thus, on remand, the trial judge must enter a final judgment, nunc pro tunc, to January 4, 1983, the date of the jury's verdict. Under Section 55.03, Florida Statutes (1981), the judgment will bear interest at the rate of 12% ~~from that date~~." Mabrey, 438 So.2d at 939 n.2 (emphasis supplied).

enter a judgment upon issuance of a mandate. Once the judgment is entered pursuant to the rule, interest accrues on the judgment under section 55.03. See Mabrey v. Carnival Cruise Lines, Inc., 438 So.2d 937, 939 n.2 (Fla. 3d DCA 1983). However, rule 9.340(c) does not apply to Rety because ~~Rety~~ neither reinstated the jury verdict nor reversed a judgment so as to require the entry of a money judgment on the verdict. In Rety, this court did not reinstate a jury verdict; the court merely modified the trial court's remittitur of the jury's verdict.

The Rety court did not modify an original judgment or order a remittitur of an original judgment. Under section 55.03 Rety may earn interest only as of the date of the rendition of a judgment. The judgment filed December 20, 1989, is the only judgment rendered. The majority applies the law as it "could be," slip op. at 3, or "should be," slip op. at 5; I would follow the law as it presently exists. I would therefore grant rehearing, withdraw our prior opinion, and hold that section 55.03 entitles Rety to earn interest as of the date that judgment was filed.[2] For these reasons, I would reverse the portion of the final judgment that provides for the judgment to bear interest commencing on the date of this court's first opinion, and would strike the entry of judgment nunc pro tunc.

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[2] "Interest on a judgment does not begin to run until the judgment is entered and even a written judgment which has been signed by the court is not 'entered' until it has been filed with the clerk." Allstate Ins, Co. v. Powell, 513 So.2d 802, 804 (Fla. 4th DCA 1987), review denied, 520 So.2d 585 (Fla. 1988), citing, Merchant v. Merchant, 433 So.2d 633, 634 (Fla. 1st DCA 1983).