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FILED
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MAY 28 1992
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN AND FOR THE
SUPREME COURT OF FLORIDA

ARTHUR GREEN

Petitioner,

v.

DENIS RETY

Respondent.

Case No.: 79,600

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
THIRD DISTRTCT COURT OF APPEAL OF FLORIDA

RESPONDENT'S BRIEF ON THE MERITS

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INTRODUCTION

In Rety v. Green, **546** So.2d 410 (Fla. 3d **DCA**), pet. for rev. den., ***553*** So.2d 1165, 1166 (Fla. 1989) ("Rety I"), the Third District held that Respondent Denis Rety established an "unprecedented' case of libel... which deserved an 'unprecedented award of damages' and that "the defendant Green, for no reason whatsoever, maliciously set out to destroy the Plaintiff Rety's restaurant, his **social** life, and his reputation in the community by attributing completely fabricated anti-semitic statements to Rety in the letter sued upon." It further held "that Green brilliantly succeeded in his calumny and literally destroyed Rety's reputation in the Bal Harbor Islands community, forcing Rety to flee the area after his two restaurants were financially ruined by Green's defamatory letter." Id at 419-20.

The only "infirmity" in the jury's verdict was the amount of the damages awarded -- a defect "[w]hich the remittitur order was designed to check". **Id** at 427.

The issue before this Court is whether an "unprecedented" award of damages should be diminished by a delay in entry of judgment until the parties exhaust all appellate remedies, or whether **such** "unprecedented award" may be maintained intact by the retroactive entry of judgment to the date the verdict was entered. Because the latter is appropriate, and warranted, the question certified by the Third District:

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[1] All references are to the Third District's opinion contained in the appendix to this brief (App. ___).

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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?,

should be answered affirmatively.

STATEMENT OF THE CASE AND FACTS

The Petitioner's selective treatment of the case and facts requires their restatement here.

On February 20, 1986, a jury returned a $22,500,000 verdict in favor of Rety and against Green and his employer, Southern Commodity Corp. **("SCC").** Rety I, **546 So.2d** at **417.** The verdict awarded $10,000,000 in compensatory damages jointly **and** severally against both defendants, $10,000,000 in punitive damages against the petitioner Green and $2,500,000 in punitive damages against SCC (which is no longer a party to this appeal).

On February 27, **1986,** the trial court **sua** sponte entered an order remitting the verdict to $3,050,000 or alternatively awarding Rety a new trial on damages only.[2] After Rety declined the remittitur, the trial court granted the defendants' post-trial motions, and entered an order granting the defendants a new trial on all issues including liability.

Rety appealed both orders. By opinion of February 14, **1989,** the Third District reversed the new trial order on liability in its

[2] The order remitted the verdict to an award of $2,500,000.00 compensatory damages jointly and severally against both defendants, only $50,000.00 in punitive damages against Green and $500,000 in punitive damages against **SCC**. **The** remitted verdict as to Petitioner Green **thus** stood at $2,550,000.

entirety. Additionally, concluding that "[R]ety was entitled to an unprecedented compensatory and punitive award so as to fit 'the vicious arrogance of the defendant's conduct, and the life shattering damage inflicted intentionally with malice and aforethought,'" the Third District reversed the remittitur order **as** to Green as "too low", and reinstated $5,500,000 in compensatory and punitive damages, $5,000,000 of which was assessed against this defendant. 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. The Court rejected the Defendants' cross-appeals, as well as their motions for rehearing, concluding the latter had "no merit." Id at **424,426.**

Rety timely accepted the modified remittitur (App. 6). The defendants then staved off entry of final judgment for an additional four months by virtue of unsuccessful companion appeals to this Court. Rety I, rev. den., 553 So.2d **1165, 1166 (Fla. 1989).**

On remand, Rety contended that the judgment should be entered nunc pro tunc as of the date of the original verdict, while the defendants asserted that the final judgment could only be entered prospectively. **The** trial court disagreed with both positions, and on December **15,** 1989, some **46** months after the jury verdict, entered final judgment effective February 14, **1989,** the date of the Third District's published opinion in Rety I. Both sides appealed.

The Third District sided with Rety, Rety v. Green, 17 FLW **683 (Fla. 3d DCA 1992** ("Rety II"), concluding that Rule **9.340(c), Fla.**

R. App. Proc. applies in the case of remittitur, not merely when after reversal, a judgment is entered in the exact amount of the verdict. Reasoning by analogy that Atlantic Coast Line Railroad, Co. v. Watkins, 99 Fla. 395, 126 So.489 (1930) compelled the Rule's application here, the Third District certified the question to this Court,

SUMMARY OF THE ARGUMENT

The purpose of an award of pecuniary damages is to make the injured party whole. As a result of erroneous trial court rulings, Rety was unable to obtain a judgment until some four years after a jury verdict vindicating his rights was returned, Unless that judgment is found to relate back to the date of the original verdict, the defendant will have had full and free use of Rety's money during the appeal period and the "unprecedented" award of damages which the Third District found warranted will have been substantially diminished,

Florida Rule of Appellate Procedure 9.340(c) was promulgated precisely to cure this situation. It authorizes the entry of judgment nunc pro tunc to the date of verdict, where any verdict (or a portion thereof) is reinstated on appeal. This case meets all of the Rule's criteria. The mandate in Rety I reversed a new trial order in its entirety; reinstated the verdict on liability; reinstated a portion of the damages award in the form of a modified $5,000,000 against petitioner Green; and ordered the trial court on remand to offer Rety his choice of the modified remittitur or a new trial on damages only. Upon Rety's acceptance of the remittitur,

the trial court was required to enter a money judgment "upon the [now reduced] verdict". The trial court's duties in both making the offer, and entering a judgment once Rety elected, were purely ministerial. The trial court **had no** discretion **and was** required **to** offer the modified remittitur and to enter a money judgment on Rety's acceptance.

Entry of judgment nunc pro tunc to the date of verdict here is both reasonable and fair. By virtue of the trial court's erroneous rulings, Rety was unable to obtain a judgment until some four years after the verdict was rendered. Depriving him of interest for four years diminishes recovery of the "unprecedented award" to which he was legally entitled.

ARGUMENT

I. Rule 9.340(c), Fla. R. App. Proc., Which Requires the Entry of a Money Judgment Nunc Pro Tunc to the Date of Verdict, When a Judgment of Reversal is Entered, Applies in the Case *of* Remittitur.

The issue before this Court is **not** whether Rety is entitled to interest from the date of the verdict, (Petitioner's Brief at 9) but the appropriate effective date for entry of a judgment on which interest may **accrue.**[3] That issue is controlled by Rule 9.340(c), Fla. R. **App.** Proc., which 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 be entered as of

[3] Section 55.03, Fla. Stats. only specifies that "judgments or decrees" bear interest. **The** statute does not address the issue before this Court of when judgment should be deemed entered.

the date of the **verdict.**[4]

Contraryto suggestion, the Third District's mandate in Rety I meets all of the Rule's criteria. First, an appellate court's mandate is a "final judgment" within the terms of the Rule. **See** generally O.P. Corp. v. North Palm Beach, **302 So.2d 130 (Fla. 1974);** Berger v. Leposky, 103 So.2d 628 (Fla. 1958); Milton **v.** Keith, 503 So.2d **1312, 1314** (Fla. 3d **DCA** 1987) (when appellate court issues mandate, this constitutes **its** final judgment).

Second, the mandate in Rety 1 cannot be characterized as anything other than a "judgment of reversal" of the trial court. It reversed an **order** granting new trial on liability in its entirety and further reversed the trial court's order of remittitur as to petitioner Green. Only by a "judgment of reversal" could Rety have obtained the reinstatement of a $5,000,000. verdict against petitioner Green after the verdict had been entirely taken away below.[5]

Third, the mandate also required the "entry of a money judgment on a verdict," because it left the trial court (as opposed to Rety) with no discretion to act. Once Rety elected remittitur,

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[4] 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.**

[5] The petitioner blithely ignores the effect of the reversal, choosing to focus on the order of remittitur, which it argues **was** "affirmed... in all respects except for the amount of punitive damages against Green." (Petitioner's Brief at 7). Obviously, unless Rety **had** obtained a reversal of the second new trial order -- precisely what occurred -- there would have been no occasion for the Third District to discuss the appropriate amount of damages.

entry of final judgment "upon the [now reduced] verdict" was purely a ministerial application of the mandate. Modine Manufacturing Co. v. ABC Radiator, Inc., 367 So.2d 232 (**Fla.** 3d DCA), cert. denied, 378 So.2d 342 (Fla. 1979) (when appellate court issues mandate, its judgment is final, and compliance with it by the trial court is a purely ministerial act); see also State ex rel. Zuckerman-Vernon Corp. v. City of Miramar, **306** So.2d 173, **175** (Fla. 4th DCA 1974), cert. denied, **320 So.2d 389 (Fla. 1975)** (duty ministerial "when the law prescribes and defines it with such precision and certainty as to leave nothing to the exercise of judgment.").

While this case has no precise equal under Florida law, the most analogous cases are in Rety's favor. In Mabrey **v.** Carnival Cruise Lines, Tnc., **438** So.2d 937 (Fla. **3d DCA** 1983), **the** jury returned with an $80,000. plaintiff's verdict in a negligence action. **The** trial court entered judgment notwithstanding the verdict. **The Third** District reversed and further addressed the issue of when statutory interest should be deemed to accrue. Citing the predecessor Rule to Rule 9.340(c), the District Court opined "on remand, the trial judge must enter a final judgment nunc pro tunc, to January 4, 1983, the date of the jury verdict". **Id** at **939 N.2.**

In Calder Race Course, Inc. v. Illinois Union Ins. Co., 714 F. Supp. 1183 (**S.D.** Fla. 1989), Ashcroft won a $10,000,000. verdict against Calder and the trial **court** entered but later vacated **its** judgment, and entered an order for remittitur/alternative new trial. Ashcroft declined the remittitur and appealed. After the

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Third District affirmed, this Court disagreed and reinstated the verdict. Thereafter, the trial court entered final judgment in accordance with the mandate in Ashcroft's favor nunc pro tunc to the date of the verdict.

In federal court, the primary insurer Illinois Union disputed its obligation to pay interest during the pendency of the appeal. Illinois Union urged (as did the petitioner below) that the date from which interest should be calculated was the date of final judgment. Since no judgment was entered until four years after the verdict, interest should not commence until the later time. Judge Atkins disagreed, holding that, "Under Florida law, when a verdict is reinstated on appeal, a plaintiff is entitled to post judgment interest from the date of the verdict." Id at 1190.

In the instant case, the Third District's Rety I decision "require[d] the entry of a money judgment upon the verdict," and fell within the language of Rule 9.340(c), Fla. R. App. Proc. The case was remanded to give Rety a choice -- either accept the verdict as remitted or elect a new trial on the issue of damages. Once Rety accepted the remitted verdict, entry of judgment on this Court's mandate was a ministerial act, requiring no further judicial labor by the trial court.[6] Pursuant to the plain meaning of the rule and the authorities following it, the judgment was properly made retroactive to the date of the jury verdict.

Green alternatively asserts the Rule is inapplicable because

[6] That Rety was given an election between two possible options does not mean that the trial court had any election; it was bound by the Third District's mandate regardless of Rety's choice.

the Third District did not "reverse" the trial court's rem ttitur and direct entry of judgment on the entire verdict in toto -- but instead came up with its own remittitur and ordered the trial court to give Rety a choice. (Petitioner's Brief at 10-11). Neither law nor logic supports this position.[7]

The majority opinion below correctly found that this Court's decision in Atlantic Coast **Line** Railroad Co. v. **Watkins**, 99 Fla. **395,** 126 So. **489** (1930) and its progeny are properly analogous to the question here.

In Watkins, the jury's verdict in favor of the plaintiff (which has been reduced to judgment) was deemed excessive by the appellate court and a remittitur/new trial was ordered. The plaintiff accepted the remittitur and the trial court ordered interest from the date of the original judgment. The defendant appealed, arguing that the appellate ruling was **"a** new judgment"

[7] Rule **9.340(c)** contains no such definition of reversal. The Third District's conclusion that the "reversal" at issue here is encompassed within the terms of Rule 9.340(c), is supported by the general rule:

> In most cases where a money judgment award has been modified on appeal (with "modification" defined to include any appellate court action changing the amount of the award), and the only action necessary in the trial court has been in compliance with the mandate of the appellate court, the view has been taken that interest on the award as modified should run from the same date as if no appeal had been taken, that is, ordinarily from the date of verdict or a judgment. It has been so held regardless of whether the appellate court reduced or increased the original award.

Annot., **4** ALR 3rd 1221, **1223** (1965).

and should bear interest only from the date of the appellate court's mandate. Id at **490.** In rejecting defendant's argument this Court held that, for purposes of computing interest, when a court ordered remittitur is accepted by the plaintiff, the balance of the original judgment "... remains unaffected and intact, and he regains the full benefit of **such** original judgment as thus modified." The result is not "... a new judgment, but in effect, the modification of the original judgment as of the date of its rendition." Id at **490-491.**

Accord Smith v. Goodpasture, **189** So.2d 267 (Fla. 4th **DCA** 1966) (where the court requires a remittitur of a portion of a judgment and it is accepted, the unremitted portion of the original judgment remains intact and bears interest from its original date); Gilmore v. Morrison, **341** So.2d **779** (Fla. 4th **DCA 1977)** (same rule applied when reinstatement of jury's verdict on appeal results in increase in original judgment); Gorman v. Largo Hospital Owners, Ltd., **435** So.2d **872** (Fla. 2d **DCA 1983)**, **rev. den**, **446** So.2d **99** (Fla. **1984)** (where money judgment has been modified interest runs from date of original judgment); Guy v. Kight, **431 So.2d** 653 **(Fla.** 5th **DCA**), **rev. den.**, **440** So.2d **352** (Fla. **1983)** (interest does *not* run from original award where appellate court remanded case for a trial).

This case is essentially the same as Watkins. The result should be the same regardless of whether the trial court fortuitously entered judgment prior ta remittitur (as in Watkins) or no such judgment was entered (as is the case here). Green repeatedly asserts that the initial verdict was "haywire,"

"runaway" and "grossly excessive," and thus no interest could or should accrue until the appeal was decided. However, Green ignores the fact that an "unprecedented" partial verdict was later reinstated as a result of his unprecedented conduct, and his claims that a "runaway" verdict warranted new trial were rejected. Moreover, he has no cause to complain as to the effective date when interest will run since he will only pay interest on the reduced, reinstated partial verdict -- not the amount ultimately deemed excessive,

As the majority opinion noted, the result here should follow and the judgment's effective date should be as of the date of the verdict in acordance with the rationale in Watkins -- where as here "the delay in entry of final judgment occurred because of Rety's rightful refusal to accept an excessive remittitur." (App. 6, n. 7).

Indeed, by virtue of the trial court's action here, this defendant was spared the obligation of superseding a money judgment by paying the principal amount plus twice the statutory rate of interest. Rule 9.310, Fla. R. App. Proc. He thus had the use and benefit of $5,000,000 of Rety's money during the entire period Rety I was pending. It thus poses no hardship for him to make recompense for such use after the reduced verdict was reinstated.

This Court's decisions in the area of pre-judgment interest are further persuasive on the issue of post-judgment interest sought here. Under the "loss theory" of interest, applicable in Florida, interest is merely another element of pecuniary damages,

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calculated to make an injured person whole, these cases confirm a state public policy in favor of doing so. Florida Steel Corp. v. Adoptable Developments, Inc., 530 So.2d 1232, 1236 (Fla. 1986); Trend Coin Co. v. Honeywell, 487 So.2d 1029 (Fla. 1986); Arqonaut Insurance Co. v. May Plumbing Co., 474 So.2d 212, 215 (Fla. 1985) ([N]either the merit of the defense nor the certainty of the amount of loss affects the award.,. Plaintiff is to be made whole from the date of the loss once a finder of fact has determined the amount of damages and defendant's liability therefore".) Entrance of judgment in accordance with the terms of Rule 9.340 (c) gives effect to these principals and is further both reasonable and fair. By virtue of the trial court's erroneous rulings, Rety was forced to wait some four years for entry of judgment. Only entry af judgment nunc pro tunc to the date of the verdict ensures that he finally receive the unprecedented award to which he was entitled.

In cases such as this where a successful plaintiff is forced to appeal because of an erroneous remittitur order, acceptance of Green's position would result in an incentive for defendants to engage in post trial delays and appellate maneuvers regardless of merit. Further, the plaintiff would be put in the unreasonable position of being forced to factor the loss of interest over the lengthy appeal period into his decision to accept or reject a remittitur he believes to be too low. Surely this is not an acceptable result.

For all of the reasons stated, 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. Proc. 9.340(c).

CONCLUSION

It is respectfully submitted that the Third District's decision should be approved, and the certified question answered in the affirmative.

Respectfully submitted,

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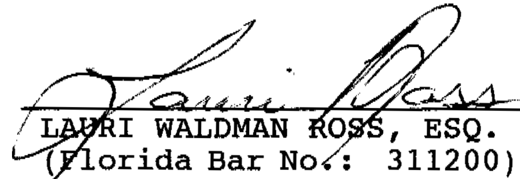

By: LAURI WALDMAN ROSS, ESQ.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed/hand-delivered this May 26, 1992 to:

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IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1992

MAR 2

DENIS RETY,	**	
Appellant,	**	
vs.	**	CASE NO. 89-2936
ARTHUR GREEN,	**	
Appellee.	**	

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

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 a rard \ as composed of:

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

APP. 2

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

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.

APP. 4

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 sat 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.

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, sewed 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, Inc., 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, 1 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 hear 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).