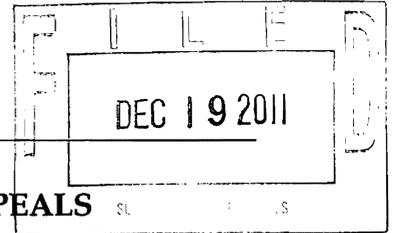


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No. 11-1325



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**IN THE WEST VIRGINIA SUPREME COURT OF APPEALS**

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RICHARD RINGER,  
Defendant Below, Petitioner,

v.

JOSEPH F. JOHN,  
Plaintiff Below, Respondent.

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**BRIEF OF PETITIONER, RICHARD RINGER, AND ASSIGNMENTS OF ERROR**

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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

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RICHARD RINGER,  
Defendant Below, Petitioner,

v.

JOSEPH F. JOHN,  
Plaintiff Below, Respondent.

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On Petition for Appeal  
From the Circuit Court of  
Preston County, West Virginia  
Civil Action No. 09-C-225

---

**BRIEF OF PETITIONER, RICHARD RINGER, AND ASSIGNMENTS OF ERROR**

**I. Statement of the facts and Procedural History**

A jury trial in the underlying civil action was held in the Circuit Court of Preston County on June 21, and 22, 2011. After deliberations, on June 22, 2011, the jury, found by a preponderance of the evidence, that:

1) Petitioner, and Defendant below, Richard Ringer, did breach his contract with Respondent, and Plaintiff below, Joseph John<sup>1</sup> for the purchase of the 1986 endloader.

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1

Throughout this brief, Petitioner, and Defendant below, Richard Ringer, shall, at times, be referred to simply as "Petitioner Ringer." Similarly, Respondent, and Plaintiff below, Joseph John, shall, at times, be referred to simply as "Respondent John."

2) Respondent John breached a contract with Petitioner Ringer for excavation work and road improvements, or, alternatively that Respondent John was unjustly enriched by Petitioner Ringer's excavation work and road improvements.

3) Respondent John breached a contract with Petitioner Ringer for storage of topsoil.

After the trial, damages were assessed to the parties as follows:

1) The jury found, by a preponderance of the evidence, that Respondent John incurred damages in the amount of nine thousand four hundred fifty dollars and twenty-seven cents (\$9,450.27) as a result of Petitioner Ringer's breach of contract for the purchase of the 1986 endloader. Accordingly, the jury awarded Respondent John damages totaling nine thousand four hundred fifty dollars and twenty-seven cents (\$9,450.27).

2) The jury found, by a preponderance of the evidence, that Petitioner Ringer incurred damages in the following amounts:

- a. Stone: twenty thousand dollars (\$20,000.00);
- b. Excavation Services: five thousand dollars (\$5,000.00);
- c. Perc. Test: one hundred dollars (\$100.00);
- d. Earnest money: five hundred dollars (\$500.00); and
- e. Storage of topsoil: sixteen thousand five hundred dollars (\$16,500.00).

Accordingly, the jury awarded Petitioner Ringer damages totaling forty-two

thousand one hundred dollars (\$42,100.00).<sup>2</sup>

The Circuit Court further Ordered that Petitioner Ringer, recover from Respondent John, individually, the sum of forty-two thousand one hundred dollars (\$42,100.00) with post judgement interest at the rate of 7% per annum from June 22, 2011, and with pre-judgment interest at a rate of 7.0% beginning from the date on which Petitioner Ringer's right to bring his claims against Respondent John accrued, which the Circuit Court held was August 2, 2010, the date on which Petitioner Ringer filed his counterclaim against Respondent John.

On or about July 18, 2011, Petitioner Ringer served, and later filed, a Motion to Amend Judgment Order.<sup>3</sup> In this motion, Petitioner Ringer requested that the Circuit Court amend the Judgment Order, which was signed by Preston County Circuit Court Judge Lawrance Miller, Jr., as the Judgment Order contained the incorrect prejudgment interest rate and the incorrect date from which prejudgment interest began to accrue. More specifically, Petitioner Ringer argued that, contrary to the Judgment Order, prejudgment interest in West Virginia begins to run on the date that a party first has a right to bring suit, and not from the date when a party actually asserts that right or files suit. As such, Petitioner Ringer argued that he was entitled to be paid for his services, and that he had a right to bring a cause of action against Plaintiff Joseph John for breach

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2

The above noted jury awards are set forth in the Verdict Form, attached hereto as Exhibit 1, and found in pages 1 through 3 of the Appendix, and in the Judgment Order, which is attached hereto as Exhibit 2, and found in pages 4 through 7 of the Appendix.

<sup>3</sup>See Exhibit 3, pages 8 through 12 of the Appendix, attached hereto.

of contract and unjust enrichment, as of July 19, 2007.<sup>4</sup> Similarly, Petitioner Ringer argued that, contrary to the Circuit Court's ruling in the Judgment Order, the applicable prejudgment interest rate should be 9.75%, which is the applicable interest rate for the calendar year of 2007.<sup>5</sup>

On or about August 18, 2011, the Circuit Court of Preston County, in an Order signed by Senior Status Justice Larry Starcher, ruled on Petitioner's Motion to Amend Judgment Order, and on various motions filed by Respondent John<sup>6</sup>, and entered an "Order Denying Plaintiff's Motion for New Trial; Order Granting, in part, and Denying, in part, Plaintiff's Motion for Stay of Execution/Ruling on Topsoil; and Order Denying Defendant's Motion to Amend Judgment Order." [hereinafter the August 18, 2011, Order].<sup>7</sup>

On or about September 16, 2011, Petitioner filed a Notice of Appeal with this Court, and this appeal follows. Specifically, Petitioner Ringer is appealing the Circuit Court's rulings regarding the Circuit Court's Denial of Richard Ringer's Motion to

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In the Motion to Amend Judgment Order (*see* Exhibit 3 attached hereto), Petitioner Ringer specifically requested that the Circuit Court rule that he was entitled to prejudgment interest from July 19, 2007. This date was based on Petitioner Ringer's recollection of the trial testimony (and was before any trial transcript was prepared). As the transcript has now been prepared, and reviewed by Petitioner Ringer, it is now apparent that Petitioner Ringer's cause of action actually began to accrue before July 19, 2007.

5

*See* the Administrative Order, at page 12 of the Appendix, which is part of Exhibit 3 attached hereto.

<sup>6</sup>None of which are at issue in this appeal.

<sup>7</sup>*See* Exhibit 4, pages 13 through 21 of the Appendix, attached hereto.

Amend Judgment Order.

**II. Standard of Review**

"Where the issue on appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. Pt. 1, Chrystal R.M. v. Charlie A. L., 194 W.Va. 138, 459 S.E.2d 415 (W. Va. 1995).

**III. Assignments of Error**

**A. The Circuit Court utilized the incorrect prejudgment interest rate for damages awarded to Petitioner Richard Ringer**

In its August 18, 2011, Order, the Circuit Court denied Petitioner Ringer's Motion to Amend the Judgment Order. The Circuit Court ruled, incorrectly, that the applicable prejudgment interest rate was determined by the date on which the final judgment, i.e. the Judgment Order, in this case was entered, which was in calendar year 2011.<sup>8</sup> Specifically, the Circuit Court ruled that:

Defendant's Motion to Amend Judgment Order with respect to the rate of interest allowable on the judgment is **DENIED**. An Administrative Order of the Supreme Court of Appeals of West Virginia dated January 2, 2007, relating to the rate of interest on judgments established the rate of interest for judgments and decrees entered in the 2007 calendar year, and ordered that a rate for subsequent years be established annually. For each following year, pursuant to this Order, the Court set different interest rates. The rate established for 2011, the year of the judgment in this case, was set at [s]even percent (7%). A fair reading of the Administrative Order, which makes no reference to the date of the cause of action, would suggest that the applicable

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Petitioner Ringer's Motion to Amend Judgment Order (*see* Exhibit 3, at page 10 of the Appendix) specifically requested that the Circuit Court rule that Petitioner Ringer was entitled to prejudgment interest at a rate of 9.75% per annum beginning on July 19, 2007. The Circuit Court's August 18, 2011, Order denies Petitioner Ringer's request for this relief. Also *see* footnote 9 below.

interest rate established by the Court for the *actual year of the judgment*; otherwise, logic would result in different rates to be applied to a judgment anytime the cause of action accrual date is one or several years prior to the year of the actual judgment.

August 18, 2011, Order (Exhibit 4 attached hereto, at page 20 of the Appendix).

As set forth in footnote 5 above, the “Administrative Order” to which the Circuit Court references above was attached to the Petitioner Ringer’s Motion to Amend Judgment Order, and is found in the attached Appendix at page 12. Unfortunately, the Circuit Court has misinterpreted the force and effect of this Administrative Order, as the West Virginia Code, and not the Administrative Order cited by the Circuit Court, provides for how prejudgment interest should be calculated.

In the August 18, 2011, Order, the Circuit Court completely ignored the mandates set forth in West Virginia Code § 56-6-31 [2006]. More specifically, in regards to prejudgment interest, West Virginia Code § 56-6-31 [2006] provides that “if the judgment or decree, or any part thereof, is for special damages, as defined below, or for liquidated damages, the amount of special or liquidated damages shall bear interest at **the rate in effect for the calendar year in which the right to bring the same shall have accrued[.]**” *Id.* (emphasis added). This Court has interpreted this statute to mean that “prejudgment interest on special or liquidated damages is calculated from the date on which the cause of action accrued.” Grove By and Through Grove v. Myers, 181 W.Va. 342, 343 382 S.E. 2d 536, 537 (W. Va. 1989). Furthermore, “[f]or a cause of action to accrue, one party must have breached a duty to the other, and the other must have been injured. At the moment the cause of action accrued, the injured party was entitled to be

left whole and became immediately entitled to be made whole. **Therefore, prejudgment interest runs from the time the cause of action accrues, that is, from the date of injury.**" *Id.* at 349, 382 S.E. 2d 536, 543 (quoting *State v. Phillips*, 470 P.2d 266, 274 (Alaska 1970)) (internal citations omitted) (emphasis added). Thus, contrary to the rulings of the Circuit Court, the rate of prejudgment interest in West Virginia is the rate which is in effect at the time that a party first has a right to bring suit, and not from the date when final judgment is entered.

W. Va. Code § 56-6-31 specifically provides for when, and at what rate, prejudgment interest begins to accrue. The Circuit Court's August 18, 2011, Order completely ignores the mandates set forth in W. Va. Code § 56-6-31. The Circuit Court has clearly misapplied the law regarding prejudgment interest. The Circuit Court attempts to explain its incorrect ruling by pointing out that the "Administrative Order...makes no reference to the date of the cause of action[.]" *See* Exhibit 4, at page 20 of the Appendix). However, the fact that the Administrative Order does not reference when, or at what rate, prejudgment interest accrues, has absolutely no bearing on how prejudgment interest is calculated in the State of West Virginia.

After reading W. Va. Code § 56-6-31, and the cases interpreting said statute which are cited above, it should be clear to this Court that the West Virginia Code mandates that prejudgment interest begins to run from the time a cause of action accrues, i.e., from the date of injury, and that the rate of prejudgment interest is that which is in effect at that time. Accordingly, the Circuit Court's ruling is incorrect as a

matter of law. The Circuit Court's August 18, 2011, Order does not provide any basis for ignoring the clear mandates set forth in W. Va. Code § 56-6-31, regarding the calculation of prejudgment interest. In fact, it appears that the Circuit Court's August 18, 2011, Order, has confused prejudgment interest with post judgment interest.

As set forth in greater detail below, in the underlying Circuit Court case, it was clear that Petitioner Ringer's cause of action against Respondent John began to accrue in calendar year 2007, when the applicable interest rate was 9.75%. Accordingly, for the reasons set forth herein, Petitioner Ringer, hereby requests that this Court reverse the Circuit Court's August 18, 2011, Order Denying Petitioner's Motion to Amend Judgment Order, and that this Court rule that prejudgment interest runs from the time a cause of action begins to accrue, i.e. from the date of the injury, and that the rate of prejudgment interest is that which is in effect when the cause of action begins to accrue.

**B. The Circuit Court erred in determining the date on which prejudgment interest began to accrue**

As a result of the Circuit Court's incorrect interpretation of W. Va. Code § 56-6-31, the Circuit Court also ruled, incorrectly, that the applicable interest rate for Petitioner Ringer's claims against Respondent John was seven percent (7.0%). See Exhibit 4, at page 20 of the Appendix.<sup>9</sup>

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It is unclear from the August 18<sup>th</sup> Order whether the Circuit Court is overruling its prior decision, set forth in the Judgment Order (attached hereto as Exhibit 2). More specifically, in the Judgment Order, the Circuit Court held that Petitioner Ringer was entitled to pre-judgment interest at a rate of 7.0% beginning from August 2, 2010, the date on which Petitioner Ringer

As set forth above, W. Va. Code § 56-6-31 clearly provides that prejudgment interest begins to run when a cause of action accrues, i.e. from the date of injury. In this case, it is clear from the evidence presented at trial that Petitioner Ringer's claims against Respondent John began to accrue in calendar year 2007.

Pursuant to Petitioner Ringer's testimony, it is clear that he performed work, as early as May 23, 2007, for which he was never compensated by Respondent John. *See* Exhibit 5, at page 68 of the Appendix. In fact, the evidence is clear that Petitioner Ringer provided services during May, June and July of 2007 for which he was never compensated.<sup>10</sup> *Id.* As such, Petitioner Ringer's right to bring a cause of action against Respondent John began to accrue at that time and the Circuit Court was incorrect in denying Petitioner's Motion to Amend Judgment.

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filed his counterclaim against Respondent John. The Circuit Court's August 18, 2011, Order, authored by Senior Status Justice Larry Starcher, does not specifically address this aspect of the prior ruling of the Circuit Court, which was authored by Circuit Judge Lawrance Miller, Jr. In fact, the only dates cited by Justice Starcher in the August 18, 2011, Order are relating to calendar year 2011. Accordingly, at this time, it is unclear to Petitioner Ringer whether the Circuit Court has ruled that Petitioner Ringer is entitled to prejudgment interest from the date of the entry of the Judgment Order, as appears to be the Order set forth by Justice Starcher in the August 18, 2011, Order (which would make absolutely no sense as prejudgment interest, by its very nature, only accrues until the date of judgment) or whether the Circuit Court has ruled that Petitioner Ringer is entitled to receive prejudgment interest from August 2, 2010, as was ordered by Circuit Judge Miller in the Judgment Order. However, such issue is actually of no consequence, because either ruling would be an incorrect interpretation of W. Va. Code § 56-6-31.

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As set forth in footnote 4 above, Petitioner Ringer previously requested that the Circuit Court rule that he was entitled to prejudgment interest from July 19, 2007, but, after reviewing the trial transcript, it is now apparent that Petitioner Ringer's cause of action actually began to accrue before July 19, 2007. However, Petitioner Ringer does not wish to further confuse matters, and alter its prior request to the Circuit Court, so, at this time, Petitioner Ringer is simply requesting, as was set forth in his prior request to the Circuit Court, that this Court rule that Petitioner Ringer is entitled to prejudgment interest beginning on July 19, 2007.

Accordingly, for the reasons set forth herein, Petitioner Ringer, hereby requests that this Court reverse the Circuit Court's August 18, 2011, Order Denying Petitioner's [Defendant's] Motion to Amend Judgment Order, and that this Court rule that Petitioner Ringer, is entitled to prejudgment interest at a rate of 9.75% per annum beginning on July 19, 2007.

Alternatively, Petitioner Ringer requests that this Court reverse the Circuit Court's August 18, 2011, Order Denying Petitioner's [Defendant's] Motion to Amend Judgment Order, and that this Court remand this case to the Circuit Court of Preston County, to determine the exact date on which Petitioner Ringer's claims against Respondent John began to accrue.

#### **IV. Oral Argument**

Although Petitioner Ringer believes that this case may possibly be appropriately decided via a Memorandum Opinion, Petitioner Ringer hereby requests that he be permitted to present Oral Argument pursuant to Rule 19 of the West Virginia Rules of Appellate Procedure, if this Court deems that further information, or argument, is necessary to grant the relief requested in this Petition.

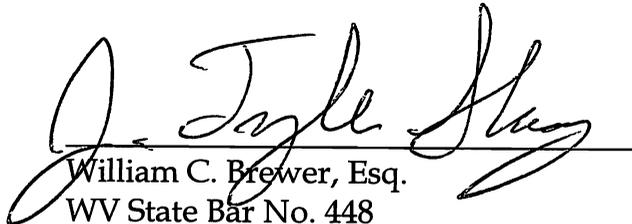
#### **V. Conclusion**

WHEREFORE, for the reasons set forth herein, Petitioner Ringer respectfully requests that this Court hereby reverse the Circuit Court's August 18, 2011, Order Denying Petitioner's Motion to Amend Judgment Order, and that this Court rule that prejudgment interest runs from the time a cause of action begins to accrue, i.e. from the

date of the injury, that this Court rule that the rate of prejudgment interest is that which is in effect when the cause of action begins to accrue, and that this Court rule that Petitioner Ringer is entitled to prejudgment interest at a rate of 9.75% per annum beginning on July 19, 2007.

Alternatively, Petitioner Ringer requests that this Court reverse the Circuit Court's August 18, 2011, Order Denying Petitioner's Motion to Amend Judgment Order, that this Court rule that prejudgment interest runs from the time a cause of action begins to accrue, i.e. from the date of the injury, that this Court rule that the rate of prejudgment interest is that which is in effect when the cause of action begins to accrue, and that this Court remand this case to the Circuit Court of Preston County, to determine the exact date on which Petitioner Ringer's claims against Respondent John began to accrue.

RESPECTFULLY SUBMITTED,  
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PETITIONER, BY COUNSEL.



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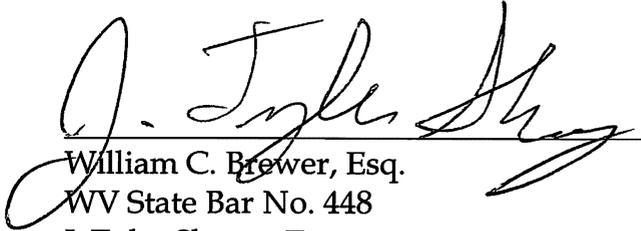
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Of Counsel

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that he served a true copy of the within **BRIEF OF PETITIONER, RICHARD RINGER, AND ASSIGNMENTS OF ERROR** and a copy of the Appendix attached hereto, on the 16<sup>th</sup> day of December, 2011, via United States mail, postage prepaid, upon the following:

Peter D. Dinardi, Esq.  
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