

measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." *Id.*

The holding of that case applies to the facts of this case. As Mrs. Martin had agreed to hold the defendants harmless for any claim by a third party, the amount due under the contract would be less any claim by a third party. The defendants convinced the jury there was a valid claim by a third party for \$1,500. Thus, the amount due to Mrs. Martin was ascertainable by the facts as they existed at the time the contract was signed.

The original debt was due on January 1, 2008. The prejudgment interest at 8.75% totals \$19,172.21. The Court adds this amount to the judgment as prejudgment interest.

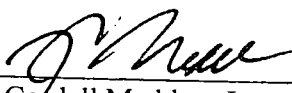
The Defendants, Wilmer (John) Rife and Barbara Ann Doomey, in their post-trial motion contend that the plaintiff is not the owner of the equipment and therefore they should be granted either a new trial or a judgment notwithstanding the verdict. The jury was presented with evidence that the plaintiff owned the equipment in question and resolved that issue against the defendants. In addition, the contract between the parties provided that if any third claimed the property, then the plaintiff would hold the defendants harmless for any loss. The defendants, at the time of the contract was signed, accepted the Mrs. Martin representation that she owned the property. The defendants have not shown that the property is owned by any third party who has asserted a claim. The defendants motion for a new trial or judgment notwithstanding the verdict is hereby denied.

Therefore, it is hereby ordered adjudged and decreed that:

1. The Motion of the defendant for a new trial or judgment notwithstanding the verdict is denied.

2. The Motion of the Plaintiff is add prejudgment interest in the amount of Nineteen Thousand One-hundred Seventy-Two and 21/100 (\$19,172.21) us hereby granted.

June 13, 2013



J. Cordell Maddox, Jr.
Presiding Judge

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