

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

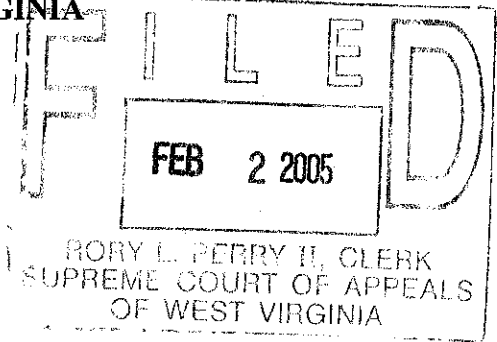
**IN RE:**

**MILLARD FRANCIS, III,  
PLAINTIFF BELOW, APPELLANT**

**VS.**

**NO. 32289**

**ERNEST BYRON and PATRICIA BRYSON  
DEFENDANTS BELOW, APPELLEES.**



**FROM THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA**

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**REPLY OF THE APPELLANT TO THE BRIEF OF THE APPELLEES**

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## STATEMENT OF FACTS

In the brief of the Appellees it is conceded on page 7 that following the original successive written leases ending in 1997 the parties continued into a month to month rental tenancy. The Court found in Findings of Fact number 2, that the month to month tenancy was for a rental amount of Three Hundred Fifty Dollars (\$350.00) per month under which the Appellees continued to hold possession due to the fact that the written leases had expired.

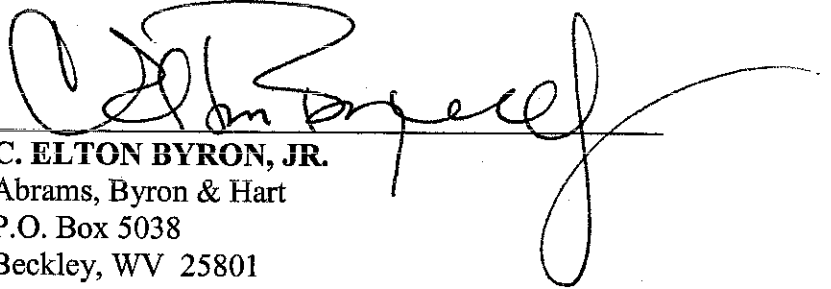
On page 8 of the Brief of the Appellees, it is argued that the failure of the option agreement does not convert it into a rental agreement. However, with the failure of the written agreement being enforceable and held null and void the fact that the Appellees continued in possession of the property and continued to pay a monthly amount to the Appellant reverted the arrangement to the original month to month tenancy.

The Appellees argue that they were making payments for the purchase of the real estate and that they made notations on some checks that the monthly amount was for "house payment". However, the lower Court found properly that a tenant may not convert rental payments into house payments by unilaterally choosing to write those words on the check or the money order, and, moreover, by cashing those checks the landlord does not turn the rental agreement into a purchase agreement.

The lower Court, in its ruling, concentrated heavily on the issue of assuring that the Appellant would not be unjustly enriched by the efforts expended on the rental property by the Appellees. However, although attempting to be equitable in its decision, the lower Court, by not awarding a credit or offset in the amount of rental arrearages has done just that in reverse. The ruling of the lower Court effectively unjustly enriches the Appellees by not making them pay, in the form of offset or otherwise, the rent which they admittedly owe to the Appellant.

Considering the fact that the Appellees owed Five Thousand Seven Hundred Dollars (\$5,700.00) in rental arrearages to the Appellant along with the fact that the lower Court has required the Appellant to pay Seven Thousand Dollars (\$7,000.00) to the Appellees amounts to a Twelve Thousand Seven Hundred Dollar (\$12,700.00) loss to the Appellant. There is nothing that could be more inequitable under the circumstances of this case.

**RESPECTFULLY SUBMITTED**

A handwritten signature in black ink, appearing to read "C. Elton Byron, Jr.", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

**C. ELTON BYRON, JR.**  
Abrams, Byron & Hart  
P.O. Box 5038  
Beckley, WV 25801  
WV State Bar ID No. 574  
Counsel for Petitioner/Appellant

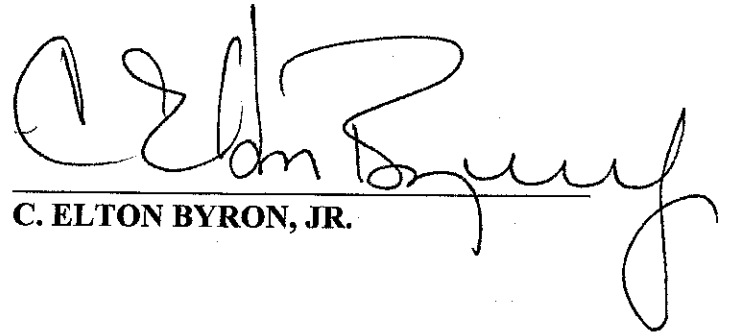
**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing **REPLY OF THE APPELLANT TO THE BRIEF OF THE APPELLEES** has been served upon the following counsel of record by United States mail, first class, postage prepaid, this 31<sup>st</sup> day of January, 2005.

West Virginia Supreme Court of Appeals  
1900 Kanawha Blvd. E  
Room E-307, State Capitol  
Charleston, WV 25305

Honorable Robert A. Burnside, Jr.  
Judge, Tenth Judicial Circuit  
Raleigh County Courthouse  
239 Main Street  
Beckley, WV 25801

Ernest and Patricia Bryson  
P. O. Box 160  
Glen White, WV 25849

  
C. ELTON BYRON, JR.