STATE OF MICHIGAN

COURT OF APPEALS

RAAD AYAR,

Plaintiff-Appellee/Cross-Appellant,

and

VINCENT, INC., JOLIET, INC., and R & D WHOLESALE, INC.,

Plaintiffs-Appellees,

v

FOODLAND DISTRIBUTORS and LIVONIA HOLDING COMPANY, INC.,

Defendants,

and

KROGER COMPANY,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
June 15, 2004

No. 242603
Wayne Circuit Court
LC No. 93-328590-CK

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant Kroger Company (Kroger) appeals as of right and plaintiff Raad Ayar (Ayar) cross-appeals from the trial court's June 21, 2002, judgment, following a bench trial. Kroger additionally challenges the trial court's June 24, 2002, postjudgment order awarding plaintiffs Ayar and Vincent, Inc. (Vincent) costs and mediation[1] sanctions of $555,275, of which $381,752

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[1] MCR 2.403 was amended in 2000 to substitute the phrase "case evaluation" for "mediation." We use the term "mediation" in this opinion because the mediation proceeding in this case took place in 1995. In general, this Court applies the version of MCR 2.403 in effect at the time of (continued…)

was allocated to Kroger, plus statutory interest. We vacate the June 21, 2002, judgment in part and affirm the June 24, 2002, order awarding costs and mediation sanctions.

I. Facts and Proceedings

This case is before this Court for the second time. In a prior appeal, defendants Kroger, Foodland Distributors (Foodland) and Livonia Holding Company, Inc. (Livonia Holding), challenged the trial court's April 27, 1998, and August 20, 1998, judgments, following a trial in which a jury, by special verdict, found that Foodland committed intentional (silent) fraud by failing to disclose material facts to plaintiffs Ayar and Vincent. The jury determined plaintiffs' damages for the intentional fraud claim to be $9,270,686, and Kroger, Livonia Holding, and Foodland were held jointly and severally liable on the intentional fraud claim. The jury also found that Kroger breached a right-of-first-refusal (RFR) contract with Ayar and awarded damages of $14,506,781, and Kroger was held individually liable for the RFR claim.

In the earlier appeal, this Court reversed the jury's verdict finding Foodland liable to Vincent for intentional fraud, because Foodland had a contractual right to a bench trial. This Court remanded for further proceedings consistent with the Court's opinion. The trial court was specifically instructed to determine on remand which portion of the jury's award represented damages for Ayar so as not to disturb that award on remand. This Court affirmed the judgment in favor of Ayar with respect to his RFR claim against Kroger. See *Ayar v Foodland Distributors*, unpublished opinion per curiam of the Court of Appeals, issued November 21, 2000 (Docket No. 214293).

Prior to the jury trial, Kroger and Foodland placed a stipulation on the record, such that they had an agency and "alter ego" relationship, agreeing that if one was liable, the other would also be liable. The trial court provided the following explanation of the stipulation to the jury in its instructions:

> Further there is a stipulation between the parties which I informed you of at the beginning of the trial. The stipulation was that Kroger is an agent of Foodland and Foodlnd [sic] is an agent of Kroger. That is that statements of Foodland and their employees may be binding on Kroger and Kroger's statements and emloyees [sic] maybe [sic] binding on Foodland. Statements of Kroger employees maybe [sic] finding [sic] on Foodland.[2]

(…continued)

mediation. *Haliw v Sterling Heights*, 257 Mich App 689, 695; 669 NW2d 563 (2003).

[2] The successor judge also indicated below, as does Kroger on appeal, that the jury was told as part of the court's preliminary instructions that "[t]he Court will instruct you there's been an acknowledgment or stipulation to the fact that Foodland Distributors and Kroger for all intents and purposes in this case are partners, alter egos." A review of the record reveals that this statement was made by plaintiffs' attorney in his opening statement, not as part of the court's preliminary instructions. The trial court instructed the jury that the attorneys' opening statements were not evidence.

The April 27, 1998, judgment addressed only Kroger's and Foodland's liability. The trial court relied on the pretrial stipulation, finding that Kroger was jointly and severally liable with Foodland for the judgment amount for the intentional fraud claim. The judgment also provided for Kroger and Foodland to pay statutory interest, as well as costs and attorney fees, if any, to be assessed later. The trial court entered a second judgment on August 20, 1998, holding Livonia Holding jointly and severally liable for the judgment amount with respect to the intentional fraud claim based on another pretrial stipulation governing Livonia Holding's liability as a partner of Foodland.

With regard to the intentional fraud claim, the successor judge determined that the April 27, 1998, judgment did not include any damages for Ayar. Following a bench trial regarding Vincent's intentional fraud claim against Foodland, the successor judge found Foodland liable for intentional fraud, but determined Vincent's damages to be only $674,680.26, substantially less than the jury's verdict of $9,270,686 at the first trial. Kroger and Livonia Holding were again held jointly and severally liable for this judgment amount. The successor judge, without explanation, also found Kroger individually liable to Vincent (as well as Ayar) on the same intentional fraud claim for an additional $6,200,149.74 in damages, which represents the balance of the jury verdict less the joint and several damages award. The successor judge refused to vacate the amount of Ayar's and Vincent's damages with regard to the RFR claim for which Kroger was held individually liable under the April 27, 1998, judgment, but reduced the amount of Foodland's joint liability to the amount determined at the bench trial.

The June 21, 2002, judgment entered by the successor judge again provided for statutory interest, as well as costs and attorney fees, if any, to be assessed later. The successor judge also modified the statutory interest awarded in the April 27, 1998, judgment against Kroger with respect to Ayar's RFR claim to reflect a change in the interest rate established by MCL 600.6013, as amended by 2001 PA 175. On June 24, 2002, the successor judge ordered Kroger, Foodland, and Livonia Holding to pay costs and mediation sanctions of $555,275, of which amount $381,752 was allocated to Kroger, and $173,523 was allocated to Foodland and Livonia Holding.

II. Intentional Fraud

On appeal, Kroger argues that the successor judge erred in holding it independently liable for the amount of the jury verdict for the intentional fraud claim. Because this issue involves questions of law, our review is de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

As a threshold matter, we reject plaintiffs'[3] claim that the law of the case doctrine precludes consideration of this issue. On remand, the successor judge was bound by this Court's earlier decision and was limited only insofar that he could not take action inconsistent with that decision. *Grievance Administrator v Lopatin*, 462 Mich 235, 259-260; 612 NW2d 120 (2000).

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[3] In this opinion, we refer to the appellees individually as Ayar and Vincent, or jointly as "plaintiffs." The remaining plaintiffs are not involved in this appeal.

Application of the law of the case doctrine to our review on appeal is discretionary, but the general rule is that legal questions decided in an earlier appeal will not be decided differently if the facts remain materially the same. *Id.*; *Grace v Grace*, 253 Mich App 357, 363; 655 NW2d 595 (2002).

A review of this Court's earlier opinion, and its January 29, 2002, order denying rehearing, fails to disclose that this Court, either implicitly or explicitly, actually decided any issue concerning Kroger's pretrial stipulation. Nor did this Court's prior decision preclude Kroger from arguing on remand that its liability was dependent on Foodland's liability. Indeed, in response to arguments raised by Foodland and Livonia Holding in support of their motion for rehearing, this Court expressly recognized that Livonia Holding could argue that its liability was dependent on Foodland's liability. Although this Court earlier noted that Kroger had joined in the motion, its failure to mention Kroger in connection with the later statement does not imply any actual decision with regard to the issue of Kroger's liability.

The essence of this Court's holding in the earlier appeal was that only the parties to the sublease, Vincent and Foodland, could invoke the jury waiver provision for claims relating to the sublease and, in particular, the intentional fraud claim against Foodland for which the jury found Foodland liable. The essence of the question raised by Kroger on remand was that the stipulation regarding its relationship with Foodland only gave rise to derivative liability for the damage award against Foodland. Because this issue was not decided in the earlier appeal, the law of the case doctrine does not apply.

The successor judge likewise had the authority to address this issue and, pursuant to MCR 2.604(A), could revise any prior orders to reflect a correct adjudication of the rights and liabilities of the parties before entry of a final judgment on remand. *Meagher v Wayne State Univ*, 222 Mich App 700, 718; 565 NW2d 401 (1997). But we conclude that the successor judge erroneously relied on the parties' pretrial stipulation to hold that Kroger remained liable for the April 27, 1998, judgment.

An agreement regarding a proceeding in an action, subsequently denied by either party, is not binding unless made in open court or in writing. MCR 2.507(H). Stipulations may differ in character, with some being mere admissions of fact that relieve a party from the inconvenience of making proof, while others, such as an agreement to settle a lawsuit, constitute a contract. *Eaton Co Bd of Co Rd Comm'rs v Schultz*, 205 Mich App 371, 378-379; 521 NW2d 847 (1994). Stipulations of fact are binding on a court, but stipulations of law are not. *Id.* at 379. A stipulation will be interpreted in reference to its subject matter, the surrounding circumstances, and the whole record. *Whitley v Chrysler Corp*, 373 Mich 469, 474; 130 NW2d 26 (1964).

In this case, the pretrial stipulation addressed both evidentiary and liability issues, but essentially relieved plaintiffs of the burden of proving the relationship between Foodland and Kroger. The parties stipulated that Foodland and Kroger had an agency and "alter ego" relationship. From an evidentiary standpoint, the parties agreed that Foodland's and Kroger's statements would be binding on each other, and from a liability standpoint, the parties agreed that, if one was liable, the other would also be liable. The trial court explained the stipulation to the jury in its instructions following the close of proofs as noted above. As summarized in the trial court's pretrial order, the stipulation provided that "any judgment entered against one shall be collectible against either."

Here, we are only concerned with the stipulation's intent with regard to liability issues and, in particular, how to apply the stipulation to the verdict. We reject plaintiffs' position that the jury verdict against which the stipulation was first applied could itself be construed as a finding that Kroger was liable for Foodland's acts and representations. Although the jury was called upon to use the evidence to decide an ultimate fact, that is, to apply legal standards to determine if intentional fraud was committed, the jury, by its special verdict, found that only Foodland committed intentional fraud. *Sahr v Bierd*, 354 Mich 353, 371; 92 NW2d 467 (1958).

The judge who presided over the jury trial, consistent with MCR 2.514(C), appropriately applied the parties' stipulation to find Kroger jointly and severally liable with Foodland for the judgment entered against Foodland for the intentional fraud claim. But this finding arose from the stipulated relationship between Kroger and Foodland. On remand, the successor judge found Kroger individually liable on the intentional fraud claim for additional damages. The successor judge on remand incorrectly applied the stipulation because the stipulated agency and "alter ego" relationship established no basis for holding Kroger liable for Foodland's intentional fraud independent of Foodland.

The stipulated agency relationship did not provide a basis for holding Kroger independently liable for Foodland's intentional fraud because the law imposes vicarious liability, that is, indirect responsibility, on the principal for its agent's acts. *Cox v Flint Bd of Hosp Mgrs*, 467 Mich 1, 11; 651 NW2d 356 (2002). The principal "is only liable because the law creates a practical identity with his [agents], so that he is held to have done what they have done." *Cox, supra* at 11, quoting *Smith v Webster*, 23 Mich 298, 300 (1871).

Further, merely because, as a factual matter, a party could be viewed as an "alter ego" of another party does not provide a basis for liability. Plaintiffs' contention to the contrary lacks citation to supporting authority. A party may not merely announce a position and leave it to this Court to discover and rationalize its basis. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). We note, however, that plaintiffs' argument is flawed because, if Kroger and Foodland were truly treated as alter egos in the manner suggested by plaintiffs, Foodland would be equally liable on the RFR contract claim against Kroger. Here, only Kroger was found liable for the RFR claim.

We nonetheless find the stipulated "alter ego" relationship relevant because an agent generally is not authorized to be a principal's "alter ego" for all purposes. *Gore v Canada Life Assurance Co*, 119 Mich 136, 145; 77 NW 650 (1898). Hence, the "alter ego" stipulation implies a broader application than the parties' "agency" stipulation. But this does not resolve the material question concerning what legal theory could be used to hold Kroger liable as an "alter ego" of Foodland within the context of this case.

After reviewing the record, we conclude that the only apparent legal theory for holding Kroger liable as Foodland's "alter ego" is its corporate relationship with Foodland. The essential nature of this theory is set forth in plaintiffs' amended complaint as follows:

> Defendant, Foodland Distributors ("Foodland"), is a Michigan partnership that conducts business in the City of Livonia, County of Wayne, State of Michigan. At all times relevant herein, Defendants, Kroger and Livonia Associates, are partners in Foodland, and Kroger is, in reality, the true partner of

> Foodland and has held itself out as a partner in Foodland through its alter ego wholly owned subsidiary, JV Distributing, Inc., by Kroger's conduct . . . .

Had plaintiffs alleged (and proved) that Kroger was actually a partner of Foodland, an alleged Michigan partnership, then arguably Kroger would have liability for the judgment against Foodland under partnership law. See MCL 449.15(a) (partners jointly and severally liable for everything chargeable to a partnership under MCL 449.13 and MCL 449.14); *Commonwealth Capital Investment Corp v McElmurry*, 102 Mich App 536, 541; 302 NW2d 222 (1980). But plaintiffs' allegation, that a corporate entity separated Kroger and Foodland, made their "alter ego" relationship relevant for purposes of determining whether a court of equity should pierce the corporate veil in order to hold Kroger liable for Foodland's intentional fraud. See generally *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 393; 600 NW2d 406 (1999) (piercing the corporate veil is an equitable doctrine).

Had the corporate veil been pierced, Kroger would stand in Foodland's shoes. *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 43-44; 436 NW2d 70 (1989); see also *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 650-651; 364 NW2d 670 (1984) (although separate corporate entities are generally respected in Michigan, the corporate veil may be pierced for equitable reasons). "The various doctrines for disregarding the corporate entity are only remedial, for they only expand the potential sources of recovery." *Kern v Gleason*, 840 SW2d 730, 736 (Tex App, 1992). "A plaintiff asserting such a theory does not allege direct damage as a result of the challenged conduct. Rather, these are equitable doctrines allowing a party to recover derivatively for the debts of a controlled corporation." *United States v Clawson Medical Rehabilitation & Pain Care Center, PC*, 722 F Supp 1468, 1471 (ED Mich, 1989).

Hence, viewing the parties' pretrial stipulation regarding an agency and "alter ego" relationship in the context of the whole record, its subject matter, and the surrounding circumstances, we conclude that the only reasonable interpretation to give to the stipulation is that it intended to make Kroger's liability for the intentional tort claim dependent on Foodland's liability. Because Kroger's liability was derivative of Foodland's liability, Kroger stood in the shoes of Foodland for purposes of any rights or defenses that Foodland might have. Kroger did not forfeit its rights by stipulating to having its relationship with Foodland used for purposes of establishing that it had the same liability as Foodland. "[T]he language of a stipulation will not be construed so as to give the effect of a waiver of a right not plainly intended to be relinquished." *In re Freiburger*, 153 Mich App 251, 262; 395 NW2d 300 (1986).

There being no evidence that Kroger demanded that a jury decide its liability for Foodland's intentional fraud, regardless of what Foodland might claim, we conclude that the successor judge erred, as a matter of law, by refusing to vacate the April 27, 1998, judgment against Kroger for the intentional fraud. Kroger was entitled to have the stipulation applied to the bench trial verdict rendered by the successor judge on remand from this Court. Because ¶ 2(C) of the June 21, 2002, judgment contains the affected part of the damage award against Kroger, which was derived from the April 27, 1998, judgment, we vacate ¶ 2(C) of the June 21, 2002, judgment. The scope of Kroger's liability should have been limited to the provision in ¶ 2(A), which provides for joint and several liability with Foodland and Livonia Holding (as a partner of Foodland) for the damage award of $674,680.26.

In light of our decision to vacate ¶ 2(C) of the June 21, 2002, judgment, it is unnecessary to address Kroger's remaining arguments, including, in particular, Kroger's claim that it was denied procedural due process.

III. Mediation Sanctions

Next, Kroger argues that plaintiffs were not entitled to mediation sanctions because they failed to timely request sanctions within twenty-eight days of the April 27, 1998, judgment, contrary to MCR 2.403(O)(8). Our review of a trial court's grant of mediation sanctions is de novo. *Brown v Gainey Transp Services, Inc*, 256 Mich App 380, 383-384; 663 NW2d 519 (2003). Having concluded that the successor judge erred by not vacating the April 27, 1998, judgment against Kroger with regard to the intentional fraud claim, we find no basis for Kroger's claim that plaintiffs were required to file their request for sanctions within twenty-eight days of the April 27, 1998 judgment.

A final judgment is unnecessary to invoke the twenty-eight-day time period prescribed in MCR 2.403(O)(8). Rather, "[f]or purposes of the court rule, the *judgment* is the judgment adjudicating the rights and liabilities of particular parties, regardless of whether that judgment is the final judgment from which the parties may appeal" (emphasis in original). *Braun v York Properties, Inc*, 230 Mich App 138, 150; 583 NW2d 503 (1998). In this case, Kroger's rights and liabilities with regard to the intentional tort claim were adjudicated in ¶ 2(A) of the June 21, 2002, judgment. As such, the June 21, 2002, judgment is the controlling judgment for purposes of filing a request for mediation sanctions. See generally *Haliw v Sterling Heights*, 257 Mich App 689, 697-698; 669 NW2d 563 (2003); *Hyde v Univ of Michigan Regents*, 226 Mich App 511, 526; 575 NW2d 36 (1997); *Keiser v Allstate Ins Co*, 195 Mich App 369, 374-375; 491 NW2d 581 (1992). Accordingly, we reject Kroger's argument that plaintiffs' request for mediation sanctions was untimely filed.

Although Kroger additionally argues that plaintiffs untimely taxed costs under MCR 2.625(F)(2), we decline to address this issue because Kroger has not identified any costs awarded by the successor judge that were outside the scope of allowable mediation sanctions. A party may not leave it to this Court to search for a factual basis to sustain or reject a position. *Great Lakes Div of National Steel Corp v Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998). In passing, we find Kroger's reliance on MCR 2.625(F)(2) misplaced because the clerk did not tax costs. Cf. *J C Bldg Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 428-429; 552 NW2d 466 (1996). Rather, the record indicates that the successor judge determined costs at a joint proceeding held after the bench trial.

Finally, we decline to address Kroger's claim regarding expert witness fees because Kroger has not identified the factual basis for its argument that plaintiffs were awarded costs for expert witness fees. *Great Lakes Div of National Steel Corp, supra* at 424. In this regard, we note that expert witness fees may be included as mediation sanctions because they are taxable costs under MCR 2.403(O)(6)(a). *Campbell v Sullins*, 257 Mich App 179, 203; 667 NW2d 887 (2003). Kroger has not established any basis for relief stemming from the award of expert witness fees.

IV. Statutory Interest

In his cross-appeal, Ayar argues that the successor judge erroneously modified the statutory interest award for the RFR claim based on a change in the interest rate established by the 2001 amendment of MCL 600.6013.[4] We consider this issue de novo as a question of law. *Cardinal Mooney High School, supra* at 80; *Morales v Auto-Owners Ins Co (After Remand),* 469 Mich 487, 490; 672 NW2d 849 (2003).

Initially, we conclude that the successor judge was authorized to consider this issue on remand following the prior appeal because the case had not yet reached a point of finality. MCR 2.604(A); *Meagher, supra* at 718; see also *Mayor of Detroit v Arms Technology, Inc,* 258 Mich App 48, 65-66; 669 NW2d 845 (2003). Further, the law of the case doctrine does not apply because neither this Court previously, nor our Supreme Court when denying Kroger's application for leave to appeal, actually decided the merits of this issue. *Grievance Administrator, supra* at 259-260; *Grace, supra* at 363.

Further, we conclude that Ayar's constitutional claims must be examined in the context of a subsequent amendment of MCL 600.6013, pursuant to 2002 PA 77, effective March 21, 2002, rather than the 2001 amendment, because the 2002 amendment applies retroactively to plaintiffs' complaint setting forth the RFR claim, and because, as of July 1, 2002, that complaint had not yet resulted in a final, nonappealable judgment. See *Morales, supra* at 490-491; *Shuler v Michigan Physicians Mutual Liability Co,* 260 Mich App 492, 523-524; ___ NW2d ____ (2004). Hence, the relevant statutory provision provides as follows:

> For a complaint filed on or after January 1, 1987, but before July 1, 2002, if the civil action has not resulted in a final, nonappealable judgment as of July 1, 2002, and if a judgment is or has been rendered on a written instrument that does not evidence indebtedness with a specified interest rate, interest is calculated as provided in subsection (8). [MCL 600.6013(6).]

Examined in this context, Ayar has not established any basis for disturbing the successor judge's decision to apply the modified interest rate. A statute is presumed constitutional, and the party opposing it bears the burden of overcoming that presumption and proving the statute unconstitutional. *Owosso v Pouillon,* 254 Mich App 210, 213; 657 NW2d 538 (2002).

Ayar has not established that he had a vested right to have interest on his RFR claim determined by the interest rate prescribed in MCL 600.6013 before it was amended. In general, "vested rights are not created by a statute that is later revoked or modified by the Legislature if '[t]he Legislature did not covenant not to amend the legislation.'" *In re Certified Question (Fun 'N Sun RV, Inc v Michigan),* 447 Mich 765, 778; 527 NW2d 468 (1994), quoting *Franks v White Pine Copper Div,* 422 Mich 636, 654; 375 NW2d 715 (1985). MCL 600.6013 is a remedial statute that serves to compensate the prevailing party for litigation expenses and the delay in receiving money damages, as well as to encourage early settlements. *Gordon Sel-Way, Inc v Spence Bros, Inc,* 438 Mich 488, 510; 475 NW2d 704 (1991). "It is firmly established that there

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[4] See 2001 PA 175, effective March 22, 2002.

is no vested right in any particular procedure or remedy." *Detroit v Walker*, 445 Mich 682, 703; 520 NW2d 135 (1994).

Because Ayar has not established a vested right to have interest calculated under a prior version of MCL 600.6013, we uphold the successor judge's decision rejecting Ayar's claim that an unconstitutional "taking" occurred. The Legislature may retroactively amend a statute that does not take away or impair any existing vested rights. See *People v Jackson*, 465 Mich 390, 401; 633 NW2d 825 (2001); *Aztec Air Service, Inc v Dep't of Treasury*, 253 Mich App 227, 234; 654 NW2d 925 (2002).

We also uphold the successor judge's rejection of Ayar's claim that MCL 600.6013, as amended, unconstitutionally impairs contract rights, because Ayar has failed to show that he had any contract rights impaired by the statute as amended. Ayar's hypothetical factual scenario regarding other potential litigants who might enter into settlement agreements is insufficient to invoke judicial review, because Ayar has not established that he has standing to vindicate the constitutional rights of other litigants. *Fieger v Comm'r of Ins*, 174 Mich App 467, 471; 437 NW2d 271 (1988); *People v Rocha*, 110 Mich App 1, 16; 312 NW2d 657 (1981).

Next, similar to the successor judge, we have treated Ayar's claim that the amended statute is both underinclusive and overinclusive as a challenge to its facial validity based on equal protection guarantees. We conclude, however, that even if we were to find that Ayar had standing to challenge the facial validity of the amended statute, Ayar failed to present any argument that would persuade us that MCL 600.6013, as amended in 2002, is constitutionally infirm on its face.

The Equal Protection Clause does not prohibit a state from distinguishing persons, but rather prohibits arbitrary or invidious classifications. *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000). The type of judicial review applied to a viable equal protection challenge depends on the nature of the classification. *Id*. Here, because Ayar does not address the particular level of judicial review that applies to his facial challenge to the statute, this issue is not properly before us. This Court need not address an issue that is given only cursory treatment on appeal. *Eldred, supra* at 150.

In any event, a party challenging the facial validity of a statute must establish that there is no set of circumstances under which the statute would be valid. *Council of Organizations & Others for Educ About Parochiaid, Inc v Governor*, 455 Mich 557, 568; 566 NW2d 208 (1997). The fact that a statute might operate unconstitutionally under some conceivable set of circumstances is not sufficient. *Wayne Co Bd of Comm'rs v Wayne Co Airport Authority*, 253 Mich App 144, 160; 658 NW2d 804 (2002). The 2002 amendment of MCL 600.6013(6) reflects the Legislature's determination that all litigants who filed complaints between January 1, 1987, and July 1, 2002, are subject to the condition that the action on the written instrument not result in a final, nonappealable judgment as of July 1, 2002. For purposes of determining the applicable interest rate, the litigants are distinguished based on whether the written instrument contains a specified interest rate. Applying the rational basis level of review to the classification scheme in the statute, we conclude that Ayar's arguments on appeal present no basis for finding the statute constitutionally infirm.

Finally, analyzing MCL 600.6013 in the context of the 2002 amendment, we find no basis for disturbing the successor judge's determination that MCL 600.6013, as applied to Ayar, does not violate equal protection guarantees. When faced with a claim that a statute, as applied, is constitutionally infirm, a court must analyze the statute as applied to the particular case. *Crego, supra* at 269.

Here, Ayar's challenge to the amended statute is directed largely at the Legislature's use of the date on which a case results in a final, nonappealable judgment. MCL 600.6013(6). But selection of this date was rational because the Legislature's ability to retroactively apply a new law is limited and the 2002 amendment affects complaints filed both before and after its effective date. See *Mayor of Detroit, supra* at 65-66. Because Ayar's RFR claim was set forth in a complaint filed before July 1, 2002, that did not result in a final, nonappealable judgment as of July 1, 2002, the judgment interest rate was subject to the 2002 amendment of MCL 600.6013(6).

The circumstances under which a given action does not result in a final, nonappealable judgment as of July 1, 2002, may differ from case to case, but rational-basis review does not test whether the classification scheme was made with "mathematical nicety" or whether some inequity results. *Crego, supra* at 260. Hence, examining the 2002 amendment in light of the remedial purpose of MCL 600.6013, we reject Ayar's claim that his equal protection rights were violated. Lastly, we are not persuaded that the challenged legislation is arbitrary and wholly unrelated in a rational way to its objective. *Crego, supra* at 259.

Affirmed in part and vacated in part. No taxable costs pursuant to MCR 7.219(A), neither party having prevailed in full.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood