IN THE UTAH COURT OF APPEALS

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Deron Brunson, Plaintiff and Appellant, v. The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate Holders CWALT, Inc.; Alternative Loan Trust 2005-58 Mortgage Pass-Through Certificates, Series 2005-58; ReconTrust Company, N.A.; Green Tree Servicing, LLC, Defendants and Appellees.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20100752-CA F I L E D (December 16, 2010) 2010 UT App 354

Third District, Salt Lake Department, 100913085
The Honorable Paul G. Maughan

Attorneys: Deron Brunson, Draper, Appellant Pro Se
Darren K. Nelson, Michael D. Black, and John P. Snow, Salt Lake City, for Appellees

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Before Judges Thorne, Voros, and Christiansen.

PER CURIAM:

Deron Brunson appeals the August 13, 2010 Order Denying Motion for Temporary Restraining Order and Dismissing With Prejudice, which granted a motion to dismiss filed by the Bank of New York Defendants[1] and ReconTrust Company, N.A. (ReconTrust). This case is before the court on a sua sponte motion for summary dismissal on the basis that the order was not final and

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[1]The Bank of New York Defendants are the Bank of New York Mellon fka the Bank of New York, as Trustee for the Certificate Holders CWalt, Inc., Alternative Loan Trust 2005-58 Mortgage Pass-Through Certificates; Series 2005-58.

appealable because it did not dispose of claims against Defendant Green Tree Servicing, LLC (Green Tree).

We affirmed the dismissal of Brunson's earlier complaint against ReconTrust and Countrywide Home Loan, Inc. See Brunson v. ReconTrust Co., 2009 UT App 381U (per curiam). Brunson later filed the underlying case against ReconTrust, the Bank of New York Defendants, and Green Tree. ReconTrust and the Bank of New York Defendants filed a motion to dismiss based upon both the claim preclusion and issue preclusion prongs of the doctrine of res judicata, arguing that the present complaint involved the same loan, same property, and same parties (or their privies) as the earlier complaint. The district court granted the motion to dismiss filed by ReconTrust and the Bank of New York Defendants. The August 13, 2010 order stated, in part, that "the case shall be dismissed with prejudice on the merits." Brunson appealed, and ReconTrust and the Bank of New York Defendants filed a motion for summary affirmance in this court.

The district court record reveals that the additional named defendant--Green Tree--was served with a summons and complaint in July 2010, and that counsel other than counsel who represents ReconTrust and the Bank of New York Defendants entered an appearance on August 9, 2010. Brunson's complaint alleges that Green Tree serviced a separate loan, which was a second mortgage secured by the real property that is the subject of the underlying action. Although the August 13, 2010 order includes language that is consistent with an intent to entirely dispose of the complaint, it was entered on a motion to dismiss only the claims against ReconTrust and the Bank of New York Defendants, and it does not address any claim against Green Tree. Furthermore, the motion in the district court contained no analysis applying res judicata principles to claims against Green Tree. Even if the district court had intended to dismiss the entire complaint, there was no motion before it that pertained to the claims against Green Tree.

Rule 3(a) of the Utah Rules of Appellate Procedure states that "[a]n appeal may be taken from a district . . . court to the appellate court with jurisdiction over the appeal from all final orders and judgments." Utah R. App. P. 3(a). An appeal taken from an order that is not final must be dismissed for lack of appellate jurisdiction. See Bradbury v. Valencia, 2000 UT 50, ¶ 8, 5 P.3d 649. An order is final and appealable when it disposes of all of the claims against all parties on the merits. See id. ¶ 9; see also Loffredo v. Holt, 2001 UT 97, ¶ 12, 37 P.3d 1070; Houston v. Intermountain Health Care, 933 P.2d 403, 406 (Utah Ct. App. 1997) ("Generally, a judgment is not a final, appealable order if it does not dispose of all the claims in a case, including counterclaims.").

Having determined that the order being appealed did not dispose of all claims against all parties on the merits, we must dismiss the appeal. Once a court has determined that it lacks jurisdiction, it "retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). We dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal following the entry of a final appealable judgment. Because we dismiss the appeal for lack of jurisdiction, we cannot consider the motion for summary affirmance filed by ReconTrust and the Bank of New York Defendants on its merits. Our dismissal is therefore without prejudice to the assertion of the arguments contained in the motion for summary affirmance in any subsequent appeal.

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge

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Michele M. Christiansen, Judge