DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, by and through Maria Baier as State Land Commissioner,	1 CA-CV 10-0630
	DEPARTMENT A
Plaintiff/Appellee,	Maricopa County Superior Court
v.	No. CV2005-006521
STEPHEN SUSSEX and VIRGINIA SUSSEX, husband and wife; JUDY TROUTMAN,	**DECISION ORDER**
Defendants/Appellants.	

Appellants appeal the trial court's grant of judgment to the State following partial summary judgment on the quiet title and recovery of real property claims to the Tempe property referred to as LOT 1E.[1] [2] [3] The trial court denied summary judgment against the

1. The legal description of the Property at issue is Lot 1E, State Plat 12, Amended according to Book 69 of Maps, Page 38, Maricopa county, Arizona, located in the East Half of the East Half of Section 16, Township 1 North, Range 4 East, Gila and Salt River Baseline and Meridian. The appellants often refer to the property as 302 West First Street, Tempe, Arizona. It is undisputed that the property at issue is school trust land.
2. Appellants are Steven Sussex, his wife Virginia and Stephen's sister Judy Troutman. Appellants claim the Sussex family has resided on the property in one form or another since 1892, although the State disputes that.
3. On appeal, appellants assert laches/equitable estoppel and that the State's 1963 Claim to Title is constitutionally defective for lack of notice. Appellants claim they had a legally protected interest in the land as tenants at sufferance and, therefore, mere notice by publication was insufficient. By motion, appellants raise a new constitutional issue, specifically whether the trial court's order to remove personal property is violates Ariz. Const. Art. X, §9, clause 2 dealing with certain school trust lands.

same appellants for a claim of trespass. Over objection, the trial court issued a judgment which included Ariz. R. Civ. Pro. Rule 54(b) certification language. Because we find certification was improper, we dismiss the appeal.

On appeal, we must examine our own jurisdiction in each case, *see Sorensen v. Farmers Ins. Co.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997) (citations omitted) (stating that we have an independent duty to inquire into our own jurisdiction to consider an appeal even when no party raises the issue), and owe no deference to a trial court's Rule 54(b) certification. *See Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991) (applying de novo review to Rule 54(b) certification and stating that a trial court=s Rule 54(b) certification does not give this court jurisdiction over an appeal if the judgment is not final). "Before a trial court may certify a judgment under Rule 54(b), it must find that the judgment is final, that is, 'an ultimate disposition of an individual claim.'" *Id.* (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)).

Rule 54(b), which states:

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such

> determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. For purposes of this subsection, a claim for attorneys= fees may be considered a separate claim from the related judgment regarding the merits of a cause.

A claim is separable from remaining claims, and thus eligible for Rule 54(b) certification, when the nature of the claim already adjudicated is such that an appellate court would not have to decide the same issue more than once if there were a later appeal. *Lloyd v. State Farm Mut. Auto. Ins. Co.*, 189 Ariz. 369, 943 P.2d 729 (App. 1996); *Cont'l Cas. v. Superior Court*, 130 Ariz. 189, 191, 635 P.2d 174, 176 (1981) (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980)). A "separate claim" for purposes of Rule 54(b) need not be "entirely distinct from all the other claims in the action" and arise from a different occurrence or transaction. *Cont'l Cas. v. Superior Court*, 130 Ariz. at 191, 635 P.2d at 176.

The purpose of Rule 54(b) is to avoid piecemeal appeals and problems that can arise under the "liberalized" joinder of claims, counter-claims, cross-claims, and third-party claims into one lawsuit. *Id.* (quoting *Stevens v. Mehagian=s Home Furnishings, Inc.*, 90 Ariz. 42, 365 P.2d 208 (1961)). "The rule against

piecemeal appeals recognizes that an appellant may ultimately prevail on the complete action, rendering interlocutory appellate determinations unnecessary." *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981) (citations omitted).

Here, the determination of whether the appellants are land owners or have other substantive rights to being on Lot 1E or are trespassers are inextricably tied together.

Because we find certification was improper, we dismiss the appeal without reaching the merits of appellants arguments.

The Court has considered the Appellants' Motion to File Supplemental Brief or for Stay of Proceeding, the State's Response to Motion for Supplemental Brief or for Stay of Proceedings and Reply in Support of Motion to file Supplemental Brief or for Stay of Proceedings. It is ordered denying the Motion.

/s/

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JON W. THOMPSON, Judge