

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Department of Transportation,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060436-CA
v.)	
)	
<u>Admiral Beverage Corporation,</u>)	F I L E D
(Assignee of Mark Investment)	(August 10, 2006)
Company); Park City West &)	
Associates; Valley Bank &)	2006 UT App 335
Trust Company nka Bank One,)	
Utah; and Valley Mortgage)	
Company nka Utah Investment)	
Company,)	
)	
Defendants and Appellant.)	

Third District, Salt Lake Department, 970905361
The Honorable Stephen L. Roth

Attorneys: Reed L. Martineau, Rex E. Madsen, and D. Jason
Hawkins, Salt Lake City, for Appellant
Mark L. Shurtleff and Brent A. Burnett, Salt Lake
City, for Appellee

Before Judges Greenwood, Davis, and Orme.

PER CURIAM:

Admiral Beverage Corporation (Admiral) appeals the trial court's order excluding particular evidence of severance damages. The trial court certified the order as final pursuant to rule 54(b) of the Utah Rules of Civil Procedure. This is before the court on both its own and the Department of Transportation's (DOT) motions for summary disposition based on lack of jurisdiction.

Utah Rule of Civil Procedure 54(b) permits a trial court to "direct the entry of a final judgment as to one or more but fewer than all of the claims or parties" in a matter involving either multiple claims or multiple parties. Utah R. Civ. P. 54(b). The effect of directing a final judgment for a partial disposition of a case is to make the specified judgment immediately appealable,

although the remainder of the case goes forward in the trial court. See id.; Kennecott Corp. v. Utah State Tax Comm'n, 814 P.2d 1099, 1102 (Utah 1991) (noting that rule 54(b) provides trial courts with authority to "certify a certain class of orders and thereby make them appealable as of right").

The question of whether an order is eligible for certification under rule 54(b) is a question of law. See Kennecott Corp., 814 P.2d at 1100. Certain requirements must be met before an order is properly certifiable under rule 54(b). First, the action must involve multiple claims for relief or multiple parties. See id. at 1101. Second, the judgment appealed must be an order that would be appealable if there were no other claims or parties remaining in the action. See id. Third, the trial court must make the specific determination that there is no just reason for delay. See id. "[A]n order that does not wholly dispose of a claim or a party is not 'final' under rule 54(b) and will not be appealable, even with such a certification." Pate v. Marathon Steel Co., 692 P.2d 765, 768 (Utah 1984).

Here, the order appealed does not wholly dispose of any claim. Admiral appeals an evidentiary ruling, not the disposition of a separate claim. The trial court excluded particular evidence of the valuation of the remainder of the land after UDOT had taken the desired portion. Although the court ruled on the admissibility of evidence of a certain type of damages, the single claim for the court to determine is the amount of damages due from the single taking, which remains before the court. The trial to determine the amount of compensation for the taking must still go forward and all the parties remain involved in the suit. Thus, the order appealed does not come within the scope of rule 54(b).

Admiral argues that severance damage is a separate claim. However, Admiral does not assert that the severance damage, even if a separate claim, is wholly disposed of by the exclusion of the evidence. Rather, it states that the exclusion of evidence "had the practical effect of disposing of Admiral's claim for severance damages" and "essentially" disposed of the claim. This is not sufficient to show that a claim is "wholly" disposed of under rule 54(b).

Furthermore, severance damage is not a separate claim because it is merely a type of compensation due from the same underlying taking. To constitute a separate claim, "the facts underlying [the claim] must be different than those underlying other claims in the action." Kennecott Corp., 814 P.2d at 1103. Here, the factual basis is the same--the taking of a portion of

property. The sole issue to determine is the amount of compensation to be paid for a single act.

In sum, the order from which Admiral appeals is not an order eligible for certification under rule 54(b). As a result, this court lacks jurisdiction to consider this appeal. Accordingly, this appeal is dismissed without prejudice to the timely filing of an appeal after the entry of a final order.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

Gregory K. Orme, Judge