

IN THE UTAH COURT OF APPEALS

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| Tooele Associates LP, et<br>al.,     | ) | MEMORANDUM DECISION            |
|                                      | ) | (Not For Official Publication) |
| Plaintiffs,                          | ) | Case No. 20090617-CA           |
|                                      | ) |                                |
| v.                                   | ) | F I L E D                      |
|                                      | ) | (November 5, 2009)             |
| Tooele City, et al.,                 | ) |                                |
|                                      | ) | 2009 UT App 317                |
| Defendants.                          | ) |                                |
| <hr/>                                |   |                                |
| Tooele City,                         | ) |                                |
|                                      | ) |                                |
| Third-party Plaintiff,               | ) |                                |
| Appellant, and Cross-                | ) |                                |
| appellee,                            | ) |                                |
|                                      | ) |                                |
| v.                                   | ) |                                |
|                                      | ) |                                |
| <u>Ames Construction, Inc.</u> ; and | ) |                                |
| Forsgren Associates, Inc.,           | ) |                                |
|                                      | ) |                                |
| Third-party Defendants,              | ) |                                |
| Appellees, and <u>Cross-</u>         | ) |                                |
| <u>appellant.</u>                    | ) |                                |

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Third District, Tooele Department, 060919737  
The Honorable Randall N. Skanchy

Attorneys: Michael W. Homer, Jesse C. Trentadue, and Brian D.  
Bolinder, Salt Lake City, for Cross-appellant

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Before Judges Greenwood, Thorne, and McHugh.

PER CURIAM:

Ames Construction, Inc. (Ames) cross-appeals the trial court's final order dismissing Ames from the case and denying attorney fees. Additionally, it appeals the trial court's order granting Tooele City's motion for an extension of time to file an

appeal. This is before the court on its own motion for summary disposition to determine the timeliness of the cross-appeal.

In February 2009, the trial court dismissed third-party defendant Ames. Ames moved to certify its dismissal as final pursuant to rule 54(b) of the Utah Rules of Civil Procedure. The trial court entered its certified final order in May. The City did not file a timely notice of appeal but filed a motion for an extension of time to appeal in July 2009. After briefing and a hearing, the trial court granted the City's motion for an extension on August 12, 2009.

On August 12, the City filed its notice of appeal. The trial court also entered its formal order granting the extension. Although the City's notice of appeal was filed prior to the entry of the trial court's order, pursuant to rule 4(c) of the Utah Rules of Appellate Procedure, the notice of appeal was deemed filed after the order was entered and on the same day. See Utah R. App. P. 4(c). Accordingly, the City's notice of appeal was effective on August 12.<sup>1</sup>

Rule 4(d) of the Utah Rules of Appellate Procedure provides,

If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

Id. R. 4(d). The City filed its notice of appeal on August 12, making a notice of cross-appeal due no later than August 26, fourteen days later.<sup>2</sup> Ames's notice of cross-appeal was filed

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<sup>1</sup>Ames argues that the August 12 notice was not effective, citing cases noting that a notice of appeal filed before a final decision is entered is of no effect. However, the cases cited involved motions made pursuant to rules 52 or 59 of the Utah Rules of Civil Procedure, which specifically toll the time for appeal. See Utah R. App. P. 4(b). Under the former rule 4(b), such motions had to be resolved before a notice of appeal would be effective. In 2005, the rule was changed to allow a notice of appeal filed before the resolution of certain motions to preserve an appeal. See id.

<sup>2</sup>The "time otherwise prescribed" is typically thirty days from the entry of the final order. See Utah R. App. P. 4(a).  
(continued...)

sixteen days later on August 28. Accordingly, to the extent that Ames seeks to appeal the dismissal order that also denied its attorney fees, the notice is untimely. When a cross-appeal is untimely filed, this court lacks jurisdiction over the cross-appeal. See Glezos v. Frontier Invs., 826 P.2d 1230, 1233 (Utah Ct. App. 1995).

Ames's notice of appeal also stated that it was appealing the trial court's order granting the City an extension. That order was entered on August 12, 2009. Accordingly, the notice of appeal is timely as to that order because the notice was filed within thirty days of the entry of the order. See Utah R. App. P. 4(a). As a result, this court has jurisdiction over the cross-appeal to the extent that it challenges the extension of the time to appeal.

In sum, Ames's appeal is dismissed regarding the certified final order dismissing it from the case below. The cross-appeal may move forward on Ames's challenge to the trial court's order granting the City's motion for an extension of time to file its appeal.

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Pamela T. Greenwood,  
Presiding Judge

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William A. Thorne Jr., Judge

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Carolyn B. McHugh, Judge

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<sup>2</sup>(...continued)  
That time had passed regarding the order of dismissal, so the fourteen-day provision is applicable.