

IN THE UTAH COURT OF APPEALS

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Burton Lumber & Hardware Company,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	Case No. 20051140-CA
	)	
v.	)	F I L E D
	)	(February 9, 2006)
Michael Graham,	)	
	)	2006 UT App 41
Defendant and Appellant.	)	

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Fourth District, Provo Department, 010404278  
The Honorable Fred D. Howard

Attorneys: David G. Harlow, Provo, for Appellant  
Richard D. Burbidge, Salt Lake City, for Appellee

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Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

This case is before the court on Burton Lumber & Hardware Company's (Burton Lumber) motion to dismiss the appeal for lack of jurisdiction.

Contrary to statements in Michael Graham's response, the district court granted Burton Lumber's requests for attorney fees and punitive damages, subject to determination of liquidated amounts. A judgment that awards attorney fees, subject to later determination of the liquidated amount of that award, is not final and appealable. See ProMax Dev. Corp. v. Raile, 2000 UT 4, ¶15, 998 P.2d 254 (holding that "a trial court must determine the amount of attorney fees awardable to a party before the judgment becomes final for the purposes of an appeal under Utah Rule of Appellate Procedure 3"); see also Anderson v. Wilshire Invs., LLC, 2005 UT 59, ¶19, 123 P.3d 393. Similarly, a judgment awarding punitive damages, subject to a later determination of the amount, is also not final and appealable. See Salt Lake City v. Layton, 600 P.2d 538 (Utah 1979) (dismissing appeal from a judgment that granted injunctive relief but did not rule on claims for compensatory and punitive damages).

On November 7, 2005, the district court entered a judgment, which included the statements that "Burton Lumber is entitled to recover punitive damages in an amount to be determined after a further hearing" and "Burton Lumber is entitled to recover reasonable attorney's fees incurred herein in an amount to be subsequently determined." Graham quotes a single statement from the contemporaneous ruling on Burton Lumber's motion for an award of attorney fees as support for his assertion that the appeal is taken from a final judgment. The court stated that the judgment "may be supplemented" with an award of attorney fees and punitive damages. When read in the context of the entire ruling, it is clear that the court was referring to its ability to modify the judgment. The body of the ruling included language granting the motion for attorney fees and awarding punitive damages. In addition, the November 7, 2005 judgment awarded attorney fees, punitive damages, and costs, each subject to a determination of the liquidated amounts. Even if the district court were to retreat from its determination to award attorney fees and punitive damages, the judgment as it now stands is not final and appealable.

We dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal filed after entry of a final, appealable judgment.

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Pamela T. Greenwood,  
Associate Presiding Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge