

IN THE UTAH COURT OF APPEALS

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Developers Diversified Realty Corporation and Rocky Mountain Real Estate,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
	)	Case No. 20070330-CA
Plaintiffs and Appellants,	)	
	)	F I L E D
v.	)	(July 19, 2007)
	)	
Boyle Engineering Corporation,	)	2007 UT App 251
	)	
Defendant and Appellee.	)	

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Third District, Salt Lake Department, 030907244  
The Honorable Sandra N. Peuler

Attorneys: Steve K. Gordon, Matthew G. Grimmer, and Chad J. Pomeroy, Salt Lake City, for Appellants  
Craig C. Coburn and Zachary E. Peterson, Salt Lake City, for Appellee

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Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Developers Diversified Realty Corporation and Rocky Mountain Real Estate (collectively referred to as DDRC) appeal from the district court's order granting Boyle Engineering Corporation's motion for summary judgment. This case is before the court on its sua sponte motion for summary disposition based on lack of jurisdiction. DDRC did not file a response to the court's motion.

"An appeal is improper if it is taken from an order or judgment that is not final, see Utah R. App. P. 3(a), unless it fits within an exception to the final judgment rule." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649. "For an order or judgment to be final, it must dispose of the case as to all the parties, and finally dispose of the subject-matter of the litigation on the merits of the case." Id. (quotations and citation omitted). "In other words, a judgment is final when it ends the controversy between the parties litigant." Id. (quotations and citation omitted). Thus, "[a] judgment is not

final if the trial court has failed to determine whether attorney fees should be awarded." Loffredo v. Holt, 2001 UT 97, ¶12, 37 P.3d 1070. In this case, Boyle has filed a motion for attorney fees associated with defending this case. The district court has not yet resolved the motion. Therefore, because the district court has not yet resolved Boyle's claim for attorney fees, the order from which DDRC appeals is not final.

Accordingly, we lack jurisdiction over the appeal and "retain 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 as to a timely appeal after entry of a final judgment.

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Russell W. Bench,  
Presiding Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge