

IN THE UTAH COURT OF APPEALS

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Herbert K. Holzer,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20060115-CA
v.	)	
	)	
Wilson Properties &	)	F I L E D
Associates, L.C.; Thomas	)	(May 11, 2006)
Baker; Ronald L. Marshall; and	)	
Maple Hills Realty,	)	2006 UT App 195
	)	
Defendants and Appellees.	)	

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Second District, Bountiful Department, 990801835  
The Honorable Glen R. Dawson

Attorneys: Conrad B. Houser, Salt Lake City, for Appellant  
Larry G. Moore, Salt Lake City, for Appellees

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Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Appellant Herbert K. Holzer filed a notice of appeal from orders granting judgment in favor of the defendants in this multiple-party action. This case is before the court on a motion for summary disposition filed by Appellees Thomas Baker, Ronald L. Marshall, and Maple Hills Realty (Maple Hills). Holzer's contention that the motion was not timely is without merit. "A party may move at any time to dismiss the appeal . . . on the basis that the appellate court lacks jurisdiction." Utah R. App. P. 10(a)(1).

Although captioned "Final Judgment and Order," the January 4, 2006 order stated that "[a]ny claims for attorneys' fees and costs are reserved for further motion and order." Maple Hills's answer to the complaint included a claim for attorney fees and costs of court. The answer also asserted the following defenses:

ELEVENTH DEFENSE

The complaint filed against these Defendants has no basis in law or in fact, and is brought in bad faith by plaintiff.

Defendants are entitled to an award of their attorneys' fees and costs incurred as against plaintiff pursuant to Utah Code § 78-27-56.

TWELFTH DEFENSE

The complaint filed against these Defendants has no basis in law or in fact, and is brought in bad faith by plaintiff and his counsel. Defendants are entitled to an award of their attorneys' fees and costs incurred pursuant to Rule 11 of the Utah Rules of Civil Procedure.

Although Maple Hills did not repeat the claim in its motion for summary judgment, resolution of the claim for attorney fees was expressly reserved for further motion and hearing. Holzer argues that the time for seeking an award of attorney fees has expired. Although it is a legitimate concern that the time for making a motion should not be unlimited, the district court's order expressly authorized further proceedings on a claim for attorney fees and costs, without specifying a time limit. After remand to the district court, Holzer may raise any issues regarding timeliness for consideration by that court.

"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. Accordingly, where a claim for attorney fees and costs remains pending before the trial court, the judgment is not final, and the appeal must be dismissed on jurisdictional grounds. See id. at ¶10. Accordingly, we dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal after the entry of a final appealable judgment.

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Russell W. Bench,  
Presiding Judge

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge