

IN THE UTAH COURT OF APPEALS

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Twin Cans,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20100084-CA	
v.)		
)	F I L E D	
Michael Katerakis,)	(April 22, 2010)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2010 UT App 103</td></tr></table>	2010 UT App 103
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Third District, Salt Lake Department, 090921276
The Honorable Tyrone E. Medley

Attorneys: Michael Katerakis, Taylorsville, Appellant Pro Se
 James H. Deans, Salt Lake City, for Appellee

Before Judges Davis, McHugh, and Voros.

PER CURIAM:

Michael Katerakis appeals the January 14, 2010 order denying his motion for relief from an order of restitution and for a stay of the underlying unlawful detainer action. This case is before the court on Twin Cans's motion for summary dismissal. After obtaining an extension of the time to respond, Katerakis failed to file a response to the motion to dismiss.

The underlying action was initiated by the Complaint for Eviction, which sought possession of the property by eviction, if necessary, and also sought past due rent, statutory treble damages, costs, and attorney fees, all pursuant to Utah Code section 78B-6-811. See Utah Code Ann. § 78B-6-811 (2008). After a hearing on immediate occupancy, the district court ordered Katerakis to vacate the property by January 6, 2010, granted him leave to amend his answer and add a counterclaim, and reserved all other claims, including damages claims, for further proceedings. The district court's January 14, 2010 order denied Katerakis's motion to stay the order of restitution and the pending unlawful detainer action.

Twin Cans moves to dismiss the appeal because it is not taken from a final appealable judgment. A final judgment for purposes of appeal is one that resolves all claims,

counterclaims, cross-claims, and third-party complaints before the court and fully and finally resolves the case. See Houston v. Intermountain Health Care, 933 P.2d 403, 406 (Utah Ct. App. 1997) ("Generally, a judgment is not a final, appealable order if it does not dispose of all the claims in a case, including counterclaims."). The January 14, 2010 order denied a motion to stay the underlying case and the orders entered in that case. The district court ordered Katerakis to vacate the property, but all the remaining claims, including damages claims, are still pending in the district court. Katerakis also did not timely seek permission to appeal from the interlocutory order pursuant to rule 5 of the Utah Rules of Appellate Procedure; therefore, we did not grant permission to pursue an interlocutory appeal. See Utah R. App. P. 5.

Once a court has determined that it lacks jurisdiction, it "retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). Accordingly, we dismiss the appeal for lack of jurisdiction, without prejudice to an appeal filed after the entry of a final judgment resolving the remaining claims.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

J. Frederic Voros Jr., Judge