

IN THE UTAH COURT OF APPEALS

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|--|---|--------------------------------|
| Mainsail Development, LLC, a Utah limited liability company; and Erikson Meadows Real Estate, LLC, a Utah limited liability company,                                 | ) | MEMORANDUM DECISION            |
|  | ) | (Not For Official Publication) |
|  | ) | Case No. 20070414-CA           |
|  | ) |                                |
| Plaintiffs and Appellees,  | ) | F I L E D                      |
|  | ) | (September 20, 2007)           |
|  | ) |                                |
| v.   | ) | 2007 UT App 312                |
|  | ) |                                |
| Ron Martinez; America West Development, LLC, a Utah limited liability company; Wasatch Builders, LLC, a Utah limited liability company; and John and Jane Does 1-10, | ) |                                |
|  | ) |                                |
| Defendants and Appellants.   | ) |                                |

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Second District, Layton Department, 050601220  
The Honorable Thomas L. Kay

Attorneys: Robert J. Dale and Bradley L. Tilt, Salt Lake City  
for Appellants  
Jared L. Anderson and Morgan Fife, Provo, for  
Appellees

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Before Judges Bench, Orme, and Thorne.

PER CURIAM:

This appeal was taken from a final order of the district court striking Appellants' pleadings as a discovery sanction, entering their default, and entering a default judgment against them. While this appeal was pending, Appellants pursued a motion to set aside the default judgment under rule 60(b) of the Utah Rules of Appellate Procedure. The district court granted the rule 60(b) motion to set aside the default judgment, upon conditions set out in its July 13, 2007 order.

This case is before the court on a sua sponte motion for summary dismissal requesting the parties to submit memoranda addressing whether this appeal was rendered moot by the order granting Appellants' rule 60(b) motion, which set aside the default judgment.

Appellees contend that the appeal is moot because the district court set aside the default judgment. However, Appellants assert that the issues raised by this appeal are not moot, but they concede that the appeal should be dismissed without prejudice for lack of jurisdiction because there is no longer a final, appealable judgment. We agree that the appeal should be dismissed for lack of jurisdiction.

Appellants argue that the order setting aside the default judgment does not render all issues raised in this appeal moot because the order imposed conditions as prerequisites to setting aside the default judgment. First, Appellants were required to pay \$9318 in attorney fees to Appellees. Second, "as a sanction pursuant to Rule 37 of the Utah Rules of Civil Procedure," the court ordered that Appellants "shall be limited to use as evidence . . . only documents and witnesses disclosed to [Appellees] by February 1, 2007." Removal of the default judgment and reinstatement of Appellants' pleadings necessarily resulted in removal of a final, appealable judgment pending further proceedings in the district court. Accordingly, we lack jurisdiction over the appeal and must dismiss it. 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). Because we lack jurisdiction, we do not determine whether the issues raised by Appellants are moot.

We dismiss this appeal, without prejudice, for lack of jurisdiction because there is no final, appealable judgment from which an appeal of right may be taken.<sup>1</sup>

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Russell W. Bench,  
Presiding Judge

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge

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1. We express no opinion on whether the conditions imposed by the July 13, 2007 order granting the rule 60(b) motion may be appealed in a subsequent appeal from a final judgment in this case or must be pursued in an appeal from the rule 60(b) order.