

IN THE UTAH COURT OF APPEALS

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MGP Income Trust; and Brett)	MEMORANDUM DECISION
Thomas Parkinson, Trustee,)	(Not For Official Publication)
)	
Plaintiffs and Appellants,)	Case No. 20060031-CA
)	
v.)	F I L E D
)	(March 2, 2006)
Marlise Cusick and Scott)	
Cusick,)	2006 UT App 83
)	
Defendants and Appellees.)	

Fourth District, Provo Department, 050402040
The Honorable Anthony W. Schofield

Attorneys: Curtis R. Hussey, Provo, for Appellants
John H. Romney, Provo, for Appellees

Before Judges Bench, Greenwood, and McHugh.

PER CURIAM:

This matter is before the court on Appellees' motion for summary disposition based upon the lack of a final appealable order. See Utah R. App. P. 10.

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order, see Utah R. App. P. 3(a), or qualifies for an exception to the final judgment rule. See Loffredo v. Holt, 2001 UT 97, ¶¶10, 15, 37 P.3d 1070. An order is final only if it disposes of the case as to all parties, and "finally dispose[s] of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649 (quotations and citation omitted).

The decision appealed from is not a final appealable order because it does not dispose of all issues in the litigation. Specifically, the order appealed from reserved determination of damages, attorney fees, and costs. Because these issues remain, there is no final appealable order. Loffredo, 2001 UT 97 at ¶14 (concluding that requests for attorney fees must be decided in order for a decision to be appealed). Further, the case does not fall into an exception to the final judgment rule. Accordingly,

this court lacks jurisdiction to hear this appeal. When this court lacks jurisdiction, it must dismiss the appeal. See id. at ¶11.

Appellant's appeal is dismissed without prejudice.¹

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge

¹We also deny Appellees' request for attorney fees and costs associated with responding to this appeal.