IN THE UTAH COURT OF APPEALS

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Thomas M. Lemmon, Wayne Margetts, Jason Waite, Jared Perry, and Gerald Smith, Plaintiffs and Appellees, v. South Willow Ranches Owners Association, Inc.; South Willow Ranches, LLC; and Daniele Collard, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20100414-CA F I L E D (August 5, 2010) 2010 UT App 214

Third District, Tooele Department, 090301815
The Honorable Stephen L. Henriod

Attorneys: Joe Cartwright, Salt Lake City, for Appellant
Darrel J. Bostwick and Daniel R. Widdison, Salt Lake City, for Appellees

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Before Judges Thorne, Voros, and Christiansen.

PER CURIAM:

This case is before the court on a sua sponte motion for summary disposition for lack of jurisdiction. South Willow Ranches, LLC (SWR) concedes that the appeal is not taken from a final judgment or an order that has been certified as final for purposes of appeal pursuant to rule 54(b) of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 54(b). The only issue before this court is whether this court has jurisdiction to consider the appeal.

Plaintiffs filed this derivative action on behalf of similarly situated members of the South Willow Ranches Owners Association (the Association), asserting causes of action for (1) breach of contract; (2) conversion; (3) breach of fiduciary duty; (4) accounting and inspection of records; (5) fraudulent nondisclosure; (6) preliminary and permanent injunction; and (7) declaratory relief regarding control of the Association. The first five causes of action sought reimbursement of amounts that

Plaintiffs claimed were converted, misappropriated, or misused by SWR or its former employee. The last two causes of action were related to preventing SWR from continuing to control the Association and its assets.

This appeal is taken from an Order on Motion to Fix Time, Place and Manner of the Annual Meeting of the South Willow Ranches Owners Association, Inc. entered on April 14, 2010. On May 13, 2010, SWR filed a timely notice of appeal from the April 14, 2010 order. SWR's docketing statement conceded that the order had not been certified as final pursuant to rule 54(b) but stated that SWR would seek certification. The docketing statement identified the claims for "breach of contact, conversion, breach of fiduciary duty, accounting, fraud and for injunctive relief" as pending claims. This implicitly represents that SWR believes the sixth and seventh causes of action have been resolved, although Plaintiffs dispute this representation.

Rule 54(b) allows the trial court to "direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment." Utah R. Civ. P. 54(b). The rule further states:

> In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Id. An order certifying a judgment as final under rule 54(b) must include "findings supporting the conclusion that such orders are final" by explaining "the lack of factual overlap between the certified and remaining claims." Bennion v. Pennzoil Co., 826 P.2d 137, 139 (Utah 1992). Finally, an order certifying a judgment as final for purposes of appeal must contain a brief explanation of the trial court's "rationale as to why there is no just reason for delay." Id. No certification order satisfying these requirements was entered in this case.

Because there has been no certification of the judgment as final for purposes of appeal, we lack jurisdiction to consider the appeal. In such circumstances, "the remedy is dismissal of

the appeal." A.J. Mackay Co. v. Okland Constr. Co., 817 P.2d 323, 325 (Utah 1991). Furthermore, neither the district court record nor the district court docket demonstrates that any attempt has been made in the district court to obtain rule 54(b) certification. Having determined that we lack jurisdiction over this appeal, "we retain 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 a timely appeal filed after the entry of a final, appealable judgment.

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge

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Michele M. Christiansen, Judge