

IN THE UTAH COURT OF APPEALS

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Terranet Investments, L.C.,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20070201-CA
v.	)	
	)	
The Gap, Inc.; New Banana,	)	F I L E D
Inc.; and Banana Republic,	)	(May 10, 2007)
Inc.,	)	
	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 162</span>
	)	
Defendants and Appellees.	)	

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Fourth District, Provo Department, 020404140  
The Honorable Fred D. Howard

Attorneys: Adam B. Price, Ryan M. Harris, and John A. Pearce,  
Salt Lake City, for Appellant

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Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Terranet Investments, L.C. appeals from the district court's judgment. This case is before the court on its sua sponte motion for summary disposition based on lack of jurisdiction.

"An appeal is improper if it is taken from an order or judgment that is not final, see Utah R. App. P. 3(a), unless it fits within an exception to the final judgment rule." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649. "For an order or judgment to be final, it must dispose of the case as to all the parties, and finally dispose of the subject-matter of the litigation on the merits of the case." Id. (quotations and citation omitted). "In other words, a judgment is final when it ends the controversy between the parties litigant." Id. (quotations and citation omitted).

Terranet argues that the district court's judgment is a final appealable order. However, the judgment expressly states that the district court "retains jurisdiction to award Defendants' their attorney fees and costs in amounts to be determined." "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. Therefore, because the district court has not yet resolved Defendants' claim for attorney fees, the judgment from which Terranet appeals is not final.

Accordingly, we lack jurisdiction over the appeal and "retain only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). We dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal after entry of a final judgment.

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Pamela T. Greenwood,  
Associate Presiding Judge

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Judith M. Billings, Judge

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James Z. Davis, Judge