

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. 20060880-CA
v.)	
)	
)	F I L E D
)	(November 9, 2006)
The Gap, Inc.; New Banana,)	
Inc.; and Banana Republic,)	2006 UT App 449
Inc.,)	
)	
Defendants and Appellees.)	

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
Mark O. Morris, Stewart W. Peay, and Troy L. Booher,
Salt Lake City, for Appellees

Before Judges Bench, Billings, and McHugh.

PER CURIAM:

Terranet Investments, L.C. appeals the district court ruling on a motion to dismiss. This case is before the court on Appellees' 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's docketing statement states "the district court . . . has indicated that it still intends to issue formal Findings of Facts and Conclusions of Law, and there will likely be additional briefing incident thereto." Indeed, the district court directed counsel for Appellees to prepare an order consistent with its ruling. "A signed minute entry will not be considered a final order where its language indicates that it is not intended as final." State v. Leatherbury, 2003 UT 2, ¶9, 65 P.3d 1180 (citing Swenson Assocs. Architects, P.C. v. State, 889 P.2d 415, 417 (Utah 1994)). "Thus, where further action is contemplated by the express language of the order, it cannot be a final determination susceptible of enforcement." Id. Furthermore, Appellees indicate that the district court has not yet ruled on attorney fees. "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.

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.¹

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

1. Appellees filed a "motion to seal proceedings on appeal," to which Terranet acquiesced. We hereby grant the motion.