

IN THE UTAH COURT OF APPEALS

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Arnold Unruh,) MEMORANDUM DECISION
) (Not For Official Publication)
 Plaintiff and Appellee,) Case No. 20070087-CA
)
 v.)
) F I L E D
 Carol Killen, an individual;) (February 22, 2008)
 and Castle Point, Ltd.,)
)
 Defendants and Appellants.) [2008 UT App 55]

Fifth District, St. George Department, 050500805
The Honorable James L. Shumate

Attorneys: Odean Bowler, St. George, for Appellants
D. Williams Ronnow and James L. Spendlove, St.
George, for Appellee

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Carol Killen and Castle Point, Ltd. (collectively Killen), appeal the trial court's order granting summary judgment against them and compelling specific performance on a real estate purchase contract. This is before the court on its own motion for summary disposition based on the lack of jurisdiction due to the absence of a final order.

The trial court's order granted relief on Arnold Unruh's claims. However, Killen's counterclaims were not resolved in the order and remain pending before the trial court. Generally, appeals may be taken only from final orders. See Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649. "To be final, the trial court's order or judgment must dispose of all parties and claims to an action." Id. ¶ 10. An order is not final when counterclaims remain pending before the trial court. See id. ¶ 11.

Because Killen's counterclaims remain pending in the trial court, the order granting summary judgment on Unruh's claims is

not a final, appealable order.¹ See id. "Where an appeal is not properly taken, this court lacks jurisdiction" and must dismiss the appeal. Id. ¶ 8.

Accordingly, this appeal is dismissed without prejudice to the filing of a timely notice of appeal from a final order.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge

1. Killen asserts that the order is final for the portion of the case within the scope of the summary judgment. However, that does not make it a final order for purposes of appeal. Killen has not pursued either interlocutory appeal under rule 5 of the Utah Rules of Appellate Procedure or trial court certification under rule 54(b) of the Utah Rules of Civil Procedure, the two means of appealing non-final orders.