IN THE UTAH COURT OF APPEALS

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Westgate Resorts, Ltd.,) MEMORANDUM DECISION) (Not For Official Publication)
Plaintiff and Appellant,) Case No. 20090065-CA
v. Consumer Protection Group, LLC) FILED) (April 9, 2009)
and Shaun S. Adel,	2009 UT App 93
Defendants and Appellee.)

Fourth District, Provo Department, 020404068

The Honorable Lynn W. Davis

Attorneys: Todd M. Shaughnessy, Salt Lake City; and Richard W. Epstein and Rebecca F. Bratter, Fort Lauderdale,

Florida, for Appellant

L. Rich Humpherys, Karra J. Porter, and Scot A. Boyd,

Salt Lake City, for Appellee

Before Judges Greenwood, Orme, and Davis.

PER CURIAM:

This case is before the court on a sua sponte motion for summary dismissal for lack of jurisdiction. We determine that the order being appealed is not final and appealable because it does not fully resolve the case pending in the district court.

Appellant Westgate Resorts, Ltd. (Westgate) concedes that the judgment from which the appeal is taken is not final and appealable. Westgate's memorandum focuses upon pending posttrial motions as the basis for the order being nonfinal. However, Appellee Consumer Protection Group, LLC (CPG) represents that "[n]ot only were post-trial motions filed . . . , but the order from which Westgate seeks to appeal resulted from a bifurcated trial that resolved only about 31 of 900 claims at issue in the case, and did not resolve any of the claims between Westgate and another defendant, Shaun Adel." CPG further states that it has agreed with Westgate that after disposition of Westgate's post-trial motions, "the trial court may issue an order that the trial court has expressly determined that there is no just reason for delay and that the trial court further

expressly directs the entry of final judgment." <u>See generally</u> Utah R. Civ. P. 54(b).

Westgate concedes that we lack jurisdiction over the appeal, but it requests this court to retain the appeal until the disposition of the post-trial motions and probable rule 54(b) certification. We decline. Unless and until the district court, having first resolved the post-trial motions, determines that certification of the order resolving a portion of the claims below is appropriate under rule 54(b) and makes the requisite findings, we lack jurisdiction and must dismiss the appeal. In the alternative, this court has not been presented with a timely petition for permission to appeal under rule 5 of the Utah Rules of Appellate Procedure, see Utah R. App. P. 5.

"[T]he initial inquiry of any court should always be to determine whether the requested action is within its jurisdiction." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). "When a matter is outside the court's jurisdiction it retains only the authority to dismiss the action." Id. Because this appeal is not taken from a final and appealable judgment, we dismiss the appeal, without prejudice to a timely appeal filed after the entry of a final appealable judgment resolving the entire case or certification by the district court of this judgment as final pursuant to rule 54(b) of the Utah Rules of Civil Procedure.

Pamela T. Greenwood, Presiding Judge
Gregory K. Orme, Judge
James Z. Davis, Judge