



answers and substantive motion practice on issues that have already been decided. For these reasons, the motion to amend the counterclaim is denied.

Second, it would be premature at this time to grant permission to appeal. Although ~~summary judgment has been granted to plaintiff Richard Daniels, the clerk has not yet~~ performed an accounting, and the court has not yet issued a final judgment order or decree of foreclosure under Rule 80.1(g) and Rule 58. Granting permission to appeal from the interlocutory summary judgment order would not move the case forward, but rather would prevent the entry of final judgment and create an unnecessary risk of piecemeal appeals: the first from the summary judgment order, and the second from the accounting and final judgment. This is not encouraged under the procedural rules governing interlocutory appeals. *In re Pyramid Co. of Burlington*, 141 Vt. 294, 305 (1982); *Castle v. Sherburne Corp.*, 141 Vt. 157, 162 (1982).

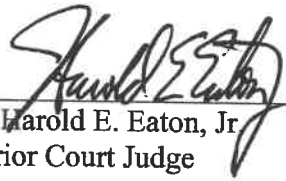
Indeed, the defendants have not articulated a reason why an appeal should be granted on an interlocutory basis. The rationale appears to be attempting to ensure that the request for permission to appeal is not deemed untimely.

Rule 80.1(m) and 12 V.S.A. § 4601 provide that permission to appeal should be requested within ten days following the final judgment order. This procedure promotes finality, *Bank of New York v. Lenge*, 172 Vt. 609, 609 (2001) (mem.), and there is no reason in this case why an appeal should be taken before the accounting and final judgment. The motion for permission to appeal is accordingly premature at this time, and therefore denied.

#### ORDER

Defendants' Motion to Amend Counterclaim (MPR #17), filed September 29, 2009, is *denied*. Defendants' Motions for Permission to Appeal (MPR #18 & MPR #20), both filed September 28, 2009, are also *denied*. The matter shall be scheduled for an accounting by the clerk.

Dated at Woodstock, Vermont this 23 day of October, 2009.

  
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Hon. Harold E. Eaton, Jr.  
Superior Court Judge

FILED

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WINDSOR COUNTY CLERK