

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

April 8, 2013

FOR THE TENTH CIRCUIT

**Elisabeth A. Shumaker
Clerk of Court**

In re: C.W. MINING COMPANY,

Debtor.

KENNETH A. RUSHTON, Trustee,

Plaintiff-Appellee -
Cross-Appellant,

v.

Nos. 13-4028 & 13-4036
(D.C. No. 2:10-CV-00039-TS)

C.O.P. COAL DEVELOPMENT
COMPANY,

Defendant-Appellant –
Cross-Appellee,

and

ANR, INC.; HIAWATHA COAL
COMPANY, INC.; AQUILA, INC.,

Defendants.

ORDER

Before **HARTZ, GORSUCH**, and **HOLMES**, Circuit Judges.

Appellant C.O.P. Coal Development Company (COP) and Cross-Appellant Kenneth Rushton (Trustee) each seek to appeal different aspects of a district court order affirming in part the judgment of the bankruptcy court and remanding for further

proceedings. These cross-appeals come before us on the court's order of March 20, 2013, which identified a potential defect in this court's appellate jurisdiction in both appeals, and the appellants' responses thereto. We conclude that we lack jurisdiction in both cases.

“A decision of the district court on appeal from a bankruptcy judge's final order is not itself final if the decision remands the case to the bankruptcy judge for significant further proceedings.” *In re Commercial Contractors, Inc.*, 771 F.2d 1373, 1375 (10th Cir. 1985), *overruled on other grounds by Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992); *see also Temex Energy, Inc. v. Underwood, Wilson, Berry, Stein & Johnson*, 968 F.2d 1003, 1005 (10th Cir. 1992) (holding that *In re Commercial Contractors* “continues to provide the test for the finality of district court decisions in bankruptcy proceedings”). “Significant further proceedings occur when the bankruptcy court undertakes more than mere ministerial computations involving little judicial discretion.” *In re Buckner*, 66 F.3d 263, 265 (10th Cir. 1995) (internal quotations omitted). These include proceedings “requiring de novo hearings, additional findings of fact concerning the dispositive issue in the case, or a determination of the amount of a claim.” *Id.* By contrast, “if matters on remand are unlikely either to generate a new appeal or to affect the issue that the disappointed party wants to raise on appeal from the order of remand, the district court's order is considered final.” *In re Rex Montis Silver Co.*, 87 F.3d 435, 438 (10th Cir. 1996) (internal quotations omitted).

As relevant here, the district court concluded that the bankruptcy court had failed to consider Utah law in deciding that COP was not entitled to prejudgment interest on its

cure claim and had erroneously limited its discretion in awarding attorney's fees as a sanction against COP for a discovery violation based on an erroneous view of the law. The district court remanded for further consideration of these two issues.

With regard to COP's entitlement to prejudgment interest, the district court directed the bankruptcy court to determine, in accordance with Utah law, whether COP's damages are complete and whether they can be measured, and, if so, to undertake the appropriate calculation. This mandate might require additional hearings and additional findings of fact, certainly more than mere ministerial computations. Furthermore, whether the bankruptcy court ultimately determines that COP is entitled to prejudgment interest or not, the decision is likely to engender an appeal by the party who does not prevail. Thus, we conclude that this remand contemplates significant further proceedings.

Moreover, because prejudgment interest is generally considered part of a party's damages, *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 175 (1989), the district court's remand of this issue renders its entire order nonfinal. It is well-established that neither counsel nor a party may appeal the imposition of sanctions prior to the entry of final judgment. See *G.J.B. & Assocs., Inc. v. Singleton*, 913 F.2d 824, 827 (10th Cir. 1990) (sanctions imposed on counsel); *D&H Marketers, Inc. v. Freedom Oil & Gas, Inc.*, 744 F.2d 1443, 1445-46 (10th Cir. 1984) (sanctions imposed on a party). As a result, regardless of whether the district court's remand of the attorney fee sanction requires

significant further proceedings, we lack jurisdiction to review this issue.

Appeals DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, reading "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro
Counsel to the Clerk