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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JOHN P. MCDONNELL,
Appellant and Cross-Appellee,
v.
WILLIE JOHN RILEY,
Appellee and Cross-Appellant.

Case No. [15-cv-01832-BLF](#)

**ORDER (1) DENYING APPELLANT'S
LEAVE TO APPEAL BANKRUPTCY
COURT ORDER AND (2) DENYING
CROSS-APPELLANT'S LEAVE TO
CROSS-APPEAL BANKRUPTCY
COURT ORDER**

Appellant John P. McDonnell seeks leave to appeal a November 6, 2014 order of the Bankruptcy Court (“order”) denying in part McDonnell’s motion for summary judgment in an adversary proceeding. McDonnell Opening Br. 1, ECF 12. Appellee Willie John Riley cross-appeals and asks this Court to reverse a portion of the order granting in part McDonnell’s motion for summary judgment. For the reasons stated below, the Court finds that the order at issue is not an appealable final order within the meaning of 28 U.S.C. § 158(a)(1), nor do the circumstances of this case warrant interlocutory review pursuant to 28 U.S.C. § 158(a)(3). Accordingly, the Court DENIES both McDonnell’s leave to appeal and Riley’s leave to cross-appeal the Bankruptcy Court’s order.

1 **I. BACKGROUND**

2 Between 2004 and 2006, Riley retained McDonnell, an attorney, regarding litigation over a
3 house in San Juan Bautista, California, litigation for misappropriation of trade secrets, and
4 litigation against two of Riley’s former attorneys. Op.¹ 6, ECF 8-3. During this time, Riley and
5 McDonnell never entered into a written fee agreement. *Id.* By the end of 2006, Riley had
6 accumulated approximately \$104,000 in legal fees. *Id.*

7 What happened next is disputed by the parties. According to McDonnell, in February
8 2007, Riley offered to provide security for his unpaid legal bills in the form of a lien on his home
9 located at 3604 Cobbert Street, San Jose, California (“Property”). *Id.* at 7. McDonnell claims that
10 he advised Riley of the rules regarding dealings between an attorney and client, first verbally, and
11 then by e-mail on February 21, 2007. *Id.* at 7; Exh. F to McDonnell Decl., ECF 11-4 (February
12 21, 2007 e-mail from McDonnell to Riley). On March 5, 2007, Riley met with McDonnell and
13 signed a promissory note for \$125,000 secured by a deed of trust encumbering Riley’s Property.
14 Op. 7, ECF 8-3; Exh. H to McDonnell Decl., ECF 11-4 (promissory note and deed of trust). The
15 deed of trust had been incorrectly notarized, so Riley and McDonnell executed the deed of trust a
16 second time on March 28, 2007 and it was recorded on May 3, 2007. Op. 7, ECF 8-3.

17 Riley, meanwhile, claims at the March 5, 2007 meeting, McDonnell said that he would
18 never take Riley’s Property and placed significant pressure on Riley to sign the documents. *Id.* at
19 8. Riley also claims that he expressed reservations about granting the deed of trust to McDonnell
20 and told McDonnell that he would only sign the deed of trust on the understanding that it was not
21 part of the deal. Riley Decl. ¶ 5, ECF 10-8. After allegedly being reassured by McDonnell that he
22 would never take Riley’s Property, Riley signed the promissory note and deed of trust. Op. 8,
23 ECF 8-3.

24 After signing the promissory note and deed of trust, McDonnell continued to perform legal
25 services on Riley’s behalf throughout 2008 and into 2009. *Id.* at 9. By the end of 2008, Riley’s
26 unpaid legal fees totaled \$210,000. *Id.*

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¹ “Op.” refers to the bankruptcy judge’s November 6, 2015 order located at ECF 8-3.

1 In February 2009, after Riley missed a scheduled payment, McDonnell and Riley started
2 exchanging a series of e-mails regarding payment that lasted throughout 2009. Starting in
3 February, McDonnell sent Riley an e-mail requesting delivery of the missed payment and
4 informing Riley that any further missed payments would require McDonnell to withdraw as his
5 attorney. Exh. J to McDonnell Decl, ECF 11-4. McDonnell's February 12, 2009 e-mail stated:

6 As I said before; all th[at] counts now is cash. I need it, and I need to take
7 the steps to get it. That means getting out of your cases and initiating a
8 collection action. I am starting that process immediately. I am sending you
a Notice of Right to Arbitrate...

9 *Id.* Along with this e-mail, McDonnell sent Riley a Notice of Client's Right to Arbitrate a Fee
10 Dispute. Op. 9, ECF 8-3.

11 On February 18, 2009, Riley sent McDonnell an e-mail, which stated:

12 Suing me on my house with that \$500,000.00 IRS lien only puts you in
13 third place and I almost wish someone would take that amount off of my
14 back. This is insane and you are once again looking into my wallet and
seeing something that is not there.

15 Exh. E to McDonnell Supp. Decl., ECF 11-10.

16 On July 22, 2009, McDonnell sent Riley an e-mail, which stated:

17 I know this is the worst time to hear this, but I have no choice but to call
18 the loan. When we did this in March 2007 we expected to get the bill
19 handled in 6 months or so. We are now over 2 years out, and I can't go any
further.

20 Please immediately look into what you can do to refinance your place on
21 Cobbert and get my loan paid off. Incidentally, the IRS does not have a
lien on Cobbert.

22 Realistically, I need to have you resolve this in 30 days, or I have to take
23 action. Naturally, I would prefer to avoid that, but it is no longer a matter
24 of choice. Please contact some banks as soon as possible and let me know
what you will be able to do.

25 Exh. K to McDonnell Decl., ECF 11-4.

26 On October 9, 2009, McDonnell sent Riley another e-mail, which stated:

27 In addition, as I told you last month, I have run out of money and out of
28 credit. I have not been able to pay my son's tuition. I am 3 months behind

1 in rent and other payments here at my office. That's why I told you I am
2 calling the loan. I don't want to move against your house, but you are
leaving me no choice.

3 Exh. H to McDonnell Supp. Decl, ECF 11-10.

4 McDonnell does not indicate that Riley made any further payments after the July 22, 2009
5 e-mail. Despite this, McDonnell continued to serve as Riley's lawyer and did not seek to
6 withdraw as his lawyer until 2010. McDonnell Decl. ¶ 26, ECF 11-4. In May 2010, the San
7 Benito County Court granted McDonnell's request to withdraw from representing Riley in a case,
8 and in July 2010, the Santa Clara County Court did the same. *Id.*

9 In September 2010, McDonnell transferred the promissory note and deed of trust to
10 Playforge LLC for \$140,000. *Id.* at ¶ 28. In October 2010, Playforge recorded a notice of default
11 and in November 2012, Playforge recorded another notice of default. *Id.* A trustee's sale was set
12 for May 10, 2013 but Riley filed for bankruptcy on May 8, 2013. *Id.* Playforge then sold the
13 promissory note and deed of trust to the Mackin Trust for \$140,000.

14 On August 13, 2013, Riley filed an adversary proceeding containing causes of action for
15 (1) fraud/negligent misrepresentation regarding McDonnell's alleged promise never to take
16 Riley's Property, (2) cancellation of the promissory note and deed of trust because McDonnell's
17 failure to have a written fee agreement violated Cal. Bus. & Prof. Code § 6148; (3) cancellation of
18 the promissory note and deed of trust because McDonnell failed to tell Riley to seek independent
19 counsel and pressured Riley to sign the promissory note and deed of trust in violation of the
20 California Rules of Professional Conduct; (4) cancellation of the note and deed of trust because
21 McDonnell alleged in his state court complaint that Riley owed \$102,092 and not the \$125,000
22 amount of the promissory note and deed of trust, and (5) declaratory relief that Riley owes nothing
23 to McDonnell and cancelling the promissory note and deed of trust; and (6) injunctive relief
24 enjoining the foreclosure sale. Riley Compl. ¶¶ 1-70, ECF 10-1. McDonnell moved for summary
25 judgment on May 2, 2014.

26 Pertinent to this order are the Bankruptcy Court's denial of summary judgment on Riley's
27 first cause of action and grant of summary judgment on his second cause of action. As to Riley's
28 first cause of action for fraud, McDonnell argued that it was barred by the three year statute of

1 limitations. Reply to SJ 8-10, ECF 11-3. According to McDonnell, because of the series of e-
2 mails exchanged between the parties in February, July, and October of 2009, Riley was on notice
3 of any potential fraud by October 2009, and his August 2013 complaint would be outside the
4 statute of limitations. *Id.* As to Riley’s second cause of action for cancellation of the promissory
5 note and deed of trust, McDonnell argued that Riley cannot cancel the promissory note and deed
6 of trust under Cal. Bus. & Prof. Code § 6148. *Id.* at 10-11. According to McDonnell, the only
7 sanction for failing to have a written fee agreement under § 6148 is that the attorney is limited to
8 collect a reasonable fees from the client; it does not allow for the invalidation of a promissory note
9 and deed of trust. *Id.* at 11.

10 In a tentative ruling, the Bankruptcy Court found the October 9, 2009 e-mail put Riley on
11 actual notice of fraud. Tentative Op. 11, ECF 11-11. The Bankruptcy Court, however, ordered
12 additional briefing on whether any damage had accrued to Riley by October 2009. *Id.* at 14. With
13 respect to Riley’s second cause of action, the Bankruptcy Court agreed with McDonnell and found
14 that assuming Cal. Bus. Prof. Code § 6148 was violated, the statute “imposes no sanctions on an
15 attorney who lacks a written fee agreement, other than limiting the attorney to recovery of a
16 reasonable attorney’s fee.” *Id.* at 13. Since Riley did not allege the fees charged by McDonnell
17 were unreasonable, nor any authority that a violation of § 6148 causes a promissory note or deed
18 of trust to be invalidated, the Bankruptcy Court granted summary judgment in favor of
19 McDonnell. *Id.*

20 On November 6, 2014, the bankruptcy court issued its order on McDonnell’s summary
21 judgment motion. Op., ECF 11-13. In the order, the Bankruptcy Court denied McDonnell’s
22 motion for summary judgement on Riley’s first cause of action. *Id.* at 8-12. In a change of
23 position from its tentative ruling, the Bankruptcy Court determined that whether the October 2009
24 e-mail put Riley on notice of fraud was a factual inquiry that could not be decided at summary
25 judgment. *Id.* at 11-12. The Bankruptcy Court granted McDonnell’s motion for summary
26 judgment on Riley’s second cause of action for the same reasons as in its tentative ruling. *Id.* at
27 12-13. The Bankruptcy Court entered its order on April 8, 2015. McDonnell filed a timely notice
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1 of appeal on April 22, 2015, ECF 1, and Riley filed a timely notice of cross-appeal² on May 4,
2 2015, ECF 8-3.

3 **II. LEGAL STANDARD**

4 Under 28 U.S.C. § 158(a)(1), a district court has jurisdiction to hear appeals of final orders.
5 A final order is one that “ends litigation on the merits and leaves nothing for the court to do but
6 execute the judgment.” *In re Cameron*, Case No. 13-cv-02018-SI, 2014 WL 1028436, at *3 (N.D.
7 Cal. March 17, 2014). In bankruptcy cases, the Ninth Circuit applies a “pragmatic approach” to
8 finality and has held that an order is final where it “(1) resolves and seriously affects substantive
9 rights and 2) finally determines the discrete issue to which it is addressed.” *In Frontier*
10 *Properties, Inc.*, 979 F.2d 1358, 1362 (9th Cir. 2002). In an adversary proceeding, however, “an
11 order is final if it would be considered an appealable final order in an ordinary federal civil action
12 under 28 U.S.C. § 1291.” *Cameron*, 2014 WL 1028436 at *3 (citing *In re King City Transit Mix,*
13 *Inc.*, 738 F.2d 1065, 1066 (9th Cir. 1984) (holding that “the unique nature of a[n adversary]
14 proceeding does not warrant a departure from final order jurisprudence developed in the context of
15 28 U.S.C. § 1291”)).

16 Under “exceptional circumstances,” a district court also has jurisdiction to hear appeals
17 from interlocutory orders “with leave of the court.” *In re Cement Antitrust*, 673 F.2d 1020, 1026
18 (9th Cir. 1982); 28 U.S.C. § 158(a)(3). When an appeal of an interlocutory order has been taken
19 without leave from the bankruptcy court, the district court may “treat the notice of appeal as a
20 motion for leave” to appeal. Bankruptcy Rule 8004(d). In determining whether an interlocutory
21 order may be appealed, courts “look to the analogous provision of 28 U.S.C. § 1292(b), which
22 governs appellate review by the Courts of Appeals of interlocutory district court orders.” *In re*
23 *Plant Insulation Co.*, Case No. 09-4222-RS, 2010 WL 1526320, at *2 (N.D. Cal. April 14, 2010).
24 Under § 1292(b), interlocutory orders may be appealed only if (1) a controlling question of law is
25 involved, (2) the order involves an issue about which there is substantial ground for difference of
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27 ² Although Riley’s notice of cross-appeal did not indicate he wished to have his cross-appeal heard
28 by a district court, ECF 8-3 at 2, because McDonnell chose to have his appeal heard by the district
court, ECF 1 at 2, Riley’s cross-appeal was also transmitted to the district court.

1 opinion, and (3) an immediate appeal may materially advance the ultimate termination of the
2 litigation. *In re Cement*, 673 F.2d at 1026. The “party pursuing the interlocutory appeal bears the
3 burden of demonstrating” that the statutory requirements are met. *Couch v. Telescope, Inc.*, 611
4 F.3d 629, 633 (9th Cir. 2010).

5 **III. DISCUSSION**

6 **A. McDonnell’s Appeal**

7 Since McDonnell has appealed an interlocutory order without leave from the bankruptcy
8 court, the Court “treat[s] the notice of appeal as a motion for leave” to appeal. Bankruptcy Rule
9 8004(d). McDonnell argues that the Court should hear his interlocutory appeal of the Bankruptcy
10 Court’s denial of summary judgment on Riley’s first cause of action for two reasons. First,
11 McDonnell claims that “a correct decision on the remaining fraud claim would substantially
12 resolve the case and conserve court resources.” McDonnell Opening Br. 1-2, ECF 12. Second,
13 McDonnell notes the Bankruptcy Court’s order on summary judgment contradicted its tentative
14 ruling and argues that under either the tentative ruling’s reasoning or order’s reasoning, summary
15 judgment should have been granted. *Id.* at 2. According to McDonnell, the Bankruptcy Court’s
16 tentative ruling held that Riley had notice of any fraud by October 2009, while the Bankruptcy
17 Court’s order held that McDonnell’s October 2009 e-mail could have meant that McDonnell
18 intended to keep his promise at the time it was made, “but then changed his mind two years later
19 when Riley ha[d] still not paid.” *Id.* If Riley had notice of any fraud by October 2009, then the
20 statute of limitations would have ran and if instead, McDonnell intended to keep his promise, but
21 changed his mind, there would be no fraud because McDonnell’s initial promise was not made
22 without any intention to perform it. *Id.*

23 Riley, on the other hand, disagrees that the Bankruptcy Court’s ruling on summary
24 judgment is an interlocutory order and simply states that “jurisdiction is provided by 28 U.S.C. §
25 158” and the Bankruptcy Court’s order “is final.” Riley Response 4, ECF 14.

26 As an initial matter, the Bankruptcy Court’s order denying summary judgment is an
27 interlocutory order and not a final order. *Lum v. City and Cnty. of Honolulu*, 963 F.2d 1167, 1169
28 (9th Cir. 1992) (holding the “appropriate forum to review the denial of a summary judgment

1 motion is through interlocutory appeal under 28 U.S.C. § 1292(b)"). Thus, in determining
2 whether interlocutory appeal is appropriate, the Court addresses whether McDonnell's appeal
3 involves a controlling question of law, whether there is substantial ground for difference of
4 opinion, and whether an immediate appeal on that legal question may materially advance the
5 termination of the litigation.

6 **i. Controlling Question of Law**

7 In order for a question to be controlling, "all that must be shown...is that resolution of the
8 issue on appeal could materially affect the outcome of litigation in district court." *In re Cement*,
9 673 F.2d at 1026. "However, courts have repeatedly held that § 1292(b) was not meant to apply to
10 cases in which the party opposing summary judgment had raised a genuine issue of material
11 fact..." *Harris v. Vector Mktg. Corp.*, Case No. 08-CV-5198-EMC, 2009 WL 4050966, at *2
12 (N.D. Cal. Nov. 20, 2009) (collecting cases). "[T]he underlying issue of whether [Plaintiff] has
13 presented sufficient evidence to show a genuine issue...[of] material fact, and thus avoid summary
14 judgment under Fed. R. Civ. P. 56(c), is not a question of law within the meaning of § 1292(b)." *Id.*
15 (quoting *Malbrough v. Crown Equip. Corp.*, 392 F.3d 135, 136 (5th Cir. 2004) (internal
16 quotations omitted)).

17 Based on McDonnell's statement of issues, he believes the controlling question of law
18 involved in his appeal is whether Riley knew or should have known of any fraud in 2009 based on
19 the several e-mails that McDonnell had sent him. McDonnell Opening Br. 2, ECF 12. However,
20 the Bankruptcy Court concluded there was a disputed issue of fact about when Riley knew or
21 should have known about potential fraud. Op. 16, ECF 8-3. As such, interlocutory appeal is not
22 appropriate under § 1292(b). McDonnell appears to argue that the Bankruptcy Court did not find
23 a disputed issue of material fact, but instead determined McDonnell's October 2009 e-mail
24 indicated that McDonnell had changed his mind and was now going to enforce the deed of trust.
25 McDonnell Opening Br. 5. McDonald's argument misinterprets the Bankruptcy Court's analysis.
26 In explaining how the series of communications in 2009 gave rise to a disputed issue of fact, the
27 Bankruptcy Court speculated as to how a reasonable factfinder could interpret those
28 communications. See Op. 16, ECF 8-3. For example, the Bankruptcy Court suggested that the e-

1 mails (1) “did not necessarily put [Riley] on notice of fraud,” (2) “could also have been simply a
2 threat to put pressure on [Riley] to pay,” or (3) indicated to Riley that McDonnell had changed his
3 mind. Contrary to McDonnell’s understanding of the Bankruptcy Court’s ruling, the Bankruptcy
4 Court did not actually find the e-mail gave rise to any of the preceding conclusions but rather, was
5 illustrating how this situation presented an issue of fact that was not resolvable on summary
6 judgment. Accordingly, given the factual inquiry needed in resolving McDonnell’s appeal,
7 McDonnell has not shown that this appeal involves a controlling question of law.

8 **ii. Substantial Ground for Difference of Opinion**

9 The second factor under § 1292(b) is whether there is substantial ground for difference of
10 opinion on the question at issue. McDonnell appears to believe there is a substantial ground for
11 difference of opinion based on the fact that the Bankruptcy Court contradicted its tentative ruling.
12 However, that is not sufficient to meet this factor. “Courts traditionally will find that a substantial
13 ground for difference of opinion exists where the circuits are in dispute on the question and the
14 court of appeals of the circuit has not spoken on the point, if complicated questions arise under
15 foreign law, or if novel and difficult questions of first impression are presented.” *Couch*, 611 F.3d
16 at 633 (internal quotations omitted). “However, just because a court is the first to rule on a
17 particular question or just because counsel contends that one precedent rather than another is
18 controlling does not mean there is such a substantial difference of opinion as will support an
19 interlocutory appeal.” *Id.* Simply disagreeing, even strongly disagreeing, with a court’s ruling, is
20 not sufficient for there to be a substantial ground for difference of opinion. *Id.* McDonnell has
21 cited no California or federal case establishing that, based on the series of e-mails exchanged
22 between the parties in 2009, Riley knew or should have known about potential fraud.
23 Accordingly, McDonnell has not met this factor.

24 **iii. Materially Advance Ultimate Termination of Litigation**

25 The final factor in determining whether to hear an interlocutory appeal is whether an
26 immediate appeal “may materially advance the ultimate termination of litigation.” This factor is
27 met when resolution of the controlling question of law “may appreciably shorten the time, effort,
28 or expense of conducting a lawsuit.” *In re Cement Antitrust Litig.*, 673 F.2d at 1027. McDonnell

1 argues that a review of the Bankruptcy Court’s denial of summary judgment would conserve court
2 resources. The Court finds McDonnell has not carried his burden in showing that the hearing of
3 an interlocutory appeal would materially advance the ultimate termination of litigation. Under
4 McDonnell’s reasoning, a party would be able to appeal every time summary judgment is denied
5 even though interlocutory appeals should be heard only in exceptional cases. *In re Cement*
6 *Antitrust*, 673 F.2d at 1026. As a result, McDonnell must do more than just note that granting
7 summary judgment would end litigation. For example, McDonnell could have provided
8 information about the length of trial or trial time that would be saved. *See Wright & Miller*, 16
9 *Fed. Prac. & Proc. Juris. 2d* § 3930 (“If trial of the case can be had in a few days, the possibility of
10 saving relatively small amounts of trial-court time is not thought sufficient to justify immediate
11 appeal.”); *see also Stuart v. Radioshack Corp.*, Case No. 07-cv-4499-EMC, 2009 WL 1817007, at
12 *4 (N.D. Cal. June 25, 2009). Thus, McDonnell has not shown that hearing his appeal would
13 materially advance the ultimate termination of litigation.

14 Since McDonnell has not carried his burden under all three factors, the Court DENIES
15 McDonnell’s motion for leave to appeal the Bankruptcy Court’s order.

16 **B. Riley’s Cross-Appeal**

17 Riley claims that his cross-appeal is “from an order from the [Bankruptcy Court] granting
18 partial summary judgment, and is final.” Riley Cross Appeal 4, ECF 13. McDonnell does not
19 address the Court’s jurisdictional basis for hearing Riley’s cross-appeal. *See generally* McDonnell
20 *Response*, ECF 17. Riley did not file a reply brief to his cross-appeal.

21 The Bankruptcy Court’s order denied summary judgment on Riley’s first cause of action,
22 granted summary judgment on Riley’s second and third causes of action, and dismissed Riley’s
23 fifth and sixth cause of action to the extent they were based on Riley’s second and third causes of
24 action. Op. 3-4, ECF 8-3. An order granting in part and denying in part summary judgment is not
25 a final order. *Dannenbergh v. Software Toolworks Inc.*, 16 F.3d 1073, 1074 (9th Cir. Feb. 18,
26 1994) (“It is axiomatic that orders granting partial summary judgment, because they do not
27 dispose of all claims, are not final appealable orders under § 1291.”).

28 As a result, Riley is cross-appealing an interlocutory order. Since Riley has appealed an

1 interlocutory order without leave from the bankruptcy court, the Court “treat[s] the notice of
2 appeal as a motion for leave” to appeal. Bankruptcy Rule 8004(d). In order to hear Riley’s appeal
3 on an interlocutory basis, Riley must show this his appeal involves a controlling question of law, a
4 substantial ground for difference of opinion, and whether legal question that may materially
5 advance the termination of the litigation. Riley has failed to make any argument as to why his
6 appeal meets the preceding three factors, and thus, has failed to carry his burden.

7 Moreover, the Court notes that Riley basis his cross-appeal on his view of the holding in
8 *Iverson, Yoakum, Papiano & Hatch v. Berwald*, 76 Cal. App. 4th 990, 996, 90 Cal. Rptr. 2d 665
9 (1999). Riley never cited this case or raised this argument to the Bankruptcy Court in opposing
10 McDonnell’s motion for summary judgment. Riley Cross Appeal 8-9, ECF 13. Riley tries to
11 cover up this fact by misconstruing the bankruptcy proceedings below. According to Riley, the
12 Bankruptcy Court issued a tentative decision on November 6, 2014, and then fearing no hearing
13 would be allowed on the tentative decision, Riley filed a supplemental memorandum of points and
14 authorities on December 12, 2014 that contained for the first time his argument based on *Iverson*.
15 *Id.* at 9. According to Riley, the Bankruptcy Court issued its final order on April 7, 2015.

16 Riley’s recap of the Bankruptcy Court proceeding is careless at best. The Bankruptcy
17 Court did not issue a tentative decision on November 6, 2014 – it issued its tentative decision on
18 August 19, 2014. Tentative Op., ECF 11-11. The Bankruptcy Court further allowed the parties to
19 submit additional briefing on the issues raised in the tentative decision and set a hearing for
20 September 19, 2014. *Id.* at 14. Riley did not submit any additional briefing nor bring the *Iverson*
21 case to the Bankruptcy Court’s attention. The Bankruptcy Court’s November 6, 2014 order,
22 contrary to Riley’s characterization, was its final³ order. Op., ECF 8-3. The Bankruptcy Court
23 ordered the parties to submit a proposed order, *id.* at 19-20, and instead of doing so, Riley filed
24 additional briefing that finally raised the *Iverson* case. At this point, Riley’s additional briefing
25 and arguments were untimely and Riley cannot raise on appeal, an argument he did not timely
26 raise in the Bankruptcy Court. The Bankruptcy Court finally entered its order on April 8, 2015.

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28 ³ For clarity, final in this context does not mean final for purposes of appeal under § 1291, but
rather, a decision that is no longer tentative.

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Op., ECF 8-3.

In any event, because Riley did not offer any argument as to why this Court should hear his interlocutory appeal, Riley has failed to carry his burden, and the Court DENIES Riley's motion for leave to appeal.


IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. McDonnell's motion for leave to appeal is DENIED.
2. Riley's motion for leave to cross-appeal is DENIED.

IT IS SO ORDERED.

Dated: February 16, 2016


BETH LABSON FREEMAN
United States District Judge