

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ROBERT S. BLENDHEIM, et al.,

CASE NO. C16-1376-JCC

10 Appellants,

ORDER GRANTING APPELLEES'
MOTION TO DISMISS APPEAL

11 v.

12 THE NOTE HOLDER, et al.,

13 Appellees.
14

15 This matter comes before the Court on Appellees' motion to dismiss appeal (Dkt.
16 No. 14). Having thoroughly considered the parties' briefing and the relevant record, the Court
17 finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained
18 herein.

19 **I. BACKGROUND**

20 This case stems from the prior litigation of Appellants Robert and Darlene Blendheim
21 ("Blendheims") in the United States Bankruptcy Court for the Western District of Washington.
22 The Blendheims filed a motion for summary judgment to recover attorney fees and costs related
23 to their prior bankruptcy litigation. (Dkt. No. 13-2 at 191–213.) The Honorable Marc L. Barreca,
24 United States Bankruptcy Judge, granted the motion in part in the memorandum opinion
25 regarding debtors' motion for summary judgment for determination of fees ("Memorandum
26 Opinion"). (Dkt. No. 13-2 at 555–79.) Judge Barreca considered nine categories of fee requests

1 and granted seven requests, denied one request for interest on fee awards, and indicated that he
2 would later award fees related to the motion for summary judgment. (Dkt. No. 13-2 at 569–579).
3 The Blendheims filed a motion for reconsideration which was denied. (Dkt. No. 1 at 45–46). The
4 Blendheims next filed a notice of appeal with this Court. (Dkt. No. 1 at 47–51). Appellees now
5 seek to dismiss this appeal. (Dkt. No. 14.)

6 **II. DISCUSSION**

7 **A. Motion to Appeal an Interlocutory Order**

8 Appellees assert that the Blendheims’ motion to appeal should be dismissed as the
9 Memorandum Opinion was interlocutory and not “a final and appealable judgment, order, or
10 decree.” (Dkt. No. 14 at 2.) In support, Appellees point to the language in the Memorandum
11 Opinion regarding the Blendheims’ motion for summary judgment fees: “[c]ontingent upon
12 further briefing and submission of time records, I will award Debtors a portion of their
13 reasonable attorneys’ fees and costs related to litigating.” (Dkt. No. 13-2 at 532.) Appellees
14 argue that the Memorandum Opinion was not final and therefore any appeal is not appropriate at
15 this time. (Dkt. No. 14 at 7.)

16 In response, the Blendheims assert that the Memorandum Opinion was final and point to
17 the language that “with entry of this order Debtors will obtain a final judgment” as evidence.
18 (Dkt. No. 16 at 2.) The Blendheims insist that the summary judgment fees were clearly awarded
19 in the Memorandum Opinion and although the specific amount is to be determined, that merely
20 requires the Bankruptcy Court to apply its pre-determined “rubric to a subsequent submission of
21 time records.” (*Id.*)

22 A final court decision is usually “one which ends the litigation on the merits and leaves
23 nothing for the court to do but execute the judgment.” *Budinich v. Becton Dickinson & Co.*, 486
24 U.S. 196, 199 (1988). The fact that there may still be a question remaining after a decision is
25 issued “does not prevent finality if its resolution will not alter the order or moot or revise
26 decisions embodied in the order.” *Id.* However, an attorney fees award “does not become final

1 until the amount of the fee award is determined.” *Image Tech. Serv., Inc. v. Eastman Kodak Co.*,
2 136 F.3d 1354, 1357 (9th Cir. 1998). It is “premature to appeal the fee award until the amount
3 [is] determined by the court.” *Id.* Here, the Memorandum Opinion clearly indicates that the
4 amount of the fee award is yet to be determined. Therefore, the Blendheims’ appeal of the
5 Memorandum Order is an appeal of an interlocutory order.

6 When an appeal is filed on an interlocutory order it must be accompanied by a motion for
7 leave to appeal. Fed. R. Bankr. P. 8004(a)(2). In the absence of such a motion, the district court
8 may order the appellant to file one or treat the notice of appeal as a motion for leave and grant or
9 deny it. Fed. R. Bankr. P. 8004(d). The Blendheims request that the Court treat the notice of
10 appeal as a motion for leave and grant the appeal. (Dkt. No. 16 at 3.) Appellees request that the
11 Court dismiss the appeal. (Dkt. No. 14 at 10.) As the Bankruptcy Court has yet to resolve the
12 issue of attorney fees associated with the motion for summary judgment, this Court will not
13 prematurely intervene in the process. The Blendheims’ appeal is DISMISSED as not ripe.

14 **III. CONCLUSION**

15 For the foregoing reasons, Appellees’ motion to dismiss (Dkt. No. 14) is GRANTED.
16 The Clerk is respectfully directed to CLOSE the case.

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18 DATED this 2nd day of March, 2017.

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24 John C. Coughenour
UNITED STATES DISTRICT JUDGE