

OCT 17 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: PETER THOMAS McCARTHY,

Debtor,

PETER THOMAS McCARTHY,

Appellant,

v.

AMY L. GOLDMAN, Esq., Chapter 7
Trustee,

Appellee,

and

NATURE'S WING FIN DESIGN, LLC,

Appellee-Intervenor.

No. 10-56743

D.C. No. 2:10-cv-00936-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Peter Thomas McCarthy appeals pro se from the district court's order dismissing his interlocutory appeal of the bankruptcy court's order denying his motion to confirm that certain contractual rights were excluded from the estate. We review de novo our own jurisdiction and whether a bankruptcy court's decision is final under 28 U.S.C. § 158(d). *Silver Sage Partners, Ltd. v. City of Desert Hot Springs (In re City of Desert Hot Springs)*, 339 F.3d 782, 787 (9th Cir. 2003). We dismiss.

The bankruptcy court's order denying McCarthy's "motion to confirm [that] rejected executory contracts and rights thereunder were not estate property" is not a final decision over which we have appellate jurisdiction. *See United States v. Fowler (In re Fowler)*, 394 F.3d 1208, 1211 (9th Cir. 2005) (discussing "pragmatic approach to determining finality" of bankruptcy court orders and setting forth tests to determine finality); *see also Rains v. Flinn (In re Rains)*, 428 F.3d 893, 901 (9th Cir. 2005) (explaining that this court has jurisdiction only when both the bankruptcy court order and the decision of the district court acting in its

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*. Accordingly, McCarthy's request for oral argument is denied.

bankruptcy appellate capacity are final orders).

Appellee-Intervenor's request for judicial notice is denied as moot.

DISMISSED.