

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

FLAGSHIP WEST, LLC, et al.,

Plaintiffs,
vs.
EXCEL REALTY PARTNERS, L.P.,
et al.,
Defendants.

) 1:02cv05200 LJO DLB
)
)
) ORDER REQUESTING ADDITIONAL
) BRIEFING
)
)
)
)

On October 21, 2011, Defendants Excel Realty Partners, L.P. and New Plan Excel Realty Trust, Inc. filed a notice of appeal from the final judgment entered in this action on September 28, 2011. On the same date, Defendants filed an *ex parte* motion for an order staying any and all proceedings to enforce the judgment and approving a supersedeas bond.

During pendency of the *ex parte* motion, Plaintiffs Flagship West, LLC, Marvin G. Reiche and Kathleen Reiche filed a motion for an order awarding them attorneys' fees in this matter, but reserved their right to move for any fees connected with enforcing their judgment, post-judgment motions and any appeal taken in this matter.

On October 28, 2011, the Court ordered Plaintiffs not to execute the judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

On November 3, 2011, Plaintiffs filed a cross-appeal from the Court’s final judgment.

Thereafter, on November 4, 2011, the Court approved the supersedeas bond posted by Defendants.

Given the procedural posture of this case, including the supersedeas bond, the stay of enforcement and the pending cross-appeals, the Court requests that the parties address the propriety of ruling on the claim for fees at this time, including whether or not the parties seek a ruling at this time, deferral of a ruling or denial of the motion without prejudice until the appeals have been resolved. *See, e.g.*, Advisory Committee notes to Fed. R. Civ. P. 54(d) (If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved). The parties shall file a joint statement addressing this issue on or before December 7, 2011.

IT IS SO ORDERED.

Dated: December 1, 2011

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE