

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Case No. 08-cv-00324-PAB-MJW

MARGARET L. YATES, and
TODD F. MAYNES,

Plaintiffs,

v.

PORTOFINO REAL ESTATE PROPERTIES COMPANY, LLC,
THE PORTOFINO CLUB, LLC,
ROCKS AZ 1, LLC,
SUN RIVER I, LLC, and
RONALD A. TAPP,

Defendants.

ORDER

This matter is before the Court on plaintiffs' motion to amend judgment pursuant to Federal Rule of Civil Procedure 59(e) [Docket No. 206]. The Court dismissed this action without prejudice for lack of subject matter jurisdiction on November 3, 2010 [Docket No. 193]. The Clerk of Court entered judgment in favor of defendants on November 4, 2010 [Docket No. 200]. That judgment provided that defendants could have their costs upon the filing of a Bill of Costs within 14 days from entry of judgment. In their motion, plaintiffs seek to have this aspect of the judgment removed, arguing that an award of costs pursuant to Federal Rule of Civil Procedure 54(d)(1) is inapplicable upon dismissal without prejudice for lack of subject matter jurisdiction. *Cf. Callicrate v. Farmland Indus. Inc.*, 139 F.3d 1336, 1340 n.8 (10th Cir. 1998) (noting the distinction between an award of costs pursuant to Fed. R. Civ. P. 54(d)(1) and an award pursuant

to 28 U.S.C. § 1919 upon dismissal for lack of jurisdiction).

On November 12, 2010, the Court stayed the judgment's provision regarding the award of costs until such time as plaintiffs' motion to amend judgment is resolved. The Court further stated that, in the absence of a timely response to plaintiffs' motion by Portofino Real Estate Properties Company, LLC ("PREPCO"), the motion would be deemed conceded. PREPCO did not file a response to plaintiffs' motion.¹ Therefore, it is

ORDERED that plaintiffs' motion to amend judgment pursuant to Federal Rule of Civil Procedure 59(e) [Docket No. 206] is GRANTED. The judgment shall be amended to remove the provision of costs.

DATED December 9, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge

¹PREPCO did file a proposed second amended bill of costs [Docket No. 209].