

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EQUITY LIFESTYLE PROPERTIES, INC.,

Plaintiff,

vs.

Case No. 2:05-cv-165-FtM-29SPC

FLORIDA MOWING & LANDSCAPE SERVICE,
INC.,

Defendant.

FLORIDA MOWING & LANDSCAPE SERVICE,
INC.,

Plaintiff,

vs.

Case No. 2:05-cv-187-FtM-29SPC

EQUITY LIFESTYLE PROPERTIES, INC.,
f/k/a MANUFACTURED HOME COMMUNITIES,
INC.,

Defendant.

OPINION AND ORDER

_____This matter comes before the Court on Florida Mowing and Landscape Service, Inc.'s Motion for Attorney's Fees Pursuant to Rule 52(d)(2) (Doc. #196) and Equity Lifestyle Properties, Inc.'s Motion for Rule 11 Sanctions Against Counsel for Florida Mowing (Doc. #203). Responses (Docs. #199, 204) and, with the permission of the Court, a Reply (Doc. #215) have been filed. Florida Mowing and Landscape Service, Inc. (Florida Mowing) seeks attorney fees as sanctions against current counsel pursuant to FED. R. CIV. P. 11 and 28 U.S.C. § 1927, and Equity Lifestyle Properties, Inc. (Equity

Lifestyle) seeks sanctions pursuant to Rule 11 for the filing of a "frivolous" motion by Florida Mowing.

The standards under both Rule 11 and § 1927 are well-established. Amlong & Amlong, P.A. v. Denny's, Inc., 500 F.3d 1230 (11th Cir. 2006) (§ 1927); Hudson v. Int'l Computer Negotiations, Inc., 499 F.3d 1252, 1261-62 (11th Cir. 2007) (§ 1927); Kaplan v. DaimlerChrysler, A.G., 331 F.3d 1251, 1255 (11th Cir. 2003) (Rule 11); Anderson v. Smithfield Foods, Inc., 353 F.3d 912, 915 (11th Cir. 2003) (Rule 11). Under these standards, it is clear that Florida Mowing's motion was not frivolous or baseless. The Court's observations in its Opinion and Order (Doc. #132) dismissing the Third Amended Complaint were sufficient to justify filing of the motion by Florida Mowing. The much closer question is whether Florida Mowing's motion should be granted. After much consideration, the Court concludes that the conduct of Equity Lifestyle's new attorney did not rise to the level of sanctionable conduct. New counsel was not involved in the proceedings which resulted in the mistrial, and while the Third Amended Complaint was dismissed, dismissal is not necessarily indicative of the type of conduct required to impose sanctions.


Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. Florida Mowing and Landscape Service, Inc.'s (Florida Mowing) Motion for Attorney's Fees Pursuant to Rule 52(d)(2) (Doc. #196) is **DENIED**.

2. Equity Lifestyle Properties, Inc.'s (Equity) Motion for Rule 11 Sanctions Against Counsel for Florida Mowing (Doc. #203) is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 3rd day of February, 2009.



JOHN E. STEELE
United States District Judge

Copies:
Counsel of record