

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

GARY PRATO; JOANNE C. MCMURRAY,

Plaintiffs,

-vs-

Case No. 2:08-cv-883-FtM-29SPC

HACIENDA DEL MAR, LLC a Florida Limited
Liability Company,

Defendant.

ORDER

This matter comes before the Court on the Plaintiffs, Gary Prato and Joanne C. McMurray's Motion for Contempt of Court and for Sanctions (Doc. #59) filed on October 11, 2010. On October 18, 2010, the Court issued an Order to Show Cause (Doc. # 60) directing the Defendant to file a written response to the Motion for Sanctions. On October 18, 2010, the Plaintiffs filed their Response to the Order to Show Cause and the Motion for Sanctions. (Doc. # 61). The Motion is now ripe for the Court's review.

Mediation in this case was scheduled for September 30, 2010. The Plaintiffs state in their Motion that they appeared in person with counsel prepared to mediate. However, they contend the Defendant Thomas Leiter called and said that he was appearing by telephone because his son Matthew Leiter was unavailable to appear in his place. In its Response, the Defendant states that Matthew Leiter was called to New York for business and was unable to appear in person. On October 29, 2010, the day before the scheduled mediation, the Defendant sent an e-mail (Doc. # 61, Ex. 1), to the Plaintiffs informing them that Matthew Leiter would not be able to attend, but instead, Thomas Leiter would attend via telephone in his place. According to the Defendant, Thomas Leiter

is an officer in the corporation and has full settlement authority and its Defense Counsel, Albert Tisso, was present at the mediation on September 30, 2010. The Defendant offered to move the mediation to the next day or any other day convenient for the Plaintiffs and to have a corporate representative personally present. The Plaintiffs rejected all the offers and left the mediation.

After a review of the Party's respective memoranda the Court finds that the Defendant did not act in bad faith, but tried to reschedule and made a good faith effort to appear at the mediation. Thus, the motion for sanctions is due to be denied.

Accordingly, it is now

ORDERED:

The Plaintiffs, Gary Prato and Joanne C. McMurray's Motion for Contempt of Court and for Sanctions (Doc. #59) is **DENIED**.

(1) The Party's are to split the cost of the mediator's fees for the September 30, 2010 mediation.

(2) The Party's are directed to reschedule mediation on or before **Monday, November 22, 2010**.

DONE AND ORDERED at Fort Myers, Florida, this 20th day of October, 2010.


SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies: All Parties of Record