

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RICHARD K. INGLIS, as
Special Trustee to the trust
under the will of Rosa B.
Schweiker, dated February 2,
1961, the Frederick W.
Berlinger Revocable Deed of
Trust, dated 10/17/1991, as
amended and restated,

Plaintiff,

v.

Case No: 2:14-cv-677-FtM-29CM

WELLS FARGO BANK N.A.,

Defendant.

OPINION AND ORDER

This matter comes before the Court on defendant Wells Fargo Bank, N.A.'s Motion for Attorneys' Fees and to Tax Costs (Doc. #235) filed on March 3, 2017. Plaintiff filed a Response in Opposition (Doc. #241) on March 17, 2017. For the reasons set forth below, the motion is denied without prejudice.

I.

On February 16, 2017 the Court entered an Opinion and Order (Doc. #230) denying plaintiff's motion for summary judgment and granting defendant's motion for summary judgment. On February 21, 2017, plaintiff filed a Notice of Appeal (Doc. #232). Then, on March 8, 2017, defendant filed a Notice of Cross-Appeal (Doc. #237). The consolidated appeal is currently pending.

Defendant filed the instant motion seeking to recover attorneys' fees in the amount of \$523,529.50 and costs in the amount of \$11,299.12. (Doc. #235.) In response, plaintiff asserts the Court lacks jurisdiction to hear the instant motion due to the pending appeal. (Doc. #241.) Plaintiff further contends defendant is not entitled to attorneys' fees, has not produced appropriate documentation to support its fee requests, and the requests are unreasonable. (Id.) Plaintiff also seeks to bifurcate the matter to first determine defendant's entitlement to fees and then determine the amount owed. (Id.)

II.

As a general rule, the filing of a notice of appeal divests a district court of jurisdiction on any matter involved in the appeal. In Green Leaf Nursery v. E.I. DuPont de Nemours & Co., 341 F.3d 1292, 1309 (11th Cir. 2003). However, the district court may retain jurisdiction to consider motions on matters that are collateral to the matters on appeal. Mahone v. Ray, 326 F.3d 1176, 1179 (11th Cir. 2003). Specifically, the district court may entertain a motion for attorney's fees after a notice of appeal has been filed in the underlying case. Briggs v. Briggs, 260 F. App'x 164, 165 (11th Cir. 2007) (per curiam) (citing Rothenberg v. Sec. Mgmt. Co., 677 F.2d 64, 65 (11th Cir. 1982)).

Alternatively, the Court has discretion to deny a motion for attorneys' fees without prejudice with leave to re-file after the

appeal has concluded. See Fed. R. Civ. P. 54(d) Advisory Committee Note to 1993 Amendment (providing that “[i]f 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”); see also The Indigo Room, Inc. v. City of Fort Myers, No. 2:12-CV-39-FTM-38CM, 2014 WL 1174355, at *1 (M.D. Fla. Mar. 21, 2014)) (denying motion for attorney’s fees without prejudice and with leave to re-file after entry of appellate court’s mandate); S.-Owners Ins. Co. v. Wall 2 Walls Const., LLC, No. 8:12-CV-1922-T-33TBM, 2013 WL 6893254, at *1 (M.D. Fla. Dec. 31, 2013) (same).

III.

Rather than resolving the instant motion during the pendency of the appeal, justice would be better served by denying the motion without prejudice and with leave to re-file after the conclusion of the appeal. See Bowers v. Universal City Dev. Partners, Ltd., No. 6:03-cv-985-ORL-18JGG, 2005 WL 1243745, at *2 (M.D. Fla. May 19, 2005) (stating that “[i]f the district court were to resolve the fee and cost issue while an appeal remains pending, it would be asked to repeat the procedure following the appeal”).

Immediate resolution of the motion is unwarranted given the procedural posture of the case. Because the consolidated appeal is pending before the Eleventh Circuit Court of Appeals (Docs.

##232, 237), the Court denies defendant's motion (Doc. #235) without prejudice.

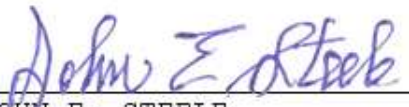
Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. Defendant Wells Fargo Bank, N.A.'s Motion for Attorneys' Fees and to Tax Costs (Doc. #235) is **DENIED without prejudice.**

2. Defendant may file a Motion for Attorneys' Fees and Costs, if appropriate, within **fourteen (14) days** of the date that the Eleventh Circuit Court of Appeals issues its Mandate on the pending appeals.

DONE and ORDERED at Fort Myers, Florida, this 26th day of May, 2017.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record