

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

IN RE: CINDY BREWER

CINDY BREWER,

Appellant,

v.

Case No: 2:17-cv-94-FtM-38

LAGO VILLAGGIO HOMEOWNERS
ASSOCIATION, INC,

Appellee.

ORDER¹

This matter comes before the Court on Appellee Lago Villaggio Homeowner's Association, Inc.'s (Lago) Renewed Motion for Attorney Fees on Appeal (Doc. 24) filed on November 20, 2017. Debtor/Appellant Cindy Brewer (Brewer) filed a Response in Opposition (Doc. 31) on December 27, 2017. In its Motion, Lago seeks to recover attorneys' fees and costs as the prevailing party.

On October 27, 2017, the Court affirmed the decision of the Bankruptcy Court and entered judgment in favor of Lago. (Doc. 22, Doc. 23). Brewer thereafter filed a Notice

¹ Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

of Appeal (Doc. 25) on November 22, 2017. The case remains pending before the Eleventh Circuit Court of Appeals.

“As a general rule, the filing of a notice of appeal divests a district court of jurisdiction with respect to any matter involved in the appeal.” [Southern-Owners Ins. Co. v. Wall 2 Wall Construc., LLC, 8:12-cv-1922, 2013 WL 6893254, at *1 \(M.D. Fla. Dec. 31, 2013\)](#). Although this jurisdictional limit does not prohibit the current motion, district courts have discretion to deny a motion for attorneys' fees without prejudice and with leave to refile after the appeal has concluded. See [Fed. R. Civ. P. 54\(d\)\(2\)\(i\)](#) (“Unless a statute or a court order provides otherwise, the motion must: (i) be filed no later than 14 days after the entry of judgment; . . .”). Further, “[t]he Advisory Committee Notes to [Rule 54\(d\)\(2\)](#) provide that:

‘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.’

[Larson v. Correct Craft, Inc., No. 6:05-cv-686, 2008 U.S. Dist. LEXIS 32311, at *3 \(M.D. Fla. Apr. 18, 2008\)](#) (citing Advisory Committee Notes to the 1993 amendment to Rule 54(d)(2)).

Here, because Brewer’s appeal is pending before the Eleventh Circuit Court of Appeals (Doc. 25), the Court will deny Lago’s Motion for Attorneys’ Fees and Costs (Doc. 24) without prejudice to refiling, if necessary, after the appeal has been resolved. See [Southern-Owners, 2013 WL 6893254, at *1](#) (denying the defendant’s motion for attorneys’ fees because, in part, “[i]mmediate resolution of the collateral issues of attorneys’ fees and costs [would] unlikely . . . assist the Court of Appeals”); [Larson, 2008 U.S. Dist. LEXIS](#)

32311, at *3 (finding no good cause to grant the defendant's motion for attorneys' fees pending the plaintiff's appeal where the court would likely have to reconsider attorneys' fees after the appeal and when fee issues are often resolved in appellate mediation).


Accordingly, it is now

ORDERED:

(1) Appellee's Renewed Motion for Attorney Fees on Appeal (Doc. 24) is **DENIED without prejudice.**

(2) Appellee Lago Villaggio Homeowner's Association, Inc. may file a Motion for Attorneys' Fees and Costs, if necessary, within **fourteen (14) days** of the date that the Eleventh Circuit Court of Appeals issues its Mandate on the pending appeal.

DONE and **ORDERED** in Fort Myers, Florida this 9th day of January, 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record