

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**CHARLES HOW,**

**Plaintiff,**

**v.**

**Case No. 04-2256 JWL**

**CITY OF BAXTER SPRINGS, KANSAS, et al.,**

**Defendants.**

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**RONALD O. THOMAS,**

**Case No. 04-2257 JWL**

**Plaintiff,**

**v.**

**CITY OF BAXTER SPRINGS, KANSAS, et al.**

**Defendants.**

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**MEMORANDUM AND ORDER**

This court entered summary judgment for defendants in these two consolidated cases on December 15, 2005. Although it did not change its ultimate decision granting summary judgment, this court amended that judgment on March 14, 2006. The amended judgment entered March 14, 2006, also ordered the plaintiffs to pay the costs of the action to the

defendants. This matter comes before the court on the uncontested motions of Mr. How (doc. 169) and Mr. Thomas (doc. 74) to stay taxation of costs pending the outcome of the appeal of these consolidated cases to the Tenth Circuit. For the reasons explained below, the motions are granted.

### **Analysis**

It is common for a losing party to request a district court to stay taxation of costs pending appeal, and it is clearly established that “[t]he taxing of costs, except as otherwise provided by statute, rests largely in the sound discretion of the trial court.” *Green Const. Co. v. Kansas Power & Light Co.*, 153 F.R.D. 670, 674-75 (D. Kan. 1994) (citing *Euler v. Waller*, 295 F.2d 765, 766 (10th Cir.1961)). *See also Tilton v. Capital Cities/ABC, Inc.*, 115 F.3d 1471, 1474 (10th Cir. 1997). “In its discretion, however, the Court may postpone the awarding of costs until the resolution of the post-trial motions or even the resolution of any appeal.” *Estate of Pidcock By and Through Pidcock v. Sunnyland America, Inc.*, 726 F. Supp. 1322, 1341 (S.D. Ga. 1989) (citing *Farmer v. Arabian Oil Co.*, 379 U.S. 227 (1964)).

Exercising its discretion on this matter, the court will grant the motions to stay taxation of costs, particularly because the plaintiffs’ motions were uncontested by either defendant. Under the provisions of D. Kan. Rule 6.1(d), the time for filing a response to each plaintiff’s motion has expired, and the court therefore has treated and decided the pending motions as unopposed pursuant to D. Kan. Rule 7.4. And in the absence of any argument to the contrary, the court will grant the plaintiffs’ motions to stay taxation of costs.

**IT IS THEREFORE ORDERED BY THE COURT** that Mr. How's motion to stay taxation of costs (doc. 169) is granted, and Mr. Thomas's motion to stay taxation of costs (doc. 74) is granted.

**IT IS SO ORDERED** this 26<sup>th</sup> day of April, 2006.

s/ John W. Lungstrum

John W. Lungstrum

United States District Judge