

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LEONA FELDT,

Plaintiff,

v.

Case No. 6:12-cv-01064-JTM

KAN-DU CONSTRUCTION CORP.;
MARTY FALCONBURG; and
HERITAGE HOMES OF NEBRASKA, INC.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's motion to stay taxation of costs (Dkt. 255). The motion asserts that plaintiff intends to ask the U.S. Supreme Court to review the Tenth Circuit's affirmance of the judgment in this case. *See Feldt v. Heritage Homes of Nebraska, Inc.*, ___F.App'x ___, 2016 WL 3974093 (10th Cir. July 20, 2016). Plaintiff asks the court to stay taxation of costs until her intended petition for writ of certiorari is filed with the U.S. Supreme Court and ruled upon. Defendant Heritage Homes opposes the motion. (Dkt. 257).

As plaintiff notes, the taxing of costs, except as otherwise provided by statute, rests largely in the sound discretion of the trial court. *How v. City of Baxter Springs, Ks.*, 2006 WL 1128667 (D. Kan. 2006). "In its discretion, ... the Court may postpone the awarding of costs until the resolution of the post-trial motions or even the resolution of any appeal." *Id.* (quoting *Estate of Pidcock v. Sunnyland American, Inc.*, 726 F.Supp. 1322, 1341 (S.D. Ga. 1989)). Any such stay is not mandatory, however, as indicated by 29

U.S.C. § 2101(f), which provides that the execution of a final judgment *may be* stayed for a reasonable time to allow a party to obtain a writ of certiorari. See *American Infra-Red Radiant Co. v. Lambert Indus., Inc.*, 41 F.R.D. 161, 163 (D. Minn. 1966) (“Neither is it mandatory to stay taxation of costs until final disposition of the petition for certiorari.”).

After considering the circumstances, the court finds that plaintiff’s motion for a stay should be denied. Aside from the fact that plaintiff has not yet filed any petition for writ of certiorari, the grounds cited by plaintiff for seeking review appear to involve fact-bound issues of state law that are unlikely to be reviewed by the U.S. Supreme Court, which grants only a small percentage of the petitions filed each year and ordinarily limits its review to significant issues of federal law.

IT IS THEREFORE ORDERED this 29th day of September, 2016, that plaintiff’s Motion for Costs to be Stayed Pending Appeal (Dkt. 255) is DENIED.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE