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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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In re:)

No. CV 05-2045-PHX-JAT

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Michael Keith Schugg, dba Schuburg)
Holsteins,)

ORDER

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Debtor.)

BK No. 2-04-13226-PHX-GBN
BK No. 2-04-19091-PHX-GBN

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_____))

ADV. No. 2-05-ap-00384-GBN

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In re:)

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Debra Schugg,)

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Debtor.)

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G. Grant Lyon, in his capacity as Chapter)
11 Trustee of the bankruptcy estate of)
17 Michael Keith Schugg and Debra Schugg;)
Wells Fargo Bank, N.A.,)

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Plaintiffs,)

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vs.)

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Gila River Indian Community,)

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Defendant.)

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_____)

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Pending before this Court is Gila River Indian Community’s motion to stay the
24 taxation of costs order.¹ The Community argues that the taxation of costs order should be
25 stayed pending the resolution of the appeals. The Trustee responds and argues that a
26 judgment on the award of costs should be entered immediately so that the Trustee can earn

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¹ The Clerk of the Court taxed costs on May 13, 2008.

1 interest on that judgment.² Presumably, once such judgment is entered, the Trustee could
2 also start collection efforts, *see* Fed. R. Civ. Pro. 62(a), unless execution was stayed, *see*
3 Fed. R. Civ. Pro. 62(d). However, the Trustee asserts that he does not intend to start
4 collection efforts, he merely wants an immediate judgment for interest purposes.

5 Local Rule Civil 54.1(b) states: “In the absence of objection, any item listed may be
6 taxed in the discretion of the Clerk. The Clerk shall thereupon docket and include the costs
7 in the judgment.” In this case, there was an objection to the Bill of Costs. Thus, this case
8 is taken out of the language of the Local Rule that calls for an automatic amendment of the
9 judgment to include the costs taxed.

10 Although there was an objection to the Bill of Costs, there was not an appeal of the
11 taxation order to the District Court. Therefore, the taxation order is “final.” *See id.* (“The
12 taxation of costs thus made shall be final unless modified on review by the Court on motion
13 served within five (5) days thereafter.”) The Local Rules are silent as to what occurs when
14 a taxation order on a bill of costs to which there was an objection becomes final.

15 Federal Rule of Civil Procedure 54 says: “‘Judgment’ as used in these rules includes
16 a decree and any other order from which an appeal lies” (emphasis added). “Judgments for
17 costs may be immediately appealed as final judgments, entered after the judgment on the
18 merits, or as collateral orders.” Wright, Miller and Kane, *Federal Practice and Procedure:*
19 *Civil 3d* § 2679 at 489 (1998) (emphasis added).

20 In *Cohen v. Beneficial Industrial Loan Corp.* the Supreme Court announced
21 an expansive interpretation of the finality requirement in 28 U.S.C.A. § 1291
22 that has come to be known as the “collateral order” doctrine. Appeals are
23 allowed from orders characterized as final under this doctrine even though it
may be clear that they do not terminate the action or any part of it. The only
finality required is that the district court have made its final determination of
the matter in question.

24 Wright, Miller and Cooper, *Federal Practice and Procedure: Jurisdiction 2d* § 3911 (1992)
25 [footnote omitted].

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27 ² At least one court has held that interest accrues on taxed costs from the date of the
28 original judgment. *See Georgia Assoc. of Retarded Citizens v. McDaniel*, 855 F.2d 794, 799
(11th Cir. 1988).

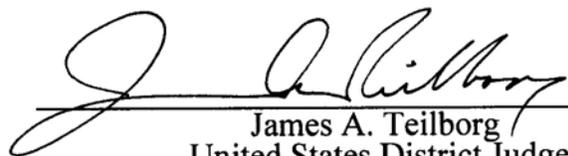
1 Taking these rules together, the Court finds that when the Clerk's order taxing costs
2 became "final" under the Civil Local Rules,³ it also became collateral order which was
3 immediately appealable to the Court of Appeals. Because a collateral order is an "other order
4 from which an appeal lies" it is effectively a judgment as the term is used in Federal Rule of
5 Civil Procedure 54.

6 Thus, given that the taxation of costs order has effectively become a judgment, it can
7 be executed on by the Trustee. However, the Community is arguing that, although no appeal
8 of the taxation of costs order on the merits has been taken to the Court of Appeals, effectively
9 the right to the taxation of costs has been appealed to the Court of Appeals by the taking of
10 an appeal on the judgment on which the taxation is premised. This Court agrees that the
11 award of costs is effectively on appeal because the underlying judgment is on appeal. *See*
12 *Amarel v. Connell*, 102 F.3d 1494, 1523 (9th Cir. 1996). Thus, because the taxation of costs
13 order is effectively on appeal, execution of that judgment is governed by Federal Rule of
14 Civil Procedure 62(d). Rule 62(d) says that a stay of execution of a judgment on appeal can
15 be obtained only by posting an appropriate bond. Thus, the motion to stay the taxation order
16 will be denied without prejudice to the Community posting a bond to stay execution.

17 Accordingly,

18 IT IS ORDERED that the Motion to Stay the Taxation of Costs Order Pending
19 Resolution of the Parties' Appeals (Doc. #299) is denied, however, execution on the taxation
20 of costs order is stayed for 10 days from the date of this order to permit compliance with
21 Federal Rule of Civil Procedure 62(d) if the Community so chooses.

22 DATED this 24th day of November, 2008.

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25 _____
26 James A. Teilborg
27 United States District Judge

27 _____
28 ³ The taxation order became final when no appeal was taken to the district court
within the five day time limit.