

Case: 2:04cv139

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Case Name: SCO Grp v. Novell Inc

Case Number: 2:04-cv-139

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Document Number: 591

Docket Text:

ORDER denying [575] Motion to Stay Taxation of Costs. Signed by Judge Dale A. Kimball on 3/13/09. (jwt)

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THE SCO GROUP, INC.,

Plaintiff/Counterclaim Defendant,

vs.

NOVELL, INC.,

Defendant/Counterclaim Plaintiff.

ORDER

Civil Case No. 2:04CV139DAK

Judge Dale A. Kimball

This matter is before the court on The SCO Group, Inc.'s ("SCO") Motion to Stay Taxation of Costs. Novell, Inc. has filed an opposition to SCO's motion. SCO has not filed a reply, but the time for doing so has elapsed. The court concludes that a hearing would not aid in its determination of the motion. Now being fully advised, the court renders the following Order.

This court entered Final Judgment on November 20, 2008. Under local rules, a request for costs is due twenty days after the entry of final judgment. *See* DUCivR 54-2(a). Novell timely filed its Bill of Costs. Instead of filing objections to Novell's Bill of Costs, SCO filed its Motion to Stay the taxation of costs until its pending appeal is decided. Novell, however, opposes the stay on the grounds that the court should determine costs when the case is fresh, which also allows any appeal from the award of costs to be consolidated into the appeal on the merits. In addition, Novell seeks to have SCO's full liability to it identified in its proof of claim in SCO's bankruptcy.

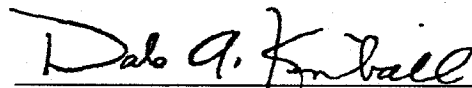
The parties agree that the district court has the discretion to stay the resolution of costs

pending appeal. *See How v. City of Baxter Springs*, 2006 WL 1128667, at *1 (D. Kan. Apr. 26, 2006) (granting unopposed motions to stay taxation of costs pending appeal). At least one court addressing such a stay, however, has concluded that “the consensus seems to be that the court must have some valid reason for not awarding costs at the customary stage of the proceedings.” *Maytag Corp. v. Electrolux Home Prods., Inc.*, 2006 U.S. Dist. LEXIS 89383, at *5 (N.D. Iowa Dec. 11, 2006).

As in *Maytag*, the court does not believe that a party’s speculation as to the possibility of the underlying judgment being reversed on appeal is a valid reason for delaying a determination of costs. *See id.* at *7-8. The court agrees with Novell that this case presents several reasons for determining costs in the regular course: the case and facts are fresh in the court’s mind; piecemeal appeals are avoided when an appeal of costs can be consolidated into the appeal on the merits; and Novell should be able to include SCO’s full liability to it in its proof of claim in SCO’s bankruptcy proceeding. SCO has provided no persuasive reason for staying the taxation of costs pending appeal.

Accordingly, the court denies SCO’s Motion to Stay Taxation of Costs. As SCO indicated in its motion, it shall file any objections it has to Novell’s Bill of Costs within ten days of the date of this Order.

DATED this 13th day of March, 2009.

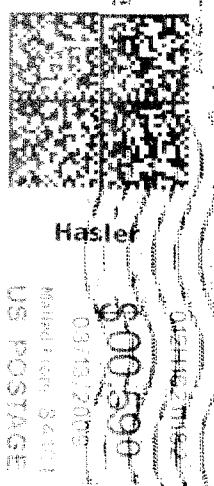


DALE A. KIMBALL
United States District Judge

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