

FSM SUPREME COURT TRIAL DIVISION

THE PEOPLE OF THE MUNICIPALITY OF TOMIL,)	CIVIL ACTION NO. 2009 0002
YAP, by and through CHIEF STEVEN MAR, CHIEF)	
ALEX GILTAMNGIN, and CHIEF ROBERT FITHING,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
M/C JUMBO ROCK CARRIER III and M/T PAGBILAO)	
I, <i>in rem</i> , their engines, masts, bowsprits, boats,)	
anchors, chains, cables, rigging, apparel, furniture,)	
and all necessaries thereunto pertaining;)	
)	
and)	
)	
IDHI PORTS & SHIPPING, INC.,)	
)	
<i>In Personam</i> Defendant.)	
)	

ORDER AWARDING SANCTIONS

Dennis K. Yamase
Associate Justice

Decided: March 29, 2010

APPEARANCES:

For the Plaintiffs: Joseph C. Razzano, Esq. (pro hac vice)
Teker Torres & Teker, P.C.
Suite 2A, 130 Aspinall Avenue
Hagatna, Guam 96910

For the Defendants: Manuel N. Camacho, Esq. (pro hac vice)
Camacho & Associates Law Offices
8th Floor, Fort Legend Towers
Corner 3rd Avenue, 31st Street
Bonifacio Global City
1634 Taguig, Metro Manila, Philippines

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HEADNOTES

Attorney's Fees – Court-Awarded; Civil Procedure – Sanctions

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM Intrm. 100, 101 (Yap 2010).

Attorney's Fees – Court-Awarded; Civil Procedure – Sanctions

When a review of the billing attached to a motion to compel a deposition reveals that 3.6 hours were spent obtaining the order to compel a deposition, the court will award sanctions at \$125 an hour for a total of \$450. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM Intrm. 100, 101 (Yap 2010).

Attorney's Fees – Court-Awarded; Civil Procedure – Sanctions

A Guam gross revenue tax or a GRT Equivalent cannot be included in a court-awarded attorney's fee or as a sanctions expense since it is levied on the attorney and not on the client, and it is thus already included in an attorney's hourly charge. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM Intrm. 100, 102 (Yap 2010).

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CHIEF JUSTICE'S OPINION

DENNIS K. YAMASE, Associate Justice:

On February 22, 2010, the court issued its order granting sanctions for the expenses the plaintiffs incurred in bringing their motion to compel the deposition of Captain Avito Bautista of the M/T *Pagbilao I*, and gave the parties the opportunity for them to be heard on written submissions concerning the amount of the expenses. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM Intrm. 64 (Yap 2010). On March 8, 2010, the plaintiffs filed an Affidavit of Joseph C. Razzano in Support of Request for Attorneys' Fees, with a supporting attachment. The defendants filed their Response/Opposition to Plaintiffs' Request for Attorneys' Fees on March 22, 2010.

The plaintiffs seek an award of \$1,492. This consists of 2.7 hours of attorney work billed at \$175 an hour and 3.1 hours of attorney work billed at \$190 an hour plus \$43.42 billed as "GRT Equivalent." The defendants contend that this amount is grossly disproportionate and that the plaintiffs' motion and reply should not have taken 5.8 hours to compose. The defendants also assert that all that was necessary for Captain Bautista to have been deposed was for the plaintiffs to give reasonable notice of the deposition, which the plaintiffs never did.

After the plaintiffs' unsuccessful attempt to depose Captain Bautista ended with Bautista's refusal to be deposed without the presence of the defendants' attorney, plaintiffs' counsel attempted to arrange with the defendants' counsel mutually agreeable time to resume the deposition. No agreement was forthcoming. The defendants maintained that no deposition should occur without a court order, necessitating the plaintiffs' motion to compel Captain Bautista's deposition. It is somewhat disingenuous for the defendants to contend that all the plaintiffs' had to do was notice Captain Bautista's deposition when previously they insisted on a court order before any deposition.

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. See Tolenoa v. Kosrae, 3 FSM Intrm. 167, 173 (App. 1987); Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 110 (Chk. 1999). In Pohnpei, it would not award attorney's fees of \$200 an hour because \$110 to \$120 an hour was the range reasonable for a case tried on Pohnpei. Amayo v. I (attorney fee sanction award). This case will be tried on Pohnpei. The court has previously determined that \$125 an hour would be appropriate for a case tried on Pohnpei. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM Intrm. 53, 72 (Yap 2007), *rev'd*; Other grounds, 16 FSM Intrm. 49 (App. 2008). The fee award in this case will therefore be made on the basis of \$125 an hour.

A review of the billing attachment reveals that 0.4 hour was spent drafting correspondence before a decision was made to bring the motion to compel, and that 1.8 hours were spent on related matters after the order to compel was obtained. These (2.2) hours will be disallowed. That leaves 3.6 hours at \$125 an hour for a total of \$450.

The plaintiffs also seek \$43.42 as a "GRT Equivalent." The court understands GRT to mean the "gross revenue tax" or "gross receipts tax" that is levied on businesses on Guam by the Guam government. The Guam gross receipts tax "differs from a sales tax insofar as it is levied on the seller rather than the consumer." Quichocho v. Macy's Dep't Stores, Inc., 2008 Guam 9, ¶ 2. In other words, it is an income tax levied on the seller [attorney] and not a sales tax charged to or levied on the consumer [client]. It thus "cannot be taxed as a cost, or [as] an increase in or part of the attorney's hourly rate" since it is already part of the attorney's fee. Bank of the FSM v. Truk Trading Co., 16 FSM Intrm. 467, 471 (Chk. 2009). Since it is levied on the attorney and not on the client, it is thus already included in an attorney's hourly charge. Therefore no "GRT Equivalent" will be allowed as an "expense" or a "fee."

Accordingly, the plaintiffs are awarded sanctions in the amount of \$450.

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FSM SUPREME COURT TRIAL DIVISION

CARLOS ETSCHUIT SOAP COMPANY,)	CIVIL ACTION NO. 2005-007
)	
Plaintiff/Counterdefendant,)	
)	
vs.)	
)	
ERINE McVEY and DO IT BEST HARDWARE,)	
a business organization,)	
)	
Defendants/Counterclaimants/)	
Cross-Claimants,)	
)	
vs.)	
)	
BOARD OF TRUSTEES OF THE POHNPEI STATE)	
PUBLIC LANDS TRUST,)	
)	
Defendant/Cross-Defendant.)	
_____)	

ORDER GRANTING JUDGMENT

Ready E. Johnny
Associate Justice

Hearing: March 18, 2010
Decided: April 16, 2010