

FSM SUPREME COURT TRIAL DIVISION

ELIAS SANDY,)	CIVIL ACTION NO. 2008-1073
)	
Plaintiff,)	
)	
vs.)	
)	
JESSE MORI, in his official capacity as)	
Director of the Department of)	
Administrative Services, DEPARTMENT OF)	
ADMINISTRATIVE SERVICES, and STATE)	
OF CHUUK,)	
)	
Defendants.)	
_____)	

ORDER DENYING MOTION TO SET ASIDE

Ready E. Johnny
Associate Justice

Decided: July 30, 2010
Corrected: September 21, 2010

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.
Micronesia Legal Services Corporation
P.O. Box 129
Kolonia, Pohnpei FM 96941

For the Defendants: Joses Gallen, Esq.
Attorney General
Office of the Chuuk Attorney General
P.O. Box 1050
Weno, Chuuk FM 96942

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HEADNOTES

Costs

The court has long followed the principle that when awarding costs, costs may be allowed for copying expenses which represent payments to others for that service, but not the cost of copying within the law office. So when there is no indication that a copying charge is for payment to others for copying services, that charge will be disallowed. Sandy v. Mori, 17 FSM Intrm. 245, 246 (Chk. 2010).

Costs

An attorney's travel expenses to Chuuk will be denied as costs when the attorney's law firm

maintains a law office on Chuuk even though the attorney did not reside on Chuuk and only made occasional trips to Chuuk from Pohnpei. Sandy v. Mori, 17 FSM Intrm. 245, 246-47 (Chk. 2010).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On July 12, 2010, the plaintiff, Elias Sandy, filed and served his Motion [to] Set Aside Portion of Order Awarding Costs and Fees. The defendants filed their opposition on July 22, 2010. The motion is denied. The reasons follow.

Sandy asks the court to reconsider the portion of the June 9, 2010 Order Awarding Fees and Costs that denied his request for an award of \$402.30 for his Micronesian Legal Services Corporation attorney's (prorated) travel expenses from Pohnpei to Chuuk for his trial and of \$65 as the purported cost (at 20¢ each) of 325 copies made in-house by his counsel for his case.

The court has long followed the principle that when awarding costs, costs may be allowed for copying expenses which represent payments to others for that service, but not the cost of copying within the law office. Bank of the FSM v. Truk Trading Co., 16 FSM Intrm. 467, 471 (Chk. 2009); Ruben v. Petewon, 15 FSM Intrm. 605, 609 (Chk. 2008); People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM Intrm. 53, 74 (Yap 2007); Lippwe v. Weno Municipality, 14 FSM Intrm. 347, 354 (Chk. 2006); Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 524, 527 (Pon. 2005); FSM Social Sec. Admin. v. Jonas, 13 FSM Intrm. 171, 173 (Kos. 2005); AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 42 (Pon. 2004); Udot Municipality v. FSM, 10 FSM Intrm. 498, 501 (Chk. 2002); Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 111 (Chk. 1999); Damarlane v. United States, 7 FSM Intrm. 468, 470 (Pon. 1996); *see also* Santos v. Bank of Hawaii, 9 FSM Intrm. 306, 308 (App. 2000). Since there was no indication that the \$65 charge was for payment to others for copying services, the June 9th order disallowed that charge. Sandy urges the court "to reevaluate its ruling for denying copying costs" and asserts that the court need not follow "a trial court ruling that set this questionable" precedent. Mot. at 4. In his view, it could discourage law firms from making copies by not making "an aggrieved party whole."

Sandy has not presented any compelling reasons not to follow the line of cases that have consistently denied the taxation of costs for a law firm's "expense" of making copies in-house. His motion to set aside that port of the June 9, 2010 order is therefore denied.

Sandy also asks for \$402.30 for his attorney's (pro-rated) travel costs from Pohnpei (1/3 of a \$362 air ticket, \$625 per diem, and \$220 car rental). Since Sandy's counsel was part of a law firm with a number of attorneys admitted to this court and since that law firm maintains a Chuuk office and has the ability to assign personnel there, the court, relying on Amayo v. MJ Co., 10 FSM Intrm. 371, 386 (Pon. 2001) (counsel's travel expenses to and from Pohnpei for litigation on Pohnpei may not be awarded as costs when counsel maintains a Pohnpei office and is thus local counsel), did not award those travel costs. Sandy urges that the court set aside this ruling on the ground that it was based on the "mistaken fact" that MLSC has the ability to assign its admitted attorneys to Chuuk, if needed, but that the court should base its decision on the "corrected fact" that an admitted MLSC attorney only made occasional trips to Chuuk from Pohnpei.

Sandy misunderstands the import of Amayo v. MJ Co., 10 FSM Intrm. 371, 386 (Pon. 2001). In Amayo, attorney's travel expenses were denied because plaintiff's counsel maintained a law office

on Pohnpei even though he was resident on Guam and only occasionally traveled to Pohnpei. Sandy's "corrected fact" thus does not support his claim for his attorney's travel. MLSC maintains a law office on Chuuk. Sandy's motion to set aside this part of the June 9, 2010 order is therefore denied.

NOW THEREFORE IT IS HEREBY ORDERED that Elias Sandy's motion to set aside parts of the June 9, 2010 is denied.

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FSM SUPREME COURT TRIAL DIVISION

THE PEOPLE OF THE MUNICIPALITY OF GILMAN,)	CIVIL ACTION NO. 2007-3009
YAP STATE, by and through CHIEF GEORGE)	
TAMAGKEN and CHIEF OTTO BOWOO,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
WOODMAN EASTERNLINE SDN. BHD.,)	
)	
Defendant.)	
_____)	

ORDER GRANTING MOTION TO STRIKE

Dennis K. Yamase
Associate Justice

Hearing: September 22, 2010
Decided: September 23, 2010

APPEARANCES:

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

For the Defendant: David Ledger, Esq. (pro hac vice)
Cabot Mantanona LLP
Edge Building, Second Floor
929 South Marine Corps Drive
Tamuning, Guam 96913

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HEADNOTES

Civil Procedure – Dismissal – After Plaintiff's Evidence
Rule 41(b) permits a defendant to move for judgment as a matter of law after the plaintiff has