

V. CONCLUSION

Accordingly, the defendant's motions to dismiss and his motion in limine are denied. Silisio a/k/a "Sirco" Tipingeni may raise the admissibility of any specific item of evidence at the appropriate time. The FSM's motion to depose eleven witnesses on Guam is granted under the terms and conditions set out above.

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FSM SUPREME COURT APPELLATE DIVISION

TADASY ANDREW and HEIRS OF)	APPEAL CASE NO. K3-2013
EDMOND TULENKUN,)	KSC Civil Action No. 45-12
)	
Appellants,)	
)	
vs.)	
)	
HEIRS OF TULENSRU SEYMOUR,)	
)	
Appellees.)	
_____)	

ORDER TAXING \$65 IN COSTS

Martin G. Yinug
Chief Justice

Decided: July 31, 2014

APPEARANCES:

For the Appellants: Sasaki L. George, Esq.
P.O. Box 487
Tafunsak, Kosrae FM 96944

For the Appellees: Harry A. Seymour, Esq.
P.O. Box 389
Tafunsak, Kosrae FM 96944

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HEADNOTES

Costs – Procédure

A prevailing party who desires costs to be taxed must state them in an itemized and verified bill of costs which must be filed with the clerk, with proof of service, within 14 days after the entry of the appellate judgment. The appellate clerk will act on the bill of costs, at least where no opposition has been filed; when there is opposition, the matter is usually referred to the court or a judge thereof. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452 (App. 2014).

Appellate Review

Although the court must first look to FSM sources of law and circumstances, when it has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452 n.1 (App. 2014).

Appellate Review; Costs – Procedure

An appellate panel's presiding justice may consider an opposed bill of costs, but the single justice's action may be reviewed by the court. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452-53 (App. 2014).

Costs – When Taxable

When the appellants prevailed by having the permanent injunction – a final decision – against them vacated and they are now in a position where either they or the other side may ultimately obtain a final judgment in their favor on remand, they are thus prevailing parties for the purpose of the appeal and costs will be taxed in their favor. Andrew v. Heirs of Seymour, 19 FSM R. 451, 453 (App. 2014).

Costs – Disallowed

The expense of service of the briefs will be disallowed. Postage is considered overhead and generally not allowed as a cost so that expenses for postage and delivery services are disallowed. Andrew v. Heirs of Seymour, 19 FSM R. 451, 453 (App. 2014).

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COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This comes before the court on the appellants' Bill of Costs, filed April 17, 2014 and the appellees' Opposition to Appellants' Bill of Costs, filed May 2, 2014. The appellants ask that \$85 be taxed as costs as the expense of producing and mailing their briefs.

The appellees oppose on the ground that while the appellants got the permanent injunction entered against them vacated, the preliminary injunction remained in place and the appellants did not obtain the other relief they sought. In other words, the appellees contend that the appellants were not prevailing parties. They also contend that the expenses of serving the briefs and the postage to mail them to the appellate clerk are not recoverable as costs.

FSM Appellate Rule 39 governs the taxation of costs in an appeal case. "A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment." FSM App. R. 39(d). "The [appellate] clerk will act on the bill of costs, at least where no opposition has been filed; where there is opposition, the matter is usually referred to the court or a judge thereof." 16AA CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3985.1, at 589 (4th ed. 2008).¹ The panel's presiding

¹ Although the court must first look to FSM sources of law and circumstances, when the court has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. *See, e.g.*, Kosrae v. Langu, 16 FSM Intrm. 83, 87 n.1 (App. 2008); Berman v. College of Micronesia-FSM, 15 FSM Intrm. 622, 624 n.1 (App. 2008). Whether a single justice may rule on an opposed Rule 39 bill of costs has not been considered before.

justice may therefore consider this opposed bill of costs. "The action of a single justice may be reviewed by the court." FSM App. R. 27(c).

Since the appellants prevailed by having the permanent injunction – a final decision – against them vacated and they are now in a position where either they or the other side may ultimately obtain a final judgment in their favor on remand. They are thus prevailing parties for the purpose of this appeal. Costs will be taxed in their favor. The appellees assert that the expense of service of the briefs should not be taxed because courier service costs are not taxable. However, costs of service of process are routinely awarded, but this \$15 was not for service of process but for the service of briefs. It will be disallowed. Postage is also considered overhead and generally not allowed as a cost. Expenses for postage and delivery services are disallowed because they are not a part of the usual costs recoverable under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM Intrm. 306, 308 (App. 2000). The \$5 claimed for postage is thus disallowed.

Accordingly, the clerk shall tax costs in the amount of \$65 in the appellants' favor.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CIVIL ACTION NO. 2013-1007
)	
Plaintiff,)	
)	
vs.)	
)	
AICHIE MUTY,)	
)	
Defendant.)	
_____)	

ORDER GRANTING SUMMARY JUDGMENT

Ready E. Johnny
Associate Justice

Decided: August 6, 2014

APPEARANCES:

For the Plaintiff:	Aaron L. Warren, Esq. Assistant Attorney General FSM Department of Justice P.O. Box PS-105 Palikir, Pohnpei FM 96941
For the Defendant:	Derensio S. Konman Micronesian Legal Services Corporation P.O. Box D Weno, Chuuk FM 96942