

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA, ) CIVIL ACTION NO. 2013-3001  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
KUO RONG 113, a long line fishing vessel, )  
HUNG YAO CHANG (Captain of the fishing )  
vessel), SYU BEI-JING (Permit holder), and LUEN )  
THAI FISHING VENTURE, LTD., (Company), )  
 )  
Defendants. )  
\_\_\_\_\_ )

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Ready E. Johnny  
Acting Chief Justice

Decided: March 25, 2015

APPEARANCES:

For the Plaintiff: Aaron L. Warren, Esq.  
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FSM Department of Justice  
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For the Defendants: Stephen V. Finnen, Esq.  
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HEADNOTES

Civil Procedure – Summary Judgment – Grounds

A court must grant a summary judgment motion under Rule 56(c) if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the facts and inferences to be drawn from those facts must be viewed by the court in the light most favorable to the party opposing the motion. FSM v. Kuo Rong 113, 20 FSM R. 27, 30 (Yap 2015).

Civil Procedure – Summary Judgment – Procedure

The party moving for summary judgment has the initial burden of showing that there are no triable issues of fact, but once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party cannot simply disagree with the

moving party and attempt to show, through affidavits or otherwise, that there is a triable issue but must submit admissible, competent evidence setting forth specific facts such that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable finder of fact. FSM v. Kuo Rong 113, 20 FSM R. 27, 30-31 (Yap 2015).

Marine Resources; Statutes – Construction; Torts – Damages

Whether cumulative statutory penalties are permissible is properly determined by seeking out the legislative intent as expressed in the statute's language. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Statutes – Construction; Torts – Damages

A statute imposing a penalty is to be strictly construed against the government and in favor of one against whom penalties are sought to be imposed. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Statutes – Construction; Torts – Damages

When a penalty provision's statutory language is ambiguous, this ambiguity should be resolved against punishing the same action under two different statutes. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Marine Resources; Torts – Damages

Clear legislative intent for cumulative penalties can be indicated by provisions providing for separate penalties for each day of a violation, as found section 901(2) of the Marine Resources Act, or where a separate penalty is expressly imposed for each violation. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Marine Resources

Congress would have reasonably intended to restrict to the scope of 24 F.S.M.C. 611(5) and its civil penalty of \$100,000 to \$500,000, to only those acts of interference that would result in a failure to ensure transmission of required information from a transponder, and that an act of interference that falls short of that standard would be penalized under the catch-all provision in 24 F.S.M.C. 920, and would be punishable by a lesser fine of between \$40,000 and \$100,000. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Marine Resources

24 F.S.M.C. 611(5) imposes strict liability for failure to comply with certain requirements of subsection (1), which reflects the legislative purpose to require that fishing vessels undertake all the various actions necessary to transmit required information continuously, accurately and effectively. To this end, a vessel's operator is required to install a transponder, maintain it in good working order, and ensure the effective transmission of required information. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Marine Resources; Statutes – Construction; Torts – Damages

Read in proper context, 24 F.S.M.C. 611(1)(b) and (c) are aimed at similar types of wrongdoing and uphold a public interest of the same nature. Thus, a vessel's failure to maintain its transponder in good working order, and its consequent failure to ensure transmission of required information from the transponder, is a solitary act that caused only one injury and therefore 24 F.S.M.C. 611(5) should not be construed to authorize cumulative penalties. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Marine Resources; Statutes – Construction; Torts – Damages

Since Subsection (1) allows NORMA to require that operators perform an integrated act which,

when completed in its entirety, ensures transmission of required information from a vessel's transponder and this is reflected in the use of the word "and" between 24 F.S.M.C. 611(1)(b) and (c); since the failure to perform any one part of the integrated act required under subsection 611(1) is sufficient to frustrate entirely the purpose of the subsection; and since a failure to perform multiple component parts of the act required under the subsection is no more frustrating to the statute's purpose than failure to perform only one part, the court will, in the absence of clear legislative intent to impose cumulative penalties, construe 24 F.S.M.C. 611(5) to impose only a single penalty for the failure to comply with the integrated requirements imposed on them under 24 F.S.M.C. 611(1). FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

Civil Procedure – Pleadings – Amendment; Marine Resources

When the FSM's initial reliance on section 906(2) was in error but that mistake was merely a technical error in pleading since the catch-all cause of action under 24 F.S.M.C. 920 applied, and when granting leave to amend would not prejudice the defendants because the revised cause of action does not place any new facts in dispute, would not result in the need for additional discovery and would not otherwise delay the case's disposition, leave to amend the prayer for relief in four counts to seek a fine in the maximum amount of \$100,000 under 24 F.S.M.C. 920 instead of \$500,000 under 24 F.S.M.C. 906(2) will be granted. FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

Marine Resources; Statutes – Construction

To prove a violation of section 611(1), the government has to show that a defendant: 1) entered into an access agreement or secured a fishing permit; 2) that the access agreement or permit required the defendant to conform to the requirements that NORMA is authorized to impose under section 611(1), and 3) that the defendant failed to comply with these requirements. It follows that a defendant's failure to comply with section 611(1), will, ipso facto, constitute a violation of a permit or access agreement as proscribed by section 906(1)(a),(c). FSM v. Kuo Rong 113, 20 FSM R. 27, 34 (Yap 2015).

Marine Resources; Statutes – Construction

In the absence of clear legislative intent to impose cumulative penalties against a single violative act, the court will construe 24 F.S.M.C. 611(5), 906(1) and 920 to impose only one penalty for failure to comply with the integrated requirements imposed as a condition of a permit or access agreement pursuant to 24 F.S.M.C. 611(1). But since 24 F.S.M.C. 901(2) evinces clear legislative intent for the imposition of cumulative penalties by making each day of a continuing violation a separate offense for violations of subtitle I and since the entire Marine Resources Act of 2002 constitutes FSM Code Title 24, Subtitle I, it is proper to impose a separate penalty for each of the four days between April 27, 2013 and April 30, 2013, inclusive, during which the vessel violated a provision of that Act. FSM v. Kuo Rong 113, 20 FSM R. 27, 34-35 (Yap 2015).

Administrative Law; Civil Procedure – Summary Judgment – Grounds – Particular Cases; Marine Resources

Whether an administrative penalty could have been imposed in lieu of a civil action in a fishing case is irrelevant to the case's disposition because the citation process by which administrative penalties are imposed is not mandatory and the citation process to assess an administrative penalty and a civil law suit for civil penalties proceed on two separate tracks. That the FSM has not cited a vessel under the Administrative Penalty Regulations, but has instead pursued Title 24 civil penalties is not sufficient as a matter of law to warrant summary judgment for defendants, nor does it present a material question of fact to be reserved for trial. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

Civil Procedure – Parties; Marine Resources

Although penalties can only be assessed against persons – natural persons or business

enterprises or similar entities – and the definition of person does not include a vessel *in rem*, the vessel or a bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied so that the vessel, as security for the bond, is therefore properly a party to the action. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

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## COURT'S OPINION

READY E. JOHNNY, Acting Chief Justice:

This matter comes before the Court on the parties' cross-motions for summary judgment. Defendants filed their motion for partial summary judgment on July 15, 2014, and Plaintiff filed its motion for summary judgment on liability on July 16, 2014. Plaintiff then filed its opposition to Defendants' motion on August 1, 2014, and Defendants filed their opposition to Plaintiff's motion on the same day. On August 11, 2014. Defendants filed a reply supporting their motion for partial summary judgment.

For the reasons set out below, the court grants Plaintiff's motion for summary judgment in part, and defendants' motion for summary judgment in part.

### I. BACKGROUND

This matter arises out of a civil complaint filed by the FSM against the defendants alleging continuing offenses for failure to maintain a transponder and transmit the *Kuo Rong 113's* location when in FSM waters, in violation of the FSM Marine Resources Act of 2002. The vessel entered FSM waters on April 27, 2013, and remained in FSM waters until it was arrested on April 30, 2013. At all times the vessel had a valid fishing permit, and was lawfully in FSM waters as a fishing vessel. At the time the vessel was boarded by the FSM National Police the transponder appeared to be on, but it was not transmitting effectively because its software had not been reconfigured after leaving dry-dock in Taiwan.

The complaint alleges twelve causes of action. These are broken down to three violations alleged, on each of four days between April 27 and April 30 inclusive. The causes of action alleged in the complaint seek the imposition of penalties under 24 F.S.M.C. 611(5) for violation of §§ 611(1)(b), 611(1)(c) and 24 F.S.M.C. 906(2) for violation of section 906(1)(c). The FSM has since conceded that section 906(2) is inapplicable, and seeks to amend the complaint to allege a violation of section 906(1)(c), punishable under the catch-all provision of 24 F.S.M.C. 920.

### II. STANDARD FOR GRANTING SUMMARY JUDGMENT

A court must grant a motion for summary judgment under Rule 56(c) if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. In considering a motion for summary judgment, the facts and inferences to be drawn from those facts must be viewed by the court in the light most favorable to the party opposing the motion. FSM v. Ponape Builders Constr. Co., 2 FSM Intrm. 48, 52 (Pon. 1985). The moving party has the initial burden of showing that there are no triable issues of fact. Once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. It is not enough for the nonmoving party to simply disagree with the moving party and attempt to

show, through affidavits or otherwise, that there is a triable issue. Rather, the nonmoving party must submit admissible, competent evidence setting forth specific facts such that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable finder of fact. See Robert v. Simina, 14 FSM Intrm. 257, 261 (Chk. 2006); Ting Hong Enterprises v. Ehsa, 10 FSM Intrm. 24, 31 (Pon. 2001).

### III. DISCUSSION

#### A. Cumulative Penalties Under 24 F.S.M.C. 611(5)

Section 611 of the Marine Resources Act allows NORMA to require, as a condition of fishing in the exclusive economic zone (EEZ) "that the operator of any vessel: (a) install on such vessel, at its own expense, a transponder approved by the Authority; (b) maintain such transponder in good working order at all times while in the fishery waters . . . and (c) ensure that any communication or data required by the Authority to be transmitted by the transponder is transmitted continuously, accurately and effectively to the designated receiver." 24 F.S.M.C. 611(1). The parties agree that these requirements were in place with regards to the *Kuo Rong 113*, and it is clear that the vessel was not in compliance with part (c) of subsection 611(1), since the vessel was inside the EEZ of the FSM between April 27, 2013 and April 30, 2013, and during this time its transmissions were not received by the designated receiver operated by the Forum Fisheries Agency (FFA). That the FFA was able to receive transmissions from the transponder aboard the *Kuo Rong 113* after its software was re-booted by a technician is sufficient evidence to support a finding that the defendants also failed to maintain the transponder in good working order, in violation of the requirements in part (b) of subsection (611)(1).

The substance of the dispute between the parties revolves around the correct interpretation of the penalty provision in 24 F.S.M.C. 611(5), which provides that "any person who violates subsection (1) or subsection (4) of this section, by failing to install, maintain, or ensure the transmission of information as required, is subject to a civil penalty of not less than \$100,000 and not more than \$500,000." The FSM contends that the defendants should be sanctioned twice under this provision, once for violating subsection 611(1)(b) by failing to maintain the transponder in working order, and again for violating subsection 611(1)(c) by failing to ensure that required information was transmitted effectively. In opposition, the defendants argue that 24 F.S.M.C. 611(5) levies a fine for a violation of subsection (1) as a whole, rather than imposing separate fines for a violation of each of the subsection's constituent parts.

Whether cumulative statutory penalties are permissible is properly determined by seeking out the legislative intent as expressed in the language of the statute. See United States v. American Trucking Ass'ns, 310 U.S. 534, 543, 60 S. Ct. 1059, 1063, 84 L. Ed. 1345, 1350-51 (1940). A statute imposing a penalty is to be strictly construed against the government and in favor of one against whom penalties are sought to be imposed. See generally 3 SUTHERLAND, STATUTORY CONSTRUCTION § 59.03, at 6-7 (4th ed. 1974); FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM Intrm. 365, 368 (Yap 1996) (noting that strict construction of penalty statutes is especially appropriate where a penalty may be imposed without requiring a finding of a culpable state of mind). Where the statutory language of a penalty provision is ambiguous, this ambiguity should be resolved against punishing the same action under two different statutes. See Laion v. FSM, 1 FSM Intrm. 503, 528-29 (App. 1984). The Laion court held that, "where two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of clear legislative intent." *Id.* Clear legislative intent for cumulative penalties can be indicated by provisions providing for separate penalties for each day of a violation, as found section 901(2) of the Marine Resources Act, or where a separate penalty is expressly imposed for each violation. See generally R.D.

Hursh, Annotation, *Recovery of Cumulative Statutory Remedies*, 71 A.L.R.2d 986 (1960).

The penalty provision at issue here, 24 F.S.M.C. 611(5), does not specifically impose cumulative penalties for violation of each part of subsection (1). The penalty provision can be read to prescribe that, "[a]ny person who violates subsection (1) or subsection (4) of this section . . . is subject to a civil penalty of not less than \$100,000 and not more than \$500,000." The dependent clause, "by failing to install, maintain, or ensure transmission of information from a transponder as required," can be afforded meaning if read to withhold the prescribed penalty from those acts that might be considered a violation of subsection (1) or (4), but would fall short of the standard that the act constitute a failure to install, maintain or ensure transmission of information from a transponder as required.

To understand why such limiting language is meaningful, one must turn to subsection (4) which states, "[n]o person shall intentionally, recklessly, or unintentionally destroy, damage, render inoperative, or otherwise interfere with a machine aboard a vessel which automatically feeds or inputs information or data into a transponder, or *intentionally feed information or data into a transponder which is not officially required or is meaningless.* [emphasis added] "Acts prohibited by the latter part of subsection (4) would not appear to fall under subsection (5), since intentionally feeding information or data into a transponder which is not officially required or meaningless would not appear to constitute a failure to ensure transmission of information from a transponder as required. Furthermore, Congress may have recognized that the language in the first part of subsection (4) penalizing an act that would "otherwise interfere with a machine . . ." is extremely broad. Congress would have reasonably intended to restrict to the scope of subsection (5) to only those acts of interference that would result in a failure to ensure transmission of information from a transponder as required. An act of interference that falls short of that standard would be penalized under the catch-all provision in 24 F.S.M.C. 920, and would be punishable by a lesser fine of between \$40,000 and \$100,000.

24 F.S.M.C. 611(5) is a penalty statute that imposes strict liability for failure to comply with certain requirements of subsection (1). In imposing strict liability for failure to comply with these requirements, Congress would have reasonably intended to limit the scope of the penalty provision in subsection (5) to only those violations that defeat the legislative purpose behind the enactment of the statute. Subsection 611(1) reflects the legislative purpose to provide NORMA with the authority to require that fishing vessels undertake all the various actions necessary to transmit required information continuously, accurately and effectively. To this end, NORMA is authorized to require that operator of any vessel install a transponder, maintain it in good working order, and ensure the effective transmission of required information.

Read in proper context it is clear that 24 F.S.M.C. 611(1)(b) and (c) are aimed at similar types of wrongdoing and uphold a public interest of the same nature. The failure of the *Kuo Rong 113* to maintain its transponder in good working order, and its consequent failure to ensure transmission of required information from the transponder, is a solitary act that caused only one injury. Therefore, under Laion, 24 F.S.M.C. 611(5) should not be construed to authorize cumulative penalties in this instance.

The arguments by the FSM against application of the Laion precedent are unavailing. The FSM argues that 24 F.S.M.C. 611(1)(b) and (c) apply to distinct violative acts, because it is possible to violate part (b) by failing to maintain a transponder, while ensuring compliance with part (c) by engaging in manual reporting of required information. This argument is defeated by subsection (5), which penalizes a failure to "ensure transmission of information *from a transponder . . .*" (emphasis added). It is clear that any vessel which fails to install a transponder will, ipso facto, fail to maintain that transponder in good working order, and any vessel that fails to maintain a transponder in working order will, ipso facto, fail to ensure continuous transmission of required information from that transponder.

The reliance of the FSM on FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 79 (Pon. 1997) is similarly misplaced. That case held that where former 24 F.S.M.C. 501(1) set forth a list of prohibited acts, each in the disjunctive, the commission of any one of the listed acts was a separate violation for which the FSM could pursue civil penalties. Ting Hong Oceanic Enterprises, 8 FSM Intrm. at 90. In support of its holding the Ting Hong court cited former 24 F.S.M.C. 502(1), which provided that, "any person who is found . . . to have committed an act prohibited by section 501 of this chapter shall be liable . . . for a civil penalty." Ting Hong is distinguishable from this matter, because the penalty statute at issue there imposed a penalty against the commission of an act, and those defendants committed two distinct acts in violation of two separate provisions of former section 501: Those defendants (1) failed to maintain a daily catch record in the English language as required by former 24 F.S.M.C. 116(1), the foreign fishing agreement and their permit, thereby violating former 24 F.S.M.C. 501(c); and (2) knowingly transported fish in violation of former 24 F.S.M.C. 501(1)(f), their agreement and their permit.

In contrast to the defendants in Ting Hong, the defendants in this case failed to perform only one act, which constitutes only one violation. Subsection (1) allows NORMA to require that operators perform an integrated act which, when completed in its entirety, ensures transmission of required information from a vessel's transponder. This is reflected in the use of the word "and" between 24 F.S.M.C. 611(1)(b) and (c). Failure to perform any one part of the integrated act required under subsection 611(1) is sufficient to frustrate entirely the purpose of the subsection. It follows that a failure to perform multiple component parts of the act required under the subsection is no more frustrating to the purpose of the statute than failure to perform only one part. In the absence of clear legislative intent to impose cumulative penalties, the court will construe subsection (5) of 24 F.S.M.C. 611 to impose only a single penalty against defendants for their failure to comply with the integrated requirements imposed on them pursuant to 24 F.S.M.C. 611(1).

*B. Leave Granted to Amend Complaint to Pursue Penalties Under 24 F.S.M.C. 920*

Counts 1-4 of the complaint seek a maximum penalty of \$500,000 against defendants under 24 F.S.M.C. 906(2) for violation of 24 F.S.M.C. 906(1)(c). Section 906(1)(c) states that it is a violation of the provision for any person to "violate any provision, condition or requirement of an access agreement . . ." Subsection 906(2) imposes a penalty of between \$100,000 and \$500,000 per act in violation of subsection 906(1), so long as the violation of section 906(1) regards: (a) serious misreporting of catch; (b) fishing in a closed area; (c) fishing after attaining quota; (d) directed fishing for a stock for which fishing is prohibited; (e) using prohibited fishing gear; or (f) falsifying or concealing the markings, identity or registration of a fishing vessel.

Defendants rightly contend in their motion for summary judgment that the offenses alleged in the complaint are not among those specified in section 906(2), and so the appropriate penalty provision for the alleged violation of 906(1)(c) is to be found in the catch-all provision of section 920. That section states that "any person who commits an act in violation of any provision of this subtitle, for which no penalty is otherwise specified in this chapter or the preceding chapters, shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000." The FSM does not dispute that its initial reliance on section 906(2) was in error, and seeks leave of court to amend the complaint to reflect a cause of action under 24 F.S.M.C. 920. The FSM argues in support that its mistake was merely a technical error in pleading, and that granting leave to amend would not prejudice the defendants because the revised cause of action does not place any new facts in dispute, would not result in the need for additional discovery and would not otherwise delay disposition of this case.

The arguments of the FSM in support of leave to amend its complaint are persuasive, and so leave to amend its prayer for relief in counts 1-4 to seek a fine in the maximum amount of \$100,000

under 24 F.S.M.C. 920 is granted.

*C. Penalties Under 24 F.S.M.C. 920*

The FSM claims, and defendants do not contest, that the failure of the transponder on board the *Kuo Rong 113* to transmit effectively between April 27, 2013 and April 30, 2013, constitutes a violation of an access agreement between the FSM and Luen Thai Fishing Venture Ltd. The parties also agree that such a violation is contrary to section 906(1)(c), which establishes that it is a violation of the subtitle to violate any provision, condition or requirement of an access agreement. The substance of the parties' dispute centers around the language in 24 F.S.M.C. 920 that imposes a penalty only against "an act in violation of any provision of the subtitle for which no civil penalty is otherwise specified in this chapter or the preceding chapters." The FSM argues that no civil penalty is provided for a violation of section 906(1)(c), and so the appropriate penalty is to be found in section 920. The FSM then asks to impose multiple penalties on defendants: One penalty for failure to maintain a transponder, contrary to Section 611(5), and an additional penalty for failure to maintain a transponder *in violation of an access agreement*, contrary to section 906(1)(c).

Defendants disagree, contending that Section 611(5) specifies a civil penalty for failure to maintain or ensure transmission from a transponder, and so the catch-all provision of section 920 does not apply. Defendants' argument finds support in 24 F.S.M.C. 611(2), which defines a transponder to mean, "any device or machine placed on a fishing vessel *as a condition of its permit or access agreement* . . . [emphasis added]. Since a transponder is defined in Section 611(2) in relation to a permit or access agreement, it follows that to support a violation of section 611(1), the government would have to prove that a defendant had secured a permit or entered into an access agreement. Furthermore, the first sentence of Section 611(1) establishes that the requirements of section 611 are to be imposed "as a condition of fishing in the EEZ." For NORMA to impose the requirements of section 611(1) as condition for fishing in the FSM EEZ, it would have to mandate these requirements as part of an access agreement or a fishing permit.

To prove a violation of section 611(1), the government has to show that a defendant: (1) Entered into an access agreement or secured a fishing permit; (2) that the access agreement or permit required the defendant to conform to the requirements that NORMA is authorized to impose under section 611(1), and (3) that the defendant failed to comply with these requirements. It follows that a defendant's failure to comply with section 611(1), will, ipso facto, constitute a violation of a permit or access agreement as proscribed by section 906(1)(a),(c). In the absence of clear legislative intent to impose cumulative penalties against a single violative act, the court will construe 24 F.S.M.C. 611(5), 906(1) and 920 to impose only one penalty for failure to comply with the integrated requirements imposed as a condition of a permit or access agreement pursuant to 24 F.S.M.C. 611(1).

*D. Each Day of a Continuing Violation Constitutes a Separate Violation for Which a Separate Penalty is Imposed*

24 F.S.M.C. 901(1) states that "any person who is found . . . to have committed an act prohibited by this subtitle shall be liable to the FSM for a civil penalty." Section 901(2) continues by stating that "each day of a continuing violation shall constitute a separate offense, for which a separate penalty shall be assessed." Relying on these provisions, the FSM seeks to impose cumulative penalties for each of the four days the *Kuo Rong 113* was in the EEZ of the FSM with a non-effective transponder in violation of 24 F.S.M.C. 611(5). The defendants argue that they are not liable for cumulative penalties under sections 901(1) and (2), because those provisions apply only to "acts prohibited by this subtitle," and the term subtitle as used in section 901(1) encompasses offenses charged in the "subtitle of the section 900 penalties." Defs.' Summ. J. Br. at 6. This contention seems



to be based on a misconstruction of how the Marine Resources Act of 2002 is organized by its enabling law within the FSM Code.

The Marine Resources Act came into law pursuant to Public Law 12-34. The preamble to Public Law 12-34 indicates that the Act is technically Subtitle I to title 24 of the FSM Code. Section 2 of Public Law 12-34 states again that Title 24 is amended to enact a new chapter 1 to new subtitle I entitled "Marine Resources Act of 2002." Thus, the entire Marine Resources Act of 2002 constitutes subtitle I to title 24. With this understanding of the term "subtitle" in mind, it is clear that section 901(2) applies to violations in all chapters of the Marine Resources Act, and not merely those violations found in chapter 9 as urged by the defendants.

For this reason, and because 24 F.S.M.C. 901(2) evinces clear legislative intent for the imposition of cumulative penalties, it is proper to impose a separate penalty for each of the four days between April 27, 2013 and April 30, 2013, inclusive, during which the *Kuo Rong 113* violated 24 F.S.M.C. 611(5). See e.g., *FSM v. Katzutoku Maru*, 15 FSM Intrm. 400, 404-05 (Pon. 2007) (defendant committed a separate violation for each day he engaged in commercial fishing without a valid fishing permit).

*E. The Possibility that Administrative Penalties Could have been Assessed in Lieu of this Civil Proceeding is Irrelevant.*

The defendants' contention that an administrative penalty could have been imposed in lieu of a civil action in this matter is not relevant to the disposition of this case. The citation process by which administrative penalties are imposed is not mandatory. The citation process to assess an administrative penalty and a civil law suit for civil penalties proceed on two separate tracks. *FSM v. Koshin 31*, 16 FSM Intrm. 15, 20 (Pon. 2008). That the FSM has not cited *Kuo Rong 113* under the Administrative Penalty Regulations, but has instead pursued civil penalties under Title 24 is not sufficient ground as a matter of law to warrant summary judgment for defendants, nor does it present a material question of fact to be reserved for trial.

*F. The Kuo Rong is a Proper Party to this Suit*

The parties do not contest that the imposition of joint and several liability against the defendants is warranted in this matter, and such liability is well established. See *FSM v. Kana Maru No. 1*, 17 FSM Intrm. 399, 404, 406 (Chk. 2011). However, defendants contend that the *Kuo Rong 113* as an *in rem* defendant is not properly a party to this action. Defendants rely on 24 F.S.M.C. 611(5), which states that any penalties can only be assessed against persons, which are defined as any natural person or business enterprise or similar entity. 24 F.S.M.C. 102(50). The definition of person does not include a vessel *in rem*. *Id.* at 405. However, the vessel, or rather the bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied. *Id.* The *Kuo Rong 113* is security for the bond and therefore is properly a party to the action.

IV. CONCLUSION AND SETTING OF PENALTY HEARING

NOW THEREFORE IT IS HEREBY ORDERED that Defendants Hung Yao Chang, Syu Bei-jing, and Luen Thai Fishing Venture, Ltd. are jointly and severally liable for four (4) violations punishable under 24 F.S.M.C. 611(5), for failure to ensure effective transmission of required information from the transponder aboard the *Kuo Rong 113* on each day between April 27, 2013 and April 30, 2013, inclusive. Further cumulative penalties requested by the FSM for violation of 24 F.S.M.C. 611(5) and 24 F.S.M.C. 906(1)(c) will not be imposed.

IT IS FURTHER ORDERED that the parties are to confer, and on or before Friday, April 3, 2015, shall file a report indicating whether a telephonic hearing on the issue of setting an appropriate penalty is sufficient, or whether an in-court hearing is preferable or necessary.

IT IS ALSO FURTHER ORDERED that, if the parties prefer or require an in-court hearing, the time for such a hearing is set for Tuesday, May 5, 2015, at 2:00 p.m. at the FSM Supreme Court in Colonia, Yap.

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CHUUK STATE SUPREME COURT APPELLATE DIVISION

ALEXANDER (SANDER) R. NARRUHN,	)	CSSC APPEAL NO. 03-2011
	)	
Appellant,	)	
	)	
vs.	)	
	)	
CHUUK STATE ELECTION COMMISSION,	)	
	)	
Appellee.	)	
	)	
JOHNSON S. ELIMO,	)	
	)	
Real Party in Interest.	)	
	)	

ORDER DISMISSING APPEAL WITH PREJUDICE

Decided: April 17, 2015

BEFORE:

Hon. Jayson Robert, Associate Justice, Presiding  
Hon. Brian Dickson, Temporary Justice\*  
Hon. Derensio Konman, Temporary Justice\*\*

\*Attorney at Law, Legislative Counsel, 12th Chuuk State Legislature, Chuuk State  
\*\* Attorney at Law, Directing Attorney Micronesia Legal Services Corporation, Chuuk Office

APPEARANCES:

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