

*Kulas v. Becheserrak*, 7 ROP Intrm. 106 (1998)

**SARE KULAS,  
Appellant,**

v.

**TMILCHOL BECHESERRAK,  
Appellee.**

CIVIL APPEAL NO. 41-95  
Civil Action No. 428-93

Supreme Court, Appellate Division  
Republic of Palau

Submitted: July 1, 1998  
Decided: August 31, 1998

Counsel for Appellee: David F. Shadel

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;  
and R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

On June 15, 1998, this Court affirmed the Trial Division's decision in this case. Tmilchol Becheserrak, as prevailing party, has moved to have the costs of the appeal taxed against appellant Sare Kulas. Appellee has submitted an itemized list of his costs totaling \$5,257.72. Appellant has not filed a response.

Under this Court's Rules of Appellate Procedure, when a judgment is affirmed, costs are taxed against the appellant "unless otherwise ordered." ROP R. App. Pro. 39(a). Included in the costs recoverable by the prevailing party are "all fees and expenses paid or incurred . . . for the service of process, witness fees, or filing fees on appeal." 14 PNC § 703. The Court may also permit recovery of "any additional items of costs or actual disbursement which it deems just and finds have been necessarily incurred for services which were actually and necessarily performed." 14 PNC § 702. This statutory provision permitting the Court wide discretion regarding costs is similar to the approach in the United States federal system. *See Johns - Manville Corp. v. United States*, 893 F.2d 324, 326 (Fed. Cir. 1989) ("the ability to award costs has become more a part of the inherent authority of the courts than a matter of statutory authorization."); *see also* 10 Wright et al., *Federal Practice and Procedure* § 2668 (1983) (courts' discretion allows them to make decisions about costs on basis of circumstances and equities of each case).

Appellee's itemized list of his costs includes charges for: photocopying, phone calls, facsimiles, his attorney's research trips to Guam, and computerized legal research. We are not

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inclined to tax all these amounts to Appellant. Costs are a limited subset of a party's total expenses. See *Pershern v. Fiatallis North America, Inc.*, 834 F.2d 136, 140 (8th Cir. 1987) (“[N]ot all expenses of litigation are costs taxable against the losing party . . . .”); 10 Wright et al., *Federal Practice and Procedure* § 2666 (1983) (“Under the American system, costs almost always amount to less than the successful litigant's total expenses in connection with a lawsuit”).

With these principles in mind, we find that it is appropriate to tax to Appellant only the costs of Appellee's photocopying. Photocopying costs are recoverable in the United States, provided they are reasonably necessary for use in the case and not merely for the convenience of the attorneys. See *M.T. Bonk Co. v. Milton Bradley Co.*, 945 F.2d 1404, 1410 (7th Cir. 1991); *Independence 1107 Tube Corp. v. Copperweld Corp.*, 543 F. Supp. 706, 722 (N.D. M. 1982). Because Appellant has not challenged Appellee's designation of photocopying costs, and such expenses appear related to his appendix of cases, the photocopying was reasonably necessary for court use.

Telephone calls and facsimiles are not generally recoverable as costs. See *Wahl v. Carrier Manufacturing Co., Inc.*, 511 F.2d 209, 217 (1975). Such items are normally attributable to an attorney's office overhead. Travel expenses are not typically recoverable either. See *Riofrio Anda v. Ralston Purina Co.*, 772 F. Supp. 46, 55 (D.P.R. 1991); 20 Am. Jur. 2d *Costs* § 61 (1995). In the absence of any vexatious or bad faith action on behalf of the losing party, see *International Trading Corp. v. Johnsrud*, 1 ROP Intrm. 569, 576-77 (1989), or any showing that the prevailing party had no choice but to hire off-island counsel, *Ray v. Electrical Contracting Corp.*, 2 FSM Intrm. 21, 25-26 (App. 1985), we believe each of the parties should be responsible for their own counsel's travel expenses. Similarly, appellee is not entitled to the amounts his attorney spent for computerized legal research. Such research is properly classified as attorney's fees and not as costs. See *Haroco, Inc. v. American Nat'l Bank & Trust Co.*, 38 F.3d 1429, 1440-41 (7th Cir. 1994).

Accordingly, Appellee's motion is GRANTED in part and DENIED in part. Costs of \$1,072.05 are hereby taxed against Appellant.