IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

KOROR STATE LEGISLATURE,
Appellant,
v.
KOROR STATE PUBLIC LANDS AUTHORITY and PALAU SEA VENTURES, INC.,
Appellees.

Cite as: 2019 Palau 38
Civil Appeal No. 19-020
Appeal from Civil Case No. 14-112

Decided: December 12, 2019

Counsel for Appellant ……	James Kennedy
Counsel for Appellee Palau Sea Ventures ……..	Kassi Berg & Rachel Dimitruk
Counsel for Appellee Koror State Public Lands Authority …	Michael Crane

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
KATHERINE A. MARAMAN, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

ORDER DISMISSING APPEAL

PER CURIAM:

BACKGROUND

[¶ 1] On September 27, 2019, Appellant, Koror State Legislature ("KSL"), filed this appeal from the Trial Division's grant of a Motion for Summary Judgment filed by Koror State Public Lands Authority ("KSPLA") and joined by Palau Sea Ventures, Inc. ("PSV"), dismissing all of KSL's claims against those entities. The Trial Division's decision did not dispose of

KSL's claims against a third defendant, Koror Planning Commission ("KPC"). Neither did it dispose of PSV's counterclaim against KSL and third-party claim against the Koror State Government ("KSG"), nor KSG's counterclaim against PSV. After the Trial Division's grant of summary judgment and KSL's appeal thereof, the only activity in the case has been KSL's successful motion to reschedule a status conference and, following that conference, a further conference set for February 6, 2020. No party requested, and the Trial Division did not issue, a certification of the grant of summary judgment as a final judgment under Rule 54(b). ROP R. Civ. P. 54(b).

[¶ 2] This appeal was filed on September 27, 2019, and Appellant's brief was timely filed on November 11. On November 26, PSV simultaneously filed a motion to enlarge time to file its responsive brief, which this Court granted on December 4, 2019, and a "Motion to Dismiss Interlocutory Appeal." KSL filed an Opposition to the Motion to Dismiss on December 9. In accordance with Rule 27(c), the Motion to Dismiss was considered by a full panel of Justices.

DISCUSSION

[¶ 3] PSV argues that, based on the final judgment rule, this Court has no jurisdiction over the appeal of a non-final judgment. That is incorrect. As we held in a prior appeal in the instant case, our subject matter jurisdiction is defined by a constitutional provision which uses "extremely broad language." *Koror St. Legis. v. KSPLA*, 2017 Palau 28 ¶ 8 (*citing* Const. Article X, § 5). This Court's jurisdiction extends to "all matters which traditionally require judicial resolution." *Id.* While this Court has "long adhered to the premise that the proper time to consider appeals is after final judgment," *KSPLA v. Ngarameketii/Rubekul Kldeu*, 22 ROP 1, 2 (2014), the basis for that rule is not jurisdictional. The final judgment rule is a prudential rule, not a jurisdictional one. *ROP v. Black Micro Corp.*, 7 ROP Intrm. 46, 47 n.2 (1998).

[¶ 4] PSV's misapprehension about the limits of this Court's jurisdiction does not doom its motion, however. The fact that we have jurisdiction over this interlocutory appeal does not mean we should exercise it. "Palau follows

the final judgment rule because '[p]iecemeal appeals disrupt the trial process, extend the time required to litigate a case, and burden appellate courts[, such that i]t is far better to consolidate all alleged trial court errors into one appeal." *Pac. Call Invs., Inc. v. Palau Marine Indus. Corp.*, 16 ROP 89, 90 (2008). This is why "[a]bsent an exception [to the final judgment rule], appeals from interlocutory judgments and orders will be dismissed" as a matter of judicial prudence and restraint. *Toribiong v. Seid*, 23 ROP 1, 3 (2015). "Typically, a partial summary judgment ruling is not the type of judgment from which an appeal may be taken." *Id.* (*citing Salii v. Etpison*, 18 ROP 41, 43 (2011); *Airai State Pub. Lands Auth. v. Aimeliik State Gov't*, 11 ROP 39, 41 (2003)).

[¶ 5] For litigants in KSL's position, the appropriate mechanism for attempting to appeal an otherwise interlocutory order is ROP Rule of Civil Procedure 54(b). Under that rule, the Trial Division "may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." ROP R. Civ. P. 54(b). A judgment entered under Rule 54(b) is a final judgment. Thus, Rule 54(b) does not create an exception to the final judgment rule—it creates an alternative way to secure a final judgment.

[¶ 6] Here, the Trial Division has not directed the entry of a final judgment under Rule 54(b). In its opposition to PSV's motion to dismiss this appeal, KSL informed this Court that it filed a motion for certification in the Trial Division.[1] But that motion —filed months after KSL noted this appeal and weeks after PSV moved to dismiss it—does not affect our ruling. KSL does not presently have the Rule 54(b) certification required to convert the

[1] KSL candidly admits in its brief that "[h]ad the Legislature been represented by a more experienced or knowledgeable appellate attorney, it would have motioned for Rule 54(b) Certification in the Trial Division before filing this Appeal." KSL Opposition at 3. While we appreciate counsel's candor and humility, the result for KSL is the same. An essential component of our representational system of litigation is that parties are bound by the actions, or inactions, of their attorneys. *E.g.*, *KSPLA v. Kebekol*, 22 ROP 122, 124 (2015) (dismissing an appeal where Appellant's attorney failed to timely file a brief). Moreover, we admonish counsel to become sufficiently knowledgeable in the areas in which he practices.

Trial Division's grant of summary judgment into an appealable final order.[2] We express no opinion regarding whether the Trial Division should or should not certify its decision as a final judgment. The Trial Division is in the best position to determine, in its discretion, whether such certification is proper.[3]

[¶ 7] Without Rule 54(b) certification, KSL must rely on an exception to the final judgment rule.[4] We have previously recognized two main exceptions: the collateral order doctrine and the "real-world effects" exception. KSL does not argue that the Trial Division's summary judgment order falls with the collateral order exception, and for good reason. To come "within the collateral order exception, an order must, at a minimum, satisfy three conditions: It must 'conclusively determine the disputed question,' 'resolve an important issue completely separate from the merits of the action,' and 'be effectively unreviewable on appeal from a final judgment.'" *Heirs of Drairoro v. Yangilmau*, 10 ROP 116, 118 (2003) (*quoting Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 98 S. Ct. 2454, 2458 (1978)). For example, this Court has held that ordering one party to pay sanctions by a date prior to the entry of final judgment falls within the collateral order exception. *Wolff v. Sugiyama*, 5 ROP Intrm. 10, 11 (1994). In this case, the determination appealed—that KSL's claims against KSPLA and PSV must fail because the statute on which they are based is unconstitutional as applied—is central to, not separate from, the merits of the action.

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[2] At present, the Trial Division's decision on the Motion for Summary Judgment "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." ROP R. Civ. P. 54(b). This Court cannot pretend to read the mind of a Justice of the Trial Division and guess whether that Justice may wish to revise her opinion in the future. This is one reason why it is important to allow the trial judge to make the determination of whether a Rule 54(b) certification is appropriate.

[3] Should the Trial Division decide to certify its decision on summary judgment as final, we see no reason not to resume appellate proceedings at their current stage, meaning that the record and KSL's opening brief should be immediately refiled with the new notice of appeal and Appellees' brief would be due 45 days thereafter. This would avoid KSL receiving the benefit of additional time to file a revised brief as a result of its decision to file an appeal without properly certifying it.

[4] For sake of completeness, we note that KSL has not asked this Court for a writ of mandamus pursuant to ROP Rule of Appellate Procedure 21. In any case, such an extraordinary writ would almost certainly be unavailable to KSL. *See Ngirmeriil v. Armaluuk*, 11 ROP 122, 124 (2004) (holding that a writ of mandamus is almost certainly unavailable where a trial court refuses to certify a judgment under Rule 54(b) precisely because there is adequate alternative relief available—the review of the trial court's decisions after a final judgment).

[¶ 8] That leaves KSL with its argument that its interlocutory appeal should be allowed under the "real-world effects" exception to the final judgment rule. As we have explained:

> Some interlocutory orders will have an impact, not only on the course of the litigation in which they are entered, but also on "real world" events. If the impact on real world events is of a nature that it cannot be easily undone after judgment, we have held that the final judgment rule has sufficient flexibility to allow for an immediate appeal of such an order. Thus, we have held that an order granting or denying a request for a preliminary injunction is immediately appealable. *See Olikong v. Salii*, 1 ROP Intrm. 406, 411 (1987).

Black, 7 ROP Intrm. at 47. Thus far, we have not applied the real-world effects exception outside the context of appeals from preliminary injunctions. Because of the high standard present in the injunctive relief context, the real-world effects exception to the final judgment rule has necessarily been limited. *See Max v. Airai State Pub. Lands Auth.*, 18 ROP 155, 156 (Tr. Div. 2011) (noting that an injunction "is an extraordinary and drastic remedy" which requires a showing of irreparable harm (citation omitted)).

[¶ 9] KSL invites us to erode the final judgment rule by applying the real-world exception outside of the context of preliminary injunctions. We decline to extend the exception to encompass KSL's appeal, particularly in light of KSL's failure to seek certification from the Trial Division under Rule 54(b) before filing its appeal. Rule 54(b) allows the Trial Division to consider whether there is "no just reason for delay," thereby providing an appropriate mechanism for judicial consideration of KSL's concerns related to the real-life impacts of a delay in appellate consideration. Rather than presenting us with an argument seeking expansion of an exception to a prudential rule, KSL should have availed itself of that mechanism.

CONCLUSION

[¶ 10] For all of the foregoing reasons, Appellee PSV's Motion to Dismiss this appeal is **GRANTED** and this appeal is **DISMISSED**.