

Becheserrak v. ROP, 3 ROP Intrm. 279 (1993)
KATSUTOSHI BECHESERRAK,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CIVIL APPEAL NO. 33-91
Civil Action No. 781-88

Supreme Court, Appellate Division
Republic of Palau

Order

Decided: August 23, 1993

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Attorney General

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
and JANET H. WEEKS, Part-time Associate Justice.

PER CURIAM:

Appellee moved to dismiss this appeal and for an extension of time to file their responsive brief on November 29, 1991. Appellant cross-moved for costs and attorney's fees incurred in responding to that motion. The motions were argued on February 21, 1992, before a panel consisting of Chief Justice Nakamura and Associate Justices Sutton and O'Brien. However, due to the death of the Chief Justice and the resignation of Justice O'Brien, no decision was issued by that panel. Rather than further delay the hearing of this appeal by scheduling additional argument on these motions alone, the undersigned panel issues the following order.

1280 Appellee's motion to dismiss urges that the trial court was without jurisdiction to hear this case because of its untimely filing and that, as a consequence, we are without jurisdiction to hear this appeal. Appellant counters that a similar motion was made by appellee in the trial court, denied, and not appealed from, and is therefore *res judicata*.

We deal first with appellant's contention, with which we disagree. Had appellee attempted to file an appeal from the denial of his motion to dismiss while the case was still pending in the trial court, it would have been dismissed as interlocutory. *See generally PEQPB v. Ngatpang State*, 1 ROP Intrm. 647 (1989) ("An appeal requires that there be some final decision dispositive of the matter before the trial court."); see *Nakatani v. Shigemitsu*, 1 ROP

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Intrm. 663A (1988) (dismissing appeal from denial of motion for summary judgment). The conclusion of the matter in the trial court was the first opportunity for appellee to raise the issue presented by its motion to dismiss in this Court, and it is entitled to do so now. *E.g., Fritz v. Salii*, 1 ROP Intrm. 521, 546-47 (1988) (after judgment, court had jurisdiction to hear cross-appeal from denial of defendants' motion to dismiss).

Having said that, we do not believe that appellee's filing of a motion to dismiss was the proper vehicle to bring the issue presented to the Court's attention. Rather than a motion to dismiss, appellee should have filed a cross-appeal from the denial of its earlier motion in the trial court. Motions to dismiss in this Court should not be used to §281 raise issues presented in the trial court, but should be limited to issues that relate peculiarly to this Court's jurisdiction or to the propriety of the appeal itself.

Rather than forfeit appellee's opportunity to raise this issue because of what (until now) may have been a confusing procedural matter, we construe the motion to dismiss herein as a cross-appeal and direct the appellee to address the matter in its brief on the merits, discussing therein the effect of the intervening decision of this Court in *Yalap v. ROP*, Civil Appeal No. 18-91 (February 20, 1992). Appellee shall file its brief within 30 days from the date of this Order.