

*Wolff v. Sugiyama*, 5 ROP Intrm. 10 (1994)  
**MARTIN WOLFF,**  
**Appellant,**

v.

**PETER SUGIYAMA,**  
**Appellee.**

CIVIL APPEAL NO. 22-94  
Civil Action No. 109-94

Supreme Court, Appellate Division  
Republic of Palau

Order

Decided: October 25, 1994

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: JEFFREY L. BEATTIE, Associate Justice, LARRY W. MILLER, Associate Justice,  
PETER T. HOFFMAN, Associate Justice

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PER CURIAM:

This appeal arises out of a multi-party civil action currently pending before the trial court. As part of this civil action, defendant Martin Wolff filed a third-party complaint against Peter Sugiyama. In an August 23, 1994 Order and Judgment the trial court granted Sugiyama's motion to dismiss Wolff's third-party complaint. The trial court also sanctioned Wolff for filing what it considered to be a frivolous claim. The court ordered Wolff to pay attorney's fees in the amount of \$996.00 to Sugiyama no later than September 23, 1994. Wolff appealed the trial court's Order and Judgment on September 20, 1994.

The sanctions portion of the Order and Judgment is immediately appealable. In the ordinary course, an order directing the payment of money is subject to review and revision by the trial court at any time prior to final judgment and therefore is not enforceable or appealable until after final judgment. Conversely, if payment is directed on a date certain before final judgment then a party should ordinarily be entitled to a prompt appeal. The latter situation applies to the present case, in that the trial court ordered Wolff to pay the attorney's fees sanction by September 23, 1994. We therefore agree to hear Wolff's appeal of the sanctions order.

In the interest of judicial economy we will also hear Wolff's appeal of the dismissal of his third-party complaint. Such a ruling would ordinarily not be immediately appealable without an express determination by the trial court, pursuant to ROP Civ. Pro. Rule 54(b), that there is no

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just reason for delaying entry of final judgment as to the dismissed claim. *See Gibbons v. Palau*, 1 ROP Intrm. 547MM, 547PP-QQ (1988) quoting ROP Civ. Pro. Rule 54(b) ("For a ruling that resolves fewer than all the claims or determines rights of fewer than all the parties to be appealable, the trial court must . . . make 'an express determination that there is no just reason for delay' and it must also make 'an express direction for entry of judgment.>"). However, under the doctrine of pendent appellate jurisdiction an appellate court may assert jurisdiction over a claim that has not been certified pursuant to ROP Civ. Pro. Rule 54(b) if the claim is "inextricably intertwined with another claim over which the court properly has jurisdiction." *Brown v. Grabowski*, 922 F.2d 1097, 1106 n.3 (3rd Cir. 1990).

In the present case the trial court dismissed Wolff's third-party complaint after finding it was without merit; the court then sanctioned Wolff because it considered the third-party complaint to be frivolous. While it is true that a claim can be meritless without being frivolous, it is also true that determining ¶12 whether a claim is frivolous necessarily involves an examination of its merit. Put another way, we could not find that Wolff's third-party complaint was frivolous without first finding that it had no merit. We therefore consider the appeal of the sanctions order to be "inextricably intertwined" with the appeal of the dismissal of the third-party complaint.

Hearing both appeals at once avoids the piecemeal litigation which would follow if we heard only the sanctions appeal and left the appeal of the dismissal of the third-party complaint until another day. Employing the doctrine of pendent appellate jurisdiction we choose instead to hear them both at this time.

Sugiyama's motion to dismiss is DENIED. The appeal is allowed to go forward. The trial court retains jurisdiction over all other aspects of the case. *See DePinto v. Provident Security Life Insur. Co.*, 374 F.2d 50, 51 n.2 (9th Cir. 1967) ("An appeal from an interlocutory order . . . does not divest the trial court of jurisdiction to continue with other phases of the case.").