

Kuniyoshi Fishing Co. v. ROP, 8 ROP Intrm. 49 (1999)
KUNIYOSHI FISHING COMPANY,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CIVIL APPEAL NO. 99-27
Civil Action No. 99-145

Supreme Court, Appellate Division
Republic of Palau

Decided: October 7, 1999

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

PER CURIAM:

This is an appeal from the trial court's denial of appellant's motion to dismiss the complaint. On September 16, 1999, this Court issued an order to show cause why the appeal should not be dismissed as interlocutory. Appellant duly responded, attaching an Order and Judgment of the trial court certifying its decision and order denying the motion to dismiss as final for the purpose of appeal pursuant to ROP Civ. Pro. R. 54(b). Appellant concedes that, "[b]ut for the 54(b) certification, [that] decision and order would have been interlocutory in nature and, therefore, not subject to immediate appeal." KFC's Response to Order to Show Cause, September 20, 1999, at ¶3.

"We have long adhered to the premise that the proper time to consider appeals is after final judgment." *ROP v. Black Micro Corp.*, 7 ROP Intrm. 46, 47 (1998). Rule 54(b) does not alter the final judgment rule. Rather, upon the trial court's determination that "there is no just reason for delay," it allows final judgment to be entered "as to one or more but fewer than all of the claims or parties" in an action. It is a "prerequisite for invoking Rule 54(b) . . . that at least one claim or the rights and liabilities of at least one party must be finally decided." 10 Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2656 at 50 (1983). *Accord*, 10 *Moore's Federal Practice 3d* §54.22[2][a] at 54-48 (1998) (the judgment must "dispose of one or more multiple claims, or all of the claims against one or more of multiple parties."). The denial of appellant's motion to dismiss does not satisfy this prerequisite.

As we have noted, there is a statutory exception to the final judgment rule applicable in United States federal courts which permits a trial judge to certify that an otherwise interlocutory order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the

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ultimate termination of the litigation.” See *Black Micro*, 7 ROP Intrm. at 48 (discussing 28 U.S.C. §1292(b)). We express no opinion as to whether the order in question would meet those criteria, but note simply that “we have not yet recognized [such an] exception to the final judgment rule,” *id.*, and that appellant has not argued that this is “a compelling case for the creation of an additional exception.” *Id.* at 49. This appeal is therefore DISMISSED.