

06/03/2021	43	<p>Judge Mark G. Mastroianni: ELECTRONIC ORDER entered denying 36 Motion to Certify and Amend May 5, 2021 Order for Interlocutory Appeal, for essentially the reasons explained in Plaintiff's opposition. First, the Municipals Defendants failed to comply with Local Rule 7.1(a)(2), which states: "No motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue." Relatedly, it is not entirely clear which issue or issues the Municipal Defendants seek leave to appeal, as both their motion and memorandum reference a bifurcation issue that has not been raised by the parties or addressed by the court. Assuming the reference to bifurcation was a typographical error, the other issue referenced -- the application of <i>Coscia v. Town of Pembroke</i>, 659 F.3d 37 (1st Cir. 2011) to this case -- does not meet the standard for interlocutory appeal under 28 U.S.C. § 1292(b). See <i>Caraballo-Seda v. Municipality of Hormigueros</i>, 395 F.3d 7, 9 (1st Cir. 2005) ("As a general rule, we do not grant interlocutory appeals from a denial of a motion to dismiss."); <i>Camacho v. Puerto Rico Ports Auth.</i>, 369 F.3d 570, 573 (1st Cir. 2004) ("Section 1292(b) is meant to be used sparingly, and appeals under it are, accordingly, hen's-teeth rare."). Specifically, the court finds the <i>Coscia</i> issue is not "a controlling question of law as to which there is substantial ground for difference of opinion," 28 U.S.C. § 1292(b), in that the Municipal Defendants have not shown that other courts have adopted their interpretation of <i>Coscia</i> as applied to similar facts. In addition, the court finds that an immediate appeal would not "materially advance the ultimate termination of the litigation," 28 U.S.C. § 1292(b), but, instead, would cause unnecessary delay. Accordingly, the Municipal Defendants have not met their burden of convincing the court that it should depart from the general "preference against piecemeal litigation." <i>Caraballo-Seda</i>, 395 F.3d at 9. As all Defendants have now filed answers, the Clerk is directed to set a scheduling conference. (Lindsay, Maurice) (Entered: 06/03/2021)</p>
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