

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 OLGA MOLINA-OLIVO,

4
5 Plaintiff,

6
7 v.

8 EXPERIENCE WORKS, INC.,

9
10 Defendant.

Civil No. 09-1839 (JAF)

11

12 **OPINION AND ORDER**

13 Defendant, Experience Works, Inc., moves this court under Federal Rule of Civil
14 Procedure 59(e) to reconsider our prior order (Docket No. 8) granting dismissal without
15 prejudice to Plaintiff, Olga Molina-Olivo. (Docket No. 10.) Defendant argues that the prior
16 disposition was a manifest error of law and should be amended to a dismissal with prejudice.
17 (Docket Nos. 11; 12.)

18 **I.**

19 **Factual and Procedural Synopsis**

20 Plaintiff filed her first action against Defendant in this court on April 7, 2009, alleging
21 violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–2000e-17, and
22 various Puerto Rico laws. See Molina-Olivo v. Experience Works, Inc., Civil No. 09-1331 (JP)
23 (“Molina-Olivo I”). The court granted summary judgment to the Defendant and dismissed all

1 of Plaintiff's claims with prejudice on June 17, 2009. Plaintiff appealed that decision to the
2 First Circuit, though she eventually withdrew her appeal voluntarily. Before the district court
3 issued its final order, Plaintiff filed a parallel action in Commonwealth court claiming
4 "violations of applicable labor laws" without citing any particular federal or Commonwealth
5 law. (Docket No. 1-2 at 4.) Defendant removed that case to this court on August 24, 2009
6 (Docket No. 1), and filed a motion for dismissal or summary judgment in the alternative.
7 (Docket No. 4). In its motion for dismissal, Defendant argued that Plaintiff's claims had been
8 presented in Molina-Olivo I and were, thus, barred by res judicata. (Id.) While Defendant's
9 motion was pending, Plaintiff moved for voluntary dismissal of her claims without prejudice.
10 (Docket No. 7.) Four days later, we granted Plaintiff's motion without ruling on Defendant's
11 pending motion. (Docket No. 8.)

12 II.

13 Rule 59(e) Standard

14 Rule 59(e) allows any to party to move the court to alter or amend a judgment within ten
15 days of its entry. Fed. R. Civ. P. 59(e). Case law has expanded upon the sparse text of the rule
16 to require that movants "clearly establish a manifest error of law or . . . present newly
17 discovered evidence." FDIC v. World Univ. Inc., 978 F.2d 10, 16 (1st Cir. 1992).

1 judgment.” Whitfield v. Municipality of Fajardo, 564 F.3d 40, 45 (1st Cir. 2009) (citation
2 omitted). A decision retains its “finality” for preclusion purposes even while an appeal from
3 that decision is pending. See Deposit Bank v. Frankfort, 191 U.S. 499 (1913); In re Kane, 254
4 F.3d 325, 328 (1st Cir. 2001). Causes of action are sufficiently identical if they arise out of a
5 common nucleus of operative facts. Mass. Sch. of Law, 142 F.3d at 38.

6 In the present case, the doctrine of res judicata precluded Plaintiff’s claims from being
7 tried before this court. First, the court’s order in Molina-Olivo I was a final judgment on the
8 merits because it was a summary judgment disposing of all claims; the pendency of an appeal
9 does not affect the application of res judicata. Second, both Molina-Olivo I and the present case
10 arose from the same alleged incidents of sexual harrassment in the workplace. The present
11 claims of “violations of applicable labor laws” are sufficiently identical to the Title VII and
12 Puerto Rico law claims in Molina-Olivo I. Even if the claims in this case were based on
13 different statutes, these claims should have been brought along with the other discrimination and
14 harassment claims in Molina-Olivo I. Third, the parties are clearly identical.

15 Defendant timely raised res judicata in its motion for dismissal – a motion that preceded
16 Plaintiff’s motion for voluntary dismissal. (Docket No. 4.) The claims in the present suit were
17 clearly precluded by res judicata. Therefore, our entry of a judgment of dismissal without
18 prejudice was a manifest error of law. As we have reconsidered our motion on this basis, it is
19 unnecessary to consider the two additional bases raised by Defendant for amending our
20 judgment to a dismissal with prejudice.

1 **IV.**

2 **Conclusion**

3 For the reasons stated above, we **GRANT** Defendant's motion for reconsideration
4 (Docket No. 10). We hereby **VACATE** our prior order granting Plaintiff's motion for dismissal
5 without prejudice (Docket No. 8). We **DENY** Plaintiff's motion for voluntary dismissal
6 (Docket No. 7). We **GRANT** Defendant's motion for dismissal (Docket No. 4). We **DISMISS**
7 Plaintiff's claims **WITH PREJUDICE**.

8 **IT IS SO ORDERED.**

9 San Juan, Puerto Rico, this 10th day of December, 2009.

10 s/José Antonio Fusté
11 JOSE ANTONIO FUSTE
12 Chief U.S. District Judge