

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO

3 MAYDA NAZARIO-LUGO,

4  
5 Plaintiff,

6 v.

7 CARIBEVISION HOLDINGS, INC.,

8  
9 Defendant.

Civil No. 09-2262 (JAF)

10 **ORDER**

11 On April 15, 2010, we issued an Opinion and Order dismissing Plaintiff's case without  
12 prejudice for prudential considerations under Colorado River Water Conservation District v.  
13 United States, 424 U.S. 800 (1976), and its progeny. (Docket No. 47.) Plaintiff moved to  
14 reconsider on April 22 (Docket No. 49), and Defendant opposed on May 10 (Docket No. 50).

15 Because Plaintiff filed her motion within twenty-eight days of the issuance of the  
16 Opinion and Order, we construe her motion under Federal Rule of Civil Procedure 59(e). See  
17 Fed. R. Civ. P. 59(e). "Motions under Rule 59(e) must either clearly establish a manifest error  
18 of law or must present newly discovered evidence." FDIC v. World Univ., Inc., 978 F.2d 10,  
19 16 (1st Cir. 1992). Parties may not "introduce new evidence or advance arguments that could  
20 and should have been presented to the district court prior to the judgment." Aybar v.  
21 Crispin-Reyes, 118 F.3d 10, 16 (1st Cir. 1997).

1           For the most part, Plaintiff’s brief reiterates issues that we previously considered and  
2 rejected in our Opinion and Order. (See Docket Nos. 47; 49.) These contentions present no  
3 manifest errors of law. (See id.) Furthermore, Plaintiff belatedly references matters pending  
4 before the Puerto Rico Court of First Instance in a parallel proceeding to challenge our  
5 evaluation of the relative progress of the two cases. (Docket No. 49.) Such evidence is not  
6 new; Plaintiff was on notice that Defendant sought dismissal on the basis of abstention doctrine,  
7 and Plaintiff could have presented these matters before we issued our Opinion and Order. (See  
8 Docket No. 16.)

9           We, nevertheless, take this opportunity to clarify one point of contention. Plaintiff  
10 asserts that the parallel Commonwealth case cannot accord her complete relief and that she is  
11 not required to file compulsory counterclaims in that suit. (Docket No. 49.) In making this  
12 argument, Plaintiff bifurcates her case into amounts due for past performance and amounts  
13 owed under a specific clause for termination for “good reason,” maintaining that only the former  
14 claim is pending before the Puerto Rico court. (Id.) We see no fundamental distinction between  
15 the two causes of action as both depend on the interpretation of the same labor contract and  
16 assessment of the parties’ performance pursuant to that agreement. (See Docket No. 47.) Both  
17 claims arise from the same instrument and, hence, the same “transaction or occurrence” as  
18 contemplated in the Puerto Rico procedural rule for compulsory counterclaims, 32 L.P.R.A.  
19 App. III R. 11.1 (2000). Furthermore, even if Plaintiff’s claim under the contractual clause is

1 not a compulsory counterclaim, Commonwealth rules provide for permissive counterclaims in  
2 the parallel case. See id. R. 11.2. Therefore, Plaintiff has a fair opportunity to obtain full relief  
3 against Defendant in the parallel case even if she elects not to pursue it. We reiterate that the  
4 equities in this case and the judicial policy of comity favor abstention in deference to the  
5 Commonwealth proceedings. (See Docket No. 47.)

6 Accordingly, we hereby **DENY** Plaintiff's motion for reconsideration (Docket No. 49).

7 **IT IS SO ORDERED.**

8 San Juan, Puerto Rico, this 17<sup>th</sup> day of May, 2010.

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