

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ERNESTO M. SANCHEZ, et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 99-6586
	:	
U.S. AIRWAYS, INC.,	:	
Defendant.	:	

GREEN, S.J.

JULY _____, 2001

MEMORANDUM-ORDER

Presently before the Court is Defendant’s Motion for Summary Judgment, Plaintiffs’ Response, and Defendant’s Reply. For the following reasons, Defendant’s motion will be denied.

I. Factual and Procedural Background

Ernesto Sanchez was employed by U.S. Airways (“Defendant”) when, in August, 1997, his employment was terminated. See Pltfs.’ Am. Complaint ¶ 14. As a result of his termination, Mr. Sanchez was forced to find new employment, and alleges that he and his wife, Charlotte Calianno de Sanchez, were forced to incur significant costs associated with relocation, in addition to the loss of Mr. Sanchez’s income. See Pltfs.’ Am. Complaint ¶¶ 23-24. Mr. Sanchez alleges that his version of the events leading to his firing was ignored, the Defendant unfairly relied on information provided by “white, non-Hispanic employees”, and he was ultimately terminated due to race discrimination. See Pltfs.’ Am. Complaint ¶¶ 20, 26. Defendant denies Plaintiffs’ allegations, and alleges that Mr. Sanchez “was terminated for his improper conduct and behavior as a management employee when he caused a revenue passenger of the airline to give up his seat in exchange for compensation in order to provide [Mr. Sanchez]

with a seat on the Puerto Rico bound flight.” See Dfdt.’s Answer, Affirmative Defenses ¶ 5.

On December 2, 1997, Mr. Sanchez “brought a lawsuit in the courts of Puerto Rico alleging wrongful discharge in violation of Law 80 of May 30, 1976, as amended 29 P.R. Laws Ann. § 185a, *et seq.* (“Law 80”), captioned Sanchez v. US Airways (“*Sanchez I*”). See Dfdt.’s Mem. at 1. On June 23, 1998, prior to commencement of the trial in that matter, the Court of First Instance for the Commonwealth of Puerto Rico, in response to Defendant’s request, entered a consent judgment against Defendant. See Dfdt.’s Mem. at 1. Defendant was ordered to pay \$23,420.98 in damages, attorney fees and costs. See Dfdt.’s Mem. at 3.

On or about May 15, 1998, while awaiting trial in *Sanchez I*, Mr. Sanchez “filed an administrative complaint alleging employment discrimination on the basis of national origin, pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e to e-17, and under Puerto Rico Law 100 of June 30, 1959, 29 P.R. Laws Ann. §146, *et seq.* (“Law 100”), with the Puerto Rico Department of Labor and the Equal Employment Opportunity Commission (“EEOC”). See Pltfs.’ Response at 2. On April 2, 1999, the EEOC issued Mr. Sanchez a right-to-sue letter, after which Plaintiffs initiated the instant action, captioned Sanchez, et al., v. US Airways (“*Sanchez II*”), in the United States District Court for the District of Puerto Rico, citing the court’s original jurisdiction under 28 U.S.C. § 1331, and seeking damages for the deprivation of rights secured by Title VII. Plaintiffs also alleged claims for national origin and/or race discrimination in employment in violation of Law 100, and associated consortium claims based on Puerto Rico law. See Pltfs.’ Response at 2.

In the motion for summary judgment sub judice, Defendant argues that Plaintiffs are barred, under the doctrine of res judicata, from prosecuting *Sanchez II* due to the mandatorily

preclusive effect of *Sanchez I*. Plaintiffs argue that *Sanchez II* is not barred, because the court in *Sanchez I* either did not have jurisdiction over the issues presented in *Sanchez II*, or was presented with different issues to be decided, precluding the application of res judicata.¹

II. Legal Standard

In order to obtain summary judgment, Defendant must prove that, in considering the “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, . . . there is no genuine issue as to any material fact and that the [Defendant] is entitled to a judgment as a matter of law.” See Fed. R. Civ. P. 56(c). Summary judgment should be granted, “after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In deciding this motion, I must draw all reasonable inferences in favor of the party against whom judgment is sought. See *American Flint Glass Workers, AFL-CIO v. Beaumont Glass Company*, 62 F.3d 574, 578 (3d Cir. 1995). The substantive law controlling the

¹ Plaintiffs also argue that Defendant is estopped by laches from presenting this motion at this time, arguing that the current issues are more apt for a motion to dismiss than a motion for summary judgment. Plaintiffs’ argument must fail for two reasons. First, Defendant indicates that it needed to conduct discovery and take the Plaintiffs’ depositions, “which supported the factual premise for this motion.” See **Dfdt.’s Reply** at 8. If Defendant *had* presented this motion as a motion to dismiss, Plaintiffs may have argued that it was premature, as Defendant could not produce evidence necessary to support their allegations that the claims in each lawsuit were the same. Second, Plaintiffs have not produced any rule or case which would support their proposition that a motion for summary judgment is the inappropriate instrument with which to present the issue of res judicata to the Court. The only case cited by Plaintiffs, *Explosives Corp. of America v. Garlam Enterprises Corp.*, 817 F.2d 894, (1st Cir. 1987), is factually inapposite to the instant matter. Complying with Federal Rule of Civil Procedure 8(c), Defendant set forth the affirmative defense of res judicata in its Answer, giving Plaintiffs adequate notice of their intent to proceed with this defense.

case will determine those facts that are material for the purpose of summary judgment. See Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986).

Judicial proceedings “shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or possession from which they are taken.” 28 U.S.C. § 1738. Therefore, federal courts “must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.” See Jones v. Holvey, 29 F.3d 828, 830 (3d Cir. 1994) (quoting Migra v. Warren City School Dist. Bd. of Ed., 465 U.S. 75, 81 (1984)). “It has long been established that § 1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken.” Kremer v. Chemical Construction Corp., 456 U.S. 461, 481-82 (1982). As Defendant is seeking to enforce the judgment of the Court of First Instance for the Commonwealth of Puerto Rico, Puerto Rico’s law must be utilized to determine whether Mr. Sanchez’s adjudicated Law 80 claim bars the instant action under the doctrine of res judicata.

In order for res judicata to apply under Puerto Rico law, the prior judgment must have been a final adjudication on the merits by a court with proper jurisdiction. See Bolker v. Superior Ct., 82 P.R. Dec. 785, 792-93, 798 (P.R. 1961). Puerto Rico law also requires that “there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.” See 31 P.R. Laws Ann. § 3343. “Puerto Rico courts do not interpret the phrase ‘perfect identity’ literally. For res judicata purposes, the thing corresponds basically to the object or matter over which the action is exercised. The test for identity of “things” is whether a

decision in the second action may contradict the prior adjudication.” Boateng v. InterAmerican Univ., Inc., 210 F.3d 56, 61 (1st Cir. 2000) (quotations and citations omitted).

Defendant argues that Plaintiffs could have brought all of their claims in *Sanchez I*, and that, after final judgment in *Sanchez I* was entered, Plaintiffs were barred from re-litigating the same issues. Plaintiffs respond that the cases do not contain similar issues, and that the court in *Sanchez I* did not have jurisdiction over all the claims which Plaintiffs now assert in *Sanchez II*. Basically, though, the determining factor is whether Plaintiffs were required to bring all of their claims in the earlier, Law 80 action. If they should have, and they decided not to, then they would be barred from attempting to do so in *Sanchez II*.²

III. Discussion

A. Plaintiffs’ argument that the court in *Sanchez I* lacked jurisdiction.

Plaintiffs indicate that when *Sanchez I* was brought and disposed of, the EEOC had not issued its right-to-sue letter; therefore, since the EEOC had not acted while *Sanchez I* was being litigated, the court did not have jurisdiction over the discrimination claims. See Pltfs.’ Response at 16. However, “several courts have held Title VII claims to be precluded by a prior

² Plaintiffs’ argue that the case should be transferred back to the United States District Court for the District of Puerto Rico, or that a question be certified to the Supreme Court of Puerto Rico. See Pltfs.’ Response at 17. Plaintiffs posit that, since the Supreme Court of Puerto Rico and the local Federal Court deal with Puerto Rico law on a daily basis, those courts would be better suited to understand Plaintiffs’ argument that the Law 80 action and the summary proceedings that followed were designed for a partial, fast resolution of employment disputes. See Pltfs.’ Response at 11 n.8, 13 n.10, 17 n.15. Mainly, Plaintiffs argue that the determination of whether the Law 80 action could have gone forward with the other claims should be made by a Puerto Rico court. However, as Defendant correctly points out, courts are required to apply the laws of other jurisdictions every day, and the issues presented here are not so novel as to necessitate a deviation from this practice.

adjudication even though a right-to-sue letter had not been obtained until after final judgment had entered in the first action.” Boateng v. InterAmerican Univ., Inc., 210 F.3d 56, 63 (1st Cir. 2000) (citing Heyliger v. State Univ. & Community College Sys., 126 F.3d 849, 854-56 (6th Cir. 1997); Herrmann v. Cencom Cable Assocs., 999 F.2d 223, 225 (7th Cir. 1993); Woods v. Dunlop Tire Corp., 972 F.2d 36 (2d Cir. 1992); see, also, Churchill v. Star Enterprises, 183 F.3d 184, 193-94 (3d Cir. 1999).

While the court in Boateng did apply Puerto Rico law, the plaintiff in that case had obtained permission to sue the EEOC while his first suit was still pending. See Boateng, 210 F.3d at 63. Plaintiffs argue that this makes their case inapposite, since the EEOC did not issue Mr. Sanchez a right-to-sue letter until April 2, 1999, nearly a year after the judgment in *Sanchez I* had been entered. See Pltfs.’ Response at 20-21. However, the Plaintiffs could have requested and obtained an early right-to-sue letter, and foregone administrative remedies. See Churchill, 183 F.3d at 193 (citing similar holdings in Heyliger, 126 F.3d at 855 n.2, Herrmann, 999 F.2d at 225, and Woods, 972 F.2d at 40). Or, Plaintiffs could have asked for a stay of their earlier court action pending the receipt of the right-to-sue letter.³ Either way, it is clear that the court in *Sanchez I* did have jurisdiction to hear the Plaintiffs’ discrimination claims, and the decision not

³ Plaintiffs contend that they did not delay the filing or ask for a stay of *Sanchez I* because they were in dire need of recovery due to Mr. Sanchez’s sudden joblessness. See Pltfs.’ Response at 9-10. They further argue that the summary proceeding which they activated, pursuant to Puerto Rico Law 2 of October 17, 1962, as amended, 32 P.R.L.A. §§ 3118-3132 (“Law 2”), intends for an expedited disposition of employment discharge claims, and a delay in filing or a stay of the Law 80 claim would be contrary to Puerto Rico’s public policy of providing a fast resolution of such claims to lighten the impact on wrongfully discharged employees. See Pltfs.’ Response at 7-9. While Plaintiffs’ argument may be correct, at this stage of the analysis, the question is whether the court in *Sanchez I* could have had jurisdiction over all of Plaintiffs’ claims, and the answer, clearly, is yes.

to file the claims together was not one mandated by law.

B. Plaintiffs' argument that the cases have different issues.

Having found that the court in *Sanchez I* could have had proper jurisdiction over the issues in the matter sub judice, it must next be determined whether the issues presented in both cases are "identical," as that term is understood under Puerto Rico's res judicata law. Defendant argues that, under Puerto Rico law, res judicata applies as a bar if both proceedings refer to the same subject matter. See Dfdt.'s Mem. at 8-9. Defendant further contends that "Puerto Rico applies a transactional approach in precluding multiple suits on different legal theories which arise out of a common nucleus of operative fact." See Dfdt.'s Mem. at 9 (citing Boateng, 210 F.3d at 61-62). Therefore, Defendant concludes, since the claims in both cases revolve factually around Mr. Sanchez's termination, the requisite identity of things and causes is present. See Dfdt.'s Mem. at 8-10. However, as Plaintiffs correctly point out, the Puerto Rico Supreme Court has not addressed the precise question presented here: "whether a res judicata defense may properly be asserted against a plaintiff's Title VII claim, who earlier exercised his right to use the Puerto Rico Law 2 Special Summary Proceedings to litigate" his discharge. See Pltfs.' Response at 16.

In order to understand how the Puerto Rico Supreme Court would answer this question, it is first necessary to understand the particular issues behind the laws governing the dispute. Plaintiffs argue that the summary proceeding provided by Law 2, and which Mr. Sanchez utilized in bringing his Law 80 claim alleging wrongful discharge, is a special law designed to effect a speedy resolution of the matter, while containing certain provisions that favor the worker over

the employer, in a legislative attempt to even a playing field which is uneven due to the economic disparity between the opponents in such actions. See Pltfs.’ Response at 8 (citing Landrum Mills Corp. v. Court, 92 P.R.R. 670 (1965)). This view is in accord with that of the Puerto Rico Supreme Court which found that the essence of a Law 2 proceeding is its summary nature which permits the rapid disposition of such claims; without this summary nature, the proceeding would be just another ordinary proceeding. See Maldonado v. Galarza Rosario, 117 D.P.R. 458 (P.R. 1986). Defendant responds that, if Plaintiffs are correct, then any claim prosecuted under Law 80 would be open to collateral attack. See Dfdt.’s Reply at 1. However, Defendant misses the point: it is not the Law 80 claim that infuses Mr. Sanchez’s earlier action with seemingly extra-doctrinal qualities, but, rather, Law 2 which does.

Mr. Sanchez’s Law 80 proceeding, prosecuted through Law 2, was confined to the issue of whether Mr. Sanchez was improperly terminated; if he won, he was entitled to statutorily defined damages.⁴ See 29 P.R.L.A. §§ 185a, 185d and 185g as amended by Law 234 of September 17, 1996. Accordingly, the damages Mr. Sanchez could recover through Law 80 were limited, and did not include the possibility of punitive damages, additional compensation, related damages associated with a new job search and relocation, or damages for his wife, which are otherwise compensable under Puerto Rico law. If Mr. Sanchez sought any damages outside those specified in Law 80, he would have to bring claims under other statutes, such as Title VII

⁴ Law 80 was amended on September 17, 1996, by Law 234. Applying Law 80 and the amendment, a successful plaintiff would be indemnified at the rate of two months’ salary if he was discharged after 12 years with the employer, plus an additional indemnity equal to one week for each year of service. See 29 P.R.L.A. §§ 185a, 185d and 185g as amended by Law 234 of September 17, 1996. In Mr. Sanchez’s case, he would obtain two months’ salary plus an additional 12 weeks if he was successful, for a total indemnity compensation of \$21,342.28.

and Law 100, as well as pursuant to Puerto Rico's consortium laws. However, if he did bring those other claims, he would probably not be able to take advantage of Law 2's summary proceedings, because the complexities of the ensuing action would have been incompatible with the stream-lined format mandated by Law 2. See, e.g., Rivera Rivera v. Insular Wire Products Corp., 140 D.P.R. 912 (1996) (noting that while Law 100 and other discrimination claims may be brought under Law 2, the territorial court may remove case from fast-track of Law 2 if it is determined that complex issues, such as animus and intent, are presented). Therefore, under Defendant's interpretation, Mr. Sanchez would have had to have made a choice between the rights guaranteed to him under Puerto Rico law: either obtain a fast, but limited, adjudication, with only partial amelioration of the damages caused by Defendant, or, assert all his damage claims, and face the possibility of a lengthy, protracted suit with the prospect of an increased damages award but with the potential cost of severe fiscal hardship while waiting for its resolution. While this would be a difficult decision for any aggrieved individual, I conclude it is not one that a plaintiff in Puerto Rico must make.

Instead, as is clear by the statutory intent to provide a fair and quick procedure for resolution of a wrongful discharge matter, and considering the Puerto Rico Supreme Court's jurisprudence on the matter, I conclude that the Law 80 action prosecuted under Law 2 does not serve to bar Plaintiffs' litigation of their other claims. To find otherwise would countermand not only the obvious intent of the laws and cases, but also would unfairly restrict Plaintiffs' rights. Also, such a finding would impliedly result in a devaluation of the rights of a plaintiff who has been discriminated against, as opposed to simply terminated. For example, if it was determined that a plaintiff was not terminated for "just cause," he would be entitled to damages under Law

80, and he would be entitled to the summary proceedings of Law 2, but only if he was not discriminated against. If the plaintiff *was* discriminated against, he would never use Law 2; or, more precisely, he could use Law 2, but then he would have to waive his Law 100 claims in addition to any federal discrimination claims he might otherwise have been able to bring. This result would lead to undue hardship on a plaintiff who was, presumably, not only fired unjustly, but also subjected to the devastation and embarrassment associated with racial, sex or age discrimination. The plaintiff could only be compensated by engaging in the lengthy judicial process which Law 2 was expressly created to circumvent. Such a result would be illogical and unjust, and cannot be what Puerto Rico's legislature intended when creating Law 2. That result would also be contrary to Puerto Rico Supreme Court's determination that *res judicata* should not be applied inflexibly, especially when policy concerns are also present. See Banco de la Vivenda v. Cario Ortiz, 130 D.P.R. 730, 739 (1992); Pagan Hernandez v. Universidad de Puerto Rico, 107 P.R. Dec. 720, 735-36, 7 Offic. Trans. 795, 806-07.⁵

Another court confronted with a similar issue provides support for the conclusion that Law 2 contains special public policy considerations which should be given considerable weight

⁵ The Puerto Rico Supreme Court has stated that the [C]ourts have refused to apply rigidly the defense of *res judicata* if in so doing it defeats the ends of justice, especially if reasons of public policy are involved. . . . As already stated, the doctrine rests upon the basic principle that there should be an end to litigation, but if the rigid application thereof would in practice defeat a right permeated in some way with public interest, the courts are inclined to a solution which would guarantee proper justice instead of rigidly applying a fiction of law which rests fundamentally upon a principle of convenience and procedural order. In other words, the rule is not absolute and should always be weighed with the equally salutary principle that justice should be done in every case. Bonafont Solis v. American Eagle, 143 D.P.R. 374 (1997) (quoting Perez v. Bauza, 83 P.R.R. 213, 218-19 (1961)).

in determining the preclusive effect of actions which appear to be related. In Rodriguez v. Clorox de Puerto Rico, 59 F. Supp. 2d 354 (D. Puerto Rico 1999), Judge Pieras examined Law 2, Law 80, and Law 100, and their interplay with a federal discrimination claim brought under the Age Discrimination in Employment Act (“ADEA”).⁶

In Rodriguez, the plaintiff brought an action for wrongful termination under Law 80 in the territorial court, invoking Law 2's special summary proceedings. See Rodriguez, 59 F. Supp. 2d at 355. He also filed suit in federal court under Law 100 and the ADEA. See Rodriguez, 59 F. Supp. 2d at 355. The defendant asked Judge Pieras to dismiss the federal action pursuant to federal abstention doctrines. See Rodriguez, 59 F. Supp. 2d at 355-56. In analyzing the issues, Judge Pieras pointed out that in the discrimination claims, “a factfinder must assess issues such as motivation and discriminatory animus.” See Rodriguez, 59 F. Supp. 2d at 357. However, in the state court action, Rodriguez did not allege age discrimination, but only the unjust discharge from his job. See Rodriguez, 59 F. Supp. 2d at 357. Rodriguez did this because the inquiry in a Law 80 claim is whether the employer had terminated an employee with “good cause”; if the employer did not have a statutorily prescribed “good cause,” the employer will be found liable for wrongful discharge under Law 80. See Rodriguez, 59 F. Supp. 2d at 357; 29 P.R. Laws Ann. § 185b. “Therefore,” Judge Pieras concluded, “the scope of the ADEA and Law 80 and the issues posed under these statutes are different because whereas a proceeding under the former

⁶ The issue of res judicata did not surface in Rodriguez; rather, the issue before Judge Pieras was whether the discrimination actions under the ADEA and Law 100 should be dismissed or stayed under the Colorado River federal abstention doctrine, due to the fact Plaintiff had filed another action in the territorial court alleging wrongful discharge. See Rodriguez, 59 F. Supp. 2d at 355-56. While the doctrines of res judicata and federal abstention are not the same, the analysis employed by Judge Pieras, and the insight he brought into the purposes of the Puerto Rico laws at issue, is instructive.

statute will consider whether Plaintiff was discharged because of age, a proceeding under the latter will consider whether or not an employee was discharged” for a statutorily listed cause. See Rodriguez, 59 F. Supp. 2d at 357. Judge Pieras also looked at the motivation of the plaintiff in filing the second suit, and concluded that the plaintiff did not file the second suit out of frustration with or in an attempt to contravene a territorial court action. See Rodriguez, 59 F. Supp. 2d at 357. Judge Pieras ultimately concluded that abstention would not be appropriate under those circumstances, and refused to dismiss the federal action. See Rodriguez, 59 F. Supp. 2d at 357-58.

Applying Judge Pieras’ reasoned approach to the instant matter, a similar result ensues. In *Sanchez I*, Mr. Sanchez alleged in his complaint that he was fired without cause, and that his discharge was in contravention of Law 80. See Dfdt.’s Mem., Declaration of Vicente J. Antonetti Appendix A. In that action, Mr. Sanchez was solely litigating whether he was fired with “just cause,” as that term is understood under Law 80. In *Sanchez II*, Plaintiffs have alleged that Mr. Sanchez’s termination was the result of race discrimination. Different inquiries into motive, and different burdens of proof, illustrate that the two actions do not contain the same “things and cause” as required by Puerto Rico’s res judicata jurisprudence. Finally, there is no evidence that Plaintiffs had any unscrupulous motive in bringing two separate actions.⁷ Therefore, I conclude that it is not appropriate to apply res judicata to *Sanchez II*.

⁷ It is noted that Plaintiffs allege Defendant has engaged in suspicious machinations of the litigation process by delaying to file this motion. See Pltfs.’ Response at 11-12. It could also be argued that Defendant’s request for a consent judgment in *Sanchez I* (filed June 11, 1998), filed so soon after Plaintiffs’ EEOC filing (May 15, 1998), raises the specter of legal maneuvering on Defendant’s part. However, allegations of motives such as these, if relevant, are best left for the fact finder to consider.

IV. Conclusion

Having reviewed *Sanchez II* in consideration of Puerto Rico's res judicata statute and the jurisprudence of the Puerto Rico Supreme Court, I conclude that Plaintiffs are not barred from prosecuting the claims they have asserted in *Sanchez II*. Accordingly, Defendant's motion for summary judgment will be denied. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ERNESTO M. SANCHEZ, et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 99-6586
	:	
U.S. AIRWAYS, INC.,	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of July, 2001, upon consideration of Defendant's Motion for Summary Judgment, Plaintiffs' Response, and Defendant's Reply, **IT IS HEREBY ORDERED** that Defendant's motion is **DENIED**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.