

JAN 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PANCHOS CORPORATION, a Florida
corporation,

Plaintiff-counterdefendant
- Appellee,

v.

GUADALUPE BEDOYA GONZALEZ;
ANA MARIA JOSEFINA BOJALIL
BEDOYA,

Defendants-counterclaimants
- Appellants,

and

SIMON LOPEZ, an individual; TEATRO
LOS PINOS, a business entity,

Defendants.

No. 07-56258

D.C. No. CV-03-03002-GPS

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
George P. Schiavelli, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Guadalupe Bedoya Gonzalez and Ana Maria Josefina Bojalil Bedoya appeal from the district court's order dismissing their counterclaim pursuant to Federal Rule of Civil Procedure 41(b). We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002), and we affirm.

The district court did not abuse its discretion by dismissing the counterclaim because counterclaimants failed to comply fully with the court's order to "proceed by default" after the court imposed less drastic sanctions and warned them that noncompliance would result in dismissal. *See id.* at 642 (listing factors that a district court must weigh before dismissing an action under Rule 41(b)).

We decline to consider whether the district court abused its discretion by denying the motions for reconsideration under Rules 59(e) and 60(b) because the issue was not argued on appeal. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (deeming abandoned issues raised but not argued on

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*. Accordingly, counterclaimants' request for oral argument is denied.

appeal).

AFFIRMED.