

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 08-cv-02462-RPM-GJR

LARRY GARFINKEL

Plaintiff,

v.

LARRY GERBAZ, and
100 ROAD CATTLE COMPANY, LLC,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

On January 13, 2009, the defendants filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(7) for the failure to join as parties those individuals and entities who are plaintiffs in an action pending in the Garfield County District County District Court in Garfield County, Colorado, who are claiming property damage from the same fire which is the basis for the plaintiff's personal injury claim. The contention is without merit. Those state court plaintiffs are neither indispensable nor necessary parties to this action. While the defendants may be adversely affected by litigating in both state and federal court, there is no authority for this Court to deny this non-resident plaintiff his statutory right to proceed under diversity jurisdiction in this court. It is

ORDERED that the motion to dismiss is denied.

Dated: February 17th, 2009

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge