

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-02599-NYW

GREG HESS,

Plaintiff,

v.

ROCKY MOUNTAIN ROMANGUS, INC., a Colorado corporation,

Defendant.

ORDER

Magistrate Judge Nina Y. Wang

This matter is before the court on Plaintiff Greg Hess's Motion to Dismiss Without Prejudice (the "Motion to Dismiss"). [#17, filed Mar. 14, 2016].

Plaintiff requests in the Motion to Dismiss that the court enter an order dismissing this case without prejudice under Fed. R. Civ. P. 41(a)(2), with each party to pay its costs and attorneys' fees. [#17 at ¶ 6]. Plaintiff represents that he has filed an amended complaint in another case currently pending in the District of Colorado, *Hess v. Michael A. Hunt, Sr. et al.*, No. 15-cv-02597-RPM, which asserts the same claims against Defendant Rocky Mountain Romangus, Inc. that are currently pending in this case. [#17 at ¶¶ 8-9]. *See also, Hess v. Hunt*, Civil Action No. 15-cv-02597-RPM, ECF No. 6. Accordingly, Plaintiff requests that the court dismiss the claims in this case without prejudice to avoid duplication of effort of the court and the parties. [#17 at ¶ 10]. Plaintiff represents that he has conferred with Defendant and that Defendant does not take a position on the Motion to Dismiss. [#17 at ¶ 1].

Pursuant to Fed. R. Civ. P. 41(a)(2), “an action may be dismissed at the plaintiff’s request . . . by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff’s motion to dismiss, the action may be dismissed over the defendant’s objection only if the counterclaim can remain pending for independent adjudication.” According to Rule 41(a)(2), “[u]nless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.”

The court finds that the terms proposed by Plaintiff are proper and that dismissing the present case to allow Plaintiff to proceed with the same claims against Defendant in the *Hunt* case would preserve judicial resources and the resources of the Parties. The court also notes that Defendant does not have any pending counterclaims in this case.

On the basis of the foregoing, **IT IS ORDERED** that:

- (1) Plaintiff’s claims for relief for breach of contract and civil theft pursuant to Colo. Rev. Stat. §§ 18-4-401 and 405 are hereby **DISMISSED WITHOUT PREJUDICE**; and
- (2) The case is dismissed in its entirety with each Party to bear its own attorneys’ fees and costs; and
- (3) The Clerk of Court is directed to close the case.

DATED: March 15, 2016

BY THE COURT:

s/Nina Y. Wang
United States Magistrate Judge