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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 WEST-HARDWICK MARINE, LLC,

11 Plaintiff,

12 v.

13 SPIRIT OF ENDEAVOUR, et al.,

14 Defendants.

CASE NO. C10-1509JLR

ORDER ON OBJECTION TO  
VOLUNTARY DISMISSAL

15 This matter comes before the court on Defendant West Travel, Inc.'s ("West  
16 Travel") objection (Dkt. # 56) to Plaintiff in Intervention Greg Kovsky's notice of  
17 voluntary dismissal (Dkt. # 54). Having considered West Travel's objection, Mr.  
18 Kovsky's response (Dkt. # 56), West Travel's reply (Dkt. # 58), the balance of the record,  
19 and the relevant law, the court DENIES West Travel's objection (Dkt. # 56) and confirms  
20 that Mr. Kovsky's claims against West Travel have been dismissed without prejudice.  
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1 **I. BACKGROUND**

2 Plaintiff West-Hardwick Marine, LLC (“West-Hardwick”) initiated this action to  
3 foreclose a mortgage *in rem* on Defendant SPIRIT OF ENDEAVOUR (the “Vessel”),  
4 which was owned by West Travel (Dkt. # 1). On September 21, 2010, the court  
5 appointed Matthew Schneider as a substitute custodian for the Vessel (Dkt. # 10). On  
6 December 16, 2010, West-Hardwick notified the court that certain creditors of West  
7 Travel had filed a petition for involuntary bankruptcy in the United States Bankruptcy  
8 Court for the Western District of Washington (Dkt. # 31). The case was automatically  
9 stayed.

10 On February 28, 2011, the Bankruptcy Court entered an order lifting the automatic  
11 stay of proceedings against West Travel and the Vessel (Dkt. # 33). On March 8, 2011,  
12 Mr. Kovsky filed a claim of interest in the Vessel (Dkt. # 36), and on March 24, 2011, the  
13 court allowed Mr. Kovsky to intervene (Dkt. # 40). Mr. Kovsky alleged that he sustained  
14 personal injuries while working as a crew member on the Vessel (Dkt. # 45). Mr.  
15 Kovsky had previously initiated an action against West Travel in Los Angeles County,  
16 California, on November 17, 2010. (Resp. (Dkt. # 57) at 2.) During the California  
17 litigation, West Travel, through its insurers, paid maintenance and cure to Mr. Kovsky  
18 and authorized and paid for two surgeries to his knee and shoulder.<sup>1</sup> (*Id.*) A third  
19 surgery to Mr. Kovsky’s left shoulder was approved, however, authority for payment was

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21 <sup>1</sup> West Travel contends that this is a misstatement of the facts. (Reply (Dkt. # 58) at 2.)  
22 Whether the alleged facts are true, however, has no bearing on the disposition of West Travel’s  
objection to Mr. Kovsky’s voluntary dismissal.



1 Mr. Kovsky filed his notice of dismissal before West Travel filed an answer or a  
2 motion for summary judgment as required by Rule 41(a)(1)(A). West Travel objects on  
3 the grounds that Mr. Kovsky was required to file a motion and obtain an order of  
4 dismissal from the court pursuant to Federal Rule of Civil Procedure 66 because Mr.  
5 Schneider had been appointed a substitute custodian in the matter. (Obj. (Dkt. # 56) at 2.)  
6 Mr. Schneider, however, was appointed substitute custodian of the Vessel for the limited  
7 purpose of retaining custody over and ensuring the safekeeping of the Vessel until it was  
8 sold. (See Dkt. # 10 at 3 (“Mathew Schneider is appointed substitute custodian of the  
9 Vessel and shall retain the Vessel in his custody for possession and safekeeping until  
10 further order of this Court.”).) After the Vessel was sold in April 2011, his role as  
11 substitute custodian terminated. See *Fed. Sav. & Loan Ins. Corp. v. PSL Realty Co.*, 630  
12 F.2d 515, 521 (7th Cir. 1980) (“When the receiver in obedience to a court order has so  
13 disposed of the property in receivership, his liability and responsibility as receiver to that  
14 property ceases. Since the property is no longer in custodial egis, the receivership is  
15 terminated.”). Because there is currently no receiver involved in the case, Rule 66 is not  
16 applicable. Mr. Kovsky properly filed his notice of voluntary dismissal as required by  
17 Rule 41(a)(1)(A).

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