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7	UNITED STATES DISTRICT COURT	
8	WESTERN DISTRICT OF WASHINGTON AT SEATTLE	
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10	WEST-HARDWICK MARINE, LLC,	CASE NO. C10-1509JLR
11	Plaintiff,	ORDER ON OBJECTION TO
12	v.	VOLUNTARY DISMISSAL
13	SPIRIT OF ENDEAVOUR, et al.,	
14	Defendants.	
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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ORDER-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 December 16, 2010, West-Hardwick notified the court that certain creditors of West 6 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 and authorized and paid for two surgeries to his knee and shoulder.<sup>1</sup> (*Id.*) A third 18 19 surgery to Mr. Kovsky's left shoulder was approved, however, authority for payment was 20

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

withdrawn and the surgery was not performed because the California litigation was
 stayed due to the involuntary bankruptcy. (*Id.*)

In April 2011, the Vessel was sold at a Marshal's sale (*see* Dkt. # 41).
On June 20, 2011, Mr. Kovsky moved the bankruptcy court for relief from the stay
so that he could renew the California litigation, and the bankruptcy court granted him
such relief on July 22, 2011. (Resp. at 3.) The order was approved by the bankruptcy
trustee. (*Id.*)

8 On August 2, 2011, Mr. Kovsky filed a notice of voluntary dismissal of this case
9 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), and on August 4, 2011, West
10 Travel objected and filed its answer to Mr. Kovsky's complaint in intervention (Dkt. ##
11 55, 56).

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## II. DISCUSSION

13 Federal Rule of Civil Procedure 41 states in relevant part: "Subject to Rule[]... 14 66 and any applicable federal statute, the plaintiff may dismiss an action without a court 15 order by filing: (i) a notice of dismissal before the opposing party serves either an answer 16 or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Federal Rule of 17 Civil Procedure 66 provides that "[a]n action in which a receiver has been appointed may 18 be dismissed only by court order." Fed. R. Civ. P. 66; see also Local Rules W.D. Wash. 19 CR 66. The advisory committee note to Rule 66 explains that dismissal by court order is 20required after a receiver is appointed because a "party should not be permitted to oust the 21 court and its officer without the consent of the court." Fed. R. Civ. P. 66 advisory 22 committee's note.

ORDER-3

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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Accordingly, the court DENIES West Travel's objection (Dkt. # 56) and confirms that Mr. Kovsky's claims against West Travel have been voluntarily dismissed without prejudice. Dated this 20th day of October, 2011. R. Rlit JAMES L. ROBART United States District Judge