

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

RICHARD D. HARVEY,)	
)	
Plaintiff,)	
)	
v.)	No. 3:08-CV-153
)	(Phillips)
ALOHA AUTO GROUP, LTD, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's motion to voluntarily dismiss defendant Aloha Auto Group Ltd. [Doc. 10]. In support of the motion, plaintiff states that he has reached a settlement agreement with the remaining defendants, Hyundai Motor Finance Company and Evolution Hyundai. Therefore, he requests the court to enter an order dismissing Aloha Auto Group Ltd., said dismissal to be with prejudice.

Prior to the filing of plaintiff's motion, defendant Aloha Auto had filed a motion to dismiss for lack of personal jurisdiction [Doc. 6]. Defendant Aloha Auto opposes the motion for voluntary dismissal unless the court grants Aloha Auto its attorney's fees and costs incurred in defending this suit in Tennessee.

Rule 41(a)(2), Federal Rules of Civil Procedure, provides that “an action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper.” It is well settled that whether dismissal should be granted under the authority of Rule 41(a)(2) is within the sound discretion of the district court. *See, e.g., Banque de Depots v. Nat’l Bank of Detroit*, 491 F.2d 753, 757 (6th Cir. 1974). Generally, an abuse of discretion is found only where the defendant “would suffer some plain legal prejudice other than the mere prospect of a second lawsuit.” *Cone v. West Virginia Pulp & Paper Co.*, 330 U.S. 212, 217 (1947).

There is no question that Aloha Auto has expended some effort and expense in preparing its motion to dismiss. However, plaintiff has amended his motion to ask that Aloha be dismissed with prejudice, so Aloha will not incur any future legal fees or expenses in this case. Accordingly, plaintiff’s motion to dismiss Aloha Auto Group Ltd [Doc. 10] is **GRANTED**, whereby Aloha Auto Group Ltd is **DISMISSED, WITH PREJUDICE**.

Defendant Aloha Auto’s motion to dismiss for lack of personal jurisdiction [Doc. 6] is **DENIED AS MOOT**. Plaintiff’s motion to strike pleading [Doc. 14] is **DENIED AS MOOT**.

IT IS SO ORDERED.

ENTER:

s/ Thomas W. Phillips
United States District Judge

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