

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

SEVEN OAKS CONSTRUCTION,)
LLC,)
)
Plaintiff,)
)
v.)
)
TALBOT CONSTRUCTION, INC.,)
and TRAVELERS CASUALTY AND)
SURETY COMPANY, INC.,)
)
Defendants.)

CIVIL ACTION NO.
2:11cv140-MHT
(WO)

OPINION AND ORDER

Based on the representations made on the record on
April 24, 2012, it is ORDERED as follows:

- (1) The motions to alter or vacate (doc. nos. 27 &
28) are granted.
- (2) The final judgment (doc. no. 26) is amended to
reflect that the dismissal is without prejudice.

The court believes that relief pursuant to Rule 59 of the Federal Rules of Civil Procedure is appropriate because there was some confusion as to whether this case had been stayed pending arbitration. Indeed, this court typically orders either a stay or a dismissal without prejudice after ordering arbitration. This confusion as to the status of the case was reinforced by the fact that the case remained pending without action for a substantial period of time before the court ordered dismissal.

Moreover, in the opinion accompanying dismissal of this case, the court stated that it "assumes that Seven Oaks has no objection to the dismissal of this case against Surety Company" and that, "If the court's assumption is incorrect, Seven Oaks should so inform the court within seven days from the date of this opinion." Therefore, the basis of the dismissal was an assumption of no opposition rather than on the merits. Seven Oaks aptly and immediately informed the court within the

allowed time period that the court was mistaken. This case should not be dismissed with prejudice based on a court's mistake.

DONE, this the 24th day of April, 2012.

 /s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE