

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

WILLIAM M. CUNNINGHAM, JR.,)
PERSONAL REPRESENTATIVE AND)
EXECUTOR OF THE ESTATE OF)
REBECCA C. CUNNINGHAM, DECEASED,)
Plaintiff,)

v.)

)**CIVIL ACTION NO. 1:10-00671-KD-C**

HONEYWELL INTERNATIONAL, INC.,)
et al.,)
Defendants.)

ORDER

This matter is before the Court on the Plaintiff’s “Rule 41(a)(1)(i) Notice of Dismissal Without Prejudice as to Selby, Battersby & Co. d/b/a SB Decking, Inc.” (Doc. 170). Plaintiff voluntarily dismisses all of his claims against Defendant Selby, Battersby & Co. d/b/a S.B. Decking, Inc. without prejudice.

A Rule 41(a)(1)(A)(i) Notice of Dismissal is permissible if filed “before the opposing party serves either an answer or a motion for summary judgment[.]” This action was commenced on December 3, 2010. (Doc. 1). An Amended Complaint was filed on April 5, 2011. (Doc. 92). The record reveals that Defendant Selby, Battersby & Co. d/b/a S.B. Decking, Inc. has not filed an answer or motion for summary judgment in this case.

Accordingly, it is **ORDERED** that all of the Plaintiff’s claims against Defendant Selby, Battersby & Co. d/b/a S.B. Decking, Inc. are hereby **DISMISSED without prejudice**.

Both parties shall bear their own costs.

Nothing herein shall be construed as dismissing any of the Plaintiff's claims against the remaining defendants.

DONE and ORDERED this the **14th** day of **April 2011**.

/s/ Kristi K. DuBose

KRISTI K. DuBOSE

UNITED STATES DISTRICT JUDGE