

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-cv-00555 REB-KLM

ELLIOT B. MAISEL,

Plaintiff,

v.

ERICKSON CONSTRUCTION, INC., a Colorado corporation,
RICKIE DEAN ERICKSON, individually,
CHARLES L. CUNNIFFE, individually, d/b/a CHARLES CUNNIFFE & ASSOC,
ARCHITECTS,
ALPINE HEATING AND SHEET METAL, INC., a Colorado corporation,
COG PLUMBING & HEATING, INC., a Colorado corporation,
FRONTIER ENTERPRISES, LTD. d/b/a FRONTIER STRUCTURES, INC., a Colorado
corporation,
PEAK SERVICE AND RENOVATION INC. d/b/a PEAK MECHANICAL SERVICES, INC.,
a Colorado corporation,
THE LOG CONNECTION, INC., a Colorado corporation,
TINMAN ROOFING AND HOME IMPROVEMENTS, INC., a Colorado corporation,

Defendants.

ERICKSON CONSTRUCTION, INC., a Colorado corporation,
RICKIE DEAN ERICKSON, individually,

Cross-Claimants/Third-Party Plaintiffs.

CHARLES L. CUNNIFFE, individually, d/b/a CHARLES CUNNIFFE & ASSOC,
ARCHITECTS,
PEAK SERVICE AND RENOVATION INC. d/b/a PEAK MECHANICAL SERVICES, INC.,
a Colorado corporation,
THE LOG CONNECTION, INC., a Colorado corporation,
DAVID JOHNS, individually, d/b/a JOHNS CONSTRUCTION,
CROSS SEVEN, INC., a Colorado corporation,
LOGARYTHMS, INC., a Colorado corporation,
STEAMBOAT LANDSCAPING, INC. d/b/a MOUNTAIN WEST ENVIRONMENTS, INC., a
Colorado corporation,
TBW, INC., a Colorado corporation,

Cross-Claim Defendants/Third-Party Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR DISMISSAL
OF THE NEGLIGENCE CLAIM AGAINST DEFENDANT,
CHARLES L. CUNNIFFE, WITHOUT PREJUDICE**

Blackburn, J.

The matter is before me is **Plaintiff's Motion for Dismissal of the Negligence Claim Against Defendant Cunniffe Without Prejudice** [#89], filed August 15, 2011.

Although defendant, Erickson Construction, Inc., ostensibly objected to the motion, it has not file a response or otherwise attempted to substantiate or formalize its objection.


Having reviewed the motion, the record, and the applicable law, I conclude that the motion should be granted and plaintiff's claim of negligence asserted against defendant, Charles L. Cunniffe, individually, d/b/a Charles Cunniffe & Assoc, Architects, should be dismissed without prejudice. Plaintiff's other claims against Cunniffe, for breach of contract, vicarious liability, and respondeat superior, are unaffected by this Order.

THEREFORE, IT IS ORDERED as follows:

1. That **Plaintiff's Motion for Dismissal of the Negligence Claim Against Defendant Cunniffe Without Prejudice** [#89], filed August 15, 2011, is **GRANTED**; and,
2. That plaintiff's claim for negligence against defendant, Charles L. Cunniffe, individually, d/b/a Charles Cunniffe & Assoc, Architects, is **DISMISSED WITHOUT PREJUDICE**.

Dated December 6, 2011, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge