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OPINION SUPPLEMENTAL INFORMATION

DecDecember 2, 1992

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COMPLETE NAME OF CASE: Robert W. Roper
v.
County of Chesterfield, Virginia, et al.

DOCKET NO.: 92-CV-610

COURT: United States District Court
Eastern District of Virginia
Richmond Division

DATE FILED: December 2, 1992

JUDGE: Hon. Richard L. Williams

ATTORNEY(S) FOR PLAINTIFF: Blackwell Nixon Shelley, Jr., Esq.
Manning, Davis & Kirby
1108 Ross Building
801 E. Main Street
Richmond, VA 23219

ATTORNEY(S) FOR DEFENDANT County of Chesterfield: Steven Latham Micas, Esq.
Jeffrey Lee Mincks, Esq.
Chesterfield County
P.O. Box 40
Chesterfield, VA 23832

ATTORNEYS FOR DEFENDANT Acors & Griffith Heating and Air Conditioning, Inc.: James Alexander Baber, III, Esq.
Dennis William Dohnal, Esq.
Bremner, Baber & Janus
P.O. Box 826
Richmond, VA 23207

ATTORNEYS FOR DEFENDANT Barnett's Heating & Air Conditioning, Inc.:

Deborah Shae O'Toole, Esq.
Frank Fletcher Rennie, IV, Esq.
Cowan & Owen
P.O. Box 35655
Richmond, VA 23235-0655

and

Archibald Wallace, III, Esq.
Sands, Anderson, Marks & Miller
P.O. Box 1998
Richmond, VA 23216-1998

ATTORNEYS FOR DEFENDANT Daniel's Heating & Refrigeration Corporation:

Edward Ernest Nicholas, III, Esq.
Thomas Nelson Langhorne, III, Esq.
Wright, Robinson, McCammon,
Osthimer & Tatum
411 E. Franklin Street
Richmond, VA 23219

ATTORNEYS FOR DEFENDANT W. G. Speeks, Incorporated:

Scott Sanford Cairns, Esq.
McGuire, Woods, Battle & Boothe
One James Center
Richmond, VA 23219

ATTORNEYS FOR DEFENDANT Lane Ramsey, County Administrator, County of Chesterfield, Va.:

Steven Latham Micas, Esq.
Jeffrey Lee Mincks, Esq.
Chesterfield County
P.O. Box 40
Chesterfield, VA 23832

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ROBERT W. ROPER, Plaintiff, v. COUNTY OF CHESTERFIELD, VIRGINIA et al., Defendants.	)	C.A. No. 92-610

MEMORANDUM OPINION

This matter is before the Court on the following motions:

1) The Plaintiff's Motion for Leave to Amend his Complaint, pursuant to Fed. R. Civ. Proc. 15(a);

2) Motions to Dismiss, either pursuant to Fed. R. Civ. Proc. 12(b)(1) or (6), by all of the Defendants except Acors & Griffith Heating and Air Conditioning, Inc. ("Acors"); and

3) Defendant Acors' Motion for Summary Judgment, pursuant to Fed. R. Civ. Proc. 56(b).

For the reasons set forth below, the Court grants the motion to amend, dismisses all defendants except the County of Chesterfield ("the County") from Count I, dismisses Count III in its entirety, and denies the remaining aspects of the motions to dismiss, while asserting supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the state law claim asserted in Count V.

I. Factual Background

The plaintiff, Robert W. Roper ("Roper"), was formerly a Senior Mechanical Inspector employed by the Chesterfield County Department of Building Inspection. His duties required him to

perform on-site inspections of dwellings to ensure that the contractors constructing those dwellings adhered to the statewide building code requirements for heating, ventilating and air conditioning systems. Roper's Complaint and Amended Complaint allege the following:

During the summer of 1990, representatives from four contracting companies -- Acors, Barnett's Heating & Air Conditioning, Inc. ("Barnett's"), Daniel's Heating & Refrigeration Corporation ("Daniel's") and W.G. Speeks, Incorporated ("Speeks") (collectively referred to as the "Contractor Defendants") -- met with Roper's superior, Robert S. Hodder ("Hodder"), to complain that Roper was "nitpicking" and refusing to pass their work. During the course of these meetings, the Contractor Defendants told Hodder to either direct Roper to rubber stamp their work or to terminate his employment. On or about July 26, 1990, Hodder met with the members of the Mechanical Inspection Staff, including Roper, at which time Hodder directed the staff that the work of certain contractors was not to be rejected. In response to a question from Roper, Hodder confirmed that the "certain contractors" were Acors, Barnett's, Daniel's and Speeks. Roper indicated to Hodder that he would not pass substandard work, regardless of the contractor.

Roper was terminated as an employee of the County on September 24, 1990. Roper alleges that he was dismissed because of his refusal to pass, without challenge, the work performed by the Contractor Defendants. At the time of his termination, Roper was

informed by the County that his termination was undertaken pursuant to Policy 200.15 - Reductions in Force, of Chesterfield County's Administrative Procedures, which provides that employees separated as a result of a reduction in force "will be given priority consideration for rehiring or for other vacancies within the County Government. . . ."

Shortly after his termination, Roper contacted the Chesterfield County Police Department and reported his suspicion that Hodder was accepting improper gifts from the Contractor Defendants. Subsequent to reporting these suspicions to the police, Roper allegedly was told by Lane Ramsey ("Ramsey"), Chesterfield County Administrator, that Roper had cost Hodder his job and that Roper would never work in the County again. Since his termination, Roper contends that he has submitted to the County numerous applications for employment but has received no consideration for employment from the County, priority or otherwise.

II. Motion to Amend

Fed. R. Civ. Proc. 15(a) dictates that leave to amend should be "freely granted when justice so requires." Leave to amend is granted liberally, Coral v. Gonse, 330 F.2d 997, 998 (4th Cir. 1964), and to justify a denial of such leave, it must appear to the Court that the amendment is futile, offered in bad faith, prejudicial or otherwise contrary to the interests of justice. Ward Elec. Serv., Inc. v. First Com. Bank, 819 F.2d 496, 497 (4th Cir. 1987). Finding no reason to deny such leave to Roper, the

Court accepts his Amended Complaint, and measures the defendants' motions to dismiss against the allegations as set forth in the Amended Complaint.

III. Motions to Dismiss and Summary Judgment[1]

A. Count I

In Count I, Roper alleges that he was instructed by Hodder not to reject any mechanical work performed by the Contractor Defendants, in response to which Roper indicated that he would not pass any substandard work. Roper claims that his "activities and speech with regard to passing or rejecting mechanical work performed by Acors, Barnett's, Daniel's or Speeks" were protected by the First Amendment and, thus, that the defendants violated 42 U.S.C. § 1983 by abridging this speech and activity.

In order to assert a colorable claim under 42 U.S.C. § 1983, a plaintiff must establish the deprivation of some constitutionally protected right. Martinez v. California, 444 U.S. 277, 284 (1980); Dennison v. County of Frederick, 921 F.2d 50, 53 (4th Cir. 1990), cert. denied, 111 S. Ct. 2828 (1991). Specifically, to state a claim under the First Amendment, the plaintiff must first identify some speech or expressive conduct that implicates the First Amendment, and second demonstrate that this speech merits constitutional protection. Dennison, 921 F.2d at 53.

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[1] Acors' Motion for Summary Judgment is predicated on the exact same legal theories as the other defendants' Motions to Dismiss. Acors simply appears to have answered instead of filing a 12(b)(6) motion and then adopted the other parties' arguments by way of summary judgment.

1. Plaintiff has identified the requisite speech or expressive conduct from which to assert a viable First Amendment violation

To survive the defendants' motion to dismiss Count I, Roper must distinguish his case from Dennison which, at first blush, appears to be factually analogous to his claim. In Dennison, the Fourth Circuit held that no First Amendment right was violated where the plaintiff, a former county building inspector, was placed on probation, and allegedly constructively discharged, for his failure to respond to his employer's urging to relax his strict enforcement of the applicable building code. 921 F.2d at 53-54. Plaintiff Dennison contended that county officials "urged" him to relax his strict enforcement of the building code by questioning his judgment and limiting his authority. Id. at 51. Furthermore, Dennison alleged that his department was reorganized so that he could "no longer directly tell the secretaries in the department what to do, but instead had to go through a 'floor coordinator' who was not a member of his department." Id. The Fourth Circuit characterized Dennison's activities merely as "a course of conduct" devoid of intent to convey a particularized message. Id. at 53. The defendants contend that Roper's course of conduct in "nitpicking" (Amended Complaint at paras. 14 and 18) or strictly enforcing the building code does not, under Dennison, constitute speech, and therefore, that Roper's First Amendment rights cannot have been violated since, as a matter of law, they were never implicated.

But while Dennison and the case at bar both involve disputes between a county official and a building inspector over proper enforcement of the relevant building code, Roper's most crucial allegations distinguish his claim from that which was dismissed by the Dennison Court. The factors that the Fourth Circuit relied upon in Dennison to arrive at the conclusion that the plaintiff's actions constituted a mere "course of conduct," and not protected speech, illustrate that Roper's claim is importantly different from that which was dismissed in Dennison.

The Dennison Court simply could not identify the particular speech for which Dennison was claiming First Amendment protection, despite making vigorous inquiry:

> When the County asked Dennison in his deposition to specify the particular 'speech' for which he was fired, Dennison could not do so, and when pressed, was told by his lawyer not to answer the question. In response to interrogatories, Dennison's lawyer only alleged that Dennison was discharged for his strict enforcement of the building code. Dennison repeats this position in his reply brief, and to date he has never specified any particular speech for which he was punished . . .

921 F.2d at 53. The Court thereafter refers to Dennison's allegations as "a dispute over a general course of conduct, not the expression of any idea or opinion." Id. at 54. Dennison's claim, in essence, was that he was fired for adhering to a stricter interpretation of the building code than his supervisors. The Fourth Circuit held that this claim did not implicate the First Amendment because no protectable speech laid at its root.

Roper's claim is fundamentally different. He alleges not some general dispute with his supervisors over overall building code

enforcement, but rather that his refusal to approve without question the work of the Contractor Defendants at Hodder's behest prompted his termination. The speech or expressive conduct at issue in Roper's case is his refusal to pass the Contractor Defendants' substandard work despite his supervisor's alleged direction to do so. This is not a "general course of conduct," but a specific response to an alleged order issued by Roper's supervisor to ignore building codes enacted to protect public safety.

The issue is a close one, and the Court is fully prepared to revisit the validity of Count One at the summary judgment phase of this litigation. The Court is of the belief, however, at this juncture, that Roper's allegations are sufficiently distinguishable from those made by the plaintiff in Dennison to survive a Rule 12(b)(6) motion.

2. The speech identified by the plaintiff is a matter of public concern and is therefore protected by the First Amendment

Recognizing that public employers must be free to make efficient personnel decisions, courts have held that not all employee speech is entitled to First Amendment protection. Connick, 461 U.S. at 140; Dennison, 921 F.2d at 54. In Dennison, the Court employed a two-part test to determine whether a public employee's speech was entitled to constitutional protection: "(1) whether the speech qualified as a matter of public concern and (2) what effect the speech has on the efficiency, discipline and proper administration of the workplace." Id., citing, Dwyer v. Smith, 867

F.2d 184, 193 (4th Cir. 1989).[2] The public concern determination is a question of law to be decided by the Court. Connick, 461 U.S. at 147 n.7.

In Dennison, the Fourth Circuit characterized the employee-employer dispute over strict or lenient enforcement of a building code essentially as a private matter between employer and employee. 921 F.2d at 54. The defendants allege, on the strength of Dennison, that Roper's "speech" similarly does not qualify as a matter of public concern. Dennison, however, does not appear to support this argument.

The Dennison Court acknowledged that "the safety of public buildings could be considered important to public welfare," but found that Dennison's speech was not a matter of public concern because Dennison never complained that office policies regarding the building code were unsafe and because "Dennison could not identify any specific conduct by his supervisor which resulted in an unsafe or unlawful enforcement of the building code." Id. (emphasis added). Roper, however, identifies in his Amended Complaint the specific conduct that Dennison apparently could not. Roper's lawsuit is not premised on his discontent with office procedures or some series of conflicts with supervisors over the appropriate amount of strictness or leniency to be used in inspecting buildings. Roper specifically alleges that he was told

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[2] The second prong of this test has not been seriously disputed by any of the defendants. All of the debate revolves around whether the speech or expressive conduct at issue qualifies as a matter of public concern.

to ignore the building code when it came to the Contractor Defendants. If followed, such directions clearly would result in "an unsafe or unlawful enforcement of the building code," as required by Dennison. The speech and/or expressive conduct alleged to be at issue in this case is a matter of public concern and, as such, is entitled to constitutional protection.

3. The Contractor Defendants are Improperly Named in Count I

While Count I will not be dismissed from the lawsuit, it will continue only against the County; the Contractor Defendants will be dismissed from this Count. The plaintiff's argument that the Contractor Defendants could somehow direct the firing of Roper while being cloaked with the color of state law is simply untenable. It is the County, and not any of the Contractor Defendants, which allegedly discharged Roper in violation of his constitutional rights. It is also the County's officials who allegedly ordered Roper to turn the other cheek to building code violations when they were perpetrated by the Contractor Defendants. Perhaps the Contractor Defendants exerted some form of improper pressure on the County which prompted the alleged instructions to ignore the building code, but even under that scenario, the truly culpable party under Count I would be the County for caving into such pressure. If the Contractor Defendants really did anything more than aggressively lobby for their cause, as would most contractors in their position, such improprieties would be fully fleshed out on Roper's state law cause of action against them for tortious interference with his employment contract. It is apparent

to the Court that the essence of Count I is directed against the County; therefore, it is dismissed as to the Contractor Defendants.

B. Count II

Roper has alleged in Count II that, in retaliation for Roper's reporting his suspicions about Hodder to the police, Ramsey, or the County, through its employees, have prevented Roper from being considered for re-employment with the County, despite the County's stated policy of offering "priority consideration" to employees, like Roper, severed as a result of a layoff, and despite Roper's numerous attempts to secure re-employment. Ramsey and the County move to dismiss Count II solely on the basis that it fails to allege that the rights guaranteed Roper by the First Amendment apply to Ramsey and the County by operation of the Fourteenth Amendment. Roper's Amended Complaint cures this defect by specifically alleging in Count II a violation of the First and Fourteenth Amendments. Thus, having granted Roper leave to amend, Count II is not subject to dismissal.

C. Count III

Count III alleges that the County and the Contractor Defendants conspired to impede, hinder, obstruct or defeat the due course of justice in Virginia, "with the intent to injure Roper or his property for lawfully enforcing, or attempting to enforce, the right of any person to equal protection of the laws." Roper alleges that this conspiracy violates 42 U.S.C. § 1985(2).

The second clause of Section 1985(2), the clause upon which Roper relies, grants litigants the right to sue where:

> two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

42 U.S.C. § 1985(2). In order to state a valid claim under this clause,[3] a litigant must demonstrate some interference with "the course of justice in state courts." Kush v. Rutledge, 460 U.S. 719, 725-26 (1983). Since the plaintiff has not met this requirement, and because his claim is of a nature that cannot be cured by amendment, this Count is dismissed.

1. Section 1985(2) requires interference with state court proceedings

Virtually all courts have held that the second clause of Section 1985(2) applies to "conspiracies to obstruct the course of justice in state courts" or, more specifically, joint efforts to prevent equal access to state judicial proceedings. Kush v. Rutledge, 460 U.S. at 725 (emphasis added). See also Lewis v. Green, 629 F. Supp. 546, 550 (D.D.C. 1986); Britt v. Suckle, 453 F. Supp. 987, 992 n.8 (E.D. Tex. 1978).

The only case which appears to suggest a somewhat more expansive reading of Section 1985(2)'s "due course of justice" language, and the only case upon which plaintiff relies to counteract Kush and its progeny, is Fowler v. Dept. of Educ., 472

[3] The first clause of Section 1985(2) is inapplicable because it applies only to access in the federal courts.

F. Supp. 121 (E.D. Va. 1978). In Fowler, the Court considered a claim against two officials in the Virginia Department of Education for obstructing administrative proceedings being held by the Virginia Department of Personnel. In holding that the Section 1985(2) claim was fatally deficient because a conspiracy could not exist where officials of the same public body act within the scope of their employment, the Court noted that the "language of § 1985(2) may be sufficiently broad to encompass conspiracies to obstruct discrimination proceedings in the Virginia Department of Personnel." 472 F. Supp. at 122.

This nebulous dictum is too weak to save Roper's dubious claim for relief under Section 1985(2). First, Fowler was decided five years before the Supreme Court's Kush opinion, which set forth a far more definitive and detailed framework for analyzing claims advanced under Section 1985(2). Roper has not cited a single case which departed from Kush's command to validate only those Section 1985(2) claims which sought to rectify some denial of equal access to state judicial proceedings. Second, even if Section 1985(2) is read as expansively as Roper suggests, Roper's claim remains an unjustifiably broad expansion even of Fowler. In Fowler, an aggrieved plaintiff pursued her grievance in an administrative forum and alleged that the defendants attempted to interfere with her right to access to that forum by trying to obstruct the discrimination hearings. Even if read as authoritative, Fowler merely extends the scope of Section 1985(2) protection to both state judicial and administrative proceedings. Roper seems to

argue that because aggrieved individuals may appeal adverse inspection decisions, and because he makes those inspection decisions, he satisfies the Fowler interpretation of Section 1985(2). Not only is this a stretch at best, but misses the point of Section 1985(2) jurisprudence. Even under Roper's theory of the case, he has not been denied access to any state or administrative proceeding. Roper cannot render his claim valid by piggybacking on top of unidentified individuals who might potentially appeal adverse inspection rulings. Roper himself must be aggrieved in the manner outlined by Kush and its progeny to assert a colorable Section 1985(2) claim. He has failed to do so.

2. Section 1985(2) requires some violation of equal protection interests

The Court need not address the defendants' allegations that Roper inadequately asserts a violation of "equal protection of the laws" in Count III. Since Roper's Amended Complaint does not allege interference with state judicial (or administrative) proceedings, Count III does not set forth a valid claim for relief under Section 1985(2), regardless of whether a showing of "class-based, invidiously discriminatory animus" is required in this case. See Kush, 460 U.S. at 725-26.

D. Count IV

This Count requests punitive damages against the Contractor Defendants. Since the Court does not dismiss Count V, it allows the punitive damages claim asserted in Count IV to remain as well.

E. Count V

No defendant argues that this Count should be dismissed on the merits. All simply assert that, on the basis of United Mine Workers v. Gibbs, 383 U.S. 715, 727 (1966), the Court should decline to assert supplemental jurisdiction over this claim once it dismisses the two federal causes of action asserted by Roper against the Contractor Defendants (Counts I and III). But since the Court retains at least a portion of Count I, it will assert jurisdiction over the pendent state law claim because Counts I and V are sufficiently related that they form part of the same case or controversy. Count V alleges, in essence, that the Contractor Defendants unlawfully interfered with Roper's employment relationship with the County in a manner which resulted in Roper's eventual dismissal. Thus, the circumstances surrounding Roper's dismissal will be directly at issue in both Counts I and V; judicial efficacy is served by retaining the entire matter and not having it litigated piecemeal in separate fora.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

DATE

SENIOR UNITED STATES DISTRICT JUDGE

U.S. District Court
Eastern District of Virginia (Richmond)

CIVIL DOCKET FOR CASE #: 92-CV-610

Roper, et al v. County of Chesterfld, et al
Assigned to: Judge Richard L. Williams
Demand: $9,999,000
Lead Docket: None
Dkt # : is none

Filed: 09/21/92
Jury demand: Plaintiff
Nature of Suit: 442
Jurisdiction: Federal Question

Cause: 42:1983 Civil Rights Act

ROBERT W. ROPER
plaintiff

Blackwell Nixon Shelley, Jr.
[COR LD NTC]
Manning, Davis & Kirby
1108 Ross Building, 801 E. Main Street
Richmond, VA 23219
(804) 643-0053

MAURICE RICHARDSON
plaintiff

v.

COUNTY OF CHESTERFIELD, VIRGINIA
defendant

Steven Latham Micas
[COR LD]
Chesterfield County
P. O. Box 40
Chesterfield, VA 23832
(804) 748-1491

Jeffrey Lee Mincks
[COR LD NTC]
Chesterfield County
P.O. Box 40
Chesterfield, VA 23832
804-748-1491

ACORS & GRIFFITH HEATING AND AIR CONDITIONING, INC.
defendant

James Alexander Baber, III
[COR LD]
Bremner, Baber & Janus
701 E. Franklin Street, P O Box 826
Richmond, VA 23207

Dennis William Dohnal
[COR LD NTC]
Bremner, Baber & Janus
P.O. Box 826
Richmond, VA 23207

BARNETT'S HEATING & AIR CONDITIONING, INC. defendant	Deborah Shae O'Toole [COR LD NTC] Cowan & Owen Po Box 35655 Richmond, VA 23235-0655 (804) 320-8918 Archibald Wallace, III [COR NTC] Sands, Anderson, Marks & Miller PO Box 1998 Richmond, VA 23216-1998 (804) 783-7265 Frank Fletcher Rennie, IV [COR] Cowan, Owen & Nance 1930 West Huguenot Road Richmond, VA 23235 (804) 320-8918
DANIEL'S HEATING & REFRIGERATION CORPORATION defendant	Edward Ernest Nicholas, III [COR LD] Wright, Robinson, McCammon, Osthimer & Tatum 411 E. Franklin St Richmond, VA 23219 (804) 783-1100 Thomas Nelson Langhorne, III [COR LD NTC] Wright, Robinson, McCammon 411 East Franklin Street Richmond, VA 23219 804-783-1121
W. G. SPEEKS, INCORPORATED defendant	Scott Sanford Cairns [COR LD NTC] McGuire, Woods, Battle & Boothe One James Center, 901 E. Cary Street Richmond, VA 23219
LANE RAMSEY, County Administrator, County of Chesterfield, Virginia defendant	Steven Latham Micas (See above) [COR LD] Jeffrey Lee Mincks (See above) [COR LD NTC]

INTERNAL USE ONLY: Proceedings include all events.
3:92cv610 Roper, et al v. County of Chesterfld, et al

9/21/92	1	COMPLAINT Filing Fee $ 120.00 Receipt # 28449; jury demand (snea) [Entry date 09/22/92]
9/21/92	--	**Added for Robert W. Roper attorney Blackwell Nixon Shelley Jr. (snea) [Entry date 09/22/92]
9/21/92	--	**Added party Lane Ramsey (snea) [Entry date 09/22/92]
9/25/92	--	**Added party Maurice Richardson, Larkin Gordon Scott, Joseph A. Shaia, Inc (snea) [Entry date 09/30/92]
9/28/92	2	SUMMONS Returned Executed as to Daniel's Heating, W. G. Speeks, Inc., Lane Ramsey, County of Chesterfld, Barnett's Heating 9/23/92 Answer due on 10/13/92 for Lane Ramsey, for W. G. Speeks, Inc., for Daniel's Heating, for Barnett's Heating, for County of Chesterfld (snea) [Entry date 09/29/92]
9/28/92	3	SUMMONS Returned Executed as to ACORS & GRIFFITH 9/24/92 Answer due on 10/14/92 for ACORS & GRIFFITH (snea) [Entry date 09/29/92]
10/13/92	4	MOTION by W. G. Speeks, Inc. to Dismiss (adoh) [Entry date 10/14/92]
10/13/92	5	MEMORANDUM by W. G. Speeks, Inc. in support of [4-1] motion by W. G. Speeks, Inc. to Dismiss (adoh) [Entry date 10/14/92]
10/13/92	--	**Added for W. G. Speeks, Inc. attorney Scott Sanford Cairns (adoh) [Entry date 10/14/92]
10/13/92	6	ANSWER to Complaint by ACORS & GRIFFITH (Attorney James Alexander Baber III, Dennis William Dohnal), (adoh) [Entry date 10/14/92]
10/13/92	7	MOTION by Lane Ramsey, County of Chesterfld to Dismiss (adoh) [Entry date 10/14/92]
10/13/92	8	MEMORANDUM by County of Chesterfld, Lane Ramsey in support of [7-1] motion by Lane Ramsey, County of Chesterfld to Dismiss (adoh) [Entry date 10/14/92]
10/13/92	--	**Added for County of Chesterfld, Lane Ramsey attorney Steven Latham Micas, Jeffrey Lee Mincks (adoh) [Entry date 10/14/92]
10/13/92	9	MOTION by Daniel's Heating to Dismiss (adoh) [Entry date 10/14/92]
10/13/92	10	MEMORANDUM by Daniel's Heating in support of [9-1] motion by Daniel's Heating to Dismiss (adoh) [Entry date 10/14/92]

10/13/92	--	**Added for Daniel's Heating attorney Edward Ernest Nicholas III, Thomas Nelson Langhorne III (adoh) [Entry date 10/14/92]
10/13/92	11	MOTION by Barnett's Heating to Dismiss (adoh) [Entry date 10/14/92]
10/13/92	12	MEMORANDUM by Barnett's Heating in support of [11-1] motion by Barnett's Heating to Dismiss (adoh) [Entry date 10/14/92]
10/13/92	--	**Added for Barnett's Heating attorney Deborah Shae O'Toole, Frank Fletcher Rennie IV (adoh) [Entry date 10/14/92]
10/26/92	13	ORDER that the time within which defendant Barnetts Heating & Air Conditioning, Inc. may file responsive pleadings is hereby extended to and includes the 23rd day of October, 1992 (signed by Judge Richard L. Williams) Copies Mailed: y (adoh)
10/26/92	--	Motion hearing re: [11-1] motion by Barnett's Heating to Dismiss set at 2:00 12/1/92, [9-1] motion by Daniel's Heating to Dismiss set at 2:00 12/1/92, [7-1] motion by Lane Ramsey, County of Chesterfld to Dismiss set at 2:00 12/1/92, [4-1] motion by W. G. Speeks, Inc. to Dismiss set at 2:00 12/1/92 (jjoh)
10/26/92	14	RESPONSE by Robert W. Roper to [11-1] motion by Barnett's Heating to Dismiss , [9-1] motion by Daniel's Heating to Dismiss , [7-1] motion by Lane Ramsey, County of Chesterfld to Dismiss by , [4-1] motion by W. G. Speeks, Inc. to Dismiss (adoh) [Entry date 10/27/92]
10/28/92	15	NOTICE of Hearing: on all pending Motions set for December 1, 1992 at 2:00 p.m. (adoh)
10/30/92	16	Deft's (Daniel's Heating & Refrigeration) Rebuttal Memorandum to Pltf's Reply Memorandum in Opposition to Defts' Motions to Dismiss. (swil)
11/2/92	17	REPLY by W. G. Speeks, Inc. to response to [4-1] motion by W. G. Speeks, Inc. to Dismiss (adoh) [Entry date 11/03/92]
11/2/92	18	REPLY by Barnett's Heating to response to [11-1] motion by Barnett's Heating to Dismiss (adoh) [Entry date 11/03/92]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ROBERT W. ROPER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 92-610
	)	
COUNTY OF CHESTERFIELD, VIRGINIA et al.,	)	
	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on the following motions:

1) The Plaintiff's Motion for Leave to Amend his Complaint, pursuant to Fed. R. Civ. Proc. 15(a);

2) Motions to Dismiss, either pursuant to Fed. R. Civ. Proc. 12(b)(1) or (6), by all of the Defendants except Acors & Griffith Heating and Air Conditioning, Inc. ("Acors"); and

3) Defendant Acors' Motion for Summary Judgment, pursuant to Fed. R. Civ. Proc. 56(b).

The Court GRANTS the Plaintiff's Motion for Leave to Amend and accepts the Amended Complaint heretofore submitted by the Plaintiff. The Court GRANTS IN PART and DENIES IN PART the defendants' various motions to dismiss and for summary judgment as follows:

1) **Count I:** The County's motion to dismiss is DENIED; the Contractor Defendants' motions to dismiss are GRANTED;

2) **Count II:** The County's and Ramsey's motions to dismiss this Count are DENIED;

3) **Count III:** All motions to dismiss this Count are GRANTED;

4) **Count IV:** The Contractor Defendants' motions to dismiss

this Count are DENIED;

5) **Count V:** The Contractor Defendants' motions to dismiss this Count are DENIED, and the Court asserts supplemental jurisdiction over this Count, pursuant to 28 U.S.C. § 1367.

The reasons for these holdings are set forth in the accompanying Memorandum Opinion.

It is so ORDERED.

Let the Clerk send a copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

_____ _____

DATE SENIOR UNITED STATES DISTRICT JUDGE