

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

MISCELLANEOUS CASE NO. 1:12mc28

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|---|---|----------------------------------|
| JEAN TAYLOR-TODD, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | <u>MEMORANDUM OF</u> |
| |) | <u>DECISION AND ORDER</u> |
| |) | |
| MARVEN DALE TRIVETTE, |) | |
| et al., |) | |
| |) | |
| Defendants. |) | |
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THIS MATTER is before the Court on the Plaintiff's Motion for Enlargement of Time to File Complaint [Doc. 1]; Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs [Doc. 2]; Plaintiff's Notice of *Lis Pendens* [Doc. 3]; Plaintiff's Claim of Lien on Real Property [Doc. 4]; Plaintiff's Notice of Assignment of Claim on Real Property [Doc. 5]; and Plaintiff's Motion to Receive Email Alerts on Items Filed [Doc. 6]. The Court will grant the Plaintiff's Application [Doc. 2] but will otherwise dismiss this action.

The Plaintiff seeks to commence this action by moving for an Order extending the time to file her complaint pursuant to North Carolina Rule of

Civil Procedure 3(a). [See Doc. 1]. The North Carolina Rules of Civil Procedure, however, apply only to proceedings in the superior and district courts of North Carolina. N.C. R. Civ. P. 1. These Rules are not applicable to the commencement of a federal action. The Federal Rules of Civil Procedure provide that an action is commenced in federal court with the filing of a complaint. Fed. R. Civ. P. 3. The Federal Rules do not provide for the commencement of an action as contemplated by N.C. R. Civ. P. 3(a). Accordingly, the Plaintiff's motion for an enlargement of time in which to file her complaint [Doc. 1] is denied.

The North Carolina General Statutes provide that a notice of *lis pendens* may be utilized in the following cases:

- (1) Actions affecting title to real property;
- (2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property;
- (3) Actions in which any order of attachment is issued and real property is attached; and
- (4) Actions seeking injunctive relief under G.S. 113A-64.1 or G.S. 113A-65 regarding sedimentation and erosion control for any land-disturbing activity that is subject to the requirements of Article 4 of Chapter 113A of the General Statutes.

N.C. Gen. Stat. § 1-116(a). There being no civil action currently pending before the Court, the Plaintiff's Notice of *Lis Pendens* [Doc. 3]; Plaintiff's Claim of Lien on Real Property [Doc. 4]; and Plaintiff's Notice of Assignment of Claim on Real Property [Doc. 5] must all be dismissed, and this miscellaneous civil action is hereby closed. Consequently, the Plaintiff's request for permission to receive electronic notification of future filings is moot.

IT IS, THEREFORE, ORDERED that the Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs [Doc. 2] is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Enlargement of Time to File Complaint [Doc. 1] is **DENIED**.

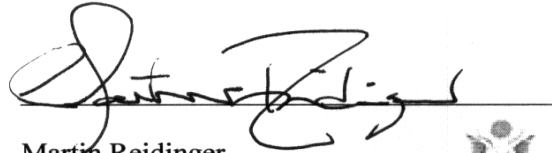
IT IS FURTHER ORDERED that the Plaintiff's Notice of *Lis Pendens* [Doc. 3]; Plaintiff's Claim of Lien on Real Property [Doc. 4]; and Plaintiff's Notice of Assignment of Claim on Real Property [Doc. 5] are **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Plaintiff's Motion to Receive Email Alerts on Items Filed [Doc. 6] is **DENIED AS MOOT**.

The Clerk of Court is **DIRECTED** to close this case.

IT IS SO ORDERED.

Signed: October 3, 2012

A handwritten signature in black ink, appearing to read "Martin Reidinger", written over a horizontal line.

Martin Reidinger
United States District Judge

