

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:15-cv-00228-MR-DLH

JOHN W. RUTLAND III,)
JOSEPH L. ELLEN and wife,)
DONNA M. ELLEN,)
CARL W. BRIDENSTINE and wife,)
CYNTHIA S. BRIDENSTINE,)

Plaintiffs,)

vs.)

ORDER

TERRI HOPE DUGAS, ANTHONY)
M. MILICI and wife, PATHUMWAN)
MILICI, and SELENA MICHELLE)
MILICI,)

Defendants,)

TERRI HOPE DUGAS,)

Third-Party Plaintiff,)

vs.)

UNITED STATES DEPARTMENT OF)
AGRICULTURE – FOREST SERVICE,)
ANTHONY PHILLIPS, and JOSEPH)
and GLORIA HALL,)

Third-Party)
Defendants.)

THIS MATTER is before the Court on the Motion to Dismiss and Alternative Motion for Summary Judgment filed by Third-Party Defendant United States of America [Doc. 12].

On September 30, 2015, the Plaintiffs initiated this action by filing a Complaint and Immediate Request for Temporary Restraining Order against Defendants Terri Dugas (“Dugas”), Anthony M. Milici and wife, Pathumwan Milici, and Selena Michelle Milici in the General Court of Justice for McDowell County, North Carolina, Superior Court Division. [Doc. 1-1]. Defendant Dugas was served on or about October 1, 2015. On October 7, 2015, Dugas filed an Answer and Third-Party Complaint, adding the United States Department of Agriculture -- Forestry Service (“USFS”), among others, as a third-party Defendant in this action. Dugas then immediately removed the action to this Court pursuant to 28 U.S.C. § 1442(a)(1), which allows removal to the district court of those actions which names as a defendant the United States or any agency thereof.

On December 8, 2015, USFS filed the present motion, seeking to dismiss this action for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Alternatively, USFS moves for

summary judgment on these same grounds pursuant to Federal Rule of Civil Procedure 56. [Doc. 12].

The inclusion of USFS as a third-party defendant is the sole basis for the exercise of federal subject matter jurisdiction in this case. [See Doc. 1]. Thus, if the third-party complaint is dismissed or resolved by summary judgment as to USFS, the remainder of the case would be subject to remand back to state court. See 28 U.S.C. § 1367(c)(3). As USFS's motion presents a threshold issue of subject matter jurisdiction, the Court will stay this action pending resolution of USFS's motion. Further, the Court hereby gives notice to Third-Party Plaintiff Terri Dugas that the Court intends to treat USFS's motion as one for summary judgment under Rule 56. Accordingly, Dugas shall be given a reasonable opportunity to present materials pertinent to the motion. See Fed. R. Civ. P. 12(d). Should Dugas determine that she requires any discovery prior to responding to USFS's Motion, she shall file a motion seeking discovery, which shall be limited to the issues presented in USFS's motion, on an expedited basis.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Motion to Dismiss and Alternative Motion for Summary Judgment filed by Third-Party

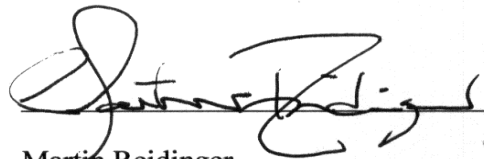
Defendant United States of America [Doc. 12] shall be treated by the Court as a motion for summary judgment.

IT IS FURTHER ORDERED that the Third-Party Plaintiff's deadline for responding to the Motion for Summary Judgment is hereby **EXTENDED** for a period of fourteen (14) days from the entry of this Order. If the Third-Party Plaintiff wishes to conduct limited discovery on an expedited basis prior to responding, she shall file a motion to that effect.

IT IS FURTHER ORDERED that except as otherwise stated in this Order, this action is hereby **STAYED** pending resolution of USFS's Motion for Summary Judgment.

IT IS SO ORDERED.

Signed: December 18, 2015


Martin Reidinger
United States District Judge

