

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : THIRD DEPARTMENT

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LEWIS FAMILY FARM, INC.,  
Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK  
PARK AGENCY,  
Defendant-Respondent.

AFFIRMATION IN REPLY TO  
APPELLANT'S FOURTH  
REQUEST FOR AN EXTENSION  
OF TIME TO PERFECT APPEAL

AD Docket No. 504696

Supreme Court  
Index No. 498-07

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Pursuant to CPLR § 2106, Loretta Simon, an attorney duly admitted to practice in the courts of the State of New York, hereby affirms the following under penalty for perjury:

1. I serve as an Assistant Attorney General in the Environmental Protection Bureau of the Office of the New York State Attorney General and am counsel to the Adirondack Park Agency ("the APA" or "the Agency") in this appeal of Lewis Family Farm, Inc. v. NYS Adirondack Park Agency, (Sup. Ct., Essex Co. Index No. 498-07) ("Lewis Farm I"). I am also the APA's counsel in the subsequent CPLR article 78 proceeding, Matter of Lewis Family Farm, Inc. v. APA, (Sup. Ct., Essex Co. Index No. 315-08) ("Lewis Farm II"), and its related enforcement action APA v. Lewis Family Farm, Inc., Salim B. Lewis, and Barbara Lewis, (Sup. Ct., Essex Co. Index No. 332-08) ("Lewis Farm III"), from which

Affirmation In Response to  
Appellant's Fourth Request for an  
Extension of Time to Perfect Appeal

appeals are also pending. Accordingly, I am familiar with the underlying facts and the litigation among the parties.

2. I submit this affirmation in response to Appellant Lewis Family Farm Inc.'s ("Lewis Farm") fourth motion for an extension of time to perfect its appeal in Lewis Farm I.

3. All three matters stem from Lewis Farm's construction of three single-family dwellings in the Adirondack Park, within a protected river corridor, without permits from the APA.

4. In the declaratory judgment action giving rise to this appeal, the Supreme Court (Ryan, Acting J.S.C.) issued a Decision and Order dated August 16, 2007, which denied a restraining order Lewis Farm sought against the Agency, determined that the APA had jurisdiction over the dwellings, and granted the Agency's motion to dismiss the matter pending further administrative proceedings. Decision and Order of Justice Kevin K. Ryan, Lewis Farm I, Index No. 498-07 Sup. Ct. Essex Co., dated August 16, 2007.

**SUMMARY OF LITIGATION**

A summary of the three matters is provided in the Affirmation of Loretta Simon dated May 15, 2008 previously provided to this Court, and is not repeated herein.

THE THREE PRIOR MOTIONS FOR EXTENSIONS

5. The notice of appeal in this action was dated September 26, 2007. The nine-month deadline by which the appeal would have been deemed abandoned was June 26, 2008. See Exhibit A (Notice of Appeal).

6. On May 8, 2008, Lewis Farm moved to extend its time to appeal by 90 days, and the APA cross-moved for a conditional order of dismissal. This Court granted an extension to July 28, 2008, and further ordered that the appeal be dismissed unless appellant filed and served its record and brief on or before July 28, 2008. See Exhibit B.

7. Lewis Farm did not perfect its appeal by July 28, 2008, and instead made a second request for an extension, asking for an additional sixty days to perfect its appeal. The APA opposed the extension seeking timely resolution of the matter. This Court granted an extension through September 22, 2008. See Exhibit C.

8. Lewis Farm made a third request for an extension by motion dated September 3, 2008. The APA did not object to the extension, given the passage of time and the pendency of the Supreme Court ruling in the related cases. The Court granted an extension through November 24, 2008. See Exhibit D.

THE INSTANT, FOURTH MOTION FOR AN EXTENSION OF TIME

9. Lewis Farm has repeatedly sought to delay appellate review of Lewis Farm I, a ruling adverse to it. It now seeks an additional 60-day extension which, if granted, would likely mean that this matter will not be decided before April 2009. The APA opposes a 60-day extension because it has a strong interest in having the matter resolved by the beginning of the next growing season when plaintiff will likely claim a need to use the dwelling units in question.

10. In April 2008, Lewis Farm argued to the court below in Lewis Farm II and III, and to this Court, that the three houses at issue were needed immediately to house farm employees. To that end, Lewis Farm sought to stay APA's enforcement and for permission to occupy the three houses. The Supreme Court denied Lewis Farm's request. By order dated May 19, 2008 this Court granted a limited stay enjoining enforcement of the APA's determination pending that appeal, requiring Lewis Farm to escrow \$50,000 and granting the right to occupy one of the three houses. That stay order remains in place. See Exhibit E.

11. Lewis Farm now argues for a fourth extension on the grounds that this Court should wait for a final ruling from the Supreme Court in Lewis Farm II and III, so that all appeals in these matters can be consolidated in the interest of judicial economy. See Lamme Aff. dated November 3, 2008 ¶ 16.

12. There has yet been no decision from the Supreme Court in Lewis Farm II and III, and a decision may be further delayed because the transcript from the June 19, 2008 oral argument was only completed on September 23, 2008.

13. The APA has consistently sought timely resolution of this matter and believes a ruling in Lewis Farm I would be helpful to the lower court in deciding the identical jurisdictional issues in Lewis Farm II and III. Nevertheless the APA did not object to the prior extension because all matters could still have been resolved before the next growing season, had the Supreme Court decided the related cases.

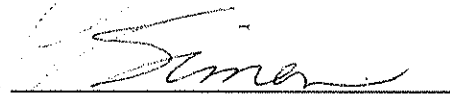
14. There is no guarantee that the Supreme Court will issue a final decision in the next sixty days. Moreover, an extension through January 24, 2009 would likely result in extending resolution of this appeal beyond April 2009, when we expect that Lewis Farm will again seek to occupy the unpermitted structures for staff housing. The APA must oppose any extension that would extend resolution of the appeal into the next growing season.

15. For the record the APA disagrees with the characterization of the facts by Lewis Farms' counsel in its affidavit in support of this motion. For one thing Lewis Farm states that the APA commenced agency enforcement in this matter after Judge Ryan's Decision in August 2007. See Affidavit of Jacob Lamme ("Lamme Aff.") dated November 3, 2008, ¶ 9. In fact

the Agency served a cease and desist order on Lewis Farm to stop construction of the dwellings on June 27, 2007. In addition, Lewis Farm's counsel indicates that this Court has not ruled on the APA's motion for permission to appeal a portion of the July 2, 2008 Decision and Order of Justice Meyer in Lewis Farm II and III denying dismissal of certain claims for collateral estoppel. See Lamme Aff. dated November 3, 2008, ¶ 14. However, this Court by Order of Judge Stein dated September 9, 2008 denied permission to appeal. See Exhibit F.

16. To the extent the Court considers granting an extension, a shortened extension of thirty days may still leave enough time for an appellate decision before another growing season. In any event, the APA respectfully requests that the Court maintain the prohibition against occupancy of the two unoccupied structures until resolution of all pending appeals.

Dated: Albany, New York  
November 14, 2008



LORETTA SIMON  
Assistant Attorney General  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224-0341  
(518) 402-2724

SIMON AFFIRMATION EXHIBIT LIST

- Exhibit A Notice of Appeal
- Exhibit B Decision and Order dated May 29, 2008
- Exhibit C Decision and Order dated July 24, 2008
- Exhibit D Decision and Order dated September 25, 2008
- Exhibit E Decision and Order dated May 19, 2008
- Exhibit F Decision and Order dated September 9, 2008