

Case No. 504696

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

REPLY AFFIDAVIT

-against-

Case No. 504696

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

**REPLY AFFIDAVIT IN SUPPORT OF MOTION TO
EXTEND TIME TO PERFECT APPEAL**

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

JACOB F. LAMME, being duly sworn, deposes and states as follows:

1. I am duly licensed and admitted to practice law in the State of New York, and I am an associate with the law firm of McNamee, Lochner, Titus & Williams, P.C., attorneys for the Lewis Family Farm, Inc. (hereafter "Lewis Family Farm" or "Appellant"), plaintiff-appellant in this action (Essex County Index No. 0498-07) (hereafter "*Action No. 1*"). I am also counsel to the Lewis Family Farm in an Article 78 proceeding (Essex County Index No. 315-08) (hereafter "*Action No. 2*") and an action (Essex County Index No. 332-08) (hereafter "*Action No. 3*"), both of which involve the same parties herein. *Action No. 2* and *Action No. 3* were consolidated and are currently pending before Hon. Richard B. Meyer, Acting J.S.C., Essex County Supreme Court. As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

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2. This reply affidavit is submitted in support of a motion to extend the time in which the Appellant has to perfect its appeal in *Action No. 1* in the interest of judicial economy.

3. The Agency's Affirmation in Opposition, dated July 11, 2008, is disingenuous since three days earlier it offered to fully consent to the extension of time in which to perfect this appeal in *Action No. 1*.

4. On July 8, 2008, the Agency offered its full consent to this motion in exchange for a 24-day extension of time to file its answer to the Article 78 petition in *Action No. 2* below. By letter dated July 8, 2008, the Lewis Family Farm informed the Agency that it could not consent to this arrangement. A copy of my July 8, 2008 letter is attached hereto as **Exhibit "A"**.

5. The next day, the Agency wrote to Hon. Richard B. Meyer seeking the extension. I responded to Judge Meyer and explained that the Lewis Family Farm opposed the extension. Copies of this correspondence is attached hereto as **Exhibit "B"**.

6. On July 11, 2008, Judge Meyer informed the parties that his July 2, 2008 Decision and Order had already granted a favorable extension to the Agency by requiring its answer within twenty (20) days instead of the five (5) days contemplated by CPLR 7804(f). Nevertheless, Judge Meyer granted a one-week extension, until July 30, 2008. A copy of Judge Meyer's July 11, 2008 letter is attached hereto as **Exhibit "C"**.

7. Thus, these proceedings are relevant to the instant motion because the lower court has briefly extended the time in which the matters in *Action No. 2* and *Action No. 3* can reasonably be expected to be decided.

8. As such, the Lewis Family Farm's request for another 60-day extension is reasonable and necessary, and the Agency's opposition, which seems to be merely vengeful, disregards this Court's resources.

9. The Agency's recitation of what occurred at the administrative hearing on March 13, 2008 has no bearing on the issues pertaining to this motion. Nevertheless, my firm was substituted as counsel for the Lewis Family Farm *after* the notice of appeal was filed in this case, as to which we had no knowledge. Thus, at the time of the hearing, we were not fully engaged in all of the issues involving the Agency and the Lewis Family Farm.

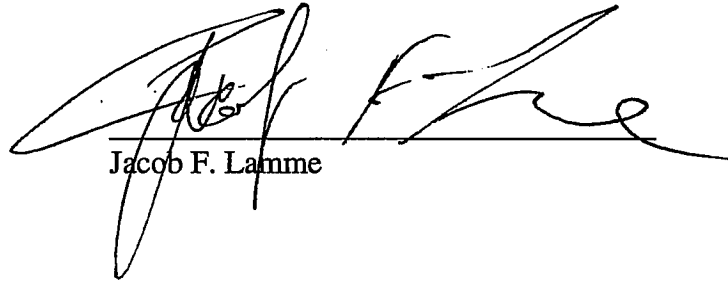
10. The Agency failed to show that it will be prejudiced if this Court extends the Appellant's time in which to perfect the appeal.

11. This Court should grant the extension because the Lewis Family Farm has demonstrated that this appeal has merit, and the extension would further the interests of justice and judicial economy. The Agency does not respond at all to these interests, which are firmly established by the Appellant.

12. The Agency claims that a decision on this appeal will "clarify for the parties the jurisdictional issues," but this claim is disingenuous. (See Agency's Affirmation in Opposition, ¶ 9). There are no procedural conditions under which this Court may determine the ultimate merits (i.e., the Agency's jurisdiction over the Lewis Family Farm's farm worker housing) before the lower court reaches them in *Action No. 2* and *Action No. 3*.

13. The Lewis Family Farm respectfully requests that it receive a 60-day extension, until September 26, 2008, to file and serve the record and brief in this appeal. This timeframe will allow the lower court to decide *Action No. 2* and *Action No. 3* on the merits. A decision there will settle this entire dispute. If not, and one party appeals, the matter should be consolidated with this case.

14. Based on the foregoing, the Lewis Family Farm respectfully requests an order from this Court granting: (i) an extension of the time in which to perfect its appeal of Justice Ryan's August 16, 2007 Decision and Order (which has not yet expired); and (ii) such other relief as to this Court seems just and proper.



Jacob F. Lamme

Sworn to before me this
14th day of July, 2008.



Notary Public

JOANNE J. FERGUSON
Notary Public, State of New York
Reg. No. 01FE5024779
Qualified in Rensselaer County
Commission Expires March 14, 2010

McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

JACOB F. LAMME

Direct Dial
(518) 447-3348

lamme@mltw.com

July 8, 2008

VIA FIRST-CLASS MAIL & FAX - (518) 473-2534

Loretta Simon, Esq.
Assistant Attorney General
State of New York
Office of the Attorney General
The Capitol
Albany, New York-12224

**RE: Lewis Family Farm, Inc. v. Adirondack Park Agency
(Appellate Division, Third Department Case # 504696)**

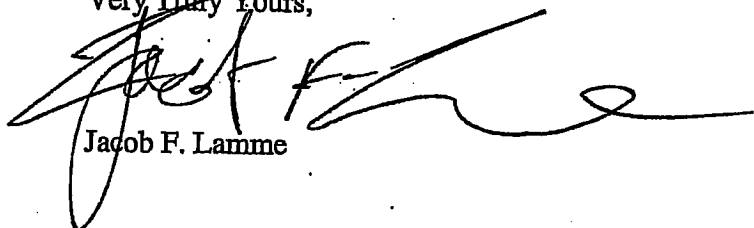
**Lewis Family Farm, Inc. v. Adirondack Park Agency (Index No. 315-08)
APA v. Lewis Family Farm, Inc., et al. (Index No. 332-08)**

Dear Ms. Simon:

I am writing in response to your phone call of this afternoon in which you offered to consent to the Lewis Family Farm's motion to extend the time in which to perfect the appeal in Appellate Division, Third Department Case No. 504969 in exchange for our consent to a 24-day extension of the dates set forth in Judge Meyer's July 2, 2008 Decision and Order in the two pending actions in Essex County Supreme Court.

After consulting my client, I am unable to consent. The Lewis Family Farm continues to be severely and adversely impacted by the inability to fully utilize its farm worker housing. It must receive a prompt resolution of this matter. As such, unless ordered otherwise, we are proceeding with the answering date being July 22, 2008 and the motion for summary judgment deadline being August 1, 2008, according to Judge Meyer's July 2, 2008 Decision and Order.

Very Truly Yours,



Jacob F. Lamme

(M0170273.1)



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

July 9, 2008

BY FACSIMILE AND MAIL

Honorable Richard B. Meyer
Supreme Court
Essex County Courthouse
7559 Court Street, P.O. Box 217
Elizabethtown, New York 12932

Re: Lewis Family Farm, Inc. v. New York State
Adirondack Park Agency
Index No. 315-08
Adirondack Park Agency v. Lewis Family Farm, Inc.
Index No. 332-08

Dear Justice Meyer:

I respectfully request an extension of time for the State to answer the remaining seven causes of action in the above-captioned petition to August 15th, 2008. Your Decision and Order dated July 2, 2008, requires the State to submit its answer on July 22. As indicated below, I have a number of conflicts in the coming weeks and request the extension so that I am able to both answer and prepare a memorandum of law on the important jurisdictional issues and other matters still remaining in the case. I had requested that counsel to Lewis Farm agree to this extension and he declined.

On July 3, 2008 at approximately 4:00pm, the Office of the Attorney General was served with a Notice of Motion by Lewis Farm's counsel, in the first Lewis Farm action against the State. I am required to prepare a response to the Appellate Division, Third Department by Friday July 11, 2008. I am scheduled to be away on a family vacation July 19-26, 2008. In addition, I have an unrelated case for which a full record, answer and memo of law

is also due the week of July 21st, with oral argument the following week. Finally, I am scheduled to be in Syracuse on another case August 5, and I will be out of town again on August 11.

As indicated, I consulted with counsel to Lewis Farm, Jacob Lamme, to see if we could reach accommodation on extensions of time (Lewis Farm is currently requesting an extension of time to perfect their appeal of Lewis Farm I in the Appellate Division). I explained to Mr. Lamme my belief that a short extension of time granted to the State would not adversely affect his client, as they already have permission from the Appellate Division to occupy one of the houses being litigated herein. Mr. Lamme informed me he was unable to agree to our request for additional time.

As the Court is aware, I previously extended the courtesy of agreement to an extension of the original return date in this proceeding to counsel for Lewis Farm, as I was told that Mr. Privitera was not available on that date, a date which they had chosen. Moreover, I have not asked for any extensions of the schedule since this matter was commenced in April, 2008.

Due to the above noted circumstances, I respectfully request an extension of time to August 15, 2008. Thank you for your consideration of my request.

Respectfully submitted,



Loretta Simon
Assistant Attorney General
(518) 402-2724

cc: Jacob Lamme (By facsimile)
Paul Van Cott (By facsimile)

McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

JACOB F. LAMME

Direct Dial
(518) 447-3348

lamme@mltw.com

July 9, 2008

VIA FIRST-CLASS MAIL
& FACSIMILE -- (518) 873-3376

Hon. Richard B. Meyer
Essex County Courthouse
7559 Court Street
Elizabethtown, New York 12932

RE: Lewis Family Farm, Inc. v. Adirondack Park Agency
Index No. 315-08
Adirondack Park Agency v. Lewis Family Farm, Inc., et al
Index No. 332-08
(Hon. Richard B. Meyer)

Dear Justice Meyer:

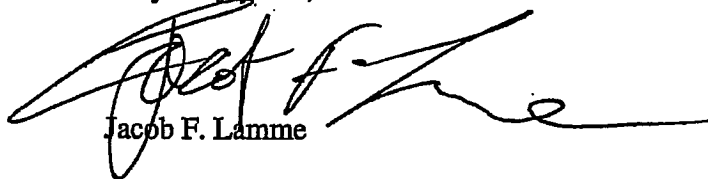
I am writing in response to Assistant Attorney General Loretta Simon's letter to Your Honor dated July 9, 2008, which I just received via fax moments ago.

I enclose a copy of a letter that I sent to Ms. Simon yesterday evening.

Upon receiving Your Honor's July 2, 2008 Decision and Order, we expeditiously served Notice of Entry on July 3, 2008 so that we can move forward with this matter. The Lewis Family Farm has already lost the ability to use its farm worker housing during the 2008 growing season. It simply cannot afford any more delays.

Thank you for Your Honor's attention to this matter.

Very truly yours,



Jacob F. Lamme

Enclosures

cc: Loretta Simon, Esq. (via facsimile - 518-473-2534)

(MD170563.1)

Exhibit C



STATE OF NEW YORK
COUNTY OF ESSEX
COUNTY, FAMILY & SURROGATE'S COURTS

RICHARD B. MEYER
JUDGE

AMY N. QUINN
COURT ATTORNEY
JILL H. DRUMMOND
SECRETARY

July 11, 2008

Via Fax & Mail

McNamee, Lochner, Titus & Williams, P.C.
Attn: John J. Privitera, Esq.
677 Broadway
Albany, New York 12207

New York State Attorney General
Attn: Loretta Simon, Esq.
Assistant Attorney General
The Capitol
Albany, New York 12224-0341

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency
Index No.: 315-08
RJI No.: 15-1-2008-0109

Adirondack Park Agency -v- Lewis Family Farm, Inc.,
Salim B. Lewis and Barbara Lewis
Index No.: 332-08
RJI No.: 15-1-2008-0117

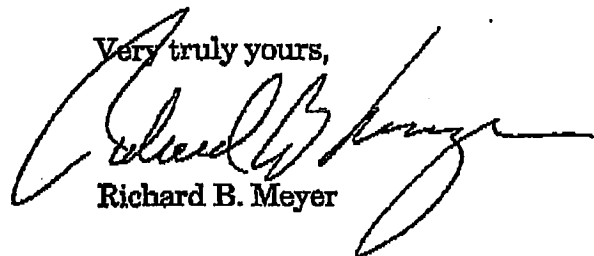
Counselors:

I have considered your respective letters of July 9, 2008 in connection with the Agency's request for an additional extension of time. Hopefully, the Agency has already recognized that an extension was granted in the recent decision and order in that CPLR §7804(f) provides for an answer to "be served and filed within five days after service of the order with notice of entry" denying a motion to dismiss "unless the order specifies otherwise".

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In light of the extremely thorough written and oral presentations by both sides to date, as well as the Agency's partial answer now on file, I find it difficult to justify granting the requested extension to August 15, 2008. Both the Agency and Lewis Farm are granted until July 30, 2008 to serve and file their respective answers, with any motions by either party for summary judgment (or other appropriate relief) being served and filed within the time required by CPLR Rule 2214(b) with a return date no later than August 22, 2008. All motions will be decided on submission only unless otherwise authorized by this court.

Very truly yours,



Richard B. Meyer

RBM:jhd

cc: Essex County Clerk
Terry Stoddard, Chief Clerk
Cynthia Feathers, Esq.