



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

July 19, 2007

BY FACSIMILE AND MAIL

Honorable Kevin K. Ryan
Supreme Court
Clinton County
137 Margaret Street
Plattsburg, New York 12901

Re: Lewis Family Farm Inc. v. New York State
Adirondack Park Agency
Index No.: 000498-07; RJI No.: 15-1-2007-0153

Dear Justice Ryan:

Late this morning I received a call from Joseph Brennan, attorney for the plaintiffs in the above-captioned matter, informing me that the Court had issued an ex parte temporary restraining order presented by plaintiffs, which restrains the State Adirondack Park Agency ("APA") from enforcement until a scheduled August 8, 2007 hearing. Respectfully, the Court's ex parte Temporary Restraining Order ("TRO") violates CPLR 6313(a) and must be vacated. Moreover, I respectfully request a conference call with the parties and the Court as soon as possible.

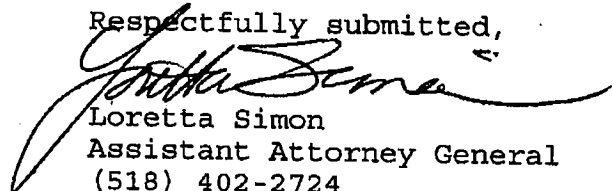
As plaintiffs know - and knew before this application - the Attorney General's Office is representing the APA in this matter. Despite my July 6, 2007 letter to Plaintiff's attorney requesting 48 hours notice of any such application, I was not notified in advance of the appearance before your Honor. CPLR § 6313 (a) plainly prohibits ex parte restraining orders against the State and other government entities ("No temporary restraining order may be granted ... against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties"). See McArdle v. Comm. of Investigation, 41 A.D. 2d 401 (3d Dep't 1973) ("As we have held several times, stays which restrain State officials from the performance of their official

duties may not be granted ex parte.") The Uniform Rules §202.7(f), also require notification of the time, date and place, to the party against whom the temporary restraining order is sought.

This matter involves an attempt by the plaintiffs to bypass the APA's regulatory jurisdiction, and to moot any Agency enforcement action by completing construction of the three residential structures at issue before the Court is able to reach and address the merits. Unfortunately, the Court's ex parte TRO facilitates plaintiffs' goal. Instead of barring APA's lawful exercise of statutory jurisdiction, CPLR § 6313(a) actually warrants the Court's direction to plaintiffs to maintain the status quo - ceasing all construction activities - until the dispute can be addressed by the Court.

I will be contacting the Court to arrange a conference on this matter at the Court's earliest convenience.

Respectfully submitted,



Loretta Simon
Assistant Attorney General
(518) 402-2724

cc: (By facsimile)

Joseph Brennan
Paul Van Cott

FILINGS

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