

510986, 511651

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

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LEWIS FAMILY FARM, INC.,

Petitioner-Respondent-Appellant,

- against -

NEW YORK STATE ADIRONDACK  
PARK AGENCY,

Respondent-Appellant-Respondent.

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ADIRONDACK PARK AGENCY,

Plaintiff-Appellant-Respondent,

- against -

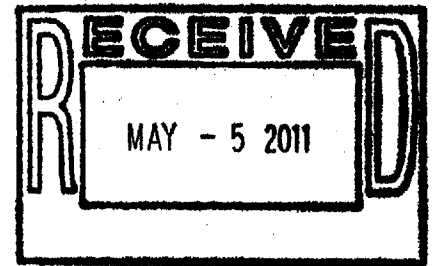
LEWIS FAMILY FARM, INC.,  
SALIM B. LEWIS and BARBARA LEWIS,

Defendants-Respondents-Appellants.

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NOTICE OF MOTION  
FOR EXTENSION  
OF TIME

Essex Co. Index  
No. 315-08



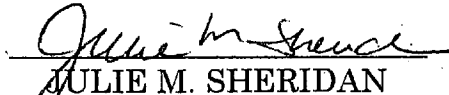
Essex Co. Index  
No. 332-08

PLEASE TAKE NOTICE that upon the annexed affirmation of Julie M. Sheridan, Esq., dated May 4, 2011, and the exhibits attached to it, the undersigned will move this Court at a Term thereof to be held at the Robert Abrams Building for Law and Justice, Empire State Plaza, Albany, New York, on Monday, May 23, 2011, for an order granting an extension of 45 days, until June 23, 2011, for the Adirondack

Park Agency to perfect its appeal in these matters. The motion will be submitted on papers and your personal appearance in opposition to the motion is neither required nor permitted.

Dated: Albany, New York  
May 4, 2011

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State of New York  
Attorney for APA  
The Capitol  
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OAG Nos. 08-077232, 08-074861

By:   
JULIE M. SHERIDAN  
Assistant Solicitor General

TO: HON. ROBERT D. MAYBERGER  
Clerk  
Appellate Division, Third Department  
P.O. Box 7288  
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Albany, New York 12224

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# 510986, 511651

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

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LEWIS FAMILY FARM, INC.,

Petitioner-Respondent-Appellant,

- against -

NEW YORK STATE ADIRONDACK  
PARK AGENCY,

Respondent-Appellant-Respondent.

---

AFFIRMATION IN  
SUPPORT OF MOTION  
FOR EXTENSION  
OF TIME

Essex Co. Index  
No. 315-08

ADIRONDACK PARK AGENCY,

Plaintiff-Appellant-Respondent,

- against -

LEWIS FAMILY FARM, INC.,  
SALIM B. LEWIS and BARBARA LEWIS,

Defendants-Respondents-Appellants.

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Essex Co. Index  
No. 332-08

I, JULIE M. SHERIDAN, an attorney duly admitted to practice in the courts of  
this State, affirm under penalty of perjury that the following is true and correct:

1. I am an Assistant Solicitor General in the office of Eric T. Schneiderman,  
Attorney General of the State of New York, and I have been assigned by the office to  
represent the Adirondack Park Agency ("APA") in the above-referenced matters.

2. I make this affirmation in support of a motion for an order granting an extension of 45 days, until June 23, 2011, for the Adirondack Park Agency to perfect its appeal in these matters, because settlement discussions initiated at the Civil Appeals Settlement Program conference on April 24, 2011 have not been concluded.

3. These matters arose out of a dispute between the parties concerning whether new single family dwellings Lewis Farm constructed on its farm land in the Adirondack Park are subject to the APA's jurisdiction and permit requirements. In *Lewis Family Farm v. APA* (Essex Co. Index No. 315-08), Lewis Farm challenged the APA's March 2008 determination that Lewis Farm had violated the APA Act and Rivers Act. The APA subsequently commenced an action against Lewis Farm and its principals to enforce the determination (*APA v. Lewis Family Farm*, Essex Co. Index No. 332-08).

4. Supreme Court, Essex County (Meyer, J.), among other things, granted Lewis Farm's article 78 petition to annul the APA's March 2008 determination, and also granted summary judgment to Lewis Farm dismissing the APA's enforcement action.

5. In a memorandum and order entered July 16, 2009, this Court affirmed. The Court held that the dwelling units on Lewis Farm's land are "agricultural use structures" within the meaning of the APA Act and are therefore exempt from APA jurisdiction and permit requirements.

6. Lewis Farm subsequently applied under the EAJA for fees and expenses incurred in the article 78 proceeding and the APA's enforcement action.

7. In a single decision and order entered February 3, 2010, Supreme Court, Essex County (Meyer, J.), held that Lewis Farm was entitled to an award for fees and expenses incurred in the article 78 proceeding but not for fees or expenses incurred in defending against the enforcement action brought by the APA. However, the court held that the parties' submissions raised material issues of fact concerning a reasonable hourly rate and the number of hours reasonably expended by counsel for Lewis Farm that could not be resolved without further evidence. Accordingly, the court ordered the parties to submit additional evidence and scheduled the matter for a hearing.

8. Although Justice Meyer's February 3, 2010 decision and order did not constitute a final judgment on Lewis Farm's fee application, on February 26, 2010, the APA filed a precautionary notice of appeal from the February 3, 2010 decision and order pending entry of a final judgment. A copy of the notice of appeal, dated February 25, 2010, is attached as Exhibit A.

9. On or about March 4, 2010, Lewis Farm filed a notice of cross appeal from the portion of the February 3, 2010 decision and order that denied recovery for the attorneys fees and expenses Lewis Farm incurred in defending itself in the enforcement action (Essex County Index No. 332-08). A copy of the notice of cross appeal is attached as Exhibit B.

10. In a Supplemental Decision and Order entered November 17, 2010, Supreme Court, Essex County (Meyer, J.), awarded Lewis Farm attorneys fees in the amount of \$67,893.75 and expenses of \$3,796.53, for a total award of \$71,690.28.

11. On November 29, 2010, the parties sought an extension of time to perfect their appeals because final judgment had not yet been entered and the November 26, 2010 deadline for perfecting the APA's appeal from the February 3, 2010 decision and order was fast approaching. By order entered December 21, 2010, this Court granted the APA's motion and extended its time to perfect its appeal to February 22, 2011, and granted Lewis Farm's cross motion and extended its time to perfect its appeal to 45 days from the date of filing and service of the APA's brief. A copy of this Court's order is attached as Exhibit C.

12. Final judgment awarding attorneys fees to Lewis Farm in accordance with Justice Meyer's November 17, 2010 decision and order was entered in the Office of the Essex County Clerk on November 30, 2010. A copy of the judgment is attached as Exhibit D.

13. On January 6, 2011, Lewis Farm served a notice of appeal from the final judgment. A copy is attached as Exhibit E. On January 20, 2011, the APA filed a notice of cross appeal from the final judgment. A copy is attached as Exhibit F.

14. It appeared that upon entry of the final judgment, the parties' appeals from Justice Meyer's February 3, 2010 order were extinguished. *See Matter of Orlowa*, 70 A.D.3d 1263 (3d Dep't 2010); *Pixel Intl. Network v. State of New York*, 255 A.D.2d 666 (3d Dep't 1998). However, since there was some uncertainty, and since the February 22, 2011 deadline for perfecting the APA's appeal from the February 3, 2010 order was fast approaching, in order to preserve its rights to challenge the February 3, 2010 order, the APA made a motion for an order consolidating the appeals in this

matter and allowing the APA to defer perfecting its appeal from the February 3, 2010 order until such time as it was required by Court rule or order to perfect its cross appeal from the November 30, 2010 judgment. Lewis Farm cross-moved for an extension of time and an order designating the APA as appellant.

15. After entry of final judgment, Lewis Farm filed and served a motion in Supreme Court, Essex County, seeking reargument of the attorney's fees award. The court (Meyer, J.) denied the motion in a decision and order dated April 4, 2011. A copy of the decision and order is attached as Exhibit G.

16. Meanwhile, while the motion for reargument was pending, in a letter dated February 15, 2011, this Court scheduled a Civil Appeals Settlement Program conference for March 14, 2011. By letter dated February 18, Lewis Farm requested an adjournment of the CASP conference. By letter dated March 1, the Court rescheduled the conference for April 26. Copies of all three letters are attached as Exhibit H.

17. Next, in an order entered March 10, 2011, the Court granted the APA's motion to consolidate the appeals, extended its time to perfect to May 9, 2011, designated the APA as the appellant and ordered it to file and serve the record on appeal and its brief first, among other things. A copy of the order is attached as Exhibit I.

18. The CASP conference was held on April 26 before settlement officer Robert K. Ruslander, Esq.. Various settlement offers were discussed. Although a final settlement was not reached by the conclusion of the conference, the parties agreed to continue to discuss settlement, with the assistance of a CASP settlement officer if

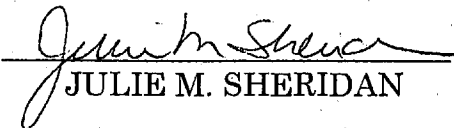
necessary. During the April 26 conference, I told Lewis Farm's attorney, John J. Privitera, that I intended to file a motion in this Court seeking an extension of time for the APA to perfect its appeals, since the May 9 deadline established in this Court's March 10 order was fast approaching and I was hopeful that settlement could be reached. Mr. Privitera stated that he would not object to an extension of time.

19. Nevertheless, I received a letter from Lewis Farm's attorneys today indicating that Lewis Farm refused to agree to an extension of time. A copy of the letter is attached as Exhibit J.

20. As of the date of this affirmation, settlement negotiations have not concluded. An extension of time will allow the parties to continue to attempt to negotiate a settlement of these appeals.

WHEREFORE, the APA respectfully requests an order granting an extension of 45 days, until June 23, 2011, for the Adirondack Park Agency to perfect its appeals in these matters, or until such other time as the Court deems just and proper.

Dated: Albany, New York  
May 4, 2011

  
JULIE M. SHERIDAN

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