Case No. 504696

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

-against-

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

REPLY AFFIDAVIT

Essex County
Index No. 498-07

Case No. 504626

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Petitioner-Respondent,

-against-

ADIRONDACK PARK AGENCY,

Respondent-Appellant.

Essex County
Index No. 315-08

ADIRONDACK PARK AGENCY,

Plaintiff-Appellant,

-against-

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

Defendants-Respondents.

Essex County
Index No. 332-08

REPLY AFFIDAVIT IN SUPPORT OF MOTION TO CONSOLIDATE OUTSTANDING APPEALS

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"), plaintiff-appellant in Case No. 504696 (Essex County Index No. 0498-07) (hereafter "*Action No. 1*"). I am also counsel to petitioner-respondent Lewis Family Farm in Case No. 504626 (Essex County Index No. 315-08) (hereafter "*Action No. 2*"). I am also counsel to defendants-respondents Lewis Family Farm, Salim B. ("Sandy") Lewis and Barbara A. Lewis in the action captioned as Essex County Index No. 332-08) (hereafter "*Action No. 3*"). As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

2. I submit this Reply Affidavit in further support of the motion by Lewis Family Farm, Salim B. ("Sandy") Lewis and Barbara A. Lewis asking this Court to: 1) consolidate the outstanding appeals in the above-captioned actions so that they are heard on a joint record and brief; (2) grant an extension of the time in which Lewis Family Farm, Inc. has to perfect its appeal in *Case Number 504696*, (3) deem the Adirondack Park Agency ("Agency") to be the "Appellant" for the purpose of the consolidated appeal, and therefore obligated to file and serve the record and brief and/or brief and appendix first, and (4) require the Agency to file its brief and record in the consolidated appeals by February 17, 2009.

3. Today, January 5, 2009, I received the Agency's response to the Lewis Family Farm's motion via USPS first class mail.

4. The Agency's response ("Affirmation in Limited Opposition to Motion to Extend Time to Perfect Upon Joint Record and Briefs of Loretta Simon, dated January 2, 2009") essentially consents to the relief sought by the Lewis Family Farm. The Agency agrees that these appeals should be consolidated, and that it should be deemed the "Appellant" on these consolidated appeals. However, the Agency has confused the record on a number of matters and objects to the filing its Appellant's Brief on February 17, 2009 without providing any reasons.

5. First, although seemingly immaterial, the Agency mischaracterizes the procedural history of the instant motion. The Lewis Family Farm did not serve and file the instant motion on Christmas Eve. (See Simon Aff., dated Jan. 2, 2009, ¶ 13). The motion was drafted, served and filed on December 23, 2008 – merely one day after we received the Agency's Notice of Appeal in *Action No. 2* and *Action No. 3*. The motion was made expeditiously because the Lewis Family Farm's time to perfect the appeal in *Action No. 1* expires on January 26, 2009. The motion would have been made sooner if the Agency had served its Notice of Appeal earlier.

6. Second, pursuant to 22 NYCRR § 800.9, the Agency has until ***February 17, 2009*** to file the record and brief in this matter. The Agency has previously recognized the need for a prompt and timely appeal in this matter. (See Affirmation of Loretta Simon in Reply to Appellant's Fourth Request for an Extension of time to Perfect Appeal, dated November 14, 2008, ¶ 14). However, the Agency now seeks an extended briefing schedule without stating any reasons to justify this request. (See Simon Aff., dated Jan. 2, 2009, ¶ 15).

7. Third, the Agency proposed a briefing schedule that calls for the submission of four (4) briefs to this Court. It is respectfully submitted that this appeal, despite the procedural

complexity thus far, involves a single issue of New York law (i.e., whether the Agency may regulate farm buildings). There is no reason this Court should be burdened with the task of wading through four briefs rather than the usual three. Appellant's reliance upon proceduralism, as if it has independent value, serves only to drive up the cost of dispute resolution and encumber the Court with more paper than is necessary.[1] These briefing schedule of these consolidated appeals should comply with the Rules of Practice of this Court (see 22 NYCRR § 800.9):

- Joint Record and Agency's Appellant Brief due ***February 17, 2009***.
- Lewis Family Farm's Respondent Brief due ***April 3, 2009***.
- Agency's Reply Brief due 10 days after service of Respondent's Brief.

There is no need to extend the briefing of this appeal an extra month as the Agency suggests.

8. Fourth, the service of briefs should be made in accordance with this Court's Rules of Practice. See 22 NYCRR § 800.9. The Agency appears concerned that it will not have enough time to submit its reply brief on these consolidated appeals. (See Simon Aff., dated Jan. 2, 2009, ¶ 16). This is unfounded because five (5) days would be added to the Agency's response time if the Lewis Family Farm serves its Respondent Brief via mail, rather than by personal service (see CPLR 2103(b)(2)). Thus, the Agency's request for electronic service is unnecessary.

9. Finally, the Court need not rule on the Agency's request concerning the Lewis Family Farm's record from *Action No. 1*. I have worked with the Agency's counsel in compiling that record, and I will provide the final version of it to the Agency's counsel upon a ruling from this Court that consolidates the appeals. However, unless otherwise directed by this Court, the Lewis Family Farm will only provide to the Agency the requisite number of copies of that record, plus two (2) copies each for itself, the Agency, and the New York State Farm Bureau

[1] See generally, Dennis G. Jacobs, "The Secret Life of Judges," 75 Fordham Law Review, 2855 (2007), a printing of Judge Jacobs' *John F. Sonnett Memorial Lecture of 2006*, arguing that an emphasis on proceduralism beclouds focus upon the merits; see also Adam Liptak, *With the Bench Cozied Up to the Bar, the Lawyers Can't Lose*, NEW YORK TIMES, August 27, 2007 (available at http://www.nytimes.com) (discussing Judge Jacob's lecture).

(who appeared as *amicus curiae* in *Action No. 2* and *Action No. 3* at the lower court level), for a total of sixteen (16) copies of the record. The Agency's bizarre demand that the Lewis Family Farm be required to pay $2.37 per page for forty (40) copies of the record for *Action No. 1* is beyond comprehension. *Incredibly, the Agency seeks authorization from this Court to charge the Lewis Family Farm **$19,434.00** in copy reproduction charges!*[2] Of course, the Agency has provided no support for this position. (See Simon Aff., dated Jan. 2, 2009, ¶ 14). Therefore, the Agency's request should be rejected. The Court need not rule on this odd proposal in granting the Lewis Family Farm's motion to extend, consolidate and schedule the briefing of these appeals.

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[2] The Record for *Action No. 1* agreed upon between me and the Agency's counsel is comprised of 205 pages. (205 pages x 40 copies x $2.37 per page = $19,434.00).

10. Based on the foregoing, the Lewis Family Farm respectfully requests: (1) an Order pursuant to 22 NYCRR § 800.2 granting a consolidation of the outstanding appeals in the above-captioned actions so that they are heard on a joint record and brief; (2) an Order pursuant to 22 NYCRR § 800.12 granting an extension of the time in which the Lewis Family Farm, Inc. has to perfect its appeal in *Case Number 504696*, and (3) an Order pursuant to 22 NYCRR § 800.9 deeming the Agency to be the "Appellant" for the purpose of the consolidated appeal, and therefore obligated to file and serve the record and brief and/or brief and appendix first; (4) an Order requiring the Agency to file its brief and record in the consolidated appeals by February 17, 2009; and (5) an Order granting such other and further relief as the Court may deem just and proper.

Jacob F. Lamme

Sworn to before me this
5th day of January 2009.

Notary Public

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

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