

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ALBANY

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.,

Plaintiff,

- against -

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

Defendants.

SUMMONS


Index No.:

2184-12

Dated Filed:

~~04-17-12~~

4-18-12

Albany County Clerk  
Document Number 11132520  
Rcvd 04/18/2012 11:18:54 AM  


**TO THE ABOVE-NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** and required to serve upon Plaintiff's attorney an Answer to the Complaint in this action within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: April 17, 2012 .

**JONATHAN P. HARVEY LAW FIRM, PLLC**  
Attorneys for Plaintiff McNamee, Lochner, Titus & Williams, P.C.

By: Trudy Boulia

Jonathan P. Harvey, Esq.  
Trudy Boulia, Esq.  
Office and Post Office Address  
677 Broadway  
Albany, New York 12207  
Telephone: (518) 463-4491

Trial is desired in the County of Albany. The basis of venue designated above is that Plaintiff's office and principal place of business is located in the County of Albany.

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ALBANY

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Plaintiff,

- against -

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

Defendants.

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**COMPLAINT**

Index No.:

2184.12

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Plaintiff, McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C., by its attorneys,  
Jonathan P. Harvey Law Firm, PLLC, as and for a Complaint allege:

1. Plaintiff McNamee, Lochner, Titus & Williams, P.C. ("McNamee Lochner"), a law firm, is and was, at all times relevant, a domestic professional corporation organized and existing under the laws of the State of New York, having its principal place of business in Albany, New York.

2. Upon information and belief, defendant, Lewis Family Farm, Inc. ("Lewis Farm") is and was, at all times relevant, a domestic corporation organized and existing under the laws of the State of New York operating a for-profit organic farming business in Essex County, in the State of New York.

3. Upon information and belief, defendant, Barbara Lewis is and was, at all times relevant, an individual residing in the village and county of Essex, in the State of New York, and a shareholder and officer of defendant, Lewis Farm.

4. Upon information and belief, defendant, Salim ("Sandy") B. Lewis is and was, at all times relevant, an individual residing in the village and county of Essex, in the State of New York, and a shareholder and officer of defendant, Lewis Farm.

#### **FACTUAL BACKGROUND**

5. On or about September 7, 2007, defendant, Lewis Farm entered into an oral contract with plaintiff, McNamee Lochner to represent the farm in an administrative enforcement proceeding commenced by the Adirondack Park Agency ("APA") on or about September 2, 2007 (the "Enforcement Proceeding").

6. The McNamee Lochner attorney chosen by defendant, Lewis Farm to represent the farm was John J. Privitera, Esq., an attorney, duly admitted to practice law before the State of New York, and a shareholder of plaintiff, McNamee Lochner.

7. Mr. Privitera was assisted by Jacob F. Lamme, Esq., an associate in plaintiff law firm, who is and was, at all times relevant, an attorney, duly admitted to practice law before the State of New York.

8. McNamee Lochner had previously represented Lewis Farm, based upon an oral agreement, in an environmental enforcement matter in State Court involving the NYS DEC for which services Lewis Farm fully paid the firm's bills.

9. The representation of defendant, Lewis Farm beginning in or about September 2007 was expected to be for attorney's services of the same general kind and nature as those previously rendered by plaintiff, McNamee Lochner to, and paid for by Lewis Farm.

10. In representing defendant, Lewis Farm, at all times relevant, it was understood and agreed by plaintiff and by defendant, Lewis Farm that plaintiff was being retained upon an hourly rate basis at the then prevailing hourly rates of the shareholders and associates of the law firm.

11. In addition to the Enforcement Proceeding, plaintiff, McNamee Lochner, was orally retained by defendant, Lewis Farm to represent the farm in its appeal from a Decision and Order of the Supreme Court of Essex County, the Honorable Kevin J. Ryan, Acting J.S.C., dated August 16, 2007 (the "Appellate Proceeding").

12. The Appellate Proceeding arose from the commencement of a proceeding by defendant, Lewis Farm, by its former attorneys Brennan & White, LLP and Nixon Peabody LLP, against the APA, on or about June 26, 2007, in Essex County Supreme Court seeking a declaratory judgment that the APA could not prohibit its construction or completion of four farm worker housing structures, which the Honorable Kevin K. Ryan, Acting J.S.C. converted to an Article 78 proceeding and summarily dismissed as premature.

13. The Enforcement Proceeding, on or about March 13, 2008, culminated in the APA Enforcement Committee issuing a determination requiring Lewis Farm to submit to APA jurisdiction and pay a \$50,000 penalty, in response to which defendant, Lewis Farm caused its attorneys, plaintiff, McNamee Lochner, on or about April 8, 2008, to commence an Article 78 proceeding in Essex County Supreme Court seeking judicial review of the APA determination ("Action No. 3").

14. Thereafter, on or about April 11, 2008, while the Appellate Proceeding remained pending and within days after the commencement of Action No. 3, the APA commenced a

duplicative second and separate action, naming Barbara Lewis and Sandy Lewis, individually, and Lewis Farm, as defendants, in Essex County Supreme Court seeking to enforce the APA's March 13, 2008 determination ("Action No. 4").

15. Action No. 3 and Action No. 4 were consolidated and in both actions, and in the subsequent consolidated action, individual defendants, Barbara Lewis and Sandy Lewis and defendant, Lewis Farm were represented by plaintiff, McNamee, Lochner, through Mr. Privitera and Mr. Lamme.

16. In representing defendant, Barbara Lewis and defendant, Sandy Lewis, it was further understood and agreed by and among the parties that plaintiff law firm's legal services would be rendered to defendants, Barbara and Sandy Lewis on the same terms that it was then and had been representing defendant, Lewis Farm, upon an hourly rate basis at the then prevailing hourly rates of the shareholders and associates of plaintiff law firm.

17. No written agreement for the multiple, related representations of defendant, Lewis Farm or the related representation of defendant, Barbara Lewis and defendant, Sandy Lewis by plaintiff, McNamee Lochner was executed.

18. By affidavit, sworn to August 13, 2009, submitted to the Supreme Court, Essex County in Action No. 4, Sandy Lewis acknowledged that, "[i]n September 2007, the Lewis Family Farm retained McNamee, Lochner, Titus & Williams, P.C., as to be managed through the services of John J. Privitera, Esq., to defend the Lewis Family Farm against the administrative enforcement action that was commenced by the Agency on September 5, 2007."

19. Between on or about September 7, 2007 and on or about June 9, 2011, plaintiff, McNamee Lochner continuously performed legal tasks and advanced certain expenses on behalf

of defendant, Lewis Farm and defendants, Barbara and Sandy Lewis at their specific instance, consent and request, and without any expressed dissatisfaction of defendants.

20. Commencing on or about December 31, 2007 and continuing through to on or about June 30, 2011, plaintiff, McNamee Lochner, in the regular course of representation, prepared and sent to defendant, Lewis Farm and defendants, Barbara and Sandy Lewis 35 legal invoices for services rendered and disbursements advanced, to and about which legal invoices defendants expressed no dissatisfaction.

**AS AND FOR A FIRST CAUSE OF ACTION**

21. Plaintiff repeats and realleges paragraphs 1 through 20 with the same force and effect as though each were more fully set forth herein.

22. Upon information and belief, each invoice issued by McNamee Lochner was received by defendant, Lewis Farm and defendants, Barbara and Sandy Lewis.

23. At no time has defendant, Lewis Farm or defendant, Barbara Lewis or defendant, Sandy Lewis ever written or telephoned Mr. Privitera or Mr. Lamme or anyone else at plaintiff, McNamee Lochner to object to, or complain about or bring to their attention any questions, complaints or problems with any invoice or any specific charge set forth in any invoice.

24. Pursuant to the oral contract between the parties, defendant, Lewis Farm on or about February 11, 2008, September 15, 2008, December 29, 2008 and January 2, 2009 made partial payment to plaintiff, McNamee Lochner on the invoices rendered.

25. Since January 2, 2009, plaintiff, McNamee Lochner has not received any further payment toward the invoices.

26. By affidavit, sworn to August 13, 2009, submitted to the Supreme Court, Essex County in Action No. 4, Sandy Lewis admitted that, "as of August 10, 2009, the Lewis Family Farm has incurred fees and is obliged to pay \$287,292.69 to McNamee, Lochner, Titus & Williams, P.C. for its services".

27. By affidavit, sworn to March 3, 2010, submitted to the Supreme Court, Essex County in Action No. 4, Sandy Lewis declared, "I have not experienced dishonesty, incompetence or misconduct in John J. Privitera, Esq., or Jacob F. Lamme, Esq., counsel to Lewis Family Farm".

28. There is now due from the defendants to plaintiff, McNamee Lochner the sum of \$298,141.56, no part of which has been paid although plaintiff has demanded payment.

29. Defendant, Lewis Farm and defendants, Barbara and Sandy Lewis are in breach of their agreement to pay plaintiff, McNamee Lochner for the legal expenses and costs incurred on their behalf in connection with the Enforcement Proceeding, the Appellate Proceeding, and Action No. 3 and Action No. 4.

30. The outstanding balance of legal fees and costs due to plaintiff, McNamee Lochner is Two Hundred Ninety-Eight Thousand One Hundred Forty-One and 56/100 (\$298,141.56) Dollars.

31. Defendant, Lewis Farm and defendants, Barbara and Sandy Lewis owe plaintiff, McNamee Lochner Two Hundred Ninety-Eight Thousand One Hundred Forty-One and 56/100 (\$298,141.56) Dollars on an account stated for services rendered and costs incurred, but only partially paid.

32. Payment has been demanded, and despite plaintiff, McNamee Lochner's successful efforts in defending Lewis Farm and defendants, Barbara and Sandy Lewis against the APA, which efforts resulted in a landmark decision protecting New Yorker's right-to-farm and a precedent-setting decision under the state's Equal Access to Justice Act, payment has not been made.

33. By defendants' refusal to pay the amount owed, plaintiff, McNamee Lochner has been damaged in the amount of Two Hundred Ninety-Eight Thousand One Hundred Forty-One and 56/100 (\$298,141.56) Dollars plus interest.

**AS AND FOR A SECOND CAUSE OF ACTION**

34. Plaintiff repeats and realleges paragraphs 1 through 33 with the same force and effect as though each were more fully set forth herein.

35. Defendant, Lewis Farm and defendants, Barbara and Sandy Lewis agreed to and did retain plaintiff, McNamee Lochner to represent them in relation to and in connection with all matters involving the APA and arising from the APA's attempt to impose its jurisdiction upon defendant, Lewis Farm and defendants, Barbara and Sandy Lewis in their construction of farm worker housing, and agreed to and promised to pay the fair and reasonable value of such services.

36. In reliance upon the promise and agreement of defendant, Lewis Farm and defendants, Barbara and Sandy Lewis, plaintiff, McNamee Lochner did represent defendant, Lewis Farm and defendants, Barbara and Sandy Lewis and successfully rendered legal services thereto from on or about September 7, 2007 through on or about June 9, 2011.



37. The fair and reasonable value of such services, calculated upon an hourly rate basis at the then prevailing hourly rates of the shareholders and associates of the law firm as set forth in each and every invoice prepared and sent to defendant, Lewis Farm and defendants, Barbara and Sandy Lewis, is Three Hundred Eighty-Four Thousand Eight Hundred Thirty-Four and 76/100 (\$384,834.76) Dollars.

38. Defendant, Lewis Farm and defendants, Barbara and Sandy Lewis are entitled to a credit for payment of Eighty-Six Thousand Six Hundred Ninety-Three and 20/100 (\$86,693.20) Dollars on account of that Three Hundred Eighty-Four Thousand Eight Hundred Thirty-Four and 76/100 (\$384,834.76) Dollars, leaving a balance due and payable by defendant, Lewis Farm and defendants, Barbara and Sandy Lewis to plaintiff, McNamee Lochner in the amount of Two Hundred Ninety-Eight Thousand One Hundred Forty-One and 56/100 (\$298,141.56) Dollars plus interest, demand for which has been duly made, but no part paid.

39. Plaintiff, McNamee Lochner demands judgment against defendant, Lewis Farm and defendants, Barbara and Sandy Lewis for the reasonable value of the legal services rendered to, for, and on their behalf in the amount of Two Hundred Ninety-Eight Thousand One Hundred Forty-One and 56/100 (\$298,141.56) Dollars plus interest.

**WHEREFORE**, plaintiff, McNamee, Lochner, Titus & Williams, P.C. demands judgment against defendant, Lewis Family Farm, Inc. and defendants, Barbara Lewis and Salim B. Lewis for the sum of Two Hundred Ninety-Eight Thousand One Hundred Forty-One and 56/100 (\$298,141.56) Dollars with interest, together with the costs and disbursements of the action.

Dated: April 17, 2012

**JONATHAN P. HARVEY LAW FIRM, PLLC**  
Attorneys for Plaintiff McNamee, Lochner, Titus &  
Williams, P.C.

By:

*Trudy Boulia*

Jonathan P. Harvey, Esq.

Trudy Boulia, Esq.

Office and Post Office Address

677 Broadway

Albany, New York 12207

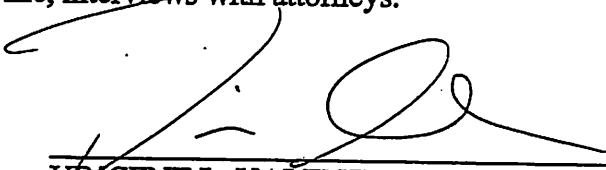
Telephone: (518) 463-4491

VERIFICATION

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

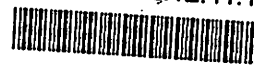
VINCENT L. VALENZA, being duly sworn, deposes and says that deponent is the Managing Principal of McNamee, Lochner, Titus & Williams, P.C., the corporation named in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: review and knowledge of file, ~~interviews with attorneys.~~

  
\_\_\_\_\_  
VINCENT L. VALENZA

Sworn to before me this 17<sup>th</sup> day  
of April, 2012.

Prudy Bouliia  
Notary Public - State of New York  
Qualified in Schoharie County  
Commission Expires: 3/1/15



STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ALBANY

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

Defendants.  
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**AFFIDAVIT OF SERVICE**

Index No. 2184-12

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

KAREN P. BLAISDELL, being duly sworn, deposes and says:


That she is over the age of eighteen years and resides in Wynantskill, New York, that she served a copy of the SUMMONS and COMPLAINT upon defendant, Lewis Family Farm, Inc., a copy of the SUMMONS and COMPLAINT upon defendant, Barbara Lewis and a copy of the SUMMONS and COMPLAINT upon defendant, Salim B. Lewis, and that such service was made, upon the consent and authorization of Joseph R. Brennan, Esq., attorney for the individuals and entity served, by dispatching same by Federal Express overnight delivery service on April 19, 2012, upon Joseph R. Brennan, Esq. at:

Brennan & White, LLP  
163 Haviland Road  
Queensbury, New York 12804

by depositing true and correct copies of the same, enclosed in a properly addressed envelope, in an official depository maintained and exclusively controlled by FEDERAL EXPRESS within New York State, directed to that person at the above respective address, that being the address within the state where Joseph R. Brennan, Esq. is known to have an actual place of business.

  
\_\_\_\_\_  
KAREN P. BLAISDELL

Sworn to before me this 20<sup>th</sup> day of  
April, 2012.

  
\_\_\_\_\_  
Notary Public - State of New York  
Qualified in Schoharie County  
Commission Expires: 3/1/2015