

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ALBANY

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

Plaintiff,

- against -

AFFIDAVIT OF  
SALIM B. LEWIS

Index No:  
2184-12

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

Defendants.

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State of New York        )  
                                  ) ss:  
Essex County             )

SALIM B. "Sandy" LEWIS, being duly sworn, deposes and says:

1. I am an officer and principal shareholder, equal with my wife of 52 years, of Lewis Family Farm, Inc., ("LFF" or "Farm"). I submit this affidavit for defendants LFF, Sandy and Barbara Lewis, as our reply to Plaintiffs Motion for Summary Judgment. I'm 73, my wife is 76. Our only home is our farm. Our farm is our only source of income.
2. This action has three causes. First, the refusal of John J. Privitera, Esq., of Plaintiff's law firm, to discuss, negotiate or consider the slightest reduction of that firm's legal bills of nearly \$400,000, bills I purposefully and openly declined to address in the final stage of litigation, for good reasons known, as stated repeatedly to Mr. Privitera. Second, the grotesque misuse of the legal

process, as noted in exquisite and exacting detail by Acting Supreme Court Judge Richard B. Meyer in his Decision and Order of November 17, 2010, awarding \$71,690.28, or 31% of that demanded by this counsel. Third, the record presented to the Court of Judge Meyer by our counsel was misleading and deliberately inaccurate: of the total amount invoiced as of March 4, 2010, the last date of bills submitted to the Judge, approximately \$60,000, was completely omitted from the record. Only those billable hours Mr. Privitera selected as recoverable, \$226,087, were itemized for the judge, out of a total \$364,503 to that date. Yet, Mr. Privitera assured the Court that the record he offered represented “true and complete copies of *all billing records* covering services rendered and expenses incurred in LFF’s action against the APA.” Plain and simple, Mr. Privitera lied to the Court in representing us. We expose this here.

3. Now, Mr. Privitera demands by this Court’s order, 9% interest, added to that which he withheld from Judge Meyer, and to that which we and Judge Meyer have deemed excessive, to that which he, Farm counsel Privitera, has refused to negotiate or discuss. To quote Judge Meyer (*italics provided*):

The underlying litigation...involved *a relatively straightforward matter of statutory construction, and was not overly complex or unique*. No special legal expertise was required, and there was no discovery or evidentiary hearings. Also, the essential facts were not in dispute. *Review of the clerk’s records reveals that the parties repeatedly asserted the same legal arguments throughout the litigation, with little deviation or new material added during the various stages.*<sup>1</sup>

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<sup>1</sup> We, and as the Court would have seen, counted at least 8 Memos of Law, 11 Affirmations from Mr. Privitera alone, not to mention countless Affidavits from others.

4. At no time during Mr. Privitera's representation of LFF did I acquiesce or agree to his fee requests or invoices. There was no express or implied agreement to pay the amount demanded.
5. Beginning early 2009, upon receipt of each monthly invoice from Plaintiff's firm, I stated to Mr. Privitera, "We will look at this matter and your invoices when the case is done, not before." I did not agree to abide by Mr. Privitera's schedule, and I did not agree to pay fees which I deemed excessive and unreasonable. Nor did I refuse to make any payment. But by arresting payment, given the time value of money, I addressed directly the feeling we had: In short, as Judge Meyer's decision would come to bear, Mr. Privitera's costs were out of line.
6. I left no doubt for Mr. Privitera from our conversations that I objected to the amount of his fees. I left no doubt for Mr. Privitera that I would not address Mr. Privitera's invoices under any circumstances pending review by Judge Meyer and a ruling on the reasonable value of services rendered.
7. I strongly objected when, in July of 2009 and in subsequent phone calls, Mr. Privitera demanded payment and proof of payment of his bills in order to file the Farm's application for fees. In a July 22, 2009 letter accompanying a monthly invoice, Mr. Privitera stated "Thank you for your prompt payment so that we can move toward the attorney's fee motion; the motion requires you to file an affidavit saying that you have paid fees." (Exhibit A). By this letter, Mr. Privitera confirmed that which concerned him most: all of my statements on point. As I said to Mr. Privitera by telephone, and by email dated October 16, 2009, I did not believe the law required payment to file a

fee application, when the judge was asked to determine reasonable value, and the law itself was designed to protect those maliciously prosecuted by government. In short, I believed Mr. Privitera was lying.

8. Separately, in late 2008 and again early 2009, I said to Mr. Privitera and to his worthy associate, Jacob Lamme, Esq., “I am sick of this excess, you are running up time.” Those were my feelings, I am outspoken, and I made no secret of them. In passing, I referred to earlier counsel terminated in the same matter and detailed the different and similar logic, both, that caused that break. I also contacted Adam Liptak, Supreme Court reporter for The New York Times ((202) 862-0352), see below.
9. In January 2009, we made the third of three equal partial payments of \$25,000 each towards Plaintiff’s growing bill, bringing our payments to \$86,693.20. We paid no more, as I said we would pay no more.
10. Immediately, in January 2009, I posted three writings on the Appeals page of the Farm website (Exhibit B), submitted here, and pointed learned counsel to each in detail with my comment by phone. I directed Mr. Privitera and Mr. Lamme to read the items. These writings are found here: see box, Adam Liptak, The New York Times - [http://www.sblewis.com/SBLewis/The\\_Appeal.html](http://www.sblewis.com/SBLewis/The_Appeal.html). (Exhibits C-E).
11. Adam Liptak’s New York Times article, ‘With the Bench Cozied up to the Bar, the Lawyers Can’t Lose’, dated August 27, 2007, (Exhibit C) references papers by Professor Benjamin H. Barton, Esq. (Exhibit E), and Chief Judge

Dennis Jacobs, United States Court of Appeals for the Second Circuit, the top federal judge in New York State. (Exhibit D).

12. The well-described institutional, widely-shared, tribal bias of litigators and the bench, as described by New York State's top jurist in his 2006 lecture at Fordham University School of Law, and as researched by Professor Barton and reported by Adam Liptak of The New York Times, defined precisely the Farm's enduring and lasting nightmare defending itself against the Adirondack Park Agency ("APA") with Mr. Privitera in command.
13. As Liptak explains: "Judge Jacob's main point is a deeper one. Judges favor complexity and legalism over efficient solutions, and they have no appreciation for what economists call transaction costs. They are aided in this by lawyers who bill by the hour and like nothing more than tasks that take a lot of time and cost their clients a lot of money." Indeed, Mr. Liptak is too kind and far too trusting. These are the carpenters that install a roof with galvanized nails.
14. Bringing these three writings, as posted on the Farm website, to Mr. Privitera's attention the same day as posted to 7,000 views, my words were: "Read Judge Dennis Jacobs, read Adam Liptak, read Professor Benjamin Barton. These are aimed at you. These are about you." I described the message. The point was made. Or so I hoped.
15. There was no doubt in what I said, or in what I meant: the briefing process, and Mr. Privitera, were out of control. Jacob Lamme, Esq. did not offer a response. Indeed, the young man asked me for help to get another job. And I

agreed to do just that. As my statements, action and inaction made clear, I was fed up. I did not need to ask how Mr. Lamme felt.

16. Judge Meyer in his last writing November 17<sup>th</sup>, 2011, expressed our view. He was as angry as I am today.
17. The full extent of the misuse became clear with close examination by this farm's outside counsel here, and by others we entrusted to take a second look, among them, in-house LFF counsel, Martina Baillie, Esq.
18. With time billed for reading the newspaper, and dates altered to shift billing hours that could not be claimed under applicable law, with embarrassing detail and the numbers withheld from the trial judge, we concluded Mr. Privitera was no longer working for the Farm's interests, nor for the Court's, nor in harmony with the ethic of the New York Bar to which he was sworn. He worked but for his own. And I sought counsel from many, among them the counsel we use here.
19. Note: I requested, of this counsel, as I had of previous counsel, as known by this counsel, that all documents to and from government were to be copied and forwarded to Joseph R. Brennan, of Brennan & White, LLP. No matter how often I asked, this request was observed in the breach.
20. As the CASP settlement date of April 26, 2011 approached, I took matters into my own hands. With calls to, and help from, Senator Elizabeth O'Connor "Betty" Little and Thomas C. Congdon of Executive Chambers, I worked to assure the Governor's Office would direct APA to settle at Judge

Meyer's number. Mr. Privitera, who had pressed hard to continue with a Motion to Reargue to collect and run up more fees (denied, J. Meyer, April 4, 2011), and an Appeal, was no part of these calls. My deal was struck with Senator Little, confirmed by Mr. Congdon for Governor Cuomo's office, and we went to CASP without a word to Mr. Privitera as he talked himself into dropping.

21. The government came ready to settle - with a hidden catch, the first of many. As condition of payment, government would seek to convert our two-party agreement to a three-party settlement, with a request of Judge Meyer to vacate or expunge the record of his opinion and decision awarding fees. By mutual agreement, entered into by our counsel and government, we were to be paid, and the court record on fees and all fact were to be obliterated. But Judge Meyer was to be asked AFTER we were paid.
22. As described in sworn detail by Affirmation of Martina Baillie, submitted in support of this Answer, Ms. Baillie accompanied Mr. Privitera to the settlement conference chamber. She and Mr. Privitera approached to ask if I would agree to petition the court *following* payment. Flat out, I declined. Ms. Baillie directly urged me to reconsider, saying that Judge Meyer would never agree, that APA would be exposed for its wish to hide the record, and that we would be paid. I reversed myself and agreed.
23. Ms. Baillie and Mr. Privitera returned to CASP chambers and then reemerged minutes later, as Mr. Privitera announced a second catch, as he called it: he confessed he was "conflicted". Judge Meyer's opinion, he said, "was abusive" to him. I had not read it. He said that government - and he -

wished to contact Judge Meyer then and there, from CASP HQ. Any payment would be subject to a *prior agreement* with Judge Meyer to obliterate his court's record. He said he and government had agreed to this, that this would be the only way government would pay the Farm. I refused. This, I said, was no settlement offer.

24. Mr. Privitera objected, saying that I was rejecting settlement. "No", I replied, "I am not rejecting settlement, I created this settlement; I am rejecting you."

25. This discussion was witnessed, off the record, at my request, from a distance, by Danny Hakim, Albany Bureau Chief, and Nathaniel Brooks, staff photographer, both for the New York Times. I had contacted them for the disclosure I felt was needed.

26. Promptly, with an officer of the court accompanying (name on request), I abruptly and directly intervened in CASP chambers, to address all concerned, and to all declared, that turning a two-party settlement into a three-party settlement would kill our deal. I said I refused to put Judge Meyer in a position where he would have to decide if we would get paid, so that government could hide. Government declined, and our counsel was silent, sharing in their mutual desire to quash and settle, for running up bills. See Jacobs (Exhibit D). Ms. Baillie and I left Albany without agreement.

27. Without delay, I contacted Will Doolittle of The Post-Star, Kim Smith-Dedam of The Press Republican, and the publisher of Denton Publications to report these details. (Exhibit F). I reached for Danny Hakim again. I was



quoted, “My lawyer and [the Attorney General] found some common ground. They just forgot about me.” I described the proposed three-party settlement as an “attempt to silence due process.”

28. Again, the message to Mr. Privitera was clear: I regarded him as part of the problem, not a part of the solution.
29. Within days, Julie Sheridan (Assistant Solicitor General, (518) 486-5355) of the Attorney General’s office withdrew the AG’s and APA’s request for secrecy, as government agreed to Judge Meyer’s number, with sunshine, as directed by me.
30. But there was still another catch. Government, Mr. Privitera said, would not settle or close in Essex County at the Court House. Government, he said, demanded settlement at CASP HQ in Albany. He said champagne would be served, we would celebrate. I declined. I said settlement would take place at the Essex County courthouse, where the battle had been fought, or there would be no settlement. Mr. Privitera responded with an offer to accept our check at CASP HQ to avoid a break in our settlement process, which, he said, would fail if I insisted. Again, I declined. He repeatedly said, government would not come to Essex, declaring that Ms. Sheridan was a mother of three and could not take the time. I declined. I said it would be Essex or nothing.
31. And, I added, I would take delivery of the check myself, in Essex. I said Mr. Privitera was welcome to attend, given his stated wish to be involved, but Farm counsel at the Essex County closing would be Martina Baillie, Esq.

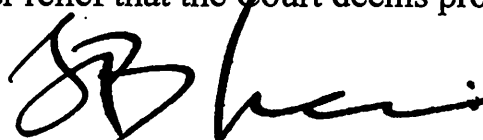
32. On June 9, 2011, by hand, following closing, Ms. Sheridan delivered a check to me at the Essex County Clerk's Office in Elizabethtown. Mr. Privitera declined to be present. He blocked Mr. Lamme from attending. The event was memorialized and witnessed, by the public and the public's representatives in the press, Senator Little and Essex County Clerk, Joseph Provoncha, present.
33. Mr. Privitera called the next day to collect. As I had said repeatedly, I said again that I would be happy to negotiate, as I had made clear so many times before. Twenty-minutes of Mr. Privitera yelling ended in stalemate. I said I hoped we might talk. Mr. Privitera's letter dated June 10, 2011, followed.
34. In my email response, dated July 9, 2011, I recounted the events of April 26 in Albany, the collusion between Mr. Privitera and government, and the pattern I saw. (Exhibit G).
35. I referenced my call, and my comment in 2009 and forward, on the subject of the writings I had posted on the Farm website, writings aimed directly at Mr. Privitera and his firm, not to mention his profession.
36. I reiterated my invitation and wish to negotiate, again stated our wish and desire, and my willingness to settle. Silence followed.
37. Mr. Privitera's subsequent undated letter to my wife Barbara Lewis attempted the path of least resistance, and I responded directly:

*When counsel misbehaves and the fleet is experiencing weather at sea, it's best to avoid a confrontation on the bridge. I do not count strawberry preserve portions in a howling typhoon. I manage what staff I have. I managed you. I commend Jacob Lamme. You require baby-sitting. (Exhibit H, and see *The Caine Mutiny*).*

38. In point of fact, at conclusion, when I directed appeals in the underlying action, most of my conversations were with Jacob Lamme. I said over and over: "get this case closed".

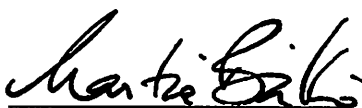
39. I sent every signal short of termination or mutiny in the typhoon. Mr. Privitera was our captain. I never refused to pay. Nor am I refusing now. The judge has ruled on reasonableness. I appealed to Mr. Privitera's sense of fairness, speaking from my own, in hope that he will do his profession, and us, justice.

WHEREFORE, I respectfully request that this Court dismiss Plaintiff's Motion for Summary Judgment, and granting such other relief that the Court deems proper.



Salim "Sandy" B. Lewis

Sworn to me this 17<sup>th</sup> day  
of September 2012.



Notary Public – State of New York  
Qualified in Essex County  
Commission Expires:

MARTINA BAILLIE  
Notary Public, State of New York  
Registration #02BA6214572  
Qualified in Essex County  
My Commission Expires December 14, 2013