

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
JONATHAN TROFFA,

Index No.
Date E-Filed:

Petitioner/Plaintiff,

JOS. M. TROFFA LANDSCAPE AND MASON SUPPLY, INC.,

Plaintiff,

-against-

**VERIFIED
PETITION/COMPLAINT**

JOSEPH M. TROFFA,

Respondent/Defendant,

LAURA J. TROFFA, JOS. M. TROFFA MATERIALS
CORPORATION, NIMT ENTERPRISES, LLC,
L.J.T. DEVELOPMENT ENTERPRISES, INC., and JOS. M.
TROFFA LANDSCAPE AND MASON SUPPLY, INC.,

Defendants.

-----X

Petitioner/Plaintiff JONATHAN TROFFA and Plaintiff JOS. M. TROFFA
LANDSCAPE AND MASON SUPPLY, INC., by their attorneys, BRACKEN MARGOLIN
BESUNDER LLP, in this hybrid proceeding pursuant to New York State Business Corporation
Law ("BCL") and New York Civil Practice Law and Rules ("CPLR"), complaining of the
Respondent/Defendant and Defendants, as and for their Petition and Complaint, allege as
follows:

PARTIES

1. Petitioner/Plaintiff JONATHAN TROFFA ("Jonathan") is a natural person who,
at all relevant times hereinafter mentioned resided and presently resides in the County of Suffolk,
State of New York.

2. Plaintiff and nominal Defendant JOS. M. TROFFA LANDSCAPE AND MASON SUPPLY, INC. (the "Corporation") is an active corporation, in good standing, which was incorporated in 1975 under the laws of the State of New York, with its principal place of business at 70 Comsewogue Road, East Setauket, in the County of Suffolk, State of New York.

3. Respondent/Defendant JOSEPH M. TROFFA ("Joseph") is a natural person who, upon information and belief, at all relevant times hereinafter mentioned resided and presently resides at 11 North Ridge Road, Setauket, in the County of Suffolk, State of New York.

4. From about 1995 through the present, Joseph was and is an officer and director of the Corporation.

5. From 1995 to the present, Jonathan was and is the Vice-President and a director of the Corporation.

6. Defendant LAURA J. TROFFA ("Laura") is a natural person who, upon information and belief, at all relevant times hereinafter mentioned resided and presently resides at 11 North Ridge Road, Setauket, in the County of Suffolk, State of New York. Laura and Joseph are presently married to each other.

7. Upon information and belief, from 1997 to the present, Laura was and is an officer of the Corporation.

8. Upon information and belief, Defendant JOS. M. TROFFA MATERIALS CORPORATION ("Materials Corp.") is a New York corporation with its principal place of business at 70 Comsewogue Road, East Setauket, in the County of Suffolk, State of New York.

9. Upon information and belief, Defendant NIMT ENTERPRISES, LLC ("NIMT") is a New York limited liability company with its principal place of business at 70 Comsewogue Road, East Setauket, in the County of Suffolk, State of New York.

10. Upon information and belief, Laura is an equity owner of NIMT, and Jonathan holds a 1% (one percent) membership interest in NIMT.

11. Upon information and belief, Defendant L.J.T. DEVELOPMENT ENTERPRISES, INC. ("LJT") is a New York corporation with its principal place of business at 70 Comsewogue Road, East Setauket, in the County of Suffolk, State of New York.

12. Upon information and belief, Laura is the sole shareholder of LJT.

NATURE OF THE PETITION/COMPLAINT

13. Jonathan, as an officer and director of the Corporation, brings this action directly on behalf of the Corporation against Respondent/Defendant and Defendants asserting causes of action sounding, *inter alia*, in breaches of fiduciary duty, breaches of the duty of loyalty, diversion of corporate opportunities, self-dealing, corporate waste, faithless employee claims, undisclosed conflicts of interest, and misrepresentation, and seeking recovery of damages, disgorgement of profits, return of compensation to the Corporation, imposition of constructive trusts and conveyance of real property beneficially owned by the Corporation but titled in the name of one or more of Respondent/Defendant and Defendants.

14. Jonathan brings this dissolution action as a 50% (fifty percent) shareholder seeking an accounting and winding up of the Corporation on the grounds of deadlock.

BACKGROUND

15. The Corporation filed its Certificate of Incorporation on August 12, 1975.

16. The Corporation engages primarily in the wholesale landscape and mason supply business. The Corporation's three main businesses are bulk materials, ready-mix and hard goods. The bulk materials sold by the Corporation include sand, gravel, boulders, mulch, compost, top soil, decorative gravel and recycling. Many of these items are produced onsite.

The bulk materials segment of the business also includes the collecting and recycling of yard waste such as trees, grass, leaves, soil, brick and concrete. The ready-mix segment of the business delivers concrete to residential and commercial customers and produces various pre-cast items. The hard goods sold by the Corporation include brick, pavers, cement blocks, tools, building stone, stone veneer, flagstone, cobblestone and chimney supplies.

17. Jonathan manages the sales and customer service for all three segments of the business, along with the scheduling and dispatching of inbound and outbound deliveries. Jonathan manages the Corporation's truck drivers, forklift operators and yard help. He is responsible for roughly 90% (ninety percent) of the purchases from suppliers and vendors across all segments of the business. Joseph primarily supervises the bulk materials segment of the business. He produces most of the bulk materials sold by the Corporation and those used in the ready-mix segment of the business. He also purchases some bulk materials.

18. Upon information and belief, from the inception of the Corporation until 1995, Joseph was the sole shareholder, having been issued stock certificate #1 for 10 (ten) common shares of the Corporation.

19. On or around December 28, 1995, Jonathan was issued stock certificate #2 for 40 (forty) shares of the common stock of the Corporation.

20. Upon information and belief, on or around January 1, 2002, Joseph caused to be issued to himself an additional 30 (thirty) shares of the common stock of the Corporation, represented by stock certificate #3.

21. The number of issued and outstanding shares of the Corporation entitled to vote at an annual meeting for election of directors is 80 (eighty) of which 40 (forty) shares are owned by Joseph and 40 (forty) shares are owned by Jonathan.

22. Upon information and belief, no additional stock of the Corporation has thereafter been issued.

23. Upon information and belief, there has been no directors' meeting whereby Jonathan was removed as Vice-President of the Corporation.

24. Upon information and belief, there has been no directors' meeting whereby Jonathan was removed as a director of the Corporation.

25. Upon information and belief, in or around October 1990, Joseph was married to Laura, his second wife.

26. Upon information and belief, based on the records of the Corporation, since January 2002 and at all times up to the present, Joseph and Jonathan have each been the record owners of 50% (fifty percent) of the common stock of the Corporation.

27. At all relevant times hereinafter mentioned, the Corporation has conducted and still conducts its business on six adjacent pieces of property in an industrial park in East Setauket, New York.

28. Of the aforementioned six parcels, four were acquired after Laura became an officer of the Corporation, and as to all four of those parcels, Jonathan was told by Joseph that they were each acquired for the benefit of the Corporation and that the Corporation was to be the beneficial owner of said parcels, but that the deeds would be titled in the names of entities which would hold the properties and title for the Corporation.

29. Upon information and belief, a fifth property was deeded to Laura or an entity owned by Laura at a time prior to her formal appointment as an officer of the Corporation.

30. Upon information and belief, three of the aforementioned five parcels are presently titled in the name of NIMT, including the approximately three-acre property upon

which is located the Corporation's warehouse and showroom, and two of these parcels are presently titled in the name of LJT (the five parcels referred to above are referred to as the "Laura Properties").

31. Based on the foregoing representations by Joseph, Jonathan did not object to the acquisition of the Laura Properties.

32. The foregoing representations were false, were known to be false when they were made, and were made for the purpose of defrauding and misleading Jonathan. Jonathan only recently discovered, based on statements made by Joseph, that the properties that were placed in entities owned by Laura were not being used for the Corporation but for the personal financial benefit of Laura and Joseph at the expense of the Corporation.

33. Joseph did not offer the Corporation the opportunity to acquire any of the Laura Properties and the Corporation's board of directors did not waive the Corporation's right to acquire these properties.

34. Upon information and belief, each of the Laura Properties was purchased with funds derived from the Corporation without proper authorization, and unauthorized capital improvements to the Laura Properties were paid for by the Corporation for the sole benefit of Respondent/Defendant and Defendants.

35. Upon information and belief, Joseph used the Corporation's funds to make irregular payments to the Laura Properties' nominal owners.

36. The payments by the Corporation to the title holder(s) of the Laura Properties were not authorized or approved by the board of directors of the Corporation and such payments constituted a conflict of interest of and self-dealing by Joseph and Laura.

37. Upon information and belief, the rents paid by the Corporation to the entities holding title to the Laura Properties were exorbitant and constituted a waste of the Corporation's assets.

38. The sixth piece of property on which the Corporation conducts business is referred to as the "Compost Yard Property" and consists of 1.78 acres located at 70 A Comsewogue Road (a/k/a Parsonage Road).

39. Upon information and belief, in or around 1999, the Corporation entered into a lease/purchase agreement with the then owners of the Compost Yard Property, Laurence and Ronald Schreiber, to buy the Compost Yard Property for \$390,000, pursuant to which the Corporation would make monthly payments to be applied against the purchase price.

40. Upon information and belief, in or around 2004, the lease/purchase agreement was modified and/or reconfirmed, and the credit for prior payments of \$133,000 was applied and the balance remaining as of April 1, 2004, was \$257,000.

41. Upon information and belief, on or about March 12, 2013, without disclosing his intent to Jonathan and without Jonathan's knowledge or consent, Joseph purchased the Compost Yard Property in his own name, taking a credit of \$355,372 toward the \$390,000 purchase price and paying a balance of \$39,628.

42. Upon information and belief, the funds accounting for the \$355,372 credit were funds paid by the Corporation.

43. Upon information and belief, the final payment was made by Joseph from funds derived from an equity line of credit advance, the amount of which was later paid to Joseph by NIMT which was, in turn, paid to NIMT by the Corporation.

44. The acquisition of the Compost Yard Property constitutes a diversion of a Corporate opportunity, self-dealing and conflict of interest, which were breaches of Joseph's fiduciary duty and duty of loyalty to the Corporation.

45. Upon information and belief, Joseph caused the Corporation to make irregular payments to NIMT, an entity owned by Laura, as rent for the Compost Yard Property, even though the Compost Yard Property was deeded to him and paid for with funds from the Corporation.

46. The payments by the Corporation to NIMT as rent for the Compost Yard Property were never authorized or approved by the board of directors of the Corporation and constituted a conflict of interest of and self-dealing by Joseph.

47. Upon information and belief, the rents paid by the Corporation to NIMT as rent for the Compost Yard Property were exorbitant and constituted a waste of the Corporation's assets.

48. Upon information and belief, Defendants have intermingled funds and assets, arbitrarily transferred funds between Defendant entities, failed to adhere to corporate formalities, and have each treated the Defendant entities as their alter egos.

49. In or about May 2014, without authorization, Joseph secretly removed Jonathan as a signatory on the Corporation's bank account and added his wife, Laura, as a signatory, thereby usurping complete control over the Corporation's cash receipts, disbursements and finances, to the exclusion of Jonathan.

50. Beginning in the fall of 2014, Joseph began pressing Jonathan to split up the Corporation into two separate companies, with Joseph taking over the bulk goods and ready-mix segments of the business and Jonathan taking over the hard goods segment.

51. Joseph provided Jonathan with a handwritten proposal of the terms and conditions for a division of the Corporation's business and assets.

52. Jonathan rejected the proposal to break up the Corporation as presented by Joseph.

53. Since late 2014, Joseph has been purchasing equipment without authorization or Jonathan's consent, including, without limitation, installation of a phone system in a location used primarily by Joseph and Laura and not for the Corporation's business, building structures and committing to capital projects, and upon information and belief, filtering the Corporation's funds through other entities they control, where the principal use of the equipment is for Joseph's own competing business and is not in the Corporation's best interests.

54. In early 2015, upon information and belief, Joseph formed Materials Corp., and in or around March 2015, Joseph candidly announced to Jonathan that he was going to use Materials Corp. to divert the bulk materials and ready mix segments of the Corporation's business to this new corporation, for himself and thereafter, dissolve the Corporation. Joseph told Jonathan that he was to set up his own business to take on the hard goods segment immediately.

55. Jonathan objected to the formation of Materials Corp. and Joseph did not offer to make Materials Corp. a subsidiary of the Corporation or to include Jonathan as an equity owner.

56. On or about December 16, 2015, Joseph unilaterally instituted a requirement that all Purchase Orders to the Corporation's outside vendors be signed by him. Prior to December 16, 2015, Jonathan was the primary buyer for all segments of the Corporation, accounting for roughly 90% (ninety percent) of the Corporation's purchases. This requirement has severely hampered Jonathan's ability to conduct the Corporation's business, in part because

it delays processing of hard goods and other orders and because, upon information and belief, Joseph has been intentionally delaying or denying such approval.

57. Joseph is causing the Corporation to lose sales by impairing Jonathan's ability to acquire inventory and by unduly delaying processing of purchase orders and receipt of merchandise. His conduct has rendered it increasingly more difficult for Jonathan to run the hard goods segment of the business. The Corporation has lost and continues to lose sales because of low inventory and longer turnaround times.

58. There is no reciprocal requirement that Jonathan approve Purchase Orders made by Joseph.

59. Jonathan's ability to perform his functions, such as ordering bulk materials and/or hard goods for the Corporation, has been further impaired by statements made by Joseph to the Corporation's vendors which intentionally demeaned and disparaged Jonathan, such as statements that Jonathan does not have the authority to purchase inventory on his own, a power he traditionally possessed.

60. Since December 16, 2015, Joseph has interfered and prevented, without authorization, acquisition of hard goods inventory for orders already placed by the Corporation's long-standing customers, without justification.

61. Joseph, Laura and Jonathan are all employed by the Corporation. Laura's responsibilities are limited to preparation of the Corporation's payroll and oversight of the health insurance for employees and employee benefits. She works roughly six hours per week.

62. Over Jonathan's objections, Joseph paid his wife, Laura, excessive compensation, which constitutes a waste of the Corporation's assets, self-dealing and a breach of fiduciary duty.

63. Jonathan's compensation is equal to Laura's, even though Jonathan's duties and responsibilities far exceed those of Laura, and his working hours are greater.

64. Upon information and belief, on Sunday, May 15, 2016, without Jonathan's knowledge or consent, and without authorization, Laura and Joseph moved a computer, certain files, a printer and miscellaneous office supplies from the Corporation's office into a trailer for the purpose of placing them and the information they contained out of Jonathan's reach and for the purpose of using same for their own businesses other than the Corporation's business.

65. Joseph, with Laura's knowing assistance, has effectively blocked Jonathan's access to the Corporation's business and financial records.

66. Laura has actual knowledge that Jonathan is a 50% stockholder of the Corporation and that Joseph's conduct, acts and omissions, and the concealment thereof, for which she has provided substantial assistance, is a breach of Joseph's fiduciary duty.

67. To the extent that Laura may be an officer of the Corporation, her conduct is a breach of fiduciary duty and duty of loyalty, for which Joseph has knowingly provided substantial assistance.

68. On May 20, 2016, Joseph attempted to stack the Board of Directors of the Corporation with three new additional directors, without a vote of shareholders, a shareholders' meeting, a board of directors' meeting and without authorization.

69. Upon information and belief, on or around June 3, 2016, Joseph attempted to intimidate employees into signing affidavits with threats and suggested retribution, which affidavits contained false and derogatory information about Jonathan. It is uncertain how many employees have been approached in this manner.

70. Upon information and belief, the conduct of Joseph and his divisiveness has created and continues to create anxiety and dissonance among the Corporation's employees, impairing the efficiency and productivity of the Corporation's work staff, to the detriment of the Corporation's welfare and threatening its continued viability.

71. Upon information and belief, Laura and Joseph have been using the Corporation's funds to pay for their own personal expenses without authorization and without Jonathan's consent.

72. Laura and Joseph have not provided evidence confirming that the funds they took from the Corporation were actually for legitimate expenses of the Corporation.

73. Joseph has denied Jonathan access to the Corporation's business and corporate records.

74. Jonathan and Joseph have agreed that the Corporation cannot continue as it is presently operating, and have attempted, over several months, to negotiate a division of the Corporation's assets and business segments without success.

75. The two equal shareholders clearly cannot co-exist and the viability of the business is in jeopardy.

FIRST CAUSE OF ACTION
Dissolution under BCL § 1104(a) - Deadlock

76. Petitioner/Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1-75 as if fully set forth at length herein.

77. There has not been an election of directors of the Corporation in over a decade.

78. Jonathan holds 40 (forty) shares of the Corporation, representing fifty percent (50%) of the issued and outstanding stock of the Corporation. The existence of the Corporation's By-Laws has not been established, and therefore, a majority of shares entitled to

vote is required for the election of directors, and the Corporation's officers are to be officers elected by majority vote of the Board of Directors.

79. In the absence of By-Laws or Certificate of Incorporation provision to the contrary, the compensation of officers must be set and approved by the Board of Directors. Joseph's and Laura's compensation have never been duly authorized.

80. Joseph has usurped full control over the management and operations of the Corporation, stripping Jonathan of his authority as the Vice-President and Director of the Corporation and excluding him from upper management of the Corporation's business.

81. Joseph has, *inter alia*: undermined Jonathan's authority and exercise of his duties and functions as an officer and director of the Corporation; interfered with Jonathan's ability to deal with the Corporation's vendors; secretly filed banking resolutions without authority that eliminated Jonathan as a signatory on the Corporation's bank account; advised suppliers and others that Jonathan no longer has the authority to conduct business in the manner in which Jonathan had customarily conducted it; secretly started a new business for his personal benefit using the Corporation's assets stating his intention to divert the Corporation's business and business opportunities to himself and Laura over Jonathan's objections; usurped and diverted corporate opportunities to acquire real property for Joseph's and Laura's own personal profits at the expense of the Corporation; paid excessive compensation to himself and his wife Laura; along with other acts undertaken by Joseph in violation of his fiduciary duties, duty of loyalty and without authorization, the continuation of which render the continued existence of any workable business relationship untenable and which compel the dissolution of the Corporation.

82. Based on the 50/50 ownership of the Corporation's stock, the fact that there are two directors of the Corporation, Joseph and Jonathan, and that the two shareholders/directors

cannot agree on the conduct of the Corporation's business, it would be futile to attempt to conduct an election of directors because the two shareholders are so hopelessly deadlocked and irreparably divided with respect to the management and operations of the Corporation that the votes necessary for the election of directors, a majority, cannot be obtained.

83. In addition, the Board of Directors is also hopelessly deadlocked and irreparably divided with respect to the management and operations of the Corporation so that the votes required for action by the Board of Directors cannot be obtained.

84. Therefore, judicial dissolution is authorized by the New York Business Corporation Law § 1104(a).

SECOND CAUSE OF ACTION
Breach of Fiduciary Duty and Duty of Loyalty - Accounting

85. Petitioner/Plaintiff and Plaintiff repeat and re-allege the allegations contained in Paragraphs 1-84 as if fully set forth at length herein.

86. Jonathan brings this action directly on behalf of the Corporation and against Respondent/Defendant and all Defendants.

87. Upon information and belief, Laura and Joseph have taken active steps to engage and are engaged in competition with the Corporation individually and through entities in which they are equity owners using the Corporation's funds.

88. Upon information and belief, assets belonging to the Corporation, including business opportunities like the opportunities to acquire the Laura Properties and the Compost Yard Property, were diverted to Respondent/Defendant and Defendants.

89. Upon information and belief, the Laura Properties were transferred to LJT and NIMT and not to the Corporation, in violation of Laura's and Joseph's fiduciary duties and their duty of undivided loyalty to the Corporation.

90. Laura and Joseph must account to the Corporation for the profits they derived, for which they were unjustly enriched to the Corporation's detriment, for wasting Corporation assets, and for self-dealing.

91. The Corporation demands that Laura and Joseph return and pay back to the Corporation excessive and unauthorized compensation they have received, along with all compensation they received while breaching their fiduciary duties to the Corporation, self-dealing and intentionally wasting the Corporation's assets.

92. The Corporation demands that Respondent/Defendant and Defendants account for and disgorge all profits obtained as a result of the duty breaches of Laura and Joseph.

93. Joseph, Laura and the remaining Defendants are also liable to the Corporation for aiding and abetting and acting in concert to help Joseph and Laura breach their respective duties to the Corporation.

94. The aforementioned tortious conduct is repugnant to the moral and ethical sensibilities of the community, and merits the awarding of punitive damages.

THIRD CAUSE OF ACTION Constructive Trust

95. Petitioner/Plaintiff and Plaintiff repeat and re-allege the allegations contained in Paragraphs 1-94 as if fully set forth at length herein.

96. The Corporation is entitled to the imposition of a constructive trust on the diverted properties and opportunities, and upon the traceable funds and assets derived therefrom, and an accounting.

97. The acquisition of the Compost Yard Property and the Laura Properties was fraudulent, and constituted a breach of Joseph's and Laura's fiduciary duties to the Corporation,

entitling the Corporation to the remedy of a constructive trust on the Compost Yard and the Laura Properties.

98. The Corporation demands conveyance of the aforementioned properties to the Corporation in return for the actual amount paid by the purchasers from funds other than those of the Corporation.

FOURTH CAUSE OF ACTION
Action to Quiet Title

99. Petitioner/Plaintiff and Plaintiff repeat and re-allege the allegations contained in Paragraphs 1-98 as if fully set forth at length herein.

100. This cause of action is brought pursuant to Article 15 of the Real Property Actions and Proceedings Law of the State of New York, to compel the determination of claims to the real property hereinafter described.

101. Pursuant to one certain Bargain and Sale Deed (copy annexed hereto as Exhibit A) dated March 12, 2013, Joseph apparently obtained sole title to the premises described therein to wit:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING AT SETAUKET, IN THE TOWN OF BROOKHAVEN, COUNTY OF SUFFOLK AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY SIDE OF PARSONAGE ROAD, SAID POINT BEING THE NORTHEASTERLY CORNER OF A LOT DESIGNATED AS DISTRICT 0200 SECTION 134.00 BLOCK 04.00 LOT 07.000 ON THE SUFFOLK COUNTY TAX MAP WHERE IT INTERSECTS THE WESTERLY SIDE OF A RIGHT OF WAY DESIGNATED AS DISTRICT 0200 SECTION 135.00 BLOCK 02.00 LOT 002.000 ON THE SUFFOLK COUNTY TAX MAP;

RUNNING THENCE FROM SAID POINT OF BEGINNING THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) SOUTH 19° 51' 34" WEST, A DISTANCE OF 312.98 FEET TO A POINT;

2) SOUTH 21° 31' 44" WEST, A DISTANCE OF 195.52 FEET TO THE TRUE POINT OF BEGINNING;

RUNNING THENCE FROM SAID POINT OF BEGINNING THE FOLLOWING NINE (9) COURSES AND DISTANCES:

- 1) SOUTH 21° 31' 44" WEST, A DISTANCE OF 18.52 FEET TO A POINT;
- 2) SOUTH 24° 12' 00" WEST, A DISTANCE OF 12.49 FEET TO A POINT;
- 3) NORTH 68° 26' 00" WEST, A DISTANCE OF 146.15 FEET TO A POINT;
- 4) SOUTH 24° 12' 00" WEST, A DISTANCE OF 148.46 FEET TO A POINT;
- 5) SOUTH 17° 35' 00" WEST, A DISTANCE OF 143.45 FEET TO A POINT;
- 6) NORTH 68° 30' 39" WEST, A DISTANCE OF 226.42 FEET TO A POINT;
- 7) NORTH 21° 34' 00" EAST, A DISTANCE OF 288.48 FEET TO A POINT;
- 8) SOUTH 86° 30' 28" EAST, A DISTANCE OF 110.32 FEET TO A POINT;
- 9) SOUTH 68° 26' 00" EAST, A DISTANCE OF 265.11 FEET TO THE POINT OR PLACE OF BEGINNING.

TOGETHER WITH EASEMENT RIGHTS OVER THE RIGHT OF WAY SET
FORTH IN LIBER 6963 PAGE 511.

As to Lots 006.006, 006.007 and 006.011
Being and intended to be the same premises as described in deed dated 12.14.01 and recorded 12/21/01 in Liber 12159, page 695; And

As to Lot 006.015
Being and intended to be the same premises as described in deed dated 8/24/06 and recorded 9/30/05 in Liber 12412, page 412.

SCTM # 0200-13400-0400-006.007 and p/o 006.006, 006.011 and 006.015 (referred to herein as the "Compost Yard Property").

102. The aforementioned Bargain and Sale Deed was recorded in the office of the

Clerk of the County of Suffolk on April 19, 2013, in Liber 12727 of Deeds at Page 158.

103. As set forth above, the Corporation is the rightful owner in fee of the Compost

Yard Property and Joseph is constructive trustee thereof.

104. Joseph is known and is not an infant, mentally retarded, mentally ill or an alcohol abuser.

105. Any judgment granted herein will not affect any person or persons not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the aforesaid premises, and every person in being who would have been entitled to such estate or interest, if such event had happened immediately before the commencement of the action is named as a party hereto.

WHEREFORE, Petitioner/Plaintiff Jonathan Troffa and Plaintiff Jos. M. Troffa Landscape and Mason Supply, Inc. demand judgment against Respondent/Defendant Joseph M. Troffa and Defendants Laura J. Troffa, Jos. M. Troffa Materials Corporation, NIMT Enterprises, LLC and L.J.T. Development Enterprises, Inc. as follows:

1. On the First Cause of Action, dissolving the Corporation, appointing a receiver, directing a complete and final accounting from Respondent/Defendant Joseph M. Troffa and Defendants Laura J. Troffa, Jos. M. Troffa Materials Corporation, NIMT Enterprises, LLC and L.J.T. Development Enterprises and to recover all funds, properties, profits and other assets of the Corporation or, alternatively, divide the business, assets and liabilities of the Corporation between Joseph and Jonathan in an equitable amount;
2. On the Second Cause of Action, ordering an accounting and requiring Respondent/Defendant Joseph M. Troffa and Defendants Laura J. Troffa, Jos. M. Troffa Materials Corporation, NIMT Enterprises, LLC and L.J.T. Development Enterprises to disgorge profits and pay such damages as may be proven at trial, return compensation improperly received during the period of their disloyalty, repay the Corporation for wasted assets and pay exemplary and punitive damages in such amount as the Court deems just and proper estimated to exceed \$200,000;
3. On the Third Cause of Action, impressing a constructive trust on the six identified properties, and the assets traceable thereto, and compelling Respondent/Defendant Joseph M. Troffa and Defendants Laura J. Troffa, Jos. M. Troffa Materials Corporation, NIMT Enterprises, LLC and L.J.T. Development Enterprises to

convey the property to the Corporation in return for the amounts they can show they actually paid from funds that were not derived from the Corporation;

4. On the Fourth Cause of Action:

(a) that Respondent/Defendant Joseph M. Troffa and every person claiming under him be barred from all claims to an estate or interest in the property described as the Compost Yard Property in Paragraph 101 of this Petition/Complaint;

(b) that it be adjudged and finally determined that the Corporation is vested with an absolute and unencumbered title in fee to the property described as the Compost Yard Property in Paragraph 101 of this Petition/Complaint;

(c) that Respondent/Defendant Joseph M. Troffa be compelled to deed and/or convey the property described as the Compost Yard Property in Paragraph 101 of this Petition/Complaint to the Corporation and account for any profits derived therefrom; and

(d) that possession of the said property described as the Compost Yard Property in Paragraph 101 of this Petition/Complaint be awarded to the Corporation and that the Corporation be put in full possession thereof; and

awarding Petitioner/Plaintiff Jonathan Troffa and Plaintiff Jos. M. Troffa Landscape and Mason Supply, Inc. the costs and disbursements of this action along with interest and such other and further relief, as the Court deems just, proper and equitable.

Dated: Islandia, New York
June 22, 2016

BRACKEN MARGOLIN BESUNDER LLP



By: Jeffrey D. Powell

Karen I. Hansen

Attorneys for Petitioner/Plaintiff and Plaintiff

1050 Old Nichols Road, Suite 200

Islandia, New York 11749

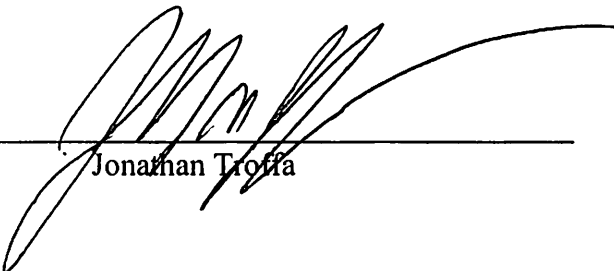
(631) 234-8585

VERIFICATION

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

Jonathan Troffa, being duly sworn, deposes and says:

I am the Petitioner/Plaintiff in the within action. I have read the foregoing *Petition/Complaint* and know the contents thereof. The contents are true to my own knowledge, except as to matters stated to be on information and belief, and as to those matters, I believe them to be true.


Jonathan Troffa

Sworn to before me this
22nd day of June, 2016


Notary Public

SUSANN INGHBRETSSEN
Notary Public, State of New York
No. 01IN4772845
Qualified in Suffolk County
Commission Expires April 30, 2018