

At Part ____ of the Supreme Court of the State of New York, held in and for the County of Suffolk, at the Courthouse located at One Court Street, Riverhead, New York, on the _____ day of June, 2016.

PRESENT:

HON. _____
J.S.C.

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JONATHAN TROFFA,

Index No.

Petitioner/Plaintiff,

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

Plaintiff,

-against-

**ORDER TO
SHOW CAUSE**

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.

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Upon reading and filing the annexed Verified Petition/Complaint, duly verified the 22nd day of June, 2016, the Affidavit of Jonathan Troffa, duly sworn to the 22nd day of June, 2016, the exhibit annexed thereto, the Affirmation of Jeffrey D. Powell pursuant to 22 N.Y.C.R.R. § 202.7(f) and the rules of the Commercial Division, duly affirmed the 27th day of June, 2016, the exhibit annexed thereto, and all prior pleadings and proceedings, and it appearing that Petitioner/Plaintiff Jonathan Troffa and Respondent/Defendant Joseph M. Troffa are each

holders of 50% (fifty percent) of the issued and outstanding shares of capital stock of Jos. M. Troffa Landscape and Mason Supply, Inc. (the "Corporation"), a corporation duly organized under the laws of the State of New York, having its principal office located at 70 Comsewogue Road, East Setauket, New York, in the County of Suffolk, State of New York, and it further appearing that irreconcilable dissention between the two factions has resulted in deadlock concerning the management of the Corporation;

LET the Corporation, Respondent/Defendant, the New York State Tax Commission, the Attorney General of the State of New York, and all persons interested in the Corporation, SHOW CAUSE, before the Honorable _____ at the Courthouse located at One Court Street, Riverhead, New York on the ____ day of July, 2016 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered in this action:

1. Dissolving the Corporation pursuant to BCL Section 1104(a);
2. Compelling Respondent/Defendant Joseph M. Troffa and Defendants to account to the Corporation;
3. Appointing a referee to report to the Court regarding the sale of the Corporation's real property;
4. Compelling Joseph M. Troffa, pursuant to N.Y. Business Corporation Law § 1106, to furnish to the Court and personally serve on Petitioner/Plaintiff's counsel a schedule of the Corporation's assets and liabilities known to or ascertainable with due diligence by Respondent/Defendant, and the name and address of each of the Corporation's creditors and claimants, including any with unliquidated or contingent claims, and any with whom the Corporation has unfulfilled contracts;
5. Along with such other and further relief as the Court may deem just and proper;

and it is further

ORDERED, pursuant to BCL § 1106(b), that a copy of this order shall be published [cross out one]

upon further order of the Court; and it is further

OR

at least once a week in each of the three weeks immediately preceding the time fixed herein for the hearing thereon in _____, a newspaper of general circulation published in Suffolk County, New York, the county in which the Corporation is located as of the date hereof; and it is further

ORDERED, that within ten days of the date of this order, pursuant to BCL § 1106(a), the Corporation and Respondent/Defendant Joseph M. Troffa shall furnish to the Court and personally serve on Petitioner/Plaintiff's counsel a schedule of the Corporation's assets and liabilities known to or ascertainable with due diligence by the Corporation and Respondent/Defendant and the name and address of each shareholder, and of each of the Corporation's creditors and claimants, including any with unliquidated or contingent claims, and any with whom the Corporation has unfilled contracts; and it is further

ORDERED, that a copy of this Order to Show Cause and the papers upon which it is granted, including the Verified Petition/Complaint, shall be filed with the Clerk of Suffolk County by Petitioner within ten days after the entry of this order and a copy of each schedule furnished to the Court by Respondent/Defendant shall be filed by Respondent/Defendant with the Clerk of Suffolk County within ten business days of furnishing said schedule(s) to the Court; and it is further

ORDERED, that a copy of this Order to Show Cause and the papers upon which it is granted, including the Verified Petition/Complaint, be served: (1) upon the State Tax

Commission; and (2) the Attorney General: pursuant to CPLR § 307; and (3) upon such persons as are identified in the schedule(s) required pursuant to BCL § 1106(a) who are creditors or claimants of the Corporation; such service to be made personally at least ten days before the hearing date or by first class mail sent postpaid to the last known address of each said person at least twenty days before the hearing, and that such service shall be deemed good and effective service;

And PENDING FURTHER ORDER OF THE COURT, Joseph M. Troffa and Laura J. Troffa, and their agents, employees, representatives, attorneys, and all those acting in concert with or under the control of either of them, shall be temporarily restrained from:

1. Taking or transferring for themselves anything of value from the Corporation in excess of the pro-rated weekly amount of compensation based on the compensation as set forth in the Corporation's Forms W-2 for the respective Defendants for the 2015 year;
2. Transferring or encumbering of any of the Corporation's real property, leasehold interests, or other beneficial interests in real property;
3. Transferring of any of the Corporation's assets outside of the ordinary course of business;
4. Reducing Petitioner/Plaintiff Jonathan Troffa's pro-rated weekly compensation from that paid to him in 2015 as indicated on the Corporation's form W-2 for 2015;
5. Interfering with the exercise of Petitioner/Plaintiff Jonathan Troffa's conduct of the hard goods segment of the Corporation's business, provided such conduct is within the historical scope of his authority prior to December 1, 2015 and otherwise in the ordinary course of business;
6. Issuing any additional stock in the Corporation or removing Petitioner/Plaintiff Jonathan Troffa as an officer or director;
7. Conducting any shareholders' or directors' meeting;
8. Making any commitments or continuing any capital improvements not to be used exclusively for and by the Corporation;

9. Using any of the Corporation's assets for their own personal benefit;
10. Preventing or interfering with Petitioner/Plaintiff Jonathan Troffa's access to the financial and corporate records of the Corporation.

ORDERED, that a copy of this Order to Show Cause and the papers upon which it is granted, including the Verified Petition/Complaint, be served personally, pursuant to CPLR § 308(1) or (2) upon the Respondent/Defendant and Defendants, and that such service shall be deemed good and effective service.

E N T E R:

J.S.C.